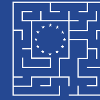
REGIONAL ANTI-CORRUPTION INITIATIVE



THE AIRE CENTRE
Advice on Individual Rights in Europe

"Effective Implementation of Asset Recovery Measures in the Western Balkans: an overview of a regional monitoring methodology, key benchmarks and case studies of good practice"

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“Effective Implementation of Asset Recovery Measures in the Western Balkans: an overview of a regional monitoring methodology, key benchmarks and case studies of good practice”

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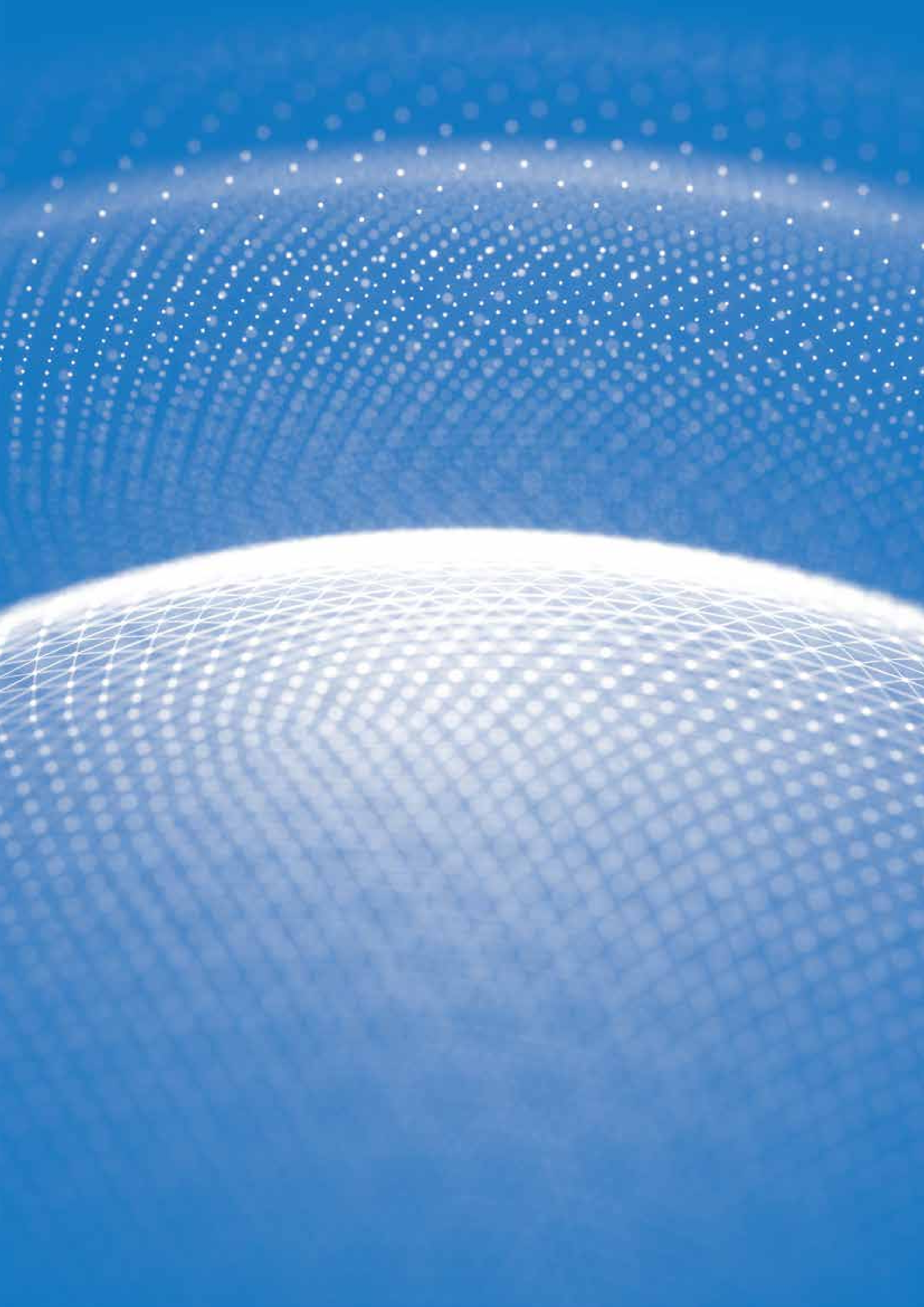

SUMMARY

The report, “Effective Implementation of Asset Recovery Measures in the Western Balkans: an overview of a regional monitoring methodology, key benchmarks and case studies of good practice” has been developed within the framework of the regional project, “Strengthening anti-corruption work in the Western Balkans through improving assets seizure measures”. The project is implemented by the AIRE (Advice on Individual Rights in Europe) Centre and RAI (Regional Anti-corruption Initiative) Secretariat. The project is funded by the UK Government.

Jurisdictions covered by this report are Albania, Bosnia and Herzegovina, Kosovo*, Montenegro, North Macedonia and Serbia.

The report consists of two parts. The first part is an overview of a regional monitoring methodology, best practice and steps forward, and it presents the most important standards derived from international sources, in particular from the European Union. Based on the analysis carried out in the overview, a list of benchmarks and recommendations has been developed, which aim to provide the national authorities in each of the jurisdictions covered with useful and practical guidance for the establishment of a comprehensive, accurate and reliable system for collecting, processing and disseminating asset recovery data. Both, the overview and the list of benchmarks and recommendations have been consulted with the national stakeholders from the participating jurisdictions. Statistical data collected by the national coordinators in each jurisdiction is presented in Annex I.

Part II of the report features success stories which are presented in the form of case studies. The case studies are focused on different aspects of the asset recovery process such as third-party confiscation, evidentiary standards, financial investigations and international cooperation. The success stories could be used as a training material but also could be further presented and promoted in order to strengthen public trust in judiciary and create a positive public perception concerning the effectiveness of the fight against corruption and organized crime in the Western Balkan region.

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* This designation is without prejudice to the positions on status, and is in line with UNSC 1244 and the ICJ opinion on the Kosovo Declaration of Independence

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PART I - OVERVIEW OF THE REGIONAL MONITORING METHODOLOGY- BEST PRACTICE AND STEPS FORWARD

Introduction

Asset recovery measures are one of the oldest legal instruments available to law enforcement in their criminal-law response to behaviours that seek material gain in an unlawful manner. Today, asset recovery is a top priority of the international community, with asset recovery included by the United Nations in their Sustainable Development Goals (SDGs), specifically in SDG-16.4 (Promote Peaceful and Inclusive Societies for Sustainable Development, Accountable and Inclusive Institutions at all Levels), as well as in commitments to the Addis Ababa Action Plan on Financing for Development. As a result of such efforts, UNODC, which is responsible for the most prominent UN instruments dealing with crime, has begun identifying good practice in the management and disposal of recovered and returned assets in support of wider sustainable development.

While the decades-long presence and use of asset recovery within national legislations has generated a number of useful insights, and outlined possible directions for further legislative improvements, the effectiveness of asset recovery in practice is still a key question. This question can be approached using a variety of methods, with a key measure of effectiveness being a statistical summary of cases that have been closed before judicial institutions, including prosecutor's offices but especially the courts. Such a summary would include the number of cases brought against criminal justice subjects, the nature of the criminal offences for which they were prosecuted and a record of the assets confiscated, including the amount, type (movable, immovable, tangible, intangible, etc.), and an assessment of value. In a report on the available statistical information on asset recovery, Europol (2016) suggests that "data and statistics on asset recovery efforts (i.e., number and value of assets frozen, seized, or confiscated) are essential in order to monitor the performance of asset recovery systems and investigative techniques used in complex investigations involving corruption and organized crime".

Although this sounds like a simple task, it is not uncommon for national mechanisms for the statistical monitoring of formal social control bodies to encounter significant problems and obstacles that make it difficult to draw accurate and reliable conclusions on how effective the asset recovery system as whole really is. First, the fact that different states have their own legislation in this area, within which asset recovery is defined as a specific measure, sanction (fine), consequence of a conviction, or something else, must be taken into account. Second, enforcement mechanisms for execution of court judgments on seizure and confiscation of illegally obtained assets are also a very important link in the rule of law chain, and this matter is usually governed by laws which are not dominantly derived from criminal law but do have a decisive influence on the effectiveness of a criminal asset recovery system. For example, a survey conducted in the UK (Bullock, 2010) pointed out that problems with successful execution of confiscation orders may be related to (a) the value of the order (if it is greater than the costs that would be incurred by execution then it makes sense to carry out enforcement), (b) having specialist knowledge of staff working in institutions charged with executing confiscation orders, (c) administrative barriers to communication between the institutions involved, which may lead to lost time and significant delays, and (d) lack of interagency cooperation and end-to-end joint approach by a number of involved institutions. Accordingly, the focus of the statistical recording mechanisms when it comes to asset recovery instruments should be on enforcement of court decisions.

Data on the enforcement of court decisions that impose confiscation measures are an important part of the statistical analysis of proceedings for the confiscation of the proceeds of crime. If the analytical information gathered does not correspond to the actual situation on the ground, for instance if it cannot be established precisely and reliably what assets (and their values) became the property of the state (jurisdiction) after the final court proceedings, then the effectiveness of the entire asset recovery system, made up of a large number of different participating institutions, can be objectively brought into question (Datzer, Mujanović, 2017). This is especially important in cases where property of higher value is confiscated as part of the fight against organized crime, corruption and large financial crime. In such cases, the focus should be on ensuring that the orders imposed on serious organised criminals are properly enforced as doing so will help to recoup larger sums and symbolize that crime does not pay (Bullock, Mann, Street & Coxon, 2009).

The benefits of establishing a comprehensive, accurate and reliable system for the statistical recording, analysis and dissemination of asset recovery data is not only benefit the application of asset recovery laws. It also strengthens public confidence in the work of institutions, particularly the police, prosecutors, courts and the asset management agency, most notably by increasing the visibility of their work (Misoski, 2018). In her study on different confiscation practices relate to illegal assets, Vettori (2006) pointed that the lack of trustworthy statistics on the implementation of confiscation provisions hampers the review of the effectiveness and efficiency of policies in this area, so that it becomes difficult to determine whether the measures have achieved their expected outputs/outcomes. This argument is particularly important to this report, which will address the existence of adequate mechanisms for the statistical monitoring of cases where the provisions of amended legislation in asset recovery have been applied. Most of the jurisdictions covered have adopted new laws or modernized existing legislation regulating asset recovery, as well as introduced new confiscation instruments (i.e. extended confiscation and seizure in absentia), and it is of particular importance that comprehensive, permanent and reliable mechanisms for monitoring the impact of these new policies exist. It is obvious that statistical data is an important indicator of institutional commitment and can focus work towards a more efficient use of asset recovery instruments. However, it is also important to understand whether, and where, the agencies appreciate the value of confiscation beyond simply the monetary value of recovered assets, and to what extent they can see the deterrent and disruptive potential of asset recovery (Chistyakova, Wall & Bonino, 2019).

Criminal justice statistics in the Western Balkans are traditionally recorded and retained on the national level and are mainly focused on indicators relating to the number of prosecuted cases at different stages of proceedings (investigation, indictment, trial), the number of convicted persons, the structure of criminal offences, and possibly the demographic characteristics of the persons involved (gender, age, education) and the frequency of reoffending (recidivism). Sometimes, these statistics include other, secondary data that refer to the work of the criminal justice system, such as sentencing data on the number of persons imprisoned, the number of seized objects (i.e. motor vehicles), but often this data is not systematically and comprehensively processed. National statistical surveys relating to asset recovery data is treated similarly and is sometimes bundled in with the monitoring of other measures of judicial performance. For example, statistics may summarize the number of cases in which some assets were seized, but which may include assets used as evidence in court which are then subsequently returned to the owner from whom they were temporarily seized. Sometimes seizure data can refer to items used or intended to be used to commit a crime or created by the commission of a crime, and which may then be used again if the court does not seize them permanently, which it will not unless for special security or moral reasons they must necessarily be permanently seized after criminal proceedings. There are also examples where a court decision on the property claim of an injured party is recorded in the statistical surveys and then added to the data that should measure the effectiveness of the asset recovery system. This data, due to the anomalies mentioned, simply does not reflect the effectiveness of the system.

Finally, the jurisdictions in the region have undergone various reforms of their criminal justice systems, which in some cases have included changes to who has jurisdiction to conduct statistical reviews of the work of the judiciary. Previously, this role was mostly performed by the State statistical institutes, with the possible involvement of other institutions in the compilation of summary statistics on the work of the criminal justice system. This system of organization created a unique methodology for keeping statistical bulletins (i.e the well-known bulletin "Reported, Accused and Convicted Persons"), which are still present in some of the jurisdictions today. Now, the reforms have led to changes that include the empowerment of Ministries of Justice, asset management agencies and the regulators of the judiciary (Judicial and Prosecutorial Councils) to handle statistical collection, processing and the publication of data. Official statistics on the work of the criminal justice system in the area of asset recovery are no longer solely a matter of national crime suppression efforts. The internationalization of crime, the removal or reduction of the intensity of border controls, the speed and simplicity of movement of people, goods, services and capital inevitably opened up new perspectives for perpetrators of crime, especially organized crime for financial gain. The Western Balkans is no exception to this and increasingly there have been incidents of the displacement of illegally acquired wealth from one jurisdiction to another, primarily in order to conceal the true origin of the property. National authorities in the region are obliged to exchange information and data at the operational level for the purposes of law enforcement and the detection and seizure/confiscation of illegally acquired property, and this also extends to the exchange of statistics on confiscated property for purposes of strategic planning and harmonization in the region in relation to combating organized crime, corruption and serious forms of financial crime. This issue is affected not only by the usual problems of data sharing within the national institutional framework but also by those of cross-border arrangements. It is well known that availability of statistics on confiscations also appears to be problematic. Although many countries produce statistics of some kind, for most of them the data is only partial and not publicly available (Centre for the Study of Democracy, 2014).

This report presents the most important rule of law standards derived from international sources, in particular the European Union, as well as best practices that can serve to improve work in the jurisdictions covered by this project. Likewise, the report outlines the statistical mechanisms by which information regarding cases in which asset recovery has been applied, with all items collected, processed and disseminated by the competent institutions, has been collected. This has been done on the basis that it will be possible to identify the existence of certain gaps, deficiencies and non-compliance with relevant standards.

This segment of the report also covers an overview or, where possible, a baseline for each jurisdiction that contains the number of cases and the value of seized/confiscated property by national courts, which will have not only an illustrative but also indicative dimension in terms of identifying potential deficiencies in the presentation of relevant seizure and confiscation data.

Finally, the analysis carried out in the report provides an opportunity to compile a list of benchmarks and recommendations for improvement, with an aim to inform the national authorities in each of the jurisdictions covered and to provide useful information on how establishment of a comprehensive, accurate and reliable system for collecting, processing and disseminating asset recovery data is an important part of the functioning of the overall criminal justice system and what this seemingly technical intervention really means for establishing the rule of law and for the process of EU integration.

1. Relevant standards and best practice in the statistical recording of asset recovery

1.1 General overview

The legal framework regulating asset recovery within the national legislations of different countries is the subject of constant innovation, primarily with the aim of improving the efficacy of legal norms in this field. However, the solutions that exist today are largely the result of the development of an international legal framework, which in terms of asset recovery began to emerge in the late 1980s, in particular as an integral part of the fight against international trafficking in narcotic drugs. In the context of this report, it should be emphasized that the provision of international treaties adopted under the auspices of the United Nations, the Council of Europe and later the European Union are authentic sources of law in this area, but which only to a small extent address the issues of establishing a system for the statistical monitoring of cases where asset recovery has been applied. Thus, the focus of these treaties was the substantive and procedural provisions that were to ensure a desirable level of harmonization of national legislation in this field, in order to enhance cooperation between states in the recognition and enforcement of judgments on temporary and permanent asset seizure.

Among the few universal sources, the UN Convention Against Corruption should be highlighted, since it contains one general provision under Article 61.2 which stipulates that Member States should consider developing and sharing statistics with each other through international and regional organizations; with a view to developing, insofar as possible, common definitions, standards and methodologies, as well as information on best practices to prevent and combat corruption. This optional provision does not explicitly refer to mechanisms for the statistical monitoring of the use of asset recovery in corruption offenses, but may serve as a basis for establishing such mechanisms.

The importance of the various bodies for monitoring and evaluating the application of certain international treaties governing asset recovery (i.e. Moneyval or GRECO acting within the Council of Europe), which also deal with statistical recording issues as part of their activities, must be emphasized here. The FATF-GAFI stands out as an inter-governmental body established in 1989 by the Ministers of its Members (of which there are 39 member states and many observers and associates). The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combatting money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF Recommendations are certainly the most well-known standards applied across the world primarily serving to harmonize approaches and practices. FATF (2012) Recommendation 33 requires countries, among other things, to maintain comprehensive statistics on any property frozen, seized and confiscated. As they relate to provisional measures and confiscation, it would be useful if such statistics were broken down by year and included, as far as possible, the items below:

a) the number of freezing, seizing and confiscation actions and the amounts or values involved, regarding money laundering, terrorist financing and the 21 designated categories of predicate offenses, collected in such a way as to ensure that there is no double counting of statistics relating to money laundering offences and the underlying predicate offence;
b) a breakdown of whether such cases are domestic or relate to foreign requests;
c) statistics on the general level of criminality in the country in relation to the 21 designated categories of predicate offenses;
d) a breakdown of the status and/or ultimate outcome of such actions (e.g., pending, property released, property or value confiscated);

e) a breakdown of the amounts ordered in the confiscation proceedings and the amounts actually recovered.

Such statistics will indicate whether provisional measures and confiscation are being systematically pursued and imposed, and whether proceeds are actually being recovered, in order to assist the countries that record them in assessing the effectiveness of their regimes. Among other things, it is evident that this FATF recommendation significantly influenced the creation of provisions for the statistical monitoring of cases where asset recovery was applied, primarily due to the use of terms such as "ultimate outcome of such actions" and "actually recovered amounts of property". This pointed to the need to create mechanisms to really monitor the outcome of proceedings in which asset recovery was applied, regardless of whether it was a temporary or permanent seizure/confiscation, because only in this way, through the monitoring of the execution of court decisions, can a true picture of the real situation and effectiveness and efficiency of the work of criminal justice institutions be observed.

1.2 The European Union's efforts for the development of harmonized statistical systems on asset recovery

The first supranational source of law that established a system for the statistical recording of cases where asset recovery has been applied was EU Directive 2014/42 on the freezing and confiscation of the instrumentalities and proceeds of crime in the European Union. The preamble to this document explicitly states that in the Member States existing statistics in this area are limited. Field studies have shown that even those countries (i.e. Greece) that have harmonized their legislation and institutional frameworks with this Directive still do not maintain statistics on asset recovery measures and do not have access to asset recovery-specific databases. Studies like these have recognized the importance and need for an institutional framework that would allow for the monitoring and recording of such asset recovery efforts and a need for an electronic system that would allow for data entry and the production and analysis of statistics pertaining to asset recovery effort (OECD, 2018). Some other member states (i.e. France) have established earlier electronic databases for collection of statistical data, including information on the characteristics of assets, case numbers, identification details and the judicial files they are linked to. The aim was to improve statistics, facilitate the work of users and increase security (UNODC, 2017). The provisions pertaining to statistics in the Directive are justified by the need to monitor, in such a harmonized way, the success of its implementation in the Member States. For this reason, the Directive provided for only the basic elements of the statistical recording of asset recovery cases and limited itself to the following categories of data: (a) freezing and confiscation of property, (b) asset tracing, (c) judicial activity, and (d) asset disposal activities. Although such a list might at first glance seem simplistic and not overly demanding for implementation in national frameworks, a detailed interpretation shows that these categories of data cover the work and outcomes of all criminal justice entities (police, prosecutors, courts and asset management agencies), that such data applies to all stages of criminal proceedings (investigative, prosecution and trial phases) and that it even covers the earliest stages of criminal investigations (financial investigations) as a separate category of data relating to asset tracing. It should not be surprising, therefore, that, almost five years after the Directive was adopted, the provisions on statistical monitoring of cases have not yet been fully implemented in individual EU Member States. Furthermore, the Directive asks for the centralized management of these statistics in order to communicate with the European Commission from a single point when providing this information. On the other hand, Member States need to make reasonable efforts to collect data concerned, which simply has an authoritative emphasis and does not leave too much freedom in the choice of particular categories of data mentioned. The exceptions are when the achievement of these goals would be associated with a disproportionate administrative burden or when there are high costs for the Member State concerned.

In particular, Article 11 of the Directive provides for a set of standards related to statistics. The first requirement arising from this provision is that asset recovery statistics are maintained on a regular basis, therefore as a permanent activity. The second requirement for these statistics is to be comprehensive, that is, to contain all relevant data, which in turn serves to record the implementation of asset recovery instruments. The specifics of such data are given below. Article 11 also provides for the existence of authorities to deal with these matters, either through establishing new authorities or empowering those that exist. The statistics collected must be transmitted to the European Commission each year and include the following data specified by the Directive:

a) the number of freezing orders executed;
b) the number of confiscation orders executed;
c) the estimated value of the property frozen, including property frozen with a view to possible subsequent confiscation at the time of freezing;
d) the estimated value of the property recovered at the time of confiscation.

The terminology used by the Directive indicates that Member States are bound to collect this data and provide to the Commission. As can be observed, there are two key elements that the Directive insists on when it comes to the content of asset recovery statistical records. These are the enforcement of court decisions on the temporary and permanent seizure/confiscation of property, and an assessment of its value. Collecting this data would be a significant step forward in harmonizing the practices of statistical collection, processing and dissemination of data on court proceedings, as previously collected statistics only included data on the decisions rendered, and did not include information on whether they were ever actually executed.

The second category includes data, which Member States are also required to submit annually to the European Commission if it is available at the central level in the Member State concerned. The data to be collected is:

a) the number of requests for freezing orders to be executed in another Member State;
b) the number of requests for confiscation orders to be executed in another Member State;
c) the value or estimated value of the property recovered following execution in another Member State.

The newly adopted Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders also contains provisions regarding the collection of statistical data. Those statistics should include, in addition to the information referred to in Article 11(2) of Directive 2014/42/EU, the number of freezing orders and confiscation orders received by a Member State from other Member States that were recognized and executed, and the number of those which were refused or not executed.

In this category of data, the focus is on the execution and evaluation of assets in cooperation procedures between Member States. Considering that both Directive 2014/42 and Regulation 2018/1805 contain provisions on statistics related to asset recovery, it can be concluded that implementing these instruments is a significant step towards establishing EU standards in this area which could be also used as benchmarks for jurisdictions from the Western Balkan region. Currently, authorities in all EU member states have some kind of register to account for seized assets. Nevertheless, most of the registers/databases do not cover the entire judicial process at the national level (Università degli Studi di Trento, 2018).

It should be noted that Directive 2014/42 contains only a set of minimum rules and standards by which Member States are required to act, meaning that they have the right to independently intro-

duce more extensive measures and procedures in national legislation and practice. This also applies to the establishment of a statistical monitoring systems that measure asset recovery outcomes.

2. Mechanisms for statistical recording of asset recovery in the region

2.1 Overview of jurisdictions

2.1.1 Albania

There is no comprehensive system of data collection on asset recovery in Albania. Data is published in the Annual Report of the Prosecutor's Office for Serious Crime, Annual Report of the General Prosecutor's Office, Annual Report of the Court of Serious Crime, Statistical Manual of the Ministry of Justice, and the General Police Directory.

The Agency for the Administration of Frozen and Confiscated Property[2] does not have a comprehensive data collection system. However, following MONEYVAL recommendations, the new Law on the Administration of Frozen and Confiscated Assets (law no. 34/2019) has introduced an electronic register of all assets managed by the agency. All relevant institutions may request data about seized and confiscated assets. Nevertheless, the Agency is not obliged to keep all statistics nationally, but only for the assets under its administration[3]. There are ongoing discussions that once the Asset Recovery Office (ARO) is established, it should keep a record of asset recovery at national level. All institutions would be obliged to collect and submit statistical data to the ARO.

At present, only the Statistical Manual of the Ministry of Justice provides information on the total number of cases before courts and the total number of finalized cases before courts. The source of this data is the Court of Serious Crimes. The Prosecutor's Office for Serious Crimes and the Court of Serious Crimes also maintain records about the total number cases involving the sequestration and confiscation of property, which is then included in their Annual Reports.

In addition, information on the category of offence, the number of the court decision, the properties frozen or confiscated, but not the value of the property, is gathered under anti-mafia law. The data is sent to the General Prosecutor's Office to be included in the General Annual Report, which is published on the webpage of the General Prosecutor's Office.

Table 1 shows data provided from the Prosecutor's Office for Serious Crime, the Court of Serious Crime, the Ministry of Justice and the Agency for the Administration of frozen and confiscated properties.

2 The Agency has the task of the administration of the frozen and confiscated properties through court decision under the law no 10192/2009, amended with the law no 70/2017, under the law 157/2013 and administration of other frozen and confiscated properties which are product of the criminal acts or related to them under the law, court decision or order of the Ministry of Finance.

3 Art.4, Law 34/2019 "The provisions of this Law shall apply to:

a) assets seized and confiscated by a decision of the competent court, in accordance with the provisions of the legislation in force for the prevention and attack of organized crime, trafficking and corruption;

b) confiscated and seized assets, in accordance with the provisions of the legislation in force on measures against the financing of terrorism;

c) assets for which the preventive seizure measure is imposed, according to the provisions of the Criminal Procedure Code, and those seized by a decision of the competent court, according to the provisions of the Criminal Code, which are the product of criminal offenses or related to them."

2.1.2 Bosnia and Herzegovina

Due to its complex constitutional and administrative structure, Bosnia and Herzegovina has four criminal justice systems (at the state level of BiH, and at the level of the three entities of the Federation of BiH and Republika Srpska and Brčko District), within which there are different criminal legal orders and judicial systems. These are managed from a single point, through a central regulator, the High Judicial and Prosecutorial Council (HJPC). Within these four criminal law systems, asset recovery provisions are within the scope of criminal and criminal procedure laws, while entities and districts also have separate asset recovery laws. These special laws also established two Asset Management Agencies in Republika Srpska and in the Federation of BiH.

Institutional arrangements for keeping public statistics are largely determined by the administrative structure of the country. This practically means that the BiH statistical system is regulated through several laws at state level, as well as at the entity level, which are enforced by the State Agency for Statistics, the agencies of each Entity, as well as the Central Bank, which is responsible for monetary statistics, the balance of payments and other financial statistics relating to BiH (CBBH). The statistical areas covered by these three statistical agencies also include the areas of justice and crime, while in parallel these statistics are also managed by the HJPC. Similarly, the Entity Asset Management Agencies have slightly different powers to collect temporarily and permanently seized assets (FBiH), and to keep records of and process the assets they manage (RS).

Through analysing the mechanisms of how this data is managed and processed it can be concluded that asset recovery is not managed in a unified, centralized and harmonized manner, that is, no mechanisms have been established for the exchange and aggregation of data on temporarily and permanently confiscated assets.

This can be practically proven by analysing the publications and reports of the listed institutions dealing with statistics in BiH. For example, the BiH Agency for Statistics has released the report titled “Adult perpetrators of criminal offenses in Bosnia and Herzegovina” covering 2017. This review contains information on reported, accused and convicted adult perpetrators of criminal offenses. Data on the gender distribution of offenders, the structure of those offenses and the outcomes of judicial proceedings before prosecutors and courts is covered, but the report does not cover the structure of sanctions, other measures or asset recovery data. The Institute for Statistics of the Federation of BiH has also published a review entitled “Woman and Men in the Federation of BiH “, which covers 2017, and also includes the area of Administration of Justice. The data is not comprehensive and refers to the number of reported perpetrators of particular categories of crimes, the number and gender of employees of judicial institutions and the bar, and the gender of accused and convicted persons. The publication does not contain asset recovery information. On the other hand, this institution has also published the Statistical Yearbook for 2018, which is a much more comprehensive and substantive document showing the overall composition of data from different fields. One of them is the Judicial System, and the data in this chapter covers the number of courts, judges, prosecutor’s offices, prosecutors and lawyers. Data is obtained from the FBiH Hight Judicial and Prosecutorial Council, the FBiH Constitutional Court and the FBiH Bar. A key part of this publication is information on perpetrators of criminal offenses and economic crime and disputes. Table 27-4, which is labelled “Convicted Adults Perpetrators by Sentences Passed”, indicates that in 2017, convicts who were given imprisoned (7,512 persons) included 448 whose sentences included a further ancillary sentence, of whom 404 persons were made subject to confiscations of property. This is the only information available in this review that relates to asset recovery and only shows the number of convicted persons who were subject to confiscations of property. In the Republika Srpska entity, the relevant Institute of Statistics publishes publications that include an overview of the Administration of Justice. This report contains data

submitted through the prosecutor's offices and courts from this entity to the RS Ministry of Justice, and focuses on the number and structure of judicial institutions, the number and gender structure of judges and prosecutors employed therein, and finally the number and structure of reported, charged and convicted persons, both adults and juveniles. Although there is information in this review on the composition of convicted data by type of crime and type of sanction (imprisonment, ancillary sentence and measures), there is no data on asset recovery, although the report contains data on the number of persons subject to fines. There is also a special publication called "This is Republika Srpska", which also contains a brief overview of crime data, which focuses on the number and structure of persons reported, charged and convicted before the competent judicial institutions. The overview does not include asset recovery information.

Asset Management Agencies in the national entities (RS and FBiH) also keep certain statistics in the area of asset recovery. The RS Agency keeps records of the assets it manages and the court proceedings in which the status of such property is decided. It also processes and monitors the data on the confiscated assets it manages for the purpose of the law enforcement analysis. The Agency in the FBiH keeps records of the property in its possession and under its management, as well as on court proceedings in which the status of such property is decided. Such a legal obligation implies close cooperation and the linking of data between judicial institutions and the Agency on the outcome of proceedings where certain assets have been temporarily and permanently confiscated. Likewise, the Agency has the legal authority to collect data, statistical reports and other information from the competent institutions, as well as finalized asset recovery processes, in accordance with this law, with the aim of processing and analysing that data and information, and identifying trends in the offenses from which the proceeds are obtained.

Asset management agencies play a very important role in gathering statistics on asset recovery, they are at the same time an important source of data on the assets they dispose of and manage, including on asset value, and a focus point for the integration of data from the outcome of the court proceedings in which the asset recovery was ordered. Judicial data on asset recovery can easily be combined with data kept by agencies in order to increase its reliability.

In this regard, it should be noted that the HJPC, as the central regulator of the judiciary, also performs the function of collecting and processing statistics relating to the work of the judiciary, and accordingly leads, coordinates and monitors the use of information technology in the courts and prosecutors' offices, in order to achieve and maintain uniformity in courts and prosecutors' offices throughout the country. Within its activities of monitoring and collecting statistical data on cases in which the confiscation of proceeds of crime was recorded, the HJPC, at its session held on 5 and 6 September 2018 adopted the "Form of new records for recording data on asset recovery". This document, together with its practical instructions, was submitted to all prosecutors' offices in BiH. Prosecutors were then requested to enter data into the Form for the period 01.01.2018 - 31.12.2018. The information provided by the HJPC is presented in Table 2. Information for 2018 on the confiscated proceeds of crime has been published on the HJPC BiH web portal, following the conclusion of the HJPC BiH session.

Manual data entry and collection continued for 2019, that is, until the establishment of a specialised module in the Case Management System (CMS) in courts and prosecutors' offices. The development of this = module in the CMS h=was been supported by the European Union through IPA funds and the British Government through expert support for the development of methodology for statistical collection, processing and exchange of information on asset recovery. It is expected that all courts and prosecutors' offices will soon start using the module in practice, which will significantly improve the situation in this field and implement the minimum standards arising from the 2014 EU Directive as well as other international requirements.

2.1.3 Kosovo*

Regarding the statistics on asset recovery in Kosovo*, there is not a comprehensive system of data collection, but there are institutions and mechanisms that collect statistical data, and produce comprehensive reports:

a) The National Coordinator for Economic Crime Enforcement, Kosovo* Prosecutor's Council.
   His role is to promote, monitor, evaluate and report on activities of all public institutions in regard to the prevention, detection, investigation, prosecution and conviction of all crimes that generate material benefit at national level. The national coordinator collects data and information from relevant institutions' comprehensive reports. Statistics collected by the National Coordinator contain data obtained from the Central Bank, FIU, Police, Prosecutor's Offices, Judiciary, Anti-Corruption Agency and some other relevant agencies. (Table 3)
b) The Agency for the Administration of Sequestrated and Confiscated Assets.
   This agency is a body of the Ministry of Justice. Data obtained from the Agency for Administration of Sequestrated and Confiscated assets shows the value of sequestration/freezing assets (Table 3a).

The Coordinator and the Agency do not collect the same as the Agency only keeps records of the assets that have been confiscated and held by the Agency, the value of which decrease over time.

2.1.4 Montenegro

The Montenegrin institutions competent and responsible for collecting asset recovery data are the Supreme Court, Supreme State Prosecutor, Police, Agency for Property, and Government Office for European Integration. There is no comprehensive statistical data and information on asset recovery publicly available. The Government office for European Integration has the best collected statistics, collected for the purpose of reporting to the European Union. These statistics result from matching and consolidating data from all relevant institution.

Some data related to asset recovery has been disclosed in some occasions, e.g. Judicial Council and Prosecutorial Council presented some of this data during a Parliamentary hearing, and the President of the Supreme Court and Supreme State Prosecutor have also presented some data.

While the statistical report for EU integration covers very useful data, it is not publicly available.

2.1.5 North Macedonia

In the Republic of North Macedonia, the responsibility of collecting and processing statistical data has been distributed among a number of institutions. As such, there has not been a single methodology for the collection, processing and analysis of the statistical data about the work of the courts.

The statistical data about the work of the courts and judges is maintained by the Supreme Court of the Republic of North Macedonia, the Judicial Council of the Republic of North Macedonia, the Ministry of Justice, and the State Statistics Bureau, for their needs. The lack of a single methodology with a corresponding methodological instrument for the collection, processing and analysis of statistical data has resulted in the collection of inconsistent statistical data that cannot be compared with other data collections and which in some part has not resulted in a single and comprehensive picture about the work of the courts in the Republic of North Macedonia.

The Ministry of Justice has defined the adoption of the Methodology for Court Statistics as the top priority in the National Programme for the Adoption of the Law of the European Union. The first

document on the Methodology of Court Statistics was drafted by the Ministry of Justice in 2011 on the basis of the Guidelines for Judicial Statistics (GOJUST), adopted by the European Commission for the Efficiency of Justice (CEPEJ), within the framework of the Council of Europe. This document has never been published in the Official Gazette.

The Methodology shall be implemented through an Automatic System for Information Management with Court Cases (ACMIS), which has been fully functional in the Republic of North Macedonia since 1 January 2010. Additionally, a software application shall be developed for the processing and analysis of the data, which will enable the generation of analytical tables and reports on the work of the courts. It will enable the processing and analysis of the statistical data collected on the basis of the parameters and indicators envisaged in the Methodology. The application will also enable the intersection and comparison of all types of statistical data about the performance in the courts. The solutions offered in the application and their harmonization with the Methodology and with the legal regulations in the Republic of North Macedonia will be approved by a Commission made up of representatives from the Judicial Council of the Republic of North Macedonia, the Supreme Court of the Republic of North Macedonia, the Ministry of Justice, the State Statistics Bureau, Public Prosecutor's Office of the Republic of North Macedonia, the Courts of Appeal, the Higher Administrative Court, the Administrative Court, Skopje I Basic Court, Skopje II Basic Court, and the basic courts with extended and basic competence. The software application is not yet completed.

Statistical data for 2017 and 2018 received from the Ministry of Justice is presented in Table 5.

2.1.6 Serbia

Statistical data on temporary and final seizures and confiscation measures are collected and analysed by the prosecutors, courts and Directorate for the management of seized and confiscated assets (Ministry of Justice). The Directorate is obliged to keep records of the property it manages and the court proceedings in which it was decided to confiscate property resulting from the criminal offense. The Directorate conducts unique collection and analysis of this data. In line with the international obligations of Serbia in cases of money laundering and the financing of terrorism, courts and prosecutors are obliged to collect separate data for those cases, which includes and data on property seizure.

All the institutions mentioned above keep separate data on temporary and final seizures and confiscation measures. There is also a special section for asset freezing and confiscation in the Court Manual which provides for all data to be entered into an electronic system. However, this system does not allow for data to be uploaded on the type of property and its value. Recently, the Directorate for the management of seized and confiscated assets has implemented a new software system, which will enable this data to be uploaded onto the system. All relevant data collected by the courts will then be processed with the new software. The resulting data will be available to all relevant institutions and the Directorate will upload all the data gathered since 2010.

Data collected by the courts is gathered separately from criminal case data. This means that courts keep separate records for cases of property seizure by creating a new case in their records for this data after receiving a request for freezing or confiscation by the prosecutor.

According to the Court Manual, courts should register data for both temporary seized and confiscated property which include the following information:

- Case number
- The number and date of initial prosecutor's act

- Number of basic criminal case
- Name of offender, third person
- Type of criminal offense
- Dates of court trials
- Type of court decision (freezing or confiscation order)
- Date of court decision
- Duration of the court procedure
- Name of the owner of the property and all relevant data about natural or legal person
- Data on type and value of property (still not available)
- Date of received complains and appeals on court decisions
- Date and type of decisions of higher courts
- Date of legally binding decision- date of validity
- Date for submission of court decision to Directorate for management of seized and confiscated assets

All data is kept regularly and is published in periodical Court reports.

In addition, since 2010, prosecutors from all instances keep their own records in a special form, which is submitted to the Republic's Prosecutor Office. The Republic Prosecutor Office keeps record of the data on national level. This data is systemized and analysed every 3 months.

Currently, only 14 prosecutors' offices have the so-called SAP system for data collection. This group includes: the Prosecutor's Office for Organize Crime, the Higher Prosecutor in Belgrade (also dealing with high corruption cases), and the Appellate Prosecutor's Offices in Belgrade and Nis. The rest of the prosecutors' offices collect data manually, which does not pose a large problem as the number of cases they deal with are lower compared to those mentioned above.

This data can be obtained from the Courts' and the Prosecutors' Annual reports

In conclusion, the Serbian system for data collection is good and enables excellent analysis of asset recovery data to be conducted.

Problems remain however in the software systems used by the judiciary, which do not allow all relevant data to be uploaded. However, if there is need, the missing data, mainly regarding the type and value of the property, could be collected by reviewing each court case.

Further, the Directorate for the management of seized and confiscated assets has obtained a new software system which has already been in use from September 2019. Data is currently being uploaded into the new system, which will serve as a central depositary for all relevant data.

All the gathered data for Serbia is presented in Table 6

3. Benchmarks toward establishment of adequate statistical mechanisms on asset recovery in the region

BENCHMARKS		
Standard	**Explanation**	**Priority**
Comprehensive	Statistics on asset recovery should include a wide spectrum of categories which refers to all stages of recovery procedure: (1) financial investigations (tracing, identification, localization etc.), (2) temporary measures (freezing and/or seizure), (3) final court decisions on all types of proceedings (ordinary confiscation, extended confiscation, preventive confiscation, value confiscation, confiscation without criminal conviction, civil recovery etc.), (4) execution of court orders on temporary freezing and/or seizure and final confiscation, including forcible execution of confiscation orders, (5) disposal with assets.	Top
Consistent	Data on asset recovery should be collected systematically, in a continuous way, with the same items in all sources of data (judiciary, law enforcement, asset management etc.). It is important that methodology for data collection, recording and analyses is similar to those used in official crime data and it should follow crime figures, without duplication and ambiguity. A good examples includes consistent data on case number (as unique ID which serves as following mark), offences from which assets have been recovered, amount/value of assets, type and number of assets etc.). For example, if in one case criminal proceedings were concluded against an organized criminal group, and five of the three convicted have confiscation imposed on them, a motor vehicle was confiscated from one, cash from another, the amount (equivalent) of the acquired proceeds from the other, then in court statistics it should be marked as one completed case of organized crime, in statistics of institutes of statistics five persons sentenced for OC, three of them with asset recovery imposed, while the asset management agency will register what it did with the motor vehicle and the cash entrusted to it for safekeeping. The summary information should also include the total value of all confiscated assets.	Top
Comparative	If data is recorded and collected in a consistent way, it should be able to be used for comparison, both domestically and internationally. These standards ensure good data exchange between agencies involved in the implementation of asset recovery laws, as well as international exchange of such data, the harmonization of strategic efforts and better cross border cooperation.	Middle
Discriminative	This standard includes a requirement to maintain records on asset recovery for at least two major categories: temporarily and definitely seized assets and confiscated assets. Within these two categories certain differences also can be noted. For instance, temporary measures against specific property (as manifestation of proceeds of crime) could possibly include freezing order issued by court (injunction on transfer of ownership in the official register kept by the police) and simultaneously the seizure of a vehicle with the aim of handing it over to an asset management agency. In other cases only freezing without seizure would occur since the court has decided to leave the asset under the control of the owner without any possibility of selling, renting or gifting the car to third parties. Official statistics should be recording this and be able to subsequently track the fate of temporary frozen and/or seized assets (which is one of key benchmarks from the EU 2014 Directive).	Top

Outcomes Based	As a recently developed and complex standard, this includes a requirement to reliably establish the real status of assets subject of asset recovery measures. The status of the property involved is thus the most important issue and official statistics should be able to determine what was actually recovered in each individual case. Obviously the focus is on execution of court decisions, on temporary freezing and/or seizure as well as the permanent confiscation of the assets. Having in mind that different jurisdictions have a variety of legal regimes in which property can be taken as a proceed of crime, this implies the need to cover all those scenarios in the statistical methodology. This is in close connection with statistical records kept by asset management agencies, since the final destination of the property involved will depend on a decision taken by the agency, which is the best asset management modality. In this case, statistical data will be able to show whether it anticipated the sale, rent, lease, retaining or destruction of property chosen for temporary seizure. It will also be possible to identify the final destination of seized cash since it can be kept in a safe or deposited into a dedicated account for these purposes. If assets were returned or used for victim's compensation then it also should be clearly stated. Permanently confiscated assets can be reused for social purposes and statistics should contain such information, or sold and income used for some other purposes (i.e. financing the reconstruction of children's hospitals or police stations). Therefore, asset management agencies, as well as courts should maintain statistics, which can ensure that in each moment truthful, precise and reliable information on the final destiny of the property exist. One of the benefits of such a methodology is to estimate priorities and the rationale of the judiciary and other institutions involved while they apply asset recovery provisions. If the majority of assets are actually recovered as budget income then it can be seen as pure economical thinking, against a scenario where competent institutions strive to compensate victims of the crime or support crime prevention programs, increase law enforcement capacities and social mechanisms against crime in general. The latter approach is more oriented towards the legitimacy of the system in general, increasing trust in institutions and fairness in society.	Top
Centralized	The fact is that in each jurisdiction, a number of institutions collect, store and process asset recovery statistics. In essence, each of the institutions in the law enforcement chain, from the police, through prosecutors' offices and courts to asset management agencies, records what it has done in each particular case. The statistical institutes, the ministries of justice, and regulators of the judiciary, some supreme judicial and prosecutorial instances, and others who also keep this information follow this rule. It would be extremely important if central authority adopted a structured database to which all relevant institutions send their data, according to a previously agreed methodology and maintain a consistent approach, so data can be aggregated and used. However, in addition to the requirement for consistent management of this data, a separate standard requires that there must be a single contact point within one of the existing institutions that would be in charge of communicating with supranational and other international entities before the entire country/jurisdiction (European Commission, UN, Council Europe, etc.) for purpose of the submission of aggregate asset recovery statistics.	Middle
Specialized	Building a complex and demanding mechanism for the statistical monitoring of cases in which asset recovery has been ordered, requires a high level of education and training for those using these advanced instruments. In order to ensure equal access to the use of these new methodological procedures, it is necessary to ensure the development of appropriate brochures, guidelines and manuals, and to provide ongoing training for all professionals directly working on the completion of statistical forms on the basis of which consolidated reports, analyses and publications are produced.	Middle

Interoperable	Once unified and comprehensive mechanisms for the statistical monitoring of asset recovery cases are in place, and once the full education and training of users has been completed, it will be possible to think about the interoperability of the new mechanisms. Expanding the institutional environment to a larger number of users, including new categories of data from other institutions' records (e.g banks, real estate registers, auction houses, etc.), production, analysis and dissemination of specialized categories of data and publications would significantly expand opportunities for their practical application, in particular in terms of monitoring and evaluating new policies and strategic approaches.	Low
Digital	There are a number of advantages to digitizing official records and much has been done to date. In particular, the system of automatic case management was introduced in the judiciary, while a considerable part of the work was done on the establishment of electronic databases in the police, and partly in the asset management agencies. It is crucial to upgrade existing databases with special units (modules) that will exclusively cover the area of asset recovery, which will integrate all the above standards in order to obtain an efficient tool for rapidly processing and accessing data, providing security for that data and other advantages of digital services.	Middle
Public	The public has a huge interest in finding out how effective asset recovery measures are in practice, and what the real effects of the laws that were enacted are. The best way to meet the expectations and needs of the public is to make a significant part of the statistics available to them. This can be accomplished through the websites of the competent institutions, through regular announcements, and other means (i.e. submission on request).In addition, it strengthens trust in institutions, strengthens legitimacy and gives impetus to further engagement towards more robust enforcement of asset recovery laws. This can be additionally supported by periodical publication of good examples (cases) of asset recovery, especially if they refer to high-profile cases and larger amounts (values) of confiscated assets, and a visible outcome of proceedings concerning the use of assets for wider social purposes.	Middle

4. Collection of Statistical Data Baseline

Year	XXXX	XXXX
Total number of cases before courts		
Total number of finalized cases before courts		
Total number of cases where assets have been temporary safeguarded		
The number of freezing orders executed		
The estimated value of property frozen		
The estimated value of property frozen with a view to possible subsequent confiscation at the time of freezing		
Total number of cases where assets have been permanently recovered		
The number of confiscation orders executed		
The estimated value of property recovered at the time of confiscation		

Case number			
INFORMATION ON OFFENCE	Title		
	Article (Criminal Code or other)		
	Time when offence was commited		
INFORMATION ON PROCEDURE	Date when procedure was inititated		
	Date of validity		
INFORMATION ON OFFENDER(S)	Legal entity		
	Physical entity	Gender	
		Age	
		Education	
		Previous convictions	
INFORMATION ON FINANCIAL INVESTIGATION (IF CONDUCTED)	Date when investigation was launched		
	Date when investigation was completed		

PART II - SUCCESS STORIES

1. Case study for Albania - Third-party confiscation

This case study relates to the implementation of Law No.10192, of 03.12.2009, "On the prevention and combat of organized crime, trafficking and corruption through preventive measures against property", amended by Law No.70/2017, known as the "Anti-mafia law", as it is the law with the greatest power in the fight against organized crime in relation to property.

Property related investigations were initiated by the Serious Crimes Prosecution Office in accordance with a reference made by the Prosecution Office of the Judicial District of Vlora. This reference pertained to criminal proceedings under the criminal offense of "Laundering the proceeds of crime", under Article 287 of the Criminal Code, in the name of citizen known as E.B.

The investigations carried out by the Prosecution Office of the Judicial District of Vlora found that citizen S.B., father of citizens I. K. (deceased) and E. B., was provided with a legalization permit related to a building with surface area for construction of 2500 m^2, a total surface area of 3199 m^2, and five stories. The building was of considerable monetary value.

Due to the fact that citizens I.K. (deceased) and E. B. have been subject to investigations for drugs trafficking, they were subject to a preventive law, known as the anti-mafia law, as were their properties.

Following preliminary investigation, the Serious Crimes Prosecution Office found that property of considerable value was registered in the name of the citizen S. B. (the father). This property was in disproportion to his income, since he was not involved in any profitable lawful activity. The Prosecution Office, in order to protect the property from conveyance to a third party, requested that the Court of Serious Crimes to carry out its seizure.

The Serious Crimes Court, which was the only competent court to implement the anti-mafia law and property investigations relating to it, accepted this request and imposed a preventive measure for seizure of the property of S.B. Specifically seizing the property mentioned above.

The request was reviewed in the presence of the prosecutor and the documents collected during the investigation of the Serious Crimes Prosecution Office and judicial police.

After being notified about the decision on seizure, the citizen S.B. challenged it by appealing to the first instance Court of Serious Crimes. The Court of Appeal for Serious Crimes left in force the decision on asset seizure reasoning that this is a preliminary measure and was used in order to guarantee the freezing of an asset suspected of being gained from criminal activity, specifically the trafficking of narcotic substances in EU countries by Albanian citizens I.K. (deceased) and E. B.

After seizing the property, the Serious Crimes Prosecution Office conducted a thorough investigation related to the property by collecting the entire penal and property related documentation of the persons under investigation, I.K (deceased) and E. B., and of the person related to them, their father S.B., in whose name the property was registered.

Following completion of the investigations regarding the related criminal proceedings, the Prosecution Office submitted to the first instance Court of Serious Crimes in Tirana a request for the forfeiture of the property of registered to S. B.

In the first instance trial, the respondent's legal representative claimed that S. B. had received considerable loans from third parties, an income that was used to build the building that was subject to forfeiture. Citizens A.M, A.G, H. M. and B. M. were called to the trial in capacity of third parties.

Upon the completion of the trial, the first instance Court of Serious Crimes decided to accept the claim of the Prosecution Office submitted to the Court of Serious Crimes Tirana, by carrying out the forfeiture of S.B.'s immovable property and transferring it to the ownership of the state.

An appeal was filed to the Court of Appeal for Serious Crimes against the decision of the first instance Court of Serious Crimes in Tirana. Following a review of the appeal, the Court of Appeal for Serious Crimes decided to return the case to the first instance Court of Serious Crimes for a retrial by another panel, on the basis that the joint judgment was not correctly established.

In the retrial, the Prosecution Office for Serious Crimes, as plaintiff, claimed that referring to the acts administered by Italian justice authorities, there was evidence of the existence of criminal procedures and judicial proceedings conducted against citizens E.B. and I.K. (deceased) in relation to the criminal offenses of "Holding and transporting narcotic substances" in association, and "Participating in international organizations for the transporting of narcotic substances, holding and transporting of narcotic substances", in association.

The entire property subject to forfeiture was suspected of being gained from proceeds realized as a result of criminal activity carried out abroad by the investigated person E. B. and his brother I.K. (deceased), both sons of S.B.

In relation to the seized assets, the prosecutor claimed that in line with Articles 22 and 24 of Law no. 10192 of 03.12.2009 "On the prevention and combating of organized crime, trafficking and corruption through preventive measures against property", there are certain conditions for their forfeiture. These are that *firstly* they had been gained following the involvement of investigated persons E.B. and his brother I. K. (deceased) in criminal activities. *Secondly*, the property in question did not correspond to the level of income of the suspects and their family members. *Thirdly,* the properties were in direct possession of investigated persons. Despite the fact that documents were registered in their father's name, statements of the latter stated that the constructed building was the fruit of investments by his sons E.B. and I.K. (deceased).

The representative of the respondent claimed that the building was constructed by income generated by S.B.'s family members in Albania and other family members that have been residing in Italy for many years. This property is registered in the name of respondent S.B. simply because he is the head of the family and for the purpose of preserving family unity and harmony. A great deal of the construction was realized through loans obtained from other entities that have been invited to the trial as third parties. Members of the family, such as citizens B.B., G.B., A. B., L.B., claimed that they had worked in Italy and thus had generated income of considerable value.

Apart from documentary and witness provided evidence that were requested by litigation parties, the court also appointed experts to evaluate the property.

The court also appointed an expert accountant to calculate the lawful income of citizen S.B. and his family members and the difference between the income and expenditures. According to financial experts, there was lack of liquidity in the amount of 17, 818, 531 lekë.

Following the review of the evidence, the court accepted the request for forfeiture after it was legally verified that the property in the name of citizen S.B. was not gained with lawful income pos-

sessed by him, but was instead the result of the investment of the money gained through criminal activity by his sons.

The Court of Appeals of Serious Crimes Tirana upheld the decision of the first instance Court of Serious Crimes, Tirana.

2. Case study for Bosnia and Herzegovina - Financial investigation and international cooperation

a. Case description

This case was brought before the Cantonal Court in Sarajevo, from 2016 to mid-2019, against three accused persons; two men aged 47 and one woman aged 38 years. The Cantonal Prosecution Office of Sarajevo Canton filed charges against them of participation in organized crime, tax evasion and money laundering.

The first instance verdict was rendered in July 2018, but following the appeals of the parties to the proceedings, the Supreme Court of the Federation of BiH revoked that judgment and ordered a case retrial.

Following a retrial, the trial court again issued a conviction, finding the defendants guilty, sentenced to 13 years' imprisonment (first and second defendants) and three years to the third defendant. In addition to BiH citizenship, the first and second defendants also have citizenship of the Russian Federation.

The case is currently on appeal before the Supreme Court of the Federation of BiH, and this analysis does not prejudice any party's responsibility and does not challenge the presumption of innocence of the persons involved, but solely deals with legal issues related to the asset recovery.

b. The main characteristics of the financial investigation

The investigation in this case was led by the Sarajevo Cantonal Prosecutor, who coordinated the investigative activities led by the competent SIPA department, which functions along the lines of the national FIU. Initial information was obtained by the national FIU in 2012 from a commercial bank, which, on the basis of their monetary transaction monitoring system and risk classification for individual clients, in accordance with the obligations placed on banks under the Law on Prevention of Money Laundering and Financing of Terrorist Activities of BiH, reported money transactions in the defendants' bank accounts, after which SIPA, as national FIU initiated investigative activities in this case.

The specific reason for the commercial bank's creation of an STR (suspicious transactions report) was the presence of a number of indicators of suspicious activity, especially during a short period of time after the opening of the accounts to resident BiH citizens. This period began with an inflow of large amounts of foreign currency transactions, namely from the United Arab Emirates, followed by basic transactions for payments described as "payments for services", along with business documentation that accompanied these money transactions (memoranda of understanding), etc.

Active monitoring of the suspected bank accounts held by several commercial banks was then carried out, lasting for several months. Tracking the expenditure from suspicious accounts, the FIU found that the money in those accounts was not used for business purposes in BiH, but for personal needs, namely the purchase of real estate, equity funds, motor vehicles and other items.

Through international cooperation, the FIU identified the movements of suspects in several countries, including the UAE, Russia, etc., and through Interpol checks it found that in these countries, the companies identified as having made payments in BiH had no business activities in those countries and were essentially fictitious.

In total, the inflow of over KM 20 million was detected in the monitored bank accounts, while in cooperation with the Tax Administration it was determined that all the financial transactions performed to and from the accounts contained elements that raised suspicions tax evasion.

Crucial to the case was that one person involved was characterised as a politically exposed person (PEP), an important indicator in terms of detecting suspicious transactions related to money laundering.

It is also interesting that the financial investigation revealed that a number of financial transactions in several countries, including Germany, were linked to a network of transactions that eventually ended up in the bank accounts of the accused in BiH. The import of goods (armoured vehicles), marketing services, etc. were mentioned as the official reason and basis for realization of these transactions.

c. Relevant legal issues with importance for asset recovery

In this case, several key legal issues were identified that should be mentioned in order to properly understand and evaluate the success of the entire criminal procedure and the confiscation of particular criminal assets.

It should first be noted that one of the key challenges in this case is related to the application of international legal sources (especially conventions) that Bosnia and Herzegovina has acceded to and is bound to apply in its legal order. Specifically, the court in this case invoked and applied the Council of Europe Convention (CETS No. 198) on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism, which Bosnia and Herzegovina ratified in 2013 and which has been in force since 1 June 2013. The jurisprudence of the courts at the time varied regarding the direct application of international criminal instruments and was applied on a case-by-case basis. It will be interesting to see how the Supreme Court of the Federation of Bosnia and Herzegovina will decide on this matter, noting that it did not problematize this issue at the first appeal.

The legal standard for establishing a money laundering offense without first identifying a predicate crime is also relevant. Specifically, in this case, the Court was unable to determine from what specific crimes the money that was the subject of money laundering, and which was ultimately confiscated, originated. Instead, the Court, referring to the aforementioned Convention, took the position that, under Article 9, a predicate offense does not necessarily have to be established in order to establish a criminal offense of money laundering, and that the subjective element of money laundering could be established on the basis of “objective factual circumstances “which is a relatively well established legal standard of jurisprudence. It could be said that these are the factors that directly affect the existence and substance of the entire judgment in the case, and have direct repercussions on the seizure of illegally acquired (and laundered) property.

If the crime of money laundering is perpetrated in this case, and the direct application of international conventions is allowed, it would not be necessary to determine, in court proceedings, the predicate crime from which the suspected property arose. It would then be relatively easy to defend the position that all the suspect property is subject to permanent confiscation, as determined by the court in its judgment. For these reasons, the court referred to the relevant provisions of the Federal Criminal Code (Article 272, paragraph 4) as well as the Law on Confiscation of Illegally Acquired Property (Article 10) in order to justify the confiscation of all property subject to money laundering.

Fulfilling all of the above assumptions would create a coherent, rational and highly effective set of legal standards that would not only allow for the permanent seizure of property of high value (approximately 10 mills. EUR) in response to the crime of money laundering, but would also build a useful and necessary legal position for future case law. This is especially important in the context of the fight against organized crime, money laundering and other serious forms of crime as these are high priority criminal policy areas in Bosnia and Herzegovina.

d. Specification of recovered assets

After the court rendered the conviction, it also ordered the seizure of property from the convicted persons, which included different assets of great value. The assets were seized were: cash, shares in an open-ended investment fund, companies, real estate, motor vehicles and other items such as furniture and a solar heating system.

3. Case study for Kosovo* - A high profile asset recovery case

This case of forfeiture was selected for the purpose of confirming the efficiency in implementing criminal legislation in Kosovo*, namely positive laws, such as: the Criminal Code (CCRK), the Criminal Procedure Code (CPCRK), the Law on Extended Powers on the Confiscation of Assets, the Law on Prevention of Money Laundering and for Combatting Terrorism Financing, for the purpose of punishing criminality and preventing individuals from acquiring property through criminal and illegal activities, with a special emphasis on perpetrators of criminal offences. In this case the perpetrator was a high profile individual.

On 28 June 2017, former judge K.P. was punished by the Basic Court in Pristina with four years of effective imprisonment, a €5.000 fine and a prohibition on his exercise of public functions for three years. This was in relation to his conviction for "issuing unlawful decisions", Article 432 of the CPCRK, "abuse of official position or authority" Article 422 of the CPCRK, as well as "money laundering", Article 56, paragraph 1, of the Law on the Prevention of Money Laundering and for Combatting Terrorism Financing". He was acquitted of "tax evasion", Article 313, paragraph 2, in conjunction with paragraph 1 of the CPCRK.

The largest part of the judgment issued by the Basic Court in Pristina was also confirmed by the second instance court, which imposed a more lenient punishment on the defendant, namely, imprisonment for three years and six months and a €3.000 fine.

However, in a panel hearing held on 15 May 2018, the Supreme Court of Kosovo* partially approved a request for protection of legality put forward by the defence counsel of the defendant K.P. and partially annulled the judgment issued by the Basic Court in Pristina and the judgment of the Court of Appeal in relation to the money laundering offence, with this part of the case returned to the first instance.

The court proceedings in question were carried out in line with the indictment of the Special Prosecution Office Kosovo*, PPS.NR.22/09, which was filed on 29 December 2015.

According to count 3 of the indictment, K.P. was charged with the criminal offence of money laundering. According to this indictment, during the period 2002 - 2008, K.P. bought a number of different properties valuing €1.200.000, despite the fact that he was aware that the money was the proceeds of criminal activity, specifically for the purpose of concealing the origin of the money.

The indictment states that K.P. bought two apartments in Klina, business premises and a two-story building, two parcels of land in Montenegro, and an apartment in the neighbourhood "Ulpiana" in Pristina.

The case against the former judge K.P. and five lawyers, who are also being tried for criminal offences related to corruption and organized crime, was transferred to the Special Department of the Basic Court in Pristina.

The lawyers Z.M., L.P., I.S., F.M., B.N., were part of the indictment together with the former judge K.P. The latter three were representatives of insurance companies.

The SPRK indictment related to this case references the criminal offences of "organized crime", "unlawful issuing of decisions", "abuse of an official position or authority", "fraud", amongst other criminal offences. The indicted persons were accused of acquiring more than one million euros (€1.200.00) from unlawful activities.

The first indictment related to this case was filed on 12 December 2013, and it was specified on 14 November 2014, 30 June 2017 and 14 August 2017.

According to the indictment, all defendants were members of an organised criminal group whose victims were insurance companies operating in Kosovo*.

According to the indictment the criminal group was created, managed, monitored and controlled by the former judge of Klina, K.P.

K.P., according to the indictment, succeeded in reaching an agreement with the members of the criminal group to fabricate court cases, issue unlawful decisions, forge documents, present false facts, abuse official positions or authority, as well as fail to respect judicial powers. This happened for the purpose of unlawfully acquiring huge amounts of financial assets in a quick and easy manner, to the detriment of others.

According to the indictment, K.P. made an agreement for unlawful gain with the lawyers indicted in the case, who were also first in the chain of the criminal activity after K.P.

The indictment states that Z.M., granted K.P. authorization to access his bank, unlawfully operating with large amounts of money. Then, an agreement was reached with representatives of insurance companies such as I.S., F.M. and B.N., in order for them to agree with the proposed decisions of K.P. during court hearings. Further, the indictment states that a relationship was created with specialist doctors also, mainly orthopaedists, such as the doctor B.B.

According to the indictment, this activity lasted from 2004 until 2008. Due to this activity, according to the indictment, the defendants unlawfully split amongst themselves the amount of €1.225.927.93. The indictment says that actions of all the defendants contain elements of the criminal offence of organized crime.

K.P., was accused of unlawfully issuing court decisions and the abuse of official position or authority. Z.M. and L.P. were accused of breach of trust. F. M. and B.N. were accused of fraud and abuse of official position, and I.S. was accused of abuse of an official position or authority.

K.P. was also simultaneously accused in another criminal case and, on 28 June 2017, was sentenced by the Basic Court in Pristina to 48 months of effective imprisonment, a 5.000 Euro fine and a ban on carrying out public functions for three years.

K.P. was found guilty of three out of four counts of the indictment. In relation to the first count, issuing unlawful court decisions, K.P. was convicted and punished with 18 months of imprisonment. In relation to the second count, abuse of official position, K.P. was convicted and punished with 24 months of imprisonment. K.P. was also found guilty in relation to the third count, money laundering, and was punished with 18 months and a fine of €5.000.00. K.P. was found not guilty in relation to the fourth count, tax evasion. On 14 December 2017, the Court of Appeal confirmed K.P.'s imprisonment.

The property gained from commission of the criminal offences was valued at over one million Euros (€1.000.000.00). It included a flat in Klina, a flat in Pristina, land in Ulcinj in Montenegro with a surface of 308 m2, a meadow in Ulqin with a surface of 171 m2, business premises in Klina, a vehicle of the type "Audi A6", as well as financial assets gained from the sale of two business premises. This property was forfeited from the accused

On 4 February 2019, former judge K.P. was convicted by the Basic Court in Pristina for money laundering and was sentenced to one year of imprisonment and a €3.000 fine. The judgment was issued by judge N.K. after finding the defendant guilty on the basis that during 2004 – 2008 K.P. bought numerous properties despite being aware that the money was proceeds of a criminal activity and for the purpose of concealing the origin of the money.

4. Case study for Montenegro - Extended confiscation

Case description

This case was brought before the Podgorica High Court, against nine defendants; eight men and one woman. The Podgorica High Prosecution Service filed charges for the criminal offenses of drug trafficking.

The final judgment was rendered in September 2016 and the defendants were found guilty.

Specification of recovered assets

After the court rendered the final and enforceable judgment, it simultaneously ordered the confiscation of assets of the convicted persons.

The following assets were confiscated from the convicted person:

REAL ESTATE

a. real estate registered in the name of one of the defendants;
b. real estate registered with the branch office of the Real Estate Administration of Montenegro, the Municipality of Niksic. Specifically, an apartment of 64 m2.

Main characteristics of the financial investigation

The Podgorica Higher Prosecution Service led the financial investigation to determine the legally acquired profits and assets of the defendant. For the aforementioned apartment the investigation collected evidence that it was acquired through criminal activity, specifically that the defendant did not have sufficient legally acquired funds for purchasing it and the value of the apartment was substantially disproportionate to his legally obtained income.

It is important to emphasize that the application of secret surveillance measures during the criminal proceedings against the defendant resulted in the collection of the information listed above. Evidence was obtained from a phone conversation in which the defendant requested certain individuals to certify that they had loaned him the money for purchasing the aforementioned apartment.

Relevant legal issues with importance for asset recovery

After submitting the confiscation order for the aforementioned apartment, the court, following the proceedings, found that the convicted person was not able to argue on the balance of probabilities that the apartment was acquired in a legal manner. And, after comparing the legally obtained income and expenses of the convicted person against the value of this apartment, the court found there was a substantial disproportion. Certainly, that there was reasonable suspicion that the apartment was acquired through pursuing criminal activity. The court particularly noted the fact that the convicted person was never employed, and that he never gained any personal income, and due to these reasons, he couldn't have acquired the €47.000 apartment.

On 26th January 2019, the Podgorica Higher Court adopted the decision, confiscating the apartment from the convicted person. On 1st April 2019, the complaint of the convicted person lodged by his defence lawyer was dismissed and thereby the apartment was confiscated.

5. Case study North Macedonia - Confiscation of instrumentalities and proceeds of crime[4]

The smuggling of tobacco and related tax evasion assumed serious proportions in the 1990s and early 2000s, thus the Macedonian authorities paid due attention to dealing with the challenges of preventing and punishing these crimes. The successful processing of the so-called "Pepel" ("Ash") case warrants a short description in the following paragraphs.

Following the discovery of a "tobacco mafia" in the North Macedonian town of Kumanovo, which caused a substantial damage to the State budget,[5] and based on the findings of the criminal investigation pointing out the likelihood of a series of criminal offences, the Skopje-based Basic Public Prosecution Office for Prosecuting Organised Crime and Corruption in 2009 indicted 33 persons before the Basic Court Skopje 1 – Skopje (the first instance court) under the charges of "Criminal association" (Article 394(1) of the Criminal Code (CC)), "Abuse of an official position and authority" (Art. 353(4) of CC), "Unauthorised trade of [...] tobacco products" (Art. 60 of the Excises Act) and/or "[...] unauthorised use of another's firm" (Art. 285(1) of CC)[6] and also sought the confiscation of the instruments and proceeds of these crimes.

4 The case study has been prepared by Zoran Gavriloski - Attorney at Law and Legal Consultant

5 Ministry of Interior, Situation and results in discovering cases of corruptive abuse of official duty 2007-2009, 09.12.2009 (http://arhiva.mvr.gov.mk/ShowAnnouncements.aspx?ItemID=8011&mid=1094&tabId=201&tabindex=0). The Ministry's information referred to 47 suspected perpetrators and claimed that the overall damage amounted to 55,3 mil. EUR. The authorities discovered on various locations more than 20 tons of unlawfully produced cigarettes (see Makfax's article, infra).

6 The first defendant B.S. was charged (under the indictment Ko.no.119/08 of 16 January 2009) for the aforementioned criminal offences, while the remaining 32 defendants were indicted for some of these criminal offences.

The first instance court in 2010 rendered a judgment,[7] thereby finding that the first defendant B.S. in mid-2006, after acquiring 59,95% of the shares of the Kumanovo Tobacco Company (TKK), placed his own protégés N.S. and R.R. in the company's management structures, and together with them created a criminal group with 20 other defendants focused on the unauthorised trade and unauthorised use of the trademark of another firm through the production of low quality cigarettes without production licences. The Court found a shortfall on cigarette tax (excise) paid before October 2008 to the denar-equivalent amount of 6.57 mil. Euros (EUR) and that B.S. incited N.N. and M.Gj. to abuse their official position and authority in the TKK by ordering the payment of 1.05 mil. US Dollars and 5.18 mil. EUR to the foreign company "Sh.k" from K., under invoices issued in relation to a fictive purchase contract with that company, even though "Sh.k" did not deal with tobacco production. B.S was sentenced to five years of imprisonment and he was ordered to pay a fine in amount of 25,200 EUR, while the sanctions against the other defendants were milder.

In accordance with the general provision of Article 100-a ("Conditions for forfeiture of instrumentalities"), which stipulates that no one may retain or acquire objects which derived from the committing a crime, or which were intended or used for committing a crime (instrumentalities), and the specific provisions of Articles 285 and 394 of the Criminal Code relating to the forfeiture of instrumentalities of their respective crimes, the first instance court ordered the following forfeitures: 77 photographic films – negatives and 25 offset plates with inscriptions of Marlboro, HB, MT, West, Ronson, Rodeo and other types of foreign cigarettes; large amounts of cigarettes, sheets of paper for cigarettes and cigarette boxes; wrappers, carton packaging and control marks and markings for different types of cigarettes with the respective inscriptions; machines for production and packaging of cigarettes; a number of vehicles (and documents thereof) used for transporting the cigarettes; large amounts of domestic and foreign currencies; many mobile phones, computers and other technical devices etc.

In accordance with the provisions of paragraph 1 of Article 97 ("Confiscation of property and the proceeds of crime") of the Criminal Code, which stipulates that no one may retain or acquire proceeds of crime, the first instance court's decision for confiscation of the proceeds of crimes (rendered under Art. 97(2) of the CC) required:

- the convicted defendants to pay on a solidarity basis (correlated to their individual contribution to the realization of the criminal endeavours and their acquisition of property/gain (proceeds of crimes)) a total amount of the denar equivalent of 6.57 mil. EUR (which is equal to the amount of unpaid excise duty on tobacco goods), and if the confiscation of that amount was not possible, the perpetrators' movable or immovable property, as well as any other property, assets, material or immaterial rights or other property corresponding to the acquired proceeds of crime would be confiscated; and
- the legal entity "Sh.k." to pay 1.05 mil. US Dollars and 5.18 mil. EUR (unlawful property gain acquired by payments received under fictive invoices in relation to non-existing sales of tobacco to TKK), and if the confiscation of these amounts was not possible, the perpetrator's movable or immovable property, as well as any other property, assets, material or immaterial rights or other property corresponding to the acquired proceeds of crime would be confiscated.

7 Basic Court Skopje 1 (Criminal Court) – Skopje, judgment V KOK.no.3/09 of 25 March 2010, now final (available at: https://www.akademik.mk/wp-content/uploads/2011/10/Presuda-pdf.pdf), convicting most of the defendants.

The first instance judgment was upheld upon appeal.[8] The confiscation was not addressed by the judgment of the European Court of Human Rights (ECtHR),[9] which rejected the claim for payment of pecuniary damages in amount of 5,76 mil. EUR which allegedly occurred on account of B.S.'s inability to undertake activities necessary for the normal operation of the company TKK while he was in detention on remand, because there was no causal link between the established violation of B.S.'s right to liberty and the pecuniary damage alleged.

The processing of "tobacco-mafia" cases in the late 2000s[10] seems to have had a positive impact on reduction of the tobacco products "grey market" (4 time smaller in 2010 compared with 2006[11]) and tax evasion (2,5 times more taxes were collected in 2018 compared to 2010, according to the Ministry of Finance), despite continuing tax evasion from raw tobacco smuggling.[12] The Macedonian success story is further confirmed by the findings of a recent regional study on illegal trade of cigarettes and other tobacco products in the Western Balkans.[13]

	Croatia	Slovenia	BiH	Serbia	Montenegro	North Macedonia	Kosovo*
Taxes evaded due to tobacco smuggling, in EUR million	59.22	8.55	129.07	64.72	23.28	6.24	15.69
Total uncollected tobacco taxes, in % of GDP	0.2	0.1	0.9	0.2	0.6	0.1	0.2
Total uncollected tobacco taxes, as a share of total tax evasion, in %	6.6	1.9	11.6	3.4	8.0	1.0	7.4

8 Makfax, "The Appels Court had confirmed the sentence to [B.S.]", 16 March 2011 (https://makfax.com.mk/crna-hronika/249095/).

9 ECtHR judgment in the case of *S[...] v. [...] Republic of Macedonia*, no. 8784/11, 7 June 2018 (https://hudoc.echr.coe.int/), §§ 47 and 49.

10 According to "Kanal 5" TV, "Confiscation of property of perpetrators of tobacco-related organised crime", 19 March 2013 (https://kanal5.com.mk/articles/168603/konfiskacija-na-imot-na-storitelite-na-organiziran-kriminal-so-tutun), the Government's Spokesperson on 19 March 2013 informed about the confiscation of 56% of Mr B.S.'s shares in the TKK, as well as substantial amounts of money (some real estates were about to be confiscated then) and about confiscation of property of: persons involved in "Jaka tabak" Radovish, who caused damage to the State in amount of 2,5 mil. EUR from March 2001 to March 2007; and persons involved in the Prilep Tobacco Company, who caused damage to the State amount of 7 mil. EUR from 1.1.2005 to 31.3.2006.

11 Ministry of Finance, "Macedonia successfully deals with organised smuggling of cigarettes, the grey market reduced to 6%" (https://www.finance.gov.mk/mk/node/1814), a non-dated article, providing information that the decrease of the grey market's share from 25% (2006) to 6% (2010) was accompanied by 80% increase of the incomes from lawful trade of tobacco products.

12 Teofil Blaževski, "Tobacco smuggling – the State and legal market lose millions of Euros", at CSO's web Platform for Fight against Corruption, 2019 (http://antikorupcija.mk/uploads/documents/3/Istrazuvacka%20storija%20-%20Teofil%20Blazevski.pdf).

13 The project "Illegal Trade of Tobacco Products: Smuggling as Experienced along the Balkan Route – BalkanSmugg" (funded by PMI IMPACT and implemented by the Zagreb-based Institute of Economics from July 2017 to September 2019), whose specific objective was to produce a strong evidence base on the illegal trade of tobacco in Slovenia, Croatia, Bosnia and Herzegovina, Serbia, Montenegro, North Macedonia, and Kosovo*, resulted in the publication of an eponymous study (https://www.eizg.hr/UserDocsImages/projekti/Balkansmugg/BalkanSmugg-Study.pdf). The project assessed the smokers' attitudes and practices of buying cigarettes on the "grey market", and the relevant data were obtained in 2018 by conducting a survey of 3,000 respondents per country, totaling 21,000 respondents in the region.

Although the level of tax evasion in North Macedonia due to tobacco smuggling is the lowest in the region, the success in dealing with specific crimes through *inter alia*, the confiscation of instrumentalities and proceeds of the crimes, is yet to be matched by overall success in processing high-profile cases of organised (notably "white collar") crime in various spheres.[14]

6. Case study for Serbia - Evidentiary standards

This confiscation case has been selected because it raises the issue of how to prove the lawful acquisition of property by a convicted individual and the application of the law that is more favourable to him.

The case has been ultimately decided by the Supreme Court of Cassation, which ruled on the request for the protection of legality, an extraordinary legal remedy. The proceedings concern the confiscation of the property of a convicted individual, after the judgment handed down by the Special Organised Crime Department became final.

In its judgment from 13 April 2017, the Belgrade Higher Court Special Organised Crime Department found the defendant, A.A., guilty of fraud under Article 208(4) of the Criminal Code in conjunction with paragraph 1 of that Article and of criminal complicity under Article 346(2) of the Criminal Code in the January 2004-13 November 2009 period. The defendant appealed the judgment with the Belgrade Court of Appeals Special Department, which delivered its judgment on 5 March 2018. This Court partly upheld the defendant's claims, modified the first-instance judgment, and found the defendant guilty only of fraud, but not of criminal complicity. Under this final judgment, the defendant was sentenced to three years and six months imprisonment and a one million RSD fine (app €8,500).

After the judgment became final, the Deputy Organised Crime Prosecutor on 9 May 2018 filed a motion for the confiscation of the proceeds of the defendant's crime.

Upon the completion of the confiscation proceedings, the Special Department of the Belgrade Higher Court issued ruling, upholding the Prosecutor's request and ordering the confiscation of the defendant's property, notably: a 218 m^2 apartment in Belgrade, a 12 m^2 garage space, and a 4,850 m^2 plot of land near Belgrade. The details of the property were specified in the ruling. The Court decided that the confiscated property was to be managed by the Assets Management Directorate until its ruling became final.

The Belgrade Court of Appeals issued ruling on 30 January 2019, dismissing the defendant's appeal and confirming the first-instance court's ruling. The decision of the Belgrade Court of Appeal shows that the findings of fact regarding the confiscated apartment during the confiscation proceeding were disputable given that the first-instance court had dismissed the claims of the defendant and his witness B.B. and that the latter had bought the apartment from the former ten years earlier and that the defendant was not the owner of either the apartment or the garage.

The Court of Appeals concurred with the first-instance court, which had concluded that the analysis of all the presented evidence, especially the statements made by witness B.B. and the defendant,

14 In the so-called "Trust" case, movable and immovable property valuable about 14,5 mil. EUR was frozen during the criminal proceedings against few companies and their CEOs who, by abusing the public tender procedures, caused damage to the State budget in amount of 17 mil. EUR. Information about the recent confiscation efforts of the Agency for Managing the Forfeited Property can be found in Svetlana Božinovska's article "Decisions to confiscate the property of S.K. are prepared", "24 vesti" TV, 18 July 2019 (https://www.24.mk/details/izgotveni-reshenija-za-konfiskacija-na-imot-na-sead-kochan).

both in the seizure and the confiscation proceedings, showed that the real estate sale contract concluded between the defendant and the witness could not be deemed valid on legal grounds for the acquisition of property in this specific case, because the contract had not been certified by a court. The Court came to this conclusion after analysing the facts, notably allegations that the defendant had sold the apartment to the witness back in 2009, but that the latter had neither tried to have the sale contract certified, nor to register the apartment in the real estate registry, and that it was only in June 2018 that the witness sued the defendant, demanding he cede him possession of the apartment or repay the money he had given him for the apartment. The Court qualified the witness's statement as unconvincing, in the light of the defendant's statement during the 2011 seizure proceedings, when he made no mention of selling the apartment to the witness; actually, the defendant then claimed that he had bought the apartment while it was still under construction, that he had not paid for it yet and that he would become its owner once it was built and he paid the contracted price. The defendant mentioned the witness for the first time in June 2018, during the confiscation proceedings, wherefore the Court concluded that both these statements and the witness's allegations had been made to preclude the confiscation of the apartment. According to a certified sales contract, the defendant bought the apartment for €309,100 on 5 April 2007.

Such an analysis of the facts by the Court is of major relevance to national case-law, because defendants in seizure/confiscation proceedings have increasingly been submitting to the courts uncertified contracts, together with witness statements corroborating their authenticity, wherefore this case is an illustration of the numerous facts the Court take into account and rule on. National case-law on such issues is not yet fully aligned.

Furthermore, the Court dismissed the defendant's allegations that he had earned a profit of €1,444,864 as a co-owner of a company in Montenegro from 1998 to 1 September 2009, and that it was with this money that he had lawfully bought the seized property (to corroborate these claims, the defendant's counsel had wanted to call to the stand a financial expert). The Court found that no reliable evidence corroborating such allegations had been presented by the defendant during the seizure and confiscation proceedings, while, on the other hand, the prosecutor had submitted reliable proof, notably public documents on the legal incomes of the defendant and his wife, proving that the value of the acquired property by far exceeded their combined legal incomes. The Court found that, during the confiscation proceedings, the defendant had failed to submit to the court original documents on the business operations of the company in Montenegro, including its book-keeping records in any format, or, for that matter, any other documents having the force of public documents and proving the existence and business operations of the company. The Court found that the defendant had wanted to called the expert witness to protract the proceedings, all the more since it established, on the basis of a report by the Ministry of Finance Anti-Laundering Administration, that the defendant had indeed co-founded a company in Montenegro, but that such a company was established in August 2007, after the defendant had bought the impugned apartment in Belgrade.

The Court found that the Prosecution Office had proven the existence of a manifest disproportion between the value of the defendant's property and his legal income, which, coupled with the fact that he had been found guilty of fraud, showed that his property constituted proceeds of crime.

Finally, the defendant claimed, both before the Court of Appeals and the Supreme Court of Cassation, that the law was violated because the 2016 Law on Confiscation of Proceeds of Crime (LCPC) - rather than the 2008 LCPC - was applied in his case. He claimed that the 2008 CPC, which was valid at the time he committed the crime he was convicted of, was more favourable to him, because it was not applicable to fraud incriminated in Article 208(4) of the Criminal Code, as opposed to the 2016 LCPC. Therefore, the defendant claimed that violations of Article 5 of the Criminal Code and Article 2 of the LCPC, i.e. that the milder law was not applied in his case.

Both the Court of Appeals and the Supreme Court of Cassation took the same view in response to these allegations by the defendant. They found that the provision on the application of the milder law had not been violated. The Court's explanation of its view is relevant to national case-law, because this is the first time this issue was raised before and ruled on by the Serbian Supreme Court of Cassation.

Both Courts held that the LCPC laid down two separate proceedings, one for the seizure and the other for the confiscation of the proceeds of crime. In their view, these proceedings differ in legal effects, the circumstances in which the assets are seized/confiscated and functional jurisdiction, and they are not mutually contingent. The LCPC prescribes that confiscation proceedings shall ensue after the judgment becomes final, wherefore such proceedings are conducted separately and may be conducted only in the given procedural situation. Therefore, the initiation and implementation of confiscation proceedings is exclusively linked to the moment of adoption of the final condemnatory judgment for a crime listed under Article 2 of the LCPC.

Therefore, the law valid at the time of adoption of the final judgment applies in confiscation proceedings. Given that the prosecutor applied for confiscation on 9 May 2018, after the judgment finding the defendant guilty of fraud became final, the Court was found to have correctly applied the 2016 LCPC (Official Gazette of the Republic of Serbia No. 94/2016), which, in Article 2(1(4)), lays down that it shall apply, inter alia, to the criminal offence of fraud, incriminated in Article 208(4) of the Criminal Code.

Annex 1 - Statistical overview of data on seized and confiscated assets in the region

Albania

(data from the Court of Serious Crime and Agency for the Administration of the Frozen and Confiscated Assets)

Table 1

Year	Total number of cases before courts	Total number of finalized cases before courts	Total number of cases where assets have been temporary safeguarded	The number of freezing orders executed	The estimated value of property frozen	The estimated value of property frozen with a view to possible subsequent confiscation at the time of freezing	Total number of cases where assets have been permanently recovered	The number of confiscation orders executed	The estimated value of property recovered at the time of confiscation
2018	27	26	9	7	Total: 901,326,213.03 ALL, (7,268,759.78 Euro)	Total: 901,326,213.03 ALL, (7,268,759.78 Euro)	10	5	Total: 515,291,000.60 ALL (4,155,572.585 Euro)
2019 (1January -30 June)	7	7	4	4	Total: 34,033,071.50 ALL (278,959.60 EURO)	Total: 34,033,071.50 ALL (278,959.60 EURO)	2	2	Total: 49,740,652.24 ALL (407,710.26 EURO)

Bosnia and Herzegovina

Table 2

Year	Total number of cases before courts	Total number of finalized cases before courts	Total number of cases where assets have been temporary safeguarded	The number of freezing orders executed	The estimated value of property frozen	The estimated value of property frozen with a view to possible subsequent confiscation at the time of freezing	Total number of cases where assets have been permanently recovered	The number of confiscation orders executed	The estimated value of property recovered at the time of confiscation
2018	160	33	54	54	1.494.434 EUR		33		377.159 EUR

Kosovo*

Table 3

Statistic data Reports from the National Coordinator for Economic Crime Enforcement, Kosovo* Prosecutorial Council

Year	Total number of cases before courts	Total number of finalized cases before courts	Total number of cases where assets have been temporary safeguarded	The number of freezing orders executed	The estimated value of property frozen	The estimated value of property frozen with a view to possible subsequent confiscation at the time of freezing	Total number of cases where assets have been permanently recovered	The number of confiscation orders executed	The estimated value of property recovered at the time of confiscation
2018	N/A	2	N/A	N/A	27,867,583.23 €	27,867,583.23 €	2	N/A	N/A
2019	57	2	57	N/A	2,118,537.47 €	2,118,537.47 €	2	N/A	N/A

Table 3a

Statistic data concerning the confiscation and seizure of illegally obtained assets
Agency for Administration of Sequestrated and Confiscated assets

Year	Sequestration	Confiscation	Total	Returned
2018	€891,330.93	€54,318.66	€ 945,649.59	€ 42,760.00
2019	€102,276.68	€1,715.00	€103,991.68	

Administration of Sequestrated and Confiscated assets executed 32 decisions (19 for sequestration, 4 for confiscation, 8 for return and 1 for use. During this period, 3 (three) auctions were carried out and revenues amounted to 19,460.

Montenegro

Table 4

Period	Financial investigations	Type of offences	Types of assets which have been seized and frozen
Jan-Sept 2019	in 10 cases against 184 natural persons 150 legal persons	Participation in organized crime group; Money laundering; Tax evasion; Abuse of office Smuggling; Bribery Terrorism	Residential building, hotels, business premises 212.392 m2 in area, a 500 m2 yard, a 37 m2 basement, garages 522 m2 in area, land 113.278 m2 in area, securities - over 138,719,016.00 shares.

Table 4a
PROCEEDS CONFISCATED BASED ON PLEA BARGAINING AGREEMENTS - 2016-2019

No	Case	Confiscated Proceeds
1.	"TRADEUNIQUE"	19 810 047.38 €
2.	"MM"	385 185.20 €
3.	"COPYRIGHT"	2 191 012.62 €
4.	"S. M"	1 096 000.00 €
5.	"GC"	3 842 766.69 €
6.	"GC"	2 254 585.24 €
7.	"Armenko"	100 000.00 €
8.	"I.B"	40 000.00 €
9.	"KLAP"	780 000.00 €
10.	"VARDAR"	1 490 000.00 €
11.	"POREZI II"	188 000.00 €
12.	"ZETA"	196 000.00 €
13.	Others	157 000,00 €
	TOTAL:	32 530 897.13 €

North Macedonia

Table 5

No.	Case number	Type of offence	Number of persons from whom the assets have been confiscated	Type of confiscated assets/value
1.	KO No 3/13	Art. 215 and Art.273. of Criminal Code	1	150 EUR
2.	KO No 139/14 KOKG No 5/17 from 18.05.2017	Art. 394 (260 and 258) of Criminal Code	1	5 000 EUR 1 pistol 4 bullets
3.	KO No43/15 KOKG No 46/17 from 18.09.2017	Art. 394 (353)	4	1.003.067 MKD
	Total for 2017		6 persons	5 150 EUR 1.003.067 MKD 1 pistol 4 bullets
1.	KO No 91/14 KOKG No18/18 from 03.12.2018	Art.353	3	10.721.903 MKD
2.	KO No 38/16 KOKG No20/18 from 27.09.2018	Art. 418d	1	34.440 MKD
3.	KO No 97/12 KOKG No 9/17 from 16.05.2018	Art.394 (279 and 353)	12	64.799.250 MKD
4.	KO No85/18	Art.353	1	26.653.281 MKD
	Total for 2018		16 persons	104.215.008 MKD

Serbia

Table 6

2018

No.		Judicial Institution	Type of offence	Type of Assets	Value
1.	A. P. D.E. J. C.	TOK order xxx/17 of 19 February 2018		- 630,920.00 EUR - 50.00 USD - 3,480 AUD - 18,300 CZK - 40 ECD - 9,000.00 JPY - 60.00 HKD - 863.00 SGD - 2,985.00 CNY - 528,000.00 VND - 2,500.00 THB - 3,870,00 AUD	
2.	A.K. (defendant) M.K. (third party)	Belgrade Higher Court	Art. 346(3) CC	- land, Surčin - house in Belgrade - MOTORCYCLE Honda -Vehicle QUAD	350,000.00 RSD 1,024,899.99 RSD

3.	D.T. (defendant) V. T. (third party) M.T (defendant) L. S. (third party) M.N. (third party) O. N. (defendant)	Belgrade Higher Court Special Department	Arts. 346(5), 246(4) and 231(2) CC	- apartment in Čačak - apartment in Čačak - house in Čačak - AUDI A8 - apartment in Belgrade - apartment in Čačak - apartment in Belgrade - SKODA SUPERB - office building in Valjevo - AUDI A6 - apartment in Čačak	34,000.00 EUR 30,000.00 EUR 9,000,000.00 RSD 1,679,989.08 RSD 82,500.00 EUR 17,550.00 EUR 36,500.00 EUR 919,801.50 RSD 20,000.00 EUR 2,226,600.00 RSD 14,500.00 EUR
4.	Z.A. (defendant) V.I. (defendant)	Niš Higher Court	Arts. 214(3) and 229(3) CC	- house - 40 m2 - house - 100 m2 - office building - 72 m2; - 2 business premises - 32 m2 and 40 m2 - building - 90 m2 - house - 95 m2 and ancillary building - 21m2 - apartment in Niš, - two houses - 60 m2 and 36 m2 and ancillary building - 24 m2, with building land adjacent to the building - 105 m2 - apartment - 42 m2 - apartment - 30 m2 - business premises - 195 m2; - apartment -175 m2 - apartment - 75 m2 - apartment - 67 m2 - apartment - 68 m2 - basement area: 8 m2 and ancillary premises - 5 m2 - garage - 45 m2 - house - 68 m2, with ancillary building, area: 63 m2 and land along the Crni Vrh facilities, - 70% of the shares in the company XXX LLC - 4 houses area: 59.50 m2, 22.50 m2, 30.81 m2 and 123 m2; total area:235.81 m2 - office building - 138 m2 - business premises – 176 m2 - business premises – 95 m2	322,270.00 EUR (according to the share capital sale contract of 21 December 2017)
5.	B. G. (defendant)	Novi Pazar Basic Public Prosecution Office	Art. 229(3) CC	- 30,000.00 EUR	
6.	R.M (defendant) XX LLC (third party)	Niš Higher Public Prosecution Office Niš Higher Court	Art. 234(3) CC	-15,651 (53.34%) ordinary shares in XX LLC - 1,904 (6.48%) ordinary shares in XX LLC	Share capital sale contract, price 51 billion RSD or 553,766.37 EUR for 15,651 shares or 53.34538% shares, nominal price per share standing at 1,500.00 RSD

7.	G.R. (defendant)	Belgrade Higher Court Special Anti-Corruption Department	Art. 367(1) CC	- 7,050.00 EUR - 500.00 USD - 190.00 HRK		
8.	O.M. (defendant)	Belgrade Higher Court Special Organised Crime Department	Art. 346(2) CC	- 27,706.33 EUR - 2,701.00 CHF		
9.	S.P. (defendant) S.P. (third party)	Belgrade Higher Court	Art. 234(3) CC	ENFORCEMENT UNDER WAY 12 companies Apartments in Belgrade Apartments in Šabac CP in Provo village and Vladimirci Cultural Centre in a village	6,000,000 EUR	
10.	I.P. (defendant) Z.P. (defendant)	Belgrade Higher Court-Special Organised Crime Department	Arts. 346(5) Art.234(3) CC	- apartments - apartment - 35 m2 - apartment - 31 m2 - agricultural land - 2,54.26 hectares - business premises -18 m2 - apartment – 38 m2 - one-floor house – café - 89 m2 - business premises -19 m2	20,000 EUR 17,000 EUR 30,000 EUR 10,000 EUR 10,000 EUR 20,000 EUR 45,000 EUR 10,000 EUR	
11.	N.P. (third party)	Belgrade Higher Court-Special Department	Arts. 346(2) and 234(3) CC	apartment, area: 55 m2	37,000 EUR	
12.	P.B. (defendant)	Jagodina Basic Court	Arts. 225(3) and 229(2 and 3) CC	-residential- office building. floor area: 124 m2 -residential-office building, two ancillary one-floor buildings, area: 98 m2, 22 m2 and 12 m2 - 3 tennis courts - business premises, area: 28 m2 - 3 apartments in a tourist facility	50,000 EUR 30,000 EUR 20,000 EUR 80,000 EUR	Returned under Jagodina Basic Court ruling xx/19
2019						
1.	I.I. (defendant)	Belgrade Higher Court-Special Organised Crime Departmentupon request by Italy	Complicity to commit the crime of illegal organisation of gaming under Art. 4 of Italian Law No. 401/89 and money laundering under Art. 648 of the Italian Criminal Code	2 apartments	550,000 EUR 350,000 EUR	

2.	M.S/ (third party)	Belgrade Higher Court-Special Organised Crime Department	Arts. 346(5) and 234(1) CC	Apartment - 80 m2	40,000 EUR
3.	S.S M.S. M.S. D.S M.S	Belgrade Higher Court-Special Organised Crime Department	Arts. 346(5) and 234(3) CC	- family-residential building - business premises -apartment - 61 m2 and garage - 21 m2 -apartment - 23 m2 - Business premises -174 m2 - bank deposits of 10,000.00 EUR and 34,545.34 EUR - Mercedez Benz - Vespa motorcycle - 2 business premises - area: 199 m2 and 120 m2 - bank deposit of 10,018.18 EUR - business premises - 298 m2 - one-floor family residential building, area: 95 m2, ancillary building, area: 110 m2, and ancillary building area: 35 m2 -business premises - 26 m2 -business premises - 48 m2 -business premises - 90 m2 -business premises - 40 m2 -2 apartments - 35 m2 each - 2 business premises - 35 m2 each - 16 apartments in the residential-office building - 35 m2 each	
4.	S.S (defendant) J.S. (third party) M.S. (third party)	Novi Sad Higher Court, Special Anti-Corruption Department	Art. 231(2) CC	-apartment - 164 m2 -garage - land, area: 9 ares and 45 m2, with a country house, area: 42 m2 - apartment -120 m2 - apartment -134 m2 - garage - 16 m2 - land, area: 13 ares and 4 m2, with three one-floor buildings, area: 120 m2, 17 m2 and 49 m2	180,000 EUR 7,000 EUR 8,000 EUR 120,000 EUR 135,000 EUR 8,000 EUR
5.	G.M. (defendant) S.M. (defendant)	Kraljevo Higher Court, Special Anti-Corruption Department	Art. 227(3) CC	- apartment - 58 m2 - commercial building-126 m2 - business premises - 73 m2 - apartment - 85.02 m2	30,000 EUR 70,000 EUR 38,000 EUR 180,000 EUR
6.	D.M. (defendant) D.M. (third party)	Belgrade Higher Court, Special Organised Crime Department	Arts. 346(5) and 234(3) CC	-land, area: 0,05.35 hectares and one-floor family residential building - 42 m2 - apartment - 42 m2	20,000 EUR 20,000 EUR
7.	D.D. (suspect)	Belgrade Higher Public Prosecution Office	Art. 245(2) CC	-958,115 EUR in cash	

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