
SPECIFIC ASPECTS OF PROVE IN CONFISCATION OF PROPERTY

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Annotation:

This article analyzes the specific aspects of evidence collection and evaluation during property confiscation. At the same time, this article analyzes the norms of confiscation of property in international documents.

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Probative issues are often neglected in asset forfeiture. However, this issue requires special attention in terms of the fact that the use of confiscation directly affects the rights and legal interests of the participants in the criminal proceedings, and causes their rights to be limited within a certain range.

Article 31 of the United Nations Convention against Corruption enshrines several standards on confiscation and confiscation [1] Because, according to it, each State Party shall take such measures as may be required to ensure, to the maximum extent possible, within the framework of its domestic legal system, the possibility of confiscation of:

- a) a) incomes obtained through criminal acts recognized as crimes in this Convention or property whose value is equal to the value of these incomes;
- b) property, equipment used or intended for use in committing criminal acts recognized as a crime.

The Convention stipulates that each State Party shall take such measures as may be required to ensure the possibility of identifying, tracking, suspending, or confiscating any of the above for further confiscation.

In addition, each State Party shall take such legal and other measures as may be required by its domestic law to regulate the management by competent authorities of the above-mentioned temporarily derelict, attached, or confiscated property. If such criminal proceeds are partially or completely converted or changed into other property, then the measures specified in this article shall be applied to this property.

If such proceeds of crime are added to property obtained from lawful sources, then a portion of the property commensurate with the appraised value of the proceeds of crime shall be forfeited without prejudice to any powers of distraint or forfeiture [2]. The measures specified

in this article shall be applied to the profits or other advantages obtained due to such criminal proceeds, due to the conversion or transformation of criminal proceeds into other property, or due to the addition of such criminal proceeds to the property, in the same manner, and to the same degree as in the case of proceeds obtained by criminal means.

It is also allowed to grant powers to courts or other competent authorities to issue subpoenas or arrest warrants related to banking, financial, or commercial matters. In this case, referring to the need to maintain bank secrecy, one should not refuse to take measures by the above-mentioned cases.

It should be noted that, by paragraph 8 of Article 31 of the Convention, the participating States have established the most important principles of their domestic legislation that the person who committed the crime must prove the legality of the proceeds or other property obtained by such criminal means, which should be confiscated, and in court and other courts. can consider the possibility of determining the level of demand according to the characteristics of the discussion.

In this case, these provisions should not be interpreted in a way that harms the rights of honest third parties.

The Special Technical Guide to the Application of the Provisions of this International Standard clarifies that, in addition to specific procedures that apply post-conviction non-criminal standards of proof, some jurisdictions have civil forfeiture procedures that focus on property rather than the person (in rem) and are based on a "preponderance of the evidence" standard. they can also use food.

By the fourth paragraph of Article 3 of the Convention on the Detection, Seizure, and Confiscation of the Proceeds of Crime and the Financing of Terrorism, adopted in Warsaw on May 16, 2005, the parties shall: take the necessary measures, not inconsistent with the principles of national law, to ensure that other goods indicate the source of the property [3].

In our opinion, these rules should be applied in equal shares to property obtained from legal sources, to other legal properties to which they are added, as well as to income derived from them.

A similar provision regarding the imposition of the burden of proof on the legality of the property is contained in Recommendation No. 3 of the Forty Recommendations of the Financial Action Task Force on Combating Money Laundering (FATF) dated 20 June 2003 [4]. According to paragraph 21 of the preamble of Directive 2014/42/EU of the European Parliament and of the Council of April 3, 2014, on the tracing and confiscation of weapons and instruments of crime and proceeds of crime in the European Union, extended confiscation can only be carried out on sufficient grounds that the property in dispute was derived from criminal activity. can only be used if you have.

However, this provision does not mean that the origin of the property must be realized through criminal acts [5]. Also, the court may issue a decision on the confiscation of this property based on the rules of preponderance of evidence or in cases where there is a reasonable suspicion that the relevant property is the result of criminal activity.

The court must consider all the circumstances of the case, including the facts and available evidence, on which a decision on extended confiscation can be made. Circumstances such as the fact that a person's property does not correspond to his legal income can be a sufficient reason for the court to come to a reasonable conclusion that this property was obtained from criminal activity.

By this Directive, countries may also specify in their national legislation a certain period during which property can be considered as the proceeds of crime. The experience of the Anticorruption Network of the Eastern European and Central Asian countries, which operates with the support of the Organization for Economic Co-operation and Development, regarding the issues of evidence in confiscation is particularly noteworthy.

The standards and burden of proof in the member countries of the network depend largely on the type of confiscation applicable in a given case [6]. In cases where confiscation is designated as a type of penalty, this penalty is generally applied in addition to the person's conviction for the crime that led to such confiscation, and the conviction of the person for committing such a crime is sufficient evidence that the property involved in the crime is also related to criminal activity. Notably, special confiscations, ie the confiscation of weapons, instrumentalities, and proceeds of crime, generally place the burden of proof on the prosecution that they are not related to a particular criminal act.

When it comes to criminal forfeiture or civil forfeiture, in most cases the burden of proof is split between the parties and simplified standards of proof are applied: preponderance of the evidence, balance of probabilities, preponderance of the evidence, or similar. In some countries, including Azerbaijan, Armenia, Kazakhstan, Kyrgyzstan, and Latvia, there is no place for extended criminal forfeiture and civil forfeiture institutions.

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