



SCOPE OF INDIVIDUALS WHOSE PROPERTY COULD BE CONFISCATED IN CRIMINAL PROCEEDINGS

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Article history:	Abstract:
Received: May 11 th 2022 Accepted: June 11 th 2022 Published: July 23 th 2022	This article analyzes the institution of confiscation and the circle of persons whose property will be confiscated based on the norms of criminal and criminal procedure legislation in the course of the implementation of judicial reform. Based on the views and ideas put forward by scientists, the category of persons whose property is subject to confiscation has been scientifically and theoretically investigated. The article carried out a classification according to certain criteria of the category of persons whose property is subject to confiscation in criminal proceedings, by a comparative analysis of the opinions of legal scholars on the category of persons subject to confiscation of property, as well as by considering the concepts in their definitions based on our legislation. According to the results of the analysis, the relevant conclusions are given based on the category of persons whose property will be confiscated in criminal proceedings and their characteristics.

Keywords: confiscation, special confiscation, punishment, criminal law, criminal procedural law, substantive law, procedural law, crime prevention.

INTRODUCTION

Today, in criminal law and criminal procedural law, confiscation of property, determining its amount, clearly defining the scope of persons from whom property has been confiscated, and not harming the rights and legal interests of third parties when confiscating property based on the constitutional principle such as the inviolability of private property it is one of the priority tasks in the criminal-legal policy.

In 2017-2021, among the priority tasks defined in the field of "Ensuring the rule of law and further reforming the judicial system", which is the second priority of the Strategy of Actions on the five priority directions of the development of the Republic of Uzbekistan, the use of the property as a weapon of crime or the subject of an administrative offence is carried out in cases where the owner is not at fault. It was intended to prohibit placement (except for temporary withdrawal) and confiscation [1].

In the third direction of this Concept, called "Priority directions of economic development and liberalization", the prohibition of confiscation or confiscation of property (except temporary confiscation) in cases where the owner is not guilty of using the property as a tool for committing a crime or administrative offence was established.

It should be noted that the issue of not confiscating the property of persons who are not guilty of committing a crime or administrative offence was

defined twice as one of the main issues of two areas in one regulatory legal document as a state program.

MATERIALS AND METHODS

Although the issue of confiscation of property in criminal proceeding is defined in the legislation, due to the concept of this institution and problems arising in practice, this research mainly uses the method of comparative legal analysis. At the same time, observation, generalization, induction, and deduction methods were used.

RESEARCH RESULTS

Confiscation of property is a coercive measure of a criminal-legal nature, which consists of the compulsory conversion of all or part of the objects owned by the person who committed the crime into state property, on the condition of non-payment of fees. It can be included in the system of types of criminal punishment in different legal systems or considered as another measure of a criminal-legal nature.

Today, in the criminal process, one of the most important issues is to correctly determine the category of property to be confiscated, their sources of origin, and the circle of persons whose property is to be confiscated. Because their correct identification serves to fulfil the tasks of criminal procedural law, i.e. to solve crimes quickly and completely, to expose the guilty so that every person who commits a crime is given a fair punishment and no innocent person is held responsible



and convicted, and to ensure the correct implementation of the law.

The scope of persons whose property will be confiscated and the identification and study of their property are closely related to the requirements of modern legal practice. Confiscation is explained by its existence in several areas of law. Because confiscation of property exists in the legislation on criminal, criminal-procedural, civil, and administrative offences, and provides for the use of the same measure of influence against the offenders in different situations and grounds.

ANALYSIS OF RESEARCH RESULTS

When studying the procedural aspects of confiscation of property, it is necessary to determine the scope of objects of property to be confiscated and persons whose property is to be confiscated. Scientists put forward different opinions on this matter.

For example, some scientists propose to divide it into types depending on the type of property included in the object of confiscation [2, p. 118].

The subject of special confiscation can be items obtained as a result of committing a crime, used for preparing and committing (financing) a crime, weapons, tools and other property of committing a crime [3, p. 107].

In our opinion, it is appropriate to include the following in the objects of confiscation of property:

1) money and other property obtained as a result of committing a crime. In this case, any profit or income obtained from the use of this property is also included in the object of confiscation.

2) funds and other property obtained as a result of committing a crime were completely or partially converted or changed into other property, or money and other property added to property obtained from legal sources;

3) funds and other property of any kind intended or used to finance or otherwise support terrorism, distribution of weapons of mass destruction, or a criminal group or criminal association;

4) if the money and other assets obtained as a result of committing a crime, the income from them, the money and other assets that these assets were partially or completely converted into other assets were transferred to the ownership of other persons by the person who committed the crime, this property should also be confiscated.

It should also not be forgotten that if the property subject to confiscation is transformed into other property or added to it, it is problematic how the confiscation will be carried out.

In our opinion, if the property obtained as a result of the commission of a crime is fully or partially transformed into other property or changed, or is added to the property obtained from legal sources, or is transferred to the ownership of other persons, confiscation is applied to the part of the property obtained as a result of the commission of a crime. In this case, all categories of money and other assets that are not part of the property unrelated to the crime must be returned to the legal owner.

In addition to the above-mentioned objects of confiscation, the following properties can also be included in its objects:

1) confiscation of something else instead of the property to be confiscated. If it is not possible to use, sell, or confiscate a certain thing that is part of the property subject to confiscation for other reasons, the amount of money equal to the value of this thing should be confiscated.

If this property is not available or if the amount of money to be confiscated is insufficient, the relevant competent authority must confiscate other property equal to the value of the property to be confiscated or similar property to the value of this property.

2) confiscation of property transferred to the ownership of another person.

The property subject to confiscation may have been transferred to the ownership of another person. In such cases, if the person to whom the property was transferred knew or could have known that the property was obtained as a result of committing a crime, the property should be confiscated.

According to V.T. Tomin and M.P. Polyakov, property belonging to others should be confiscated only if there is evidence that it was obtained from the criminal activities of the suspect and the accused [4, p. 327]. However, the suspect's or accused's property, which may later be subject to enforcement, may be legally transferred to another person.

In some legal literature, such ideas were put forward: when a person becomes the owner of his property, depending on whether the person who gives, donates, or sells this property knows whether he knows how this property was acquired, ideas were put forward about the confiscation of these properties [5, p. 277].

In this case, if a person knows that he is becoming the owner of property acquired by criminal means, that is, if he is a dishonest owner, then the property in him will be confiscated, otherwise, the property should not be confiscated.

In addition, if the money and other property included in the subject of confiscation were gifted or sold to third parties, the damage caused to the bona



fide possessor of this property at the time of confiscation of the property must be compensated.

Some authors include among the most common objects of confiscation measures the tools and means of committing corruption offences, the income from their commission (directly or indirectly, as well as any form of profit from them) [6]. In our opinion, the list of property belonging to suspects, accused, and defendants and subject to confiscation is not limited by law.

Therefore, any property considered as the subject and weapon of corruption crimes can be confiscated by the relevant authorities. Property located in the territory of a foreign country may be confiscated by the court during the criminal case under an international agreement. As for the bribe, even if the person who committed the crime actively helped to solve the crime and was exempted from criminal responsibility, the given bribe cannot be returned to the person who gave it.

In addition, one of the important issues is to correctly determine the scope of the persons whose property will be confiscated during the confiscation of property. Because the scope of persons whose property can be confiscated is not clearly defined in the current legislation.

According to some scientists, when solving the issue of confiscation of property, the competent authorities must clearly determine its owner [7, pp. 125-126].

However, Article 211 of the Criminal Procedure Code of the Republic of Uzbekistan stipulates that the criminal weapons belonging to the suspect, the accused, the defendant, and the convict shall be confiscated, and handed over to the relevant institutions or destroyed.

In addition, Article 289 of the Code of Criminal Procedure of the Republic of Uzbekistan defines the procedure and conditions for requisitioning and confiscating the property of the victim and other persons. According to it, if the property, which is prohibited to be in private ownership, is recognized as physical evidence in the case, depending on whether the owner acquired it correctly or illegally, it will be requisitioned or confiscated, that is, on the condition that the property is paid or not, such property will be confiscated by the court. is given to the relevant state body or legal entity that has the right to own, use and dispose of the property.

As can be seen from the above two articles, the property of the suspect, the accused, the defendant, the convict, as well as the victim and other persons can be confiscated. However, in our opinion, the range of

persons presented in this list is not complete. Because the property of persons not included in this list may be confiscated during criminal proceedings.

If there are sufficient grounds to believe that as a result of a crime or an act of a mentally deranged person, the certain property has been transferred to the ownership of a person who has no connection with another crime, this property shall also be confiscated.

For example, a person who buys a house obtained through the legalization of criminal proceeds, although he has no connection to the crime and the persons who committed the crime, this property can be confiscated.

Issues related to the confiscation of property and the correct determination of the scope of persons whose property will be confiscated in criminal procedural legislation have been controversial issues for several decades.

According to V.T.Tomin, in cases where the property was acquired by the suspect and accused criminally and given to other persons to hide from confiscation, the property given to these persons should be confiscated [8, p. 324].

According to most scholars, including A.P.Korotkov and I.L.Petrukhin, confiscation of the property of the suspect or the accused is carried out regardless of where the property is located [9, p. 216].

In other words, these scholars tried to suggest to the law that the confiscatable property of the suspect, the accused should be confiscated regardless of where and in whose hands they are kept.

A special feature of confiscation is that it can be applied to persons who are not the subject of a crime, but who received the proceeds of criminal activity in another way. In this case, it is required that these persons knew or could have known that the property was obtained by criminal means.

CONCLUSION

Based on the results of the analysis, based on above, the property of the following persons may be confiscated:

- 1) suspect, accused, defendant, convict and their close relatives;
- 2) victim, civil claimant and civil defendant;
- 3) third parties.

Here, other persons mean persons who know or may know that the property subject to confiscation was obtained as a result of committing a crime (unscrupulous possessors of property).

In order to confiscate the property of these specified persons, the property to be confiscated must



necessarily enter the object of the property to be confiscated.

During the confiscation of property in the practice of criminal cases, persons who are involved or are likely to be involved as a suspect or accused in a criminal case alienate the property that belongs to them. But this property will not be acquired through criminal means. In such cases, there is no legal basis for confiscation of these properties. In this case, the goal of alienation of property is important. If the contract is forged or the property is sold to another person to hide the property from confiscation, it is given for free use, if the person gives it as a gift, taking into account the actual circumstances of the case, these properties may be confiscated.

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