



INTERNATIONAL STANDARDS ON THE INSTITUTION OF CONFISCATION IN CRIMINAL PROCEEDINGS

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Article history:	Abstract:
Received: December 8 th 2022 Accepted: January 6 th 2023 Published: February 8 th 2023	This article analyzes the existing norms in international legal documents related to the regulation and application of the institution of confiscation. The norms in the field of confiscation of criminal assets established in the international documents adopted by the Council of Europe, UN, European Union, Organization for Economic Cooperation and Development as well as other international organizations and their bodies are analyzed in depth. Based on the results of the analysis, conclusions were drawn on the application of measures related to confiscation of assets in criminal proceedings, and proposals and recommendations for national legislation were developed.
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International standards in the field of criminal weapons, means of committing crimes and confiscation of criminal proceeds are defined in many international documents adopted by the UN, the European Union, the Organization for Economic Cooperation and Development, the Council of Europe, as well as other international organizations and their bodies. We will discuss the most important of them in detail below.

We can also see the international standards related to these issues in the following documents of the European Union:

- Decision No. 2006/783/JHA of the Council of October 6, 2006 "On the application of the principle of mutual recognition of confiscation decisions";
- Resolution No. 2005/212/JHA of the Council of February 24, 2005 "On Confiscation of Criminal Proceeds, Criminal Weapons and Means of Property";
- Council Decision No. 2003/577/JHA of July 22, 2003 "On the execution of arrest warrants and evidence in the European Union";
- Council Decision No. 2001/500/JHA dated June 26, 2001 "On legalization, detection, search, freezing, criminal weapons and tools, and confiscation of proceeds of crime";
- Directive 2014/42/EU of the European Parliament and the Council of April 3, 2014.
- Council Decision No. 2003/568/JHA dated July 22, 2003 on combating corruption in the private sector;
- 1997 Anti-corruption Convention "Between Public Officials of the European Union and Officials of the Member States of the European Union".

Directive 2014/42/EU of the European Parliament and the Council dated April 3, 2014 defines the basic concepts of property, income and profit, weapons and instruments of crime, confiscation of property¹.

At the same time, this document defines the sphere of specific regulation of the institution of confiscation and confiscation, extended confiscation, confiscation of property transferred to third parties as a result of a crime, confiscation of property for the purpose of confiscation, rights of property as a result of confiscation safeguards for persons whose legal interests may be violated or harmed, more fully regulates the issues of enforcement of decisions on confiscation of property, management of seized and confiscated assets, and keeping statistics on confiscated assets in EU countries.

According to Article 2 of the Directive, confiscation of property means the final deprivation of property ordered by a court for a criminal act. Pursuant to Article 4 of this Directive ("Confiscation"), Member States of the European Union may confiscate other weapons, instruments and proceeds or property, the value of which corresponds to those weapons, instruments or proceeds, as a result of a final conviction for a person convicted of a crime. must take necessary measures to ensure that it is done (in full or in part).

¹ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union // <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042>



According to Article 5 of the Directive ("Extended confiscation"), the legislation of the EU member states must provide that, even in the absence of direct evidence, the court, based on the circumstances of the case and the available evidence, does not correspond to the legal income of the defendant, and the disputed property if he comes to the conclusion that it may have been obtained as a result of a crime, he must take measures to ensure the confiscation of this property in whole or in part.

One of the important provisions regarding confiscation of property is reflected in Article 6 of this Directive ("Confiscation of property held by third parties").

In this case, the Member States shall, based on certain facts and circumstances, provide that the property subject to confiscation has been directly or indirectly transferred by the suspect or accused person to third parties, or that the purpose of such transfer or acquisition by third parties from the suspect or accused party is at least to avoid confiscation by said third parties, in cases where they know or should have known that they have accepted or purchased without paying or for an amount much lower than the market value, they must take the necessary measures to ensure the possibility of confiscation of this property or other property corresponding to it.

At the same time, certain guarantees are given to the persons whose property is being confiscated during the confiscation of property. The safeguards granted to suspects, defendants and third parties who may be affected by confiscation measures are set out in Article 8 of the above Directive ("Safeguards"). According to it, the member states should ensure effective means of protection for the persons whose rights are affected as a result of the measures provided for in the directive and the right to a fair trial to protect their rights. This includes the right to legal aid and the right to be notified of confiscation and prohibition.

In Article 11 of the Directive, the competent authorities of the European Union member states regularly collect statistical data on seizure and confiscation measures, including the status of execution of confiscation orders, information on the estimated value of the prohibited property, information on the property returned as a result of confiscation measures. It is determined that it should be updated regularly.

In the "Forty Recommendations" of June 20, 2003, developed by the Financial Action Task Force on Combating Money Laundering – FATF², states should

² International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The 40 Recommendations, published October 2004 //

adopt similar measures as defined in the Vienna and Palermo Conventions, the UN International Convention for the Suppression of the Financing of Terrorism, including: it is determined that their competent authorities should take legal measures that allow the suspension, confiscation or confiscation of any means used or allocated for the purpose of committing a crime without harming the rights of honest third parties (property possessors).

Such measures include:

– identifying, monitoring and assessing the value of confiscated property;

– to prevent any transactions aimed at transferring the proceeds of criminal activities to third parties, to take security measures such as banning and blocking in order to transfer or dispose of such property;

– taking measures to prevent or neutralize any actions (falsification of evidence) that undermine the state's ability to find confiscated property;

– take any appropriate investigative and procedural steps. In this case, the exchange of information and documents available or obtainable in law enforcement and investigative bodies, in case of sufficient grounds (suspicions) confirming the occurrence of cases of legalization to the competent authorities of foreign countries, sending the received information, identifying and investigating cases of legalization and predicate crimes, as well as identifying natural or legal entities and beneficial owners involved in these crimes, etc.

At the same time, countries may consider establishing measures that allow the confiscation of proceeds of crime or instrumentalities without holding the offender accountable or require him to prove the legality of the origin of the confiscated property, provided that such a requirement does not conflict with the principles of their domestic law.

FATF Recommendations № 27, 28 and 32 are significant in that they provide statistical standards for investigative measures and other institutional measures and confiscation of the proceeds of crime³.

Also, recommendation № 34.1 issued by the Organization for Economic Co-operation and Development (OECD) as a result of the 4th stage monitoring carried out as part of the Istanbul Action

<https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html>

³ International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation – The 40 Recommendations, published October 2004 // <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatfrecommendations.html>



Plan on Combating Corruption indicates the need to take the necessary measures to enable confiscation of the income obtained as a result of crimes of a corrupt nature based on international standards.

On November 21, 1997, the Organization for Economic Cooperation and Development (OECD) enacted the Convention on Combating Bribery of Foreign Officials in the Implementation of International Commercial Agreements. To date, 44 countries (36 member countries and 8 non-member countries) have joined the Convention⁴.

In accordance with paragraph 3 of Article 3 of the Convention, member states shall take all necessary measures to impose the amount of bribe received by a foreign public official and the income from bribery, as well as the confiscation of property corresponding to the value of the stated income, or other proportionate measures and financial sanctions. must take measures.

The convention also envisages a mechanism for monitoring the implementation of this requirement. In particular, in Article 12 of the Convention, the parties undertake to cooperate in the implementation of a systematic program of measures to facilitate the current monitoring and full implementation of this Convention. Unless otherwise decided by agreement of the parties, this work will be carried out within OECD Working Group on Bribery in International Business Transactions⁵.

United Nations Convention against Corruption adopted by the UN General Assembly Resolution No. 58/4 of October 31, 2003 also defines a number of provisions related to confiscation of property⁶.

The Convention defines the concepts of "proceeds of crime" and "confiscation".

According to Article 2(e) of the Convention, proceeds of crime are any property obtained directly or indirectly as a result of the commission of a particular crime.

The Convention defines the concept of "confiscation" as the complete deprivation of property by the decision of a court or other competent body (subparagraph "g" of Article 2 of the Convention).

In accordance with paragraph 1 of Article 31 of the Convention, States Parties shall, to the maximum extent possible within their domestic legal

system, take the necessary measures to ensure the possibility of confiscation of two types of objects:

a) Proceeds from crimes covered by the Convention or from property whose value corresponds to the value of such proceeds;

b) Property, criminal weapons and other means used or intended to be used in the commission of crimes covered by the Convention.

According to paragraph 4 of Article 31 of the Convention, if the proceeds of crime are partially or completely converted or converted into other property, confiscation measures should also be applied to such property.

If the proceeds of crime are added to property obtained from legal sources (so-called "mixed proceeds"), then the portion of the property corresponding to the assessed value of the attached proceeds shall be confiscated without prejudice to the rights of the other lawful owner(s) (Article 31 of the Convention Clause 5).

The same confiscation measures as above apply to the proceeds of crime. If such profit is added to the property obtained from legal sources, then the part of the property corresponding to the value of the profit will be confiscated.

At the same time, the Convention also protects the property rights of third parties. After all, according to paragraph 9 of Article 31 of the Convention, its provisions shall not be interpreted in such a way as to harm the rights of honest (legal) purchasers.

Mechanisms for international cooperation on confiscation are detailed in Articles 54-55 of the Convention.

The Council of Europe's Criminal Law Convention on Corruption, signed on January 27, 1999, also sets out confiscation norms⁷. Its implementation will be monitored by the "Group of States against Corruption – GRECO", which started functioning on 1st May 1999. As soon as they ratify it, states which do not already belong to GRECO will automatically become members.

According to Article 19, paragraph 3 of the Convention, each State Party shall take such legislative and other measures as may be necessary to authorize the confiscation or other seizure of weapons and proceeds of crimes covered by the Convention, or property of a value equal to such proceeds.

The Convention requires member states to ensure the specialization of their bodies and officials in the fight against corruption and their independence, effective protection of persons cooperating with justice in this category of cases, as well as the search,

⁴ <https://docs.cntd.ru/document/902343859>

⁵ OECD Working Group on Bribery in International Business Transactions // <https://www.oecd.org/corruption/anti-bribery/anti-briberyconvention/oecdworkinggrouponbriberyininternationalbusinesstransactions.htm>

⁶ United Nations Convention against Corruption // https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf

⁷ Criminal Law Convention on Corruption // <https://www.coe.int/en/web/impact-convention-human-rights/criminal-law-convention-on-corruption/>



detection, prohibition, confiscation and acquisition of corruption or property. determines the obligation to take measures to use investigative and procedural actions.

Another important international instrument for asset confiscation is the Council of Europe Convention on the Detection, Seizure and Confiscation of the Proceeds of Crime and the Financing of Terrorism (Warsaw, May 16, 2005) and includes more than thirty participating countries.

Article 1 of the Convention defines "proceeds of crime" (any economic benefit obtained directly or indirectly as a result of crimes), "property" (any type of assets, tangible or intangible, movable or immovable, legal documents or ownership of property documents to give); "weapon" (property used or intended to be used in any way, in whole or in part, to commit a crime or crime). In addition, concepts such as "confiscation" (punishment or measure of influence imposed by the court in a criminal case and consisting of deprivation of property) are defined.

According to Article 3 of the Convention ("Confiscation Measures"), each Member State shall establish legislative frameworks enabling the confiscation of weapons and proceeds of crime, or property of a value corresponding to such proceeds, and shall take other necessary measures for the identification and confiscation of property. should take measures.

Parties may provide for mandatory confiscation for crimes falling under the confiscation regime. Instead, the list of crimes included in this regime may include crimes related to money laundering and any other serious crimes.

In addition, each party to the Convention provides for the confiscation of the proceeds of a convicted person for serious or other relevant crimes defined in national law (serious or predicate crimes defined in national law, that is, any crime aimed at obtaining illegal income as a result of its commission and other similar alternative crimes). In order to ensure that the obligation to prove that the source of origin of (property) is legal is imposed, it should establish appropriate norms in the legislation and take other necessary measures.

At the same time, it is stipulated that the above requirement imposed on the member states will not be used as an exception if its implementation contradicts the principles of national legislation.

In addition to the above, the Convention also regulates in detail the use of mechanisms of mutual international legal assistance by member states in the process of confiscation of assets (Articles 23-26 of the Convention).

Today, countries that have not ratified the Warsaw Convention can rely on the 1990 Convention

on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS 141) as a legal basis for cooperation on confiscation issues⁸. This Convention has been ratified by 47 countries of the Council of Europe, as well as Australia and Kazakhstan.

It is worth noting that in paragraph 73 of the "Road Map" on the implementation of the National Strategy of the Republic of Uzbekistan on Human Rights, approved by the Decree of the President of the Republic of Uzbekistan dated June 22, 2020 No. accession to the Confiscation Convention (Warsaw, May 16, 2005)⁹.

Confiscation of property affects a person's fundamental rights and freedoms, including the rights and freedoms defined in the Convention for the Protection of Human Rights and Fundamental Freedoms¹⁰, which was opened for signature in Rome on 4 November 1950 and came into force on 3 September 1953.

The European Court of Human Rights is responsible for monitoring and ensuring compliance with this Convention.

The following rights, which may be violated during the confiscation of a person's property in criminal proceedings, as well as the obligation to prove the fact that the said property was obtained from a legal source, are guaranteed by the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms:

– the right to justice. According to Article 6, paragraph 1 of the Convention, every person, in case of a dispute about his civil rights and obligations, or in the event of any criminal charge being brought against him, shall have a fair and public trial by an independent and impartial tribunal within a reasonable time prescribed by law. has the right to demand withdrawal;

– presumption of innocence. According to paragraph 2 of Article 6 of the Convention, every person accused of having committed a crime is presumed innocent until proven guilty by law;

⁸ Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (CETS 141). European Treaty Series - No. 141 // <https://rm.coe.int/168007bd23>

⁹ Ўзбекистон Республикаси Президентининг 2020 йил 22 июндаги ПФ-6012-сон Фармони билан тасдиқланган Инсон ҳуқуқлари бўйича Ўзбекистон Республикасининг Миллий стратегиясини амалга ошириш бўйича «Йўл харитаси» // <https://lex.uz/docs/4872355>

¹⁰ The Convention for the Protection of Human Rights and Fundamental Freedoms (*better known as the European Convention on Human Rights*) // https://www.echr.coe.int/Documents/Convention_ENG.pdf



– the right to freely dispose of property. According to Article 1 of Protocol No. 1 of the Convention, every natural or legal person has the right to protect his property. No one shall be deprived of his property, except in the case of expropriation in the public interest, as well as in other cases provided for by law and universally recognized principles of international law.

However, the Convention stipulates that these provisions do not limit the right of the State to enact laws necessary to exercise control over the use of property.

If we touch on the question of the compatibility of the provisions set forth in Article 2, Clause 6 of the Convention with the presumption of innocence, the European Court, based on the established practice, considers that the confiscation of property without assessing the validity of the criminal charge is not a punishment, but a preventive measure with a compensatory nature, and that is why these processes states that it does not contradict the presumption of innocence.

Also, when applying the institution of confiscation, it is necessary to take into account the following approaches used in the practice of the European Court of Human Rights: Measures of confiscation of property do not violate Article 1 of Protocol No. 1 to the Convention (the right to free ownership of property) if the following conditions are fully met:

1) when the intervention is legal (when it is carried out in accordance with the procedure established by the law and in accordance with the legal grounds, as well as when the law itself is qualitative and known to everyone in advance);

2) when the intervention is justified (if it is aimed at achieving a legal goal);

3) when the intervention is reasonably proportionate to the intended purpose.

In order for confiscation measures not to violate the right to a fair trial as defined in Article 6 of the Convention, the following requirements must be met:

– the person against whose property a court decision was taken should be given a reasonable opportunity to present his arguments and evidence against the opposing party;

– other procedural guarantees provided for in Article 6 of the Convention must be fully observed.

The use of different presumptions in the process of confiscation does not raise a problem in terms of compliance with Article 6 of the Convention, provided that it is carried out with adequate guarantees of justice.

At the same time, the presumptions cannot be accepted as irrefutable, and full independence of the court must be ensured when considering the case.

Also, in this case, it is not allowed to place the burden of proof entirely on the defendant or the accused.

It should be noted that today, in our republic, it is important to ensure human rights regarding the transfer and confiscation of property and to prevent the negative impact of the inviolability of property rights based on the generally recognized norms and rules of international law defined in international conventions.

In this regard, in the reform of the national legislation, taking into account the requirements of the international standards analyzed above, it is necessary to consider the following:

– it is necessary to complement the other legal measures of the criminal legislation with the measure of "confiscation" and clearly define the scope of the property to which this measure can be applied. Besides, failure to define the scope of such assets may lead to different application of the law in practice, increase of corruption risks and violation of legal rights and interests of citizens.

– if the property obtained as a result of committing a crime is fully or partially transformed into other property or changed or added to the property obtained from legal sources or transferred to the ownership of other persons, confiscation shall be applied to the part of the property obtained as a result of committing a crime;

– specifying that the court must specify the exact property to be confiscated when applying confiscation;

– to provide for the non-use of confiscation measures against property that cannot be subject to recovery in accordance with the legislation of Uzbekistan;

– to clarify that in the event that property subject to confiscation is transferred to the ownership of another person (honest possessor), along with the confiscation of this property, the right to file a civil lawsuit against the defendant for the recovery of damages caused to the bona fide possessor rule setting. Because, in Article 4 of Directive 2014/42/EU of the European Parliament and of the Council of April 3, 2014, to ensure the confiscation (in whole or in part) of other arms, instruments and income or property whose value corresponds to these arms, instruments or income necessary measures have been taken.

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