

PROVISIONAL RESTRICTIVE MEASURES – AN IMPORTANT STAGE IN ASSET RECOVERY

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Abstract. *This article highlights the necessity of provisional restrictive measures in the recovery of criminal assets as well as issues relating to the preservation of such assets in the context of international and national legal norms. In particular, it examines the legal nature and essence of the concepts of suspension of transactions, seizure and freezing of property, as provided for in the United Nations Convention against Corruption and the Convention against Transnational Organized Crime, as well as FATF standards. Furthermore, the legal foundations of provisional restrictive measures with regard to property under the legislation of the Republic of Uzbekistan are analysed.*

The article examines the procedure for seizing property, the application of restrictive measures against assets owned by third parties, the rights of bona fide acquirers, and the problems of establishing the limits of seizure in cases where illegitimate and legitimate income are combined. It addresses practical challenges in the mechanisms for freezing and seizing assets within the framework of international legal assistance, and puts forward proposals for their further improvement.

Keywords: *criminal assets, provisional restrictive measures, seizure of property, suspension of operations, freezing, international legal aid, third-party property, bona fide acquirers, legalization, confiscation.*

The mechanism for the identification, preservation, and eventual confiscation of proceeds derived from criminal activity constitutes one of the main stages in the system of combating modern corruption and transnational organized crime. Practice reveals that if criminal assets are not seized or frozen in a timely manner, the possibility of their subsequent recovery or confiscation becomes significantly limited. For this reason, provisional restrictive measures, including suspension of transactions, seizure and freezing of property, serve as a decisive legal instrument for the preservation of criminal assets.

The United Nations Convention against Corruption and the Convention against Transnational Organized Crime require states parties to implement effective mechanisms for identifying, freezing, and confiscating criminal assets. In

the Vienna Convention, the concepts of “freezing” and “seizure” are used in the context of a temporary prohibition on the transfer, conversion, or disposal of property [1].

The term “freezing” is not fully defined in our national legislation as an independent institution; however, this function is carried out through the suspension of operations and the seizure of property. The Criminal Procedure Code defines the procedure for seizing property, however, the issue of property owned by third parties, assets related with the rights of bona fide acquirers and legitimate income, raises a number of theoretical and practical questions.

In this context, the purpose of this article is to analyze the role of provisional restrictive measures in international standards and national legislation, identify gaps in practice, and develop proposals aimed at ensuring the effective preservation and recovery of criminal assets.

It is known that procedural measures like transaction freezing, seizure, and suspension are particularly important to guarantee the direct recovery of assets. According to the definitions set by UNCAC, “freezing” or “seizure” shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority [2].

In the Vienna Convention, the terms “freezing of property” and “seizure of property” are used to denote procedures that are important for asset recovery, i.e., a temporary prohibition on the transfer, conversion, disposition or movement of property, or temporarily assuming custody of property on the basis of an order issued by a court or other competent authority [1].

In our national legislation, there is no phrase “freezing of property”, but in foreign literature, such a term is described as the suspension of transactions not related to a court decision [4].

In accordance with the Law of the Republic of Uzbekistan “On countering the legalization of proceeds from criminal activities, the financing of terrorism and the financing of the proliferation of weapons of mass destruction” (Law of the Republic of Uzbekistan, 2004), the restriction of the use of money or property is carried out in two ways: suspension - a ban on the transfer, exchange, disposal, or transfer of money or property; suspension of transactions - temporary non-execution of the client's instructions to transfer, convert, transfer to other persons, or perform legally significant actions [4].

Pursuant to Article 9, paragraph 11 of this Law, the Department for Combating Economic Crimes, when sufficient grounds exist, issues instructions to financial and supervised organizations to suspend transactions involving funds or other property for a period not exceeding thirty working days. Unlike a full suspension, however, such temporary suspension by financial and supervised institutions may be implemented solely in cases related to terrorist activities or the proliferation of weapons of mass destruction.

Seizure of property is carried out in accordance with the requirements of Chapter 35 of the Criminal Procedure Code [5]. In this regard, it is considered appropriate to interpret the notion of property broadly, including, at present, crypto-assets as a form of such property [6] and to ensure that this list is continuously updated.

Seizure is allowed only after the initiation of a criminal case, when the property (including material evidence) of the suspect, accused, defendant, and civil defendant is seized by the investigator, inquiry officer, or court. For this purpose, the investigator or inquiry officer issues a ruling on initiating a motion for seizure and sends it to the prosecutor, who, in turn, sends such a ruling and the necessary materials to the court (Criminal Procedure Code of Uzbekistan, Art. 290) [5]. The court issues a ruling on the seizure of property or on the refusal to seize property (Criminal Procedure Code of Uzbekistan, Art. 2902) [5].

In urgent circumstances, the seizure of property may be carried out without prior court authorisation, on the basis of a decision of the investigator or the inquiry officer, with the court and the prosecutor being notified within a short period of time (Criminal Procedure Code of Uzbekistan, Art. 290) [5].

When attaching the property, the cost, which is sufficient to compensate for damage caused, shall be entered in an official record in order to secure execution of a sentence in its part pertaining to a civil suit. The owner or holder shall indicate thereby the property, which must be entered in the official record, in his opinion (Criminal Procedure Code of Uzbekistan, Art. 293, part 3) [5].

The record also specifies which property belongs to third parties (Criminal Procedure Code of Uzbekistan, Art. 291). The seizure and safekeeping of the attached property are carried out in accordance with Article 294 of the Criminal Procedure Code [5].

In this case, a legitimate question arises whether the issue of seizure of property owned by third parties remains open in this chapter. The OECD report concludes that this issue remains open in the legislation of Uzbekistan [7], however, the EAG report provides examples of cases initiated against third parties under Article 243 of the Criminal Code and considered them as participants in the crime [8].

In accordance with paragraph 5 of the Resolution of the Plenum of the Supreme Court On Judicial Practice in the Application of Legislation on Compensation for Property Damage Caused by a Crime, property belonging to a suspect or accused, held by third parties, may also be subject to seizure if there are sufficient grounds during the proceedings in the case to believe that this property actually belongs to the suspect or accused [9]. However, considering that the wording “may” is not binding and the legal nature of the plenum's decisions, it can be concluded that this explanation is insufficient.

In our opinion, when it comes to addressing the return of illegal assets, it is advisable to consider incorporating the issue of seizing property held by third

parties, as well as income derived from illegal assets, into Chapter 35 of the Criminal Procedure Code.

Another issue arises when lawful income is mixed with illicit assets, and the procedure for delineating such property during attachment remains unclear.

Another important issue is related to the seizure of the property of “bona fide” acquirers. Article 13 of the UNTOC establishes rules for the implementation of international cooperation for the purpose of confiscation, which stipulates that the competent authorities of the states to which the request is submitted must take comprehensive measures to implement the request, while freezing property, confiscation, and other measures should not be directed at the property of bona fide acquirers [10].

However, as mentioned above, bona fide acquirers are granted the right to file a lawsuit against the convicted person in accordance with Article 285 of the Criminal Procedure Code [11], i.e., this is not carried out during the seizure process.

The issue of seizure, freezing, and confiscation of criminal assets within the framework of international cooperation is addressed in Chapter IV of UNCAC [2], Article 18 of UNTOC [10], and Recommendation 38 of FATF [12]. In this context, participating states send requests to other participating states to implement these measures.

Section fourteen of the Criminal Procedure Code also defines the procedure, content, and form for sending a request for the performance of procedural actions in the territory of a foreign state, as well as the procedure for executing a request for the performance of procedural actions in the territory of the Republic of Uzbekistan [5]. Consequently, requests for the seizure of property received from foreign countries are processed according to the general procedure in accordance with the Criminal Procedure Code. This means that, considering that a criminal case must be initiated for the seizure of property, criminal cases may be opened both in the foreign country and in Uzbekistan for the same crime.

For this purpose, requests to foreign countries are sent through the Supreme Court of the Republic of Uzbekistan for matters related to criminal proceedings conducted by courts of general jurisdiction; through the Ministry of Internal Affairs and the State Security Service for procedural actions that do not require a court decision or prosecutor's consent (sanction); and in all other cases, through the Prosecutor General's Office.

It is also advisable to consider the provisions of the Regulation on the Procedure for Implementing International Cooperation in the Field of Combating the Legalization of Proceeds from Criminal Activity, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction [13] regarding the sending of requests specifically in the field of combating the legalization of proceeds from criminal activity. This Regulation establishes a comprehensive list of authorized state bodies responsible for implementing

international cooperation. It is specifically stipulated that only the Department for Combating Economic Crimes has the authority to issue instructions for suspending operations based on international requests [13].

In agreement with the proposals put forward by Kh. Kudratillaev regarding amendments and additions to the Criminal Procedure Code on the seizure and confiscation of criminal assets within the framework of international cooperation [14], we consider it appropriate not to limit this issue solely to criminal assets, but also to provide, in a special law, for matters of international cooperation relating to illegal assets more broadly. Furthermore, it appears advisable to examine the issue of establishing, within national legislation, a mechanism for executing international requests in Uzbekistan without the need to initiate a new criminal case domestically.

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