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CONFISCATION AND REQUISITION IN CRIMINAL PROCESS

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Abstract
This article discusses the current problems of criminal procedure law concerning the issue of confiscation and requisition. The seizure of property as a forced reaction of the state to the actions of participants in legal relations is regulated by the norms of various branches of law, such as criminal, civil, administrative and land. The variety of regulatory norms indicates the need for an intersectoral study of compliance with the concepts used in regulatory legal acts and the grounds for the use of confiscation and requisition.

Keywords: law, criminal proceedings, civil law, confiscation of property, requisition, legal instruments, intersectoral regulation, blank norms, seizure of property, compensation for harm.

Introduction

Today, the national criminal procedure legislation is undergoing wide-scale reforms, which is conditioned by socio-political changes in the country. The Decree of the President of the Republic of Uzbekistan "On the development strategy of the new Uzbekistan for 2022-2026" designates "the transformation of the principles of justice and the rule of law into a fundamental and necessary condition for the development of the country" as one of the main goals of further development. Attention is drawn to the issues of strengthening guarantees of inviolability and protection of private property, strict enforcement of property rights, including rights to land [1]. In this aspect, attention is drawn to the issues of forced seizure of property, which has such forms as "confiscation" and "requisition".

In turn, the legislation of the Republic of Uzbekistan guarantees the inviolability of private property, except in certain cases. Так, в Гражданском кодексе конфискация и реквизиция рассматриваются в качестве оснований прекращения права частной собственности (ст. 203, 204 ГК). Requisition is understood as the seizure of property from the owner by decision of state bodies with payment of the value of the property in the event of natural disasters, accidents, epidemics, epizootics and

other circumstances of an extraordinary nature solely in the interests of society (Article 203 of the Civil Code). Additionally, it is indicated that upon termination of the circumstances in connection with which the requisition was made, the former owner of the requisitioned property has the right to demand the return of the remaining property to him. Article 27 of the Code of Administrative Responsibility of the Republic of Uzbekistan also establishes the possibility of confiscation of property in an administrative manner. In the Code of Criminal Procedure, requisition and confiscation presupposes the seizure by court decision of property that is material evidence in a criminal case for a fee or free of charge (Article 289 of the CPC).

It is noteworthy that the seizure of property is a unifying feature of requisition and confiscation as legal institutions. However, the legal consequences of requisition and confiscation are different. In case of confiscation of property, ownership rights are terminated, and in case of requisition, termination has the consequence of compensation for loss to the owner. The grounds for termination of rights to land plots are also regulated by article 36 of the Land Code of the Republic of Uzbekistan, which specifies the difference between requisition and confiscation. Thus, the right of ownership of land plots is terminated in accordance with the established procedure in the following cases: purchase of trade and service facilities, as well as residential premises and other buildings or parts of buildings together with the land on which they are located, for public needs and confiscation of trade and service facilities, as well as residential premises and other buildings or parts of buildings together with the land on which they are located, in the following cases established by law. We believe that such a revision of the norms is more accurate in protecting both public interests and the rights of private owners. It is noteworthy that the concept of requisition is given differently than in civil legislation. The difference lies in the fact that property is subject to requisition - a land plot also in cases of natural disasters, accidents, epidemics, epizootics and other circumstances of an extraordinary nature, i.e. civil legislation provides more detailed explanations of the grounds for the requisition of property.

Based on the above, it can be concluded that requisition is an administrative measure used to address such urgent issues of public life as threats of a man-made or natural nature.

In the legal literature, the opinion is expressed that "confiscation to a large extent does not imply the termination of the convict's ownership right to the seized property, although it should realize the main purpose of applying other measures of a criminal nature» [2]. Others also support the position that "it is impossible to terminate ownership of property that is illegally owned by a person. Such seizure of property is

of a public legal nature, has nothing to do with the civil law grounds for termination of ownership, nor with the intersectoral institution of confiscation," while putting forward the need to use a separate term as "taking away» [3]. The term "conversion to state income" is also used classically.» [4]. We believe that the correct definition of the institution used affects its legal definition. Since confiscation is cross-sectoral in nature, its objectives, types and scope of application should be clearly defined.

The issue of the application of these institutions in criminal proceedings deserves special attention. As noted earlier, requisition and confiscation are reflected in Article 289 of the CPC. However, as a legal institution, it is absent in criminal legislation. It is well known that "confiscation" as a measure of punishment functioned in the criminal legislation of Uzbekistan in the period from 1995 to 2001 and had its wide application [5]. But despite the lack of legislative consolidation in the form of sanctions, penalties and other measures of criminal legal impact, this institution has its own practice of application in criminal proceedings.

The experience of neighboring countries indicates the existence and functioning of only the institution of confiscation in both criminal and criminal procedure law. Chapter 15.1 of the Criminal Code of the Russian Federation defines confiscation as other measures of criminal legal impact, while establishing that "confiscation is the forced gratuitous seizure and conversion into state ownership on the basis of a guilty verdict of money, valuables and other property obtained as a result of committing crimes or for their commission, tools, equipment of crimes» [6]. The Code of Criminal Procedure of the Russian Federation additionally establishes that confiscation is a legal instrument for compensation for damage caused by a crime, which also serves to return assets from the territory of a foreign state (Article 160.1 of the Code of Criminal Procedure of the Russian Federation) [7]. The Criminal and Criminal Procedure Law of the Republic of Kazakhstan adhere to an identical approach (Articles 48 of the Criminal Code and Article 325 of the CPC) [8]. In the CPC of the Republic of Azerbaijan, confiscation is singled out as a legal instrument for compensation for damage caused (Article 58 of the CPC), i.e. property is seized during a pre-trial investigation and subsequently the issue is resolved on the basis of a court decision. The Criminal law of Azerbaijan distinguishes two types of confiscation of property, as general and special [9]. General confiscation means additional punishment for the crime committed. Special confiscation in the form of a criminal law measure consists in the compulsory and gratuitous seizure of the following property in favor of the State:

- tools and means used by the convicted person in the commission of a crime (with the exception of tools and means that are subject to return to the rightful owner);

- funds or other property obtained by a convicted criminal, as well as income received from these funds or other property (with the exception of funds or other property and income received from them, which are subject to return to the rightful owner);
- other property or its corresponding part, into which funds or other property obtained by criminal means have been fully or partially transformed by concluding civil law transactions or by other means;
- property provided for or used for the financing of terrorism, not provided for by legislation of armed formations or groups, organized groups or criminal communities (criminal organizations).

The Criminal Procedure Code of Georgia regulates the issue of seizure of property in a different way. Thus, in case of damage, loss or destruction of material evidence, its owner or owner receives monetary compensation. This procedure does not apply to property subject to procedural confiscation, destruction and recourse to reimbursement of procedural expenses [10]. At the same time, confiscation has an independent procedure in comparison with the seizure of property. The arrest is considered as a temporary restriction of the rights to use and dispose of property (i.e. freezing of assets, prohibition on the sale of real estate, etc.). The issue of confiscation of property is resolved only on the basis of a court verdict. Thus, material evidence in a criminal case is subject to confiscation. In case of loss of the seized property, the issue of mandatory compensation for the damage caused to the rightful owner or owner is resolved.

Analyzing the practice and legislation of foreign countries, it is possible to note the logical sequence and interrelation of regulatory norms governing the issues of forced seizure of property in criminal proceedings. As such, we have not noticed the institution of requisition in the criminal and criminal procedure legislation of the studied countries. Despite the fact that national legislation mentions requisition in the CPC, an analysis of the materials of judicial and investigative activities indicates the absence of its application, in connection with which we consider it advisable to exclude it from the system of norms of criminal procedure legislation.

The analysis of the norms of the CPC shows that, along with the concept of confiscation and requisition, the legislator also uses the term "seizure». Thus, in article 294 of the CPC, it indicates the possibility of seizure of property that has been seized.

Having linked these norms, it is necessary to establish the procedure in which objects and property should be seized by order of the inquirer, investigator, prosecutor or by court definition with the imposition of arrest on them before their confiscation. At the same time, it cannot be excluded that seizure can simultaneously be associated with both requisition and confiscation, and also often acts as an independent concept.

Given the importance of the analyzed categories, such a provision of law enforcement cannot be considered acceptable. It is necessary to establish a unified, well-defined understanding of the full content of the main types of forced seizure of property from owners. A comparative analysis of modern legislation and regulations of neighboring countries shows a clear superiority in the quality of the normative content of the latter. Based on the results of the analysis of the institute of forced seizure of property, a proposal is put forward that confiscation should be understood as the forced termination of property rights on the basis of a court decision in a criminal case. Confiscation should be divided into general and special forms. The general form of confiscation should be understood as another measure of a criminal law nature, the purpose of which is to compensate for the harm caused by the crime. A special form of confiscation should be understood as "the seizure of property that should be converted into state income" (tools and objects of crime, money or other property obtained by a convicted criminal, property provided for or used to finance terrorism, armed formations or groups not provided for by law, organized groups or criminal communities).

Due to the fact that the requisition can be implemented only in the form of forced and compensated seizure of property, this issue cannot be settled only by analogy of civil law. In this matter, a special settlement procedure should be applied, since only material evidence in criminal cases is subject to requisition. For example, citizen B. purchased a Cobalt car from citizen C. for a certain amount on the basis of a purchase and sale agreement. After some time, Citizen B.'s car is arrested due to the fact that a criminal case has been opened against citizen S. under paragraph "a" of Part 2 of Article 168 of the Criminal Code. During the investigation, it is established that citizen S. illegally sold a car purchased on credit through a bank. In this case, the car will be seized as evidence with seizure. In another case, the crime may be related to the purchase of housing on the primary market without the appropriate cadastral document, which is being investigated under paragraph "a" of Part 4 of Article 168 of the Criminal Code. We believe that such examples fit the requirements of the provisions of Article 289 of the CPC. In such situations, requisition may also be temporary or permanent.

Such a distinction will make it possible to determine the differences in the order of implementation of these forms of confiscation and requisition. It is possible to achieve the solution of these tasks by adopting a comprehensive regulatory act on the requisition and confiscation of property. The existence of a special law would allow solving many problems of a theoretical and practical nature.

REFERENCES

1. Указ Президента Республики Узбекистан, от 28.01.2022 г. № УП-60. https://lex.uz/ru/docs/5841077#5843136
2. Кузнецова О. А., Степанов В. В. Межотраслевая правовая природа конфискации имущества //Журнал российского права. – 2018. – №. 2 (254). – С. 27-37.
3. Кузнецова Ольга Анатольевна, Степанов Виталий Витальевич Межотраслевая правовая природа конфискации имущества // Журнал российского права. 2018. №2 (254).
4. КОНДРАТ И. Н. Ограничения политических, социально-экономических и культурных прав и свобод в уголовном судопроизводстве: допустимость и пределы //Мир политики и социологии. – 2012. – №. 9. – С. 58-70.
5. https://lex.uz/acts/111457?ONDATE=01.04.1995%2000
6. "Уголовный кодекс Российской Федерации" от 13.06.1996 N 63-ФЗ (ред. от 04.08.2023)
7. "Уголовно-процессуальный кодекс Российской Федерации" от 18.12.2001 N 174-ФЗ (ред. от 04.08.2023) (с изм. и доп., вступ. в силу с 11.08.2023)
8. https://online.zakon.kz/Document/?doc_id=31575252&doc_id2=31575252#activate_doc=2&pos=5;-100.19999694824219&pos2=5;-100.19999694824219; https://online.zakon.kz/Document/?doc_id=31575852&pos=385;-49#pos=385;-49
9. https://www.migration.gov.az/content/pdf/7d878287d2a6aa187238b93c7df26ef3.pdf
10. https://matsne.gov.ge/ru/document/view/90034?publication=157