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SCIENTIFIC APPROACHES TO STUDYING THE PROCESS OF RETURNING INCOMES (ASSETS) OBTAINED BY CRIMINAL

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Abstract: The article discusses scientific approaches to studying the process of asset recovery, international legal aspects of the search and return of illegally exported assets. It focuses primarily on the complexity of the interaction of subjects of international law in this area, since it affects the financial interests of many of the states where these assets are located, as well as the importance of conceptual international legal issues.

Keywords: scientific approaches, international law, asset recovery, corruption offense, anti-corruption.

Introduction

The simplest definition of asset recovery is to find and recover stolen public funds. From a scientific point of view, there are several scientific approaches put forward by experts working in this field in covering this topic.

According to experts from the International Center for Asset Recovery (ICAR), established in 2006 as part of the Basel Institute of Management, asset recovery is no simple process that requires data collection and tracking of financial transactions, including from abroad. It also provides for litigation, development of legal strategies and issuance of confiscation orders.

The asset recovery process requires technical skills and specialized legal knowledge from professionals. International cooperation, political will and determination are important as assets are often laundered in complex chains in different jurisdictions. These skills and experiences are still rare in many countries, especially in countries that suffer the most from corruption.

By condemning corrupt officials and restoring stolen property, interested countries can also raise funds to develop and strengthen their criminal justice system. The end result is the strengthening of the rule of law, integrity, and confidence in government (1).

At the same time, experts from the Center for Global Development have their own approaches to the asset recovery research process. That is, the main goal of this research method is to compensate for the damage caused

by corrupt officials. Since restoring assets and punishing bribe-takers is a key element of imprisonment, reducing corruption in the country is critical to its development.

Increasing accountability and transparency are key issues in the asset recovery process, which are critical to the success of long-term development.

The main argument of this study is that new methods are being used in the investigation of corruption offenses and asset recovery, and new actors in the private sector, civil society and the media are being used, which could ultimately be a significant contribution to justice (2).

The issue of asset recovery has also become relevant in African countries. Recently, UN Secretary-General Antonio Guterres noted that illegal cash flows, money laundering and tax evasion cost Africa fifty billion dollars a year. According to the Washington-based Stolen Asset Recovery Initiative (Star), developing countries are losing up to \$ 40 billion annually due to corruption, and in the 15 years to 2011, only \$ 5 billion was returned, with the remaining assets not returned. Return methods require completely new methods of identifying and recovering criminal assets.

Ehi Esomeme of the Cardiff Institute (Wales) is proactively investigating the problem. After researching asset recovery issues for several years in his scholarly articles, the author noted that regulatory documents should limit the flow of illicit funds, money laundering and tax evasion. It critically analyzes the existing system for tracking and

recovering assets in Nigeria, as well as examines the experience of developed countries in this process that can be used to effectively track illegal assets in Nigeria (3).

This approach can ensure that the offender does not achieve multi-stage success in the money laundering process.

Rwandan (African) experts will assess the effectiveness of the systemic approach regulating the recovery of assets related to crime in Rwanda and compare it with the international standards set out in the major conventions to which Rwanda is a party.

Norms, including international conventions, domestic law, and case law, apply to return issues. The authors emphasize that the law on the recovery of assets related to crime should not face strategic shortcomings and gaps, and suggest simplifying and balancing the process of recovery of assets to achieve the goals of crime prevention (4).

The main method used in the process of detection and subsequent return of criminal assets transferred abroad in the countries of the African continent is the reporting of suspicious activities (transactions) submitted by operators of financial institutions (banks, stock exchanges, trading platforms). use, in order to track assets in a timely manner, possibly to be criminal in nature.

They also argue that the confiscation of civil proceedings is an important factor in preventing corruption offenses, depriving offenders of income from criminal activities, preventing the commission of new crimes, and reducing existing revenues intended to further finance corruption. criminal enterprises (5).

The International Financial Center's supervisory team is also actively promoting measures to increase the effectiveness of regimes that help restore assets systematically and in a timely manner by prioritizing them. Within these experts, the concept of asset recovery is discussed as an international financial and legal institution.

However, given the amount of stolen and hidden funds and their impact on the international financial system, as well as the ethical and political aspects of the incident, the

world community has taken a number of measures to combat this process, primarily this sources of assets - corruption, commercial bribery, drug trafficking and organized international crime (6).

Experts Theodore Greenberg, Linda Samuel, Wingate Grant, Larisa Gray are looking at the issue from a legal approach, i.e. the recovery of assets is stolen through corruption by current or departed government officials, their family members the process of returning public funds. , political allies, affiliates, as well as any foreign actors (7).

VV Kudryashov and other researchers understand this process as a set of several actions: identification; investigation, surveillance and freezing; confiscation or confiscation; Back to. Detection of criminal activity or suspicious proceeds from corruption will initiate an investigation. The investigation collects evidence of corruption and at the same time monitors the location of corruption proceeds. Timely freezing of assets is critical to prevent the spread and loss of assets, as they have been identified. In order to recover the assets, the final court decision must be secured by criminal or civil (private) proceedings. The assets are returned to the affected state (s) by court order to secure ownership, and in some cases to third parties (8).

Michel Simonato, an expert at the National Science Foundation of Luxembourg, examines the issue comprehensively, and criminal justice systems are not considered effective if they do not track and collect criminal proceeds for the purpose of conducting them. to the victims or the state. Asset recovery is a key tool of the effort, which is a complex process that involves several steps: financial audits, seizure and confiscation of assets, their management, repatriation of assets and their recovery. distribution Each of these interrelated stages raises complex legal questions.

Some international and EU documents address specific aspects of this process, but they are not aimed at comprehensive recovery of assets. The author believes that the need to form a coherent and complete legal framework requires a comprehensive analysis of the

process of recovery of cross-border assets from the initial stage of the investigation. It also proposes to develop a clear EU concept for asset recovery, taking into account all stages and aspects (9).

Also, there is a pragmatic approach of the experts of the Interdisciplinary Research Center (International State Crime Initiative). As Dr. Christian Lasslett points out, it is impossible to achieve a goal without sufficient skill and experience. Researchers, civil societies and policymakers need to come together and apply rigorous measures to achieve the goal of successful asset recovery (10).

The participants in the Lausanne process try to study the topic of asset recovery in a principled approach. The aim of the seminars in Lausanne is to discuss topical issues related to asset recovery and ways to overcome them. They enable the participating ministries of foreign affairs and the judiciary to establish direct contacts, strengthen their networks, and exchange and transfer knowledge to each other. In other words, the Lausanne Process fosters a spirit of partnership between requesting and requested States and reinforces a strategic and proactive approach to asset recovery (11).

Researchers RF Volevodz A.G., Soloviev A.B. study the topic using the right approach. In their studies, having comprehensively considered the issues, they explained the procedure for criminal cases, the peculiarities of legal regulation, the participation of law enforcement agencies of various states in the international search, arrest and confiscation of money and property obtained by criminal means, as well as the transfer of material evidence abroad.

They examined the legal regulation of the activities of law enforcement agencies of some states of the Anglo-American legal family (system of "common law"), including Great Britain, the USA, Canada, Australia and some states of offshore jurisdictions.

By means of a comparative analysis, they showed various aspects of the activities of law enforcement agencies in the field of asset recovery from states of the Romano-Germanic legal family (system of continental law), such

as Germany, Austria, Switzerland, the Netherlands, Israel and Japan.

In their studies, they separately showed the features of the legal regulation of the participation of law enforcement agencies of the CIS member states in the international search, arrest and confiscation of money and property obtained by criminal means, as well as the transfer of material evidence abroad (RF, Azerbaijan, Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan, Uzbekistan and Ukraine).

The experts also showed the methodology of the activities of the investigative bodies, prosecutors and courts for the return of assets at the request of foreign countries. Was given a forensic characteristic of the procedural actions of the international search for funds and property obtained by criminal means.

For example, the use of information and guidance information of state bodies of foreign countries for the search and seizure of assets, the method of obtaining legal assistance in the search and arrest abroad, the application and execution of applications for legal assistance abroad, the assessment and the use of evidence obtained through mutual legal assistance.

Michel Simonato and Maxime Lassalle (Dr. Michel Simonato is a doctoral researcher in criminal law at the University of Luxembourg. Maxime Lassalle is a graduate student at the University of Luxembourg) studied the asset recovery process through a fragmented approach aimed at addressing clearly defined threats in a given setting. As examples of the implementation of this approach, you can specify individual tools (12).

They argue that, over the past three decades, criminal justice policy has focused on combating illicit funds. As a rule, removing criminal proceeds from their possession is the most effective way to liquidate criminal organizations, which is beneficial for the economy of a country in preventing illegal proceeds. According to the experience of the European Union in the recovery of criminal assets, the search is considered relevant in the case of theft of part of the EU budget.

Nevertheless, the tasks related to the restoration of damage from crimes are equally distributed among the national authorities.

EU instruments cover some parts of the legal process, acting in three main directions: horizontal (exchange of information between the authorities involved); mutual (recognition of freezing and confiscation judgments) and harmonization of national systems (especially with regard to the confiscation regime).

The first clear indirect approach is to apply the source and method of application, taking into account the approaches of experts Charles Monteit and Andrew Dornbier. The basic theory of this method is to determine the amount of funds in excess of the officially registered income over a period of time.

For example, there are cases where a corrupt government official is investigated for accepting bribes from corporations in exchange for the provision of bribery contracts. In determining the illegality of the property of this official, the investigators indirectly provided him with a list of all known assets (savings balances) and expenses (living expenses, large purchases) during his employment, more than his salary. can determine that he received money. in the same period and excluding the total amount of official income he received (13).

Has the technical and procedural experience necessary to effectively recover business assets and gather information, review, review, process claims, recover funds, and make payments.

In cases when decisions of an election commission are declared invalid, the election commission that adopted them shall be obliged to prove the circumstances on which these decisions were based.(14)

Therefore, in order to study corruption, conflicts of interest, it is necessary to analyze a number of official crimes, as well as the areas of service of officials.(15)

Considering the above scientific approaches to the study of the process of return of criminal assets from abroad, we can conclude that this process involves several interstate legal

processes of a criminal-procedural nature with a step-by-step systematic approach.

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