

CONFISCATION OF THE PROPERTY OF CRIME AND CORRUPTION -COMPARATIVE CHALLENGES AND EXPERIENCES

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Abstract

The research in this study aims to prove that confiscation of property acquired through crime is an important tool in the fight against organized crime. The basic idea of the paper is to investigate the confiscation of property acquired through crime, which is a huge criminal wealth generated mostly by various forms of misdemeanors. The analysis of the confiscation of criminal property is made based on studying and comparing the key features of the legislation in the European Union, the USA, and Australia to find out how these legislations regulate the confiscation of criminally acquired property. The methods used in the research of this paper are defined according to the purpose of the study, i.e. determining the measures that aim to reduce and prevent crime by making it known that criminals will not be allowed to enjoy their illicit wealth. Key findings and arguments show that the recovery process involves several stages: identification and tracking, freezing and confiscation, and management of frozen and confiscated assets. The data were collected, processed and analyzed to find improved solutions for confiscating criminally acquired property. In conclusion, the study proposes to take measures to confiscate criminally acquired property so that criminals cannot use it and enjoy the benefits of that property.

Keywords: Financial Systems, Freezing, Confiscation, Criminals, Corruption, Bank Accounts, Organized Crime.

1. Introduction

Property confiscation deprives criminals of illegally acquired property. Confiscation of property acquired through crime is a key means of combating (organized) crime. It is also a way to prevent money laundering and reinvestment in criminal or illegal business activities. An efficient and effective system of seizure and confiscation of criminal assets helps in the fight against crime. (European Commission. 2018)

Organized crime is driven by profit, and its illegal activities generate huge profits. Confiscation and the return of crime proceeds deprive criminals of what they have worked so hard to obtain and, therefore, can have a deterrent effect by reinforcing the idea that "crime cannot be paid for". The process of repaying proceeds of crime involves several stages: (European Commission, 2020)

Identification and monitoring of illegally acquired assets;

Freezing and confiscation of property for the purpose of their possible subsequent confiscation;

Management of frozen and seized assets to preserve their value;

Confiscation of illegally acquired property;

Disposal of confiscated assets, which may involve their re-use for public or social purposes.

Confiscation of property acquired from a criminal offence or confiscation of the illegally acquired property falls into the category of specific criminal measures. Confiscation does not belong to the system of criminal sanctions but is a criminal-legal measure related to the commission of a crime and is pronounced exclusively in criminal proceedings. The

significance of this measure, both politically and criminally, is indisputable. The basic purpose of this measure is not to allow the perpetrator to get rich. The measure is imposed *ex officio* for the benefit of the community. (Korman, 2021)

Confiscation of property is a permanent deprivation of property by a court or other competent authority. Confiscation (which can be called confiscation of property) is usually imposed after the outcome of the case and is a final measure that prevents criminals from accessing property obtained from a crime. Confiscation is an action that means not only confiscation of property related to a particular crime but also additional property that the court will determine to be the proceeds of other crimes. This can be useful for effectively dealing with organized crime not only for confiscating property related to a particular crime but also for the additional property that the court will find to be the proceeds of other crimes. (Principle 4, 2021)

In order to conduct this research, we used data and information from the legislation in the European Union, the USA and Australia to find out how these legislations regulate the confiscation of criminally acquired property. Explicitly, in this research, we asked three research questions:

RQ1: To recognize and assess the occurrence of confiscation of criminally acquired property.

RQ2: To assess the impact of criminally acquired money on the economies of countries and society as a whole.

RQ3: To propose measures for more efficient confiscation of criminally acquired property.

2. Literature review

1. Law about crime property confiscation

In recent decades, the confiscation and return of criminal assets have taken a prominent place in the fight against organised and other profit-driven crimes. Property restitution also has positive social impacts, including promoting public confidence in the justice system, strengthening redistributive justice for victims of crime, and increasing state budgets. (Fazekas, 2021)

In 2014, the European Parliament and the Council adopted Directive 2014/42/EU (the "Directive"), which sets out minimum rules for the freezing, handling and confiscation of criminal assets: (European Commission 2020)

The directive introduced:

- Confiscation provisions based on non-conviction (at least if the accused or suspect flees or is ill);
- Provisions for extended confiscation for a specific list of criminal offences;
- Provisions for third party confiscation;
- Clarifications for freezing property for subsequent confiscation, including "immediate" freezing;
- Strict safeguards which ensure respect for the rights of the parties affected by the freezing or confiscation proceedings;
- Rules that allow for the detection and tracing of property even after final conviction to ensure the effective execution of a confiscation order;
- Provisions for management of the frozen and confiscated property;
- Provisions requiring the Member States to collect and maintain complete freezing and confiscation statistics.

In addition to Directive 2014/42/EU, the adoption of Regulation (EU) 2018/1805 on the mutual recognition of orders for freezing and confiscation is another important milestone in

the area of confiscation of property. The regulation aims to facilitate cross-border refunds and to make freezing and confiscation of criminal assets faster and easier across the EU. The ability to freeze and confiscate property depends directly on the capacity to monitor and identify them effectively. Directive 2019/1153 on the use of financial information grants law enforcement authorities and property collection offices direct access to bank account information for the purpose of combating serious crime.

The European Union has long taken a firm stance on organised crime. The latest development in its strategy is the implementation of Regulation (EU) 2018/1805 in order to further protect financial systems from abuse. Depriving criminals of their wealth acts as punishment for crimes already committed, as well as deterring others from engaging in illegal schemes: (New EU Rules for Confiscating & Freezing Criminal Assets, 2020)

Offenders are blocked from accessing their wealth in 2 ways:

- Freezing order: prevents the destruction, transformation, transfer or disposal of assets that the authorities wish to confiscate.
- Confiscation order: the final removal of property acquired illegally by an individual or company.

Regulation (EU) 2018/1805 of the European Parliament sets out the rules that EU countries are required to adhere to before 2021:

- Single regulation: apply across the EU a set of guidelines covering both freeze orders. This will avoid the problems caused by the existence of multiple legal instruments.
- Mutual recognition: decisions of a legal nature taken in one European Union country will be automatically upheld and enforced in another in the vast majority of cases.
- Standardised certificates and procedures: speeding up the process of freezing and confiscating property.
- Deadlines: Confiscation orders must be acknowledged within 45 days. For emergencies, recognition must occur within 48 hours, with an additional 48 hours to execute the freeze order.
- Compensation: The victim's right to compensation will be respected in cross-border cases.

Mechanisms are being used worldwide to seize criminal assets in the fight against drug cartels, organised crime, terrorists and white-collar criminals. The ability to seize criminal proceeds has been used by US authorities to deal with criminals who have profited from their unauthorised and fraudulent transactions: (Ryder, 2021)

Confiscation is a disciplinary measure that results in the permanent seizure or removal of finances or other resources by order of a competent authority or court as a result of criminal or civil proceedings. There are three types of confiscation mechanisms:

- Confiscation of proceeds of crime,
- Confiscation of an object acquired by committing a crime and
- Seizure of results obtained through criminal activities.

International legislative measures allowing the confiscation of property acquired through crime are extensive:

- The United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances stipulates that the signatories adopt measures to enable the restriction, seizure and confiscation of proceeds of drug trafficking and related money laundering.
- The Vienna Convention stipulates that each participant should introduce measures to enable the relevant authorities to "identify, search and freeze or seize revenue, property, instruments" for confiscation.
- The UN Convention against Transnational Organized Crime covers the proceeds of crime.

- The UN Convention against Corruption further extends international confiscation measures to include, for example, bribery of national officials, bribery of foreign public officials and officials of international public organisations, embezzlement, misuse or other diversion of property by a public official, trade influence, abuse of office, illicit enrichment, bribery in the private sector and money laundering.

Under the US Department of Justice's confiscation program, confiscation of criminally acquired property involves: (U.S. Department of Justice, 2021)

- Punishment and deterrence from criminal activities by depriving criminals of property used or acquired through illegal activities.
- Promote and enhance cooperation between federal, state, local, and foreign law enforcement agencies.
- Restitution of property that can be used for compensation.

3. Which criminal property can be confiscated?

States enact laws on the confiscation of criminal proceeds that provide for the confiscation of proceeds of crime and property related to persons convicted of certain serious drug offences, payment of unexplained state wealth, and other purposes. The main purpose of the laws is to remove the financial gain and increase the financial loss related to the illegal activity, regardless of whether a certain person has been convicted or not for a misdemeanour due to the activity. It is also an important subject of the law to deprive persons of the following: (Queensland. 2021)

- illegally acquired property, soiled property and the benefits arising from the commission of offences;
- the benefits arising from misdemeanour agreements;
- the wealth that persons can not prove in court that it is legally acquired; and
- deter individuals from committing serious crimes, including by increasing the financial risk associated with committing serious crimes; and
- to prevent the reinvestment of financial gain from illegal activity into further illegal activity.

There are broad definitions of money, criminal property, proceeds and assets that can be confiscated as a result of criminal prosecution for criminal activities, including: (Asset Seizure - Police. 2021)

Money or property whose origin is unknown or known to come from:

- Drug trafficking,
- Fraud,
- Theft or other crime.

Property purchased with crime money includes houses, vehicles, jewellery and other high-value goods. These include luxury cars, apartments, houses acquired through fraud, and money earned that are considered proceeds of crime.

According to the legal regulations, he can seize any property acquired through crime. (What types of property can be seized? 2021)

- Physical property such as cars, boats, weapons, cash, drugs, drug paraphernalia, houses and other real estate may be seized.
- It can also seize non-physical assets such as bank accounts, copyrights and proceeds of crime.
- Property that does not yet exist can be seized, such as future proceeds of crime that have not yet been earned when the crime occurs.
- He may even be able to take away the income that a person later earns by selling books or movies from memoirs written about his alleged crime.

Confiscation is mandatory for property acquired by: (College of Policing APP, 2022)

- Drug trafficking,
- Money laundering,
- Targeting terrorism,
- Human trafficking,
- Weapons trade
- Intellectual property counterfeiting (copyright)
- Pimps, brothels and child sex offenders,
- Blackmail,
- Unusual offences (attempts, conspiracies and incitement in relation to these offences).
- Fraud or series of thefts.

Circumstances in which property, real or personal, may be confiscated under Australian law relate to four confiscations: (Skead, 2020)

- Confiscation of property used in or in connection with the commission of a prescribed misdemeanour;
- Unexplained confiscation of wealth where a person's wealth exceeds the value of his legally acquired property; and
- Confiscation of a trafficker where the person has been declared a registered drug trafficker.

Statistics on civil collection orders covering the financial years 2016 to 2017 to 2020 to 2021 for crime revenue in England, Wales and Northern Ireland were used to conduct this research.

The following hypotheses are set for research in this paper:

Hypothesis 1: Does the confiscation of illegally acquired property influence criminals not to commit criminal offences for developing property outside the law?

Hypothesis 2: Do criminals by their behaviour violate the legal or moral norms of society and cause damage to the economy and society as a whole in countries?

Hypothesis 3: Is there a need to constantly monitor criminal activities with mine gaining significant assets, and should existing measures and activities be corrected?

4. Methodology

The research process in the preparation of this study includes a combination of comparative doctrinal legal analysis of the proceeds of crime and a review of the existing forensic and legal literature on the proceeds of crime. This paper is qualitative research and adopted a theoretical approach. It relies on documented theories and other secondary data sources. Relevant literature was collected from official documents to specific reports and published in books, magazine publications, and online articles. The results were presented and analysed using the open method of content analysis.

The key features of the legislation in the European Union, the United States and Australia were studied and compared to find out how these legislations regulate the confiscation of criminally acquired property. The study of the literature, i.e. the analysis included a review of existing legal documents. This analysis highlighted those features in the legislation of each jurisdiction.

The research methodology of this article is the most general methodological framework for the research of the phenomenology of organised crime and confiscation of criminal property. Since this is a mass phenomenon, the most common is the statistical method of data processing and presentation technique. The volume is monitored on the basis of data from the statistical records and refers to the total number of performed works in a specific space and a specific time.

With the purpose of understanding the wider criminal context of the confiscation of criminally

acquired property, an analysis of the relevant aspects of the more comprehensive criminal justice system in these jurisdictions was conducted. Extensive criminological information consisted of data and information on organised crime and drug-related crime, relevant papers by institutions in the European Union and the United States and England, Wales and Northern Ireland, dealing with organised crime and the acquisition of property illegally, information and publications on political views and election platforms related to confiscation legislation, media coverage, crime reports, and journal articles on these topics. In accordance with the working conditions for this, data collection also included mass research and the use of data from fieldwork. It can be summarised under the following headings.

5. Results and discussion

In recent years, EU member states and European institutions have stepped up their efforts to counter and prevent organised crime activities. The return of confiscated funds is considered one of the most important measures in the fight against organised crime. In addition to national efforts, the European Commission, through the EU Directive (2014/42/EU) on the freezing and confiscation of proceeds of crime, has set important standards for the return of criminal profits: (Criminal asset recovery in the EU, 2016)

- The results show that the amount of money currently returned to the EU is only a small part of the estimated criminal proceeds: 98.9% of the estimated criminal profits are not confiscated and remain available to criminals.
- Crime revenues reach up to 3.6% of global gross domestic product. Illegal markets in the European Union generate about 110 billion euros per year or about 0.9% of EU GDP in 2010.
- Only 2.2% of the estimated proceeds of crime have been temporarily seized or frozen, but only 1.1% of the criminal proceeds have finally been confiscated at the EU level. This means that about 50% of all temporarily seized/frozen assets are eventually confiscated
- The annual value of temporarily seized/frozen assets in the EU is around € 2.4 billion, with approximately € 1.2 billion finally confiscated each year at the EU level.

The data currently available across Europe do not show the complete picture of the issue of confiscated property acquired through crime. According to statistics on civil collection orders covering the financial years 2016 to 2017 to 2020 to 2021 for crime revenue England, Wales, and Northern Ireland have the following characteristics: (Official Statistics, 2021)

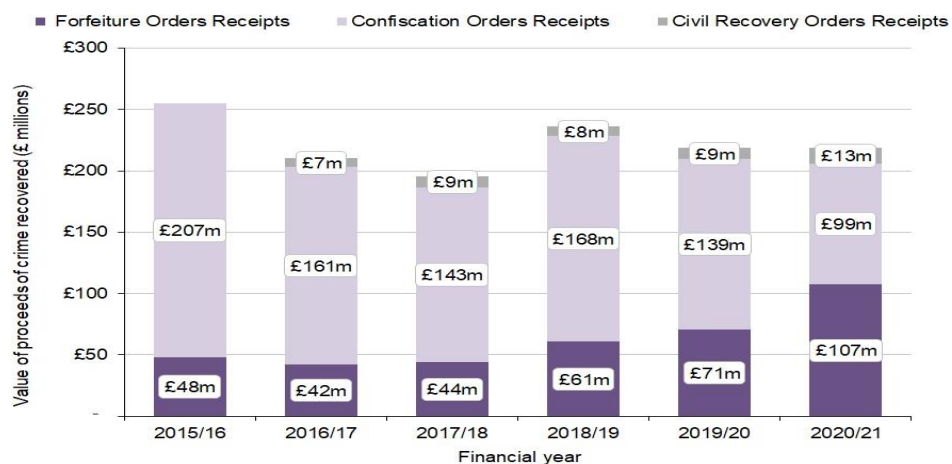


Figure 1: The value of proceeds of crime recovered from Confiscation Orders, Forfeiture Orders and Civil Recovery Orders receipts from the financial year 2015 to 2016 until the financial year 2020 to 2021. Source: JARD (Confiscation Order and Forfeiture Order receipts) and NCA (Civil Recovery Order receipts)

- 219 million pounds are recovered in total crime revenue from confiscation orders, foreclosure orders, and civil collection orders. This represents an increase of 4% from the financial year 2016 to 2017, to 2020 and 2021 due to increased crime income recovered by confiscation of proceeds of crime.
- 99 million pounds are recovered with confiscation in the financial year from 2020 to 2021, which is the lowest amount collected in the last six years
- 107 million pounds are recovered in the fiscal year 2020 to 2021, due to the inclusion of account freezing orders.
- 13 million repaid through receipts for civil warrants in the fiscal year 2020 to 2021, the highest amount recovered in five years
- 13 million pounds have been paid to compensate victims of criminal proceeds.

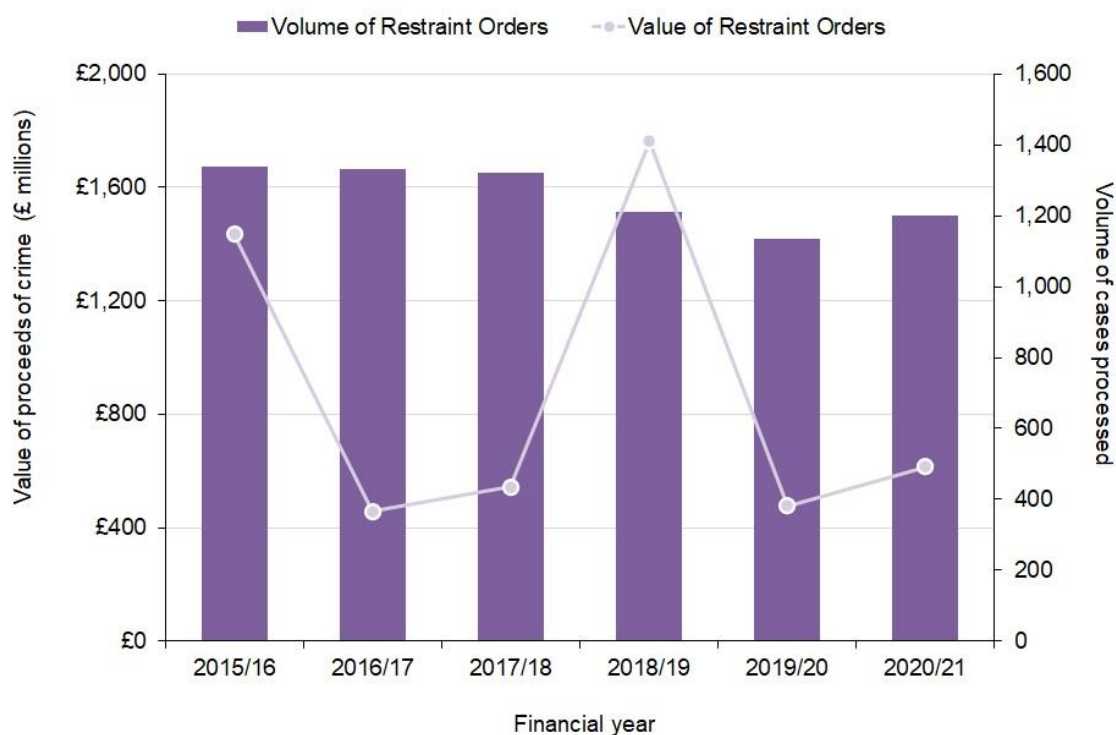


Figure 2: Restraint Orders – values and volumes, from the financial year 2015 to 2016 until the financial year 2020 to 2021 in England and Wales, Northern Ireland and countries of no recorded jurisdiction
Source: JARD (Confiscation Order and Forfeiture Order receipts) and NCA (Civil Recovery Order receipts)

- The data presented in Figure 2 include proceeds of crime that the defendant could not access while the confiscation and enforcement proceedings were ongoing.
- The value of restricted crime revenue reached 81.8 billion in the 2018-2019 financial year and then fell by 65% to 14 614 million in the 2020-2020 financial year - a 57% drop compared to the financial year 2015 to 2016.

Confiscation of property acquired in the United States on the basis of a crime is a process in which law enforcement agencies take funds from persons suspected of involvement in crime or illegal activities without necessarily blaming the owners for the irregularity. The seizure of criminal assets is seen as a powerful tool to deter criminal organizations involved in drug trafficking, with an annual profit of \$12 billion, as it allows authorities to seize cash and other assets from suspected drug traffickers. Seizure of property from crime is also an effective method as it allows law enforcement agencies to use these seized proceeds to further combat illegal activities, that is, to directly convert value obtained for law enforcement purposes with

economic damage to suspected criminals while financially assisting law enforcement: (US Department of Justice, 2014).

- Statistics show a strong upward trend in recent years. Over the past decade, government seizures of criminal assets have risen from \$1.25 billion to \$2.50 billion.
- In 2012 alone, over \$4.4 billion were seized through the confiscation of property.
- Federal authorities seized more than \$4 billion in 2013 through the confiscation of property, where some of the money was taken from innocent victims.
- In 2010, there were 15,000 cases of seizures.
- Over a 12-year period, state authorities seized \$20 billion in cash, securities, and other assets from drug bosses and tycoons.

Organized crime in the EU fundamentally relies on its ability to launder huge amounts of criminal profits. The financial footprint left by criminals is a key indicator of their activity, providing useful clues to investigators and invaluable evidence of incriminating perpetrators: (European Commission, 2021)

- Dealing with criminal finances is crucial for detecting criminal activity, deterring crime and preventing infiltration into the legal economy and society. Despite the development of legal frameworks to prevent money laundering and property restitution, only a small proportion of money laundering activities have been detected, and only 1% of criminal assets have been seized.

It is equally essential to step up freezing and confiscation efforts through a further strengthened legal framework at the EU level and stronger operational capacity of fundraising institutions. Confiscation measures that are not based on conviction should be investigated, as they may contribute to an increase in the number of confiscated assets.

6. Conclusion

Research in this paper has shown that confiscation of property, also called seizure of property, is a legal process of confiscation of property or money that has been linked to criminal activity. The funds may include everything involved in the crime, directly or indirectly, such as stolen goods or instruments involved in the actual crime. Confiscation of the property also refers to cash that may have been earned after the crime, for example, if the perpetrators sold the stolen property for profit.

Some of the most commonly confiscated assets are cash, cars and weapons, as well as luxury goods such as boats, planes and jewellery. Residential and commercial property are also subjected to confiscation. Once a property has been confiscated, it must be assessed to determine the value of the property, less any claims against it. Confiscation of property is permanent deprivation of property by order of a court or administrative procedure, which transfers ownership of property obtained from criminal activity of the state.

The paper confirms that confiscation of property is a way to undermine the fiscal structure and even the survival of an organised crime group by seizing illegally obtained money and any property obtained from criminal activities. Confiscation of criminal property is a key aspect of tackling subversive, organised crime. Not only is it preventing criminals from pursuing their quick financial gain, but it is also helping to prevent criminal investment in further illegal practices. Also, criminals and those who help alleviate their illegal practices are prevented from corrupting the legal economy with their criminal means and, consequently, undermining society.

International anti-crime instruments and proceeds of crime have introduced a mechanism for confiscating all gainful crimes, such as drug trafficking, bribery and corruption.

This article provides answers to three research questions:

First, the occurrence of the confiscation of the criminally acquired person was perceived and evaluated, thus realising the first research goal Ro 1

Second, the criminally acquired property has a detrimental effect on the economy and society as a whole, which is why it is important to seize criminal law enforcement funds, thus realising the second research goal Ro 2.

Third, according to the third research goal Ro 3, which has been accomplished, measures for more efficient confiscation of criminally acquired property are proposed:

- ✓ Law enforcement agencies to fight organised crime.
- ✓ The main purpose of confiscation is to ensure that criminals do not enjoy the fruits of their criminal behaviour.
- ✓ Confiscation is an obstacle to crime and deprives convicts of illegally obtained benefits.
- ✓ The confiscation should aim to deprive the perpetrator of the benefit accumulated to the perpetrators, regardless of whether they still own the proceeds.
- ✓ Confiscation to ensure that the perpetrator who acquired the property from criminal acts will lose the fruits of his criminal acts.
- ✓ To successfully counter the illegal acquisition of property through criminal activity, each country must adopt such legislative and other measures as may be necessary to enable it to confiscate instruments and income or property the value that corresponds to such income.
- ✓ Nevertheless, countries should carry out investigative measures necessary to identify and monitor property subject to confiscation accordingly.
- ✓ Countries should adopt legislative and other measures authorising their courts or other competent authorities to order that bank, financial, or commercial accounts be made available or confiscated.

By researching this paper, the set goals have been fully realised, i.e. it has been confirmed that Hypothesis 1: Confiscation of illegally acquired property has the effect of preventing criminals from committing criminal offences for acquiring property outside the law?

Hypothesis 2: Do criminals by their behaviour violate the legal and moral norms of society and cause harm to the economy and society as a whole in different countries?

Hypothesis 3: Is there a need to constantly monitor criminal activities that acquire significant property, and do existing measures and activities need to be corrected?

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