

## Confiscation as a Preventive Measure Against Trafficking as Part of the Organized Crime in Albania

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### Abstract

Since the '90, Albania has been faced with trafficking as part of the organized crime. For this reason, the state policy for preventing this criminal activity is of great importance. The paper presents the legal framework of prevention measures which consist in confiscating assets derived from trafficking and other criminal activities in Albania. The confiscation of crime derived assets is treated only as a preventive measure against criminal activities and not as an additional punishment after the defendant is found guilty. The study highlights the persons who can be subjected to this proceeding, analyzes the development of institutional innovations and the facilitation of procedures, and the effect of the law toward the reduction of human trafficking. On one hand, the paper focuses on the great importance of the latest law achievements, on the other hand, it gives highest priority to the law implementation and especially to subjects that represent high levels of the Albanian state officials. This study is based on legal analysis, statistics, annual reports and observation of judicial cases.

**Keywords:** seizure, confiscation, law implementation, organized crime, legal amendment.

### 1. Introduction

In order to fulfill the justice reform, Albania has to effectively fight organized crime, and trafficking as the most dangerous form of it. Besides the Criminal Code and Criminal Procedural Code of Albania, which have been the legal basis of confiscation of criminal assets, until 2010, now the Parliament of Albania has approved new laws, such as the so-called "The Anti-mafia Law".

The Albanian Procedural Code provides seizing and confiscating only as an addition punishment, and lead to the need to regulate the preventive property measures by a specific law which would not follow the usual way against the income and assets derived from crime. The new regulation would follow the civil procedure conform the Code of Civil Procedure. This study is concentrated in the legal conditions which should be fulfilled by the prosecutor and the court, the guarantee of the right of third parties in this process, the constitutionality of the process, the effectiveness and necessary changes referring the law and its implementation. To arrive at the conclusion about the positive and negative aspects of the legal framework for preventing criminal activity through seizure and confiscation, the study is based on legal analysis, statistics and annual reports of European Commission.

### 2. Seizure and Confiscation Provided by the Criminal Code and Criminal Procedure Code of Albania

Seizure and confiscation is related to the human trafficking as a criminal offense provide by several provisions of the Albanian Criminal Code. The Albanian Criminal Code provides in article 36 the definition of confiscation as an obligatory court decision and the transfer into the state budget or ownership of the tools and criminal proceeds. The confiscation is given after the criminal proceeding has finished and the trafficker is found guilty, beyond the reasonable doubt and based on proofs. This kind of confiscation is realized only within the criminal process, and according to the Code of the Criminal Procedure, seizure means:

- a) The seizure of material proof, which is a tool to look for proofs;
- b) The conservative seizure, which means keeping the wealth and using it in the end of trial to fulfill the financial

obligations of the defendant;

- c) Preventive seizure, which purpose is the prevention and stopping the further criminal activity.

As already mentioned above, beside the seizure and confiscation within the criminal process, it was necessary to confiscate and prevent the further criminal activity (trafficking) without waiting for a final court verdict of guilt. This new procedure is the seizure and confiscation of assets through a civil procedure in a criminal court, which is the First Instance Court for Serious Crimes in Albania.

### 3. The Albanian Anti-Mafia Law

The Anti-Mafia Law (Law no. 10 192, dated 03.12.2009) was passed by Albanian Parliament with the purpose to ensure confiscation of property achieved by the commission of trafficking and other dangerous criminal activities.

The law describes in detail the responsibility in the appointment of judges and monitoring the work of asset administrators. One single judge of the first level of serious crime court decides on the request of the prosecution regarding the seizure of assets, while a judicial body composed of three judges decides to confiscate the assets. The hearing of the verdict is provided in accordance with the Albanian Code of Civil Procedure. The law describes in detail the cases in which confiscation can be enforced, and provides the period of seizure for more than one year. It is worth mentioning that the Albanian Helsinki Committee has initiated a case in the Constitutional Court of Albania claiming that the Anti-mafia law is inconsistent with the European Constitution and Convention of Human Rights (ECHR). The Constitutional Court claimed that the law does not violate the human rights. (*Instituti Kosovar per kerkime dhe zhvillime te politikave, 2011*).

The Albanian Anti-mafia law or Law no. 10 192, dated 03.12.2009 "On prevention and fight against organized crime and trafficking through preventive measures against property" is based on the international conventions such as the UN Convention against the Transnational Organized Crime which entered into force in 2003 and which provides a narrowed confiscation; and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism or the Warsaw Convention which entered into force in 2009 and which has provided an extended confiscation. Based on these conventions, Albania adopted its law on prevention and fight against organized crime and trafficking through preventive measures against property. Albanian legal provision regarding preventive confiscation consists in a narrowed but obligatory confiscation for some criminal offenses (only for a limited number of criminal offenses) which are serious ones. These offenses are: participating in organized crime, participating in a structured criminal group, participating in armed bands, trafficking of human being, women, children and weapons, offenses against property etc (Anti-mafia Law, art. 3). Albanian legislator chose the narrowed confiscation for two main reasons:

1. The law purpose to fight organized crime and corruption;
2. The legislator has taken into account the informal economy and fiscal invasion phenomenon which is present in Albania.

Seizure and confiscation of assets derived from criminal activities in Albania constitutes the preventive policy against organized crime, trafficking and corruption. Law no. 10 192, dated 03.12.2009 "On prevention and fight against organized crime and trafficking through preventive measures against property", which focuses its attention to the effectiveness of the prevention of criminality, was passed as a more specialized law than its predecessor. This law or "Anti-mafia law" which entered into force in January 2010, created the necessary space for legal prosecution, seizure and confiscation of illegal income resulting from criminal activities. Here, it is necessary to emphasize some important moments:

1. The deterrent character of law against limited serious crimes such as participating in criminal organizations or criminal structured groups; participating in terrorist organizations or armed bands; exploitation of prostitution; women trafficking and narcotic trafficking; laundering of criminal derived assets and corruption.
2. The seizure and confiscation process is based on sufficient indications, not on proofs.
3. The burden of proof is transferred from the prosecutor to the suspect.
4. The subjects of investigation, seizure and confiscation under this law are not only the suspects but even their relatives.
5. State officials of the highest levels are also subjects of this law.

In terms of Anti-mafia law, "preventive measure" is considered any preventive measure applied to the property, which the court decides in a judicial proceeding through seizure and confiscation of assets; economic, trade and professional activity. This law has no aim to punish the persons who used to commit criminal offenses, but only to prevent (*Court of Appeal, 2013*).

The measures against corruption through years have not brought the desirable results in investigating and punishing corruption, taking in consideration that corruption is one of the very problematic issues Albania and Albanian citizens have to face with (<http://www.drejtësia.gov.al/al/newsroom/lajme/ndryshimet-ne-ligjin-antimafia-korrupsioni-jo-mepeng-i-demagogjise>, 20 March 2014).

#### 4. The Civil Confiscation and the Criminal Confiscation

The preventive measures provided by the Anti-mafia law, can be applied after the criminal proceeding has begun, or even after its completion. This is a procedure which is requested by the prosecutor in emergency cases and in which the suspect does not participate. In preventive seizure according the criminal law, the defendant should be found guilty in order to confiscate the assets related to crime. If the defendant is not found guilty then the seizure falls and confiscation cannot take place even if it is not legally justified. This happens because the defendant is presumed innocent (*Albanian Criminal Code, art. 4*) and as result his assets are also presumed legal. Otherwise, the preventive seizure and confiscation according the civil procedure does not respect such principles like the innocence presumption, or the decision beyond the reasonable doubt based on proofs. The Albanian Anti-mafia law is not a material or a procedure criminal law, it does not respect criminal principles such as the presumption of innocence, but it presumes guilt. Proofs are not really essential in these proceedings, what is needed is the evidences that the income are not legal. The suspect is charged with the burden of proof. He has the obligation to prove the legal source of income. If he does not, then the court decides the seizure and confiscation of income and other assets. This is another specific element of this law which increases the effectiveness of the fight against criminality. In this way the prosecutor finds it easier to prove the illicit wealth in the court.

"In the third paragraph of Article 21 of this Law is stipulated that: "The burden of proof to prove that the assets are legally acquired belongs to the person who is a suspect". In this sense, the real value of this law is that it will not be the prosecutor who will prove the illegality of setting the property, but will be individual, who must prove otherwise before the court with evidence and facts about how the property has been seized and impounded in cases of corruption".

The competent authority for these proceedings is the Court of Serious Crimes of First Instance and the Appeal of Serious Crimes. In the case of confiscation in a criminal proceeding, the competent authority is any criminal court of the Republic of Albania.

#### 5. Some Statistics about Confiscation

The Anti-mafia law increased the value of assets seized in 2011 by 2.1 times more than in 2010 (*DMC no. 663, 2003*). During the 2013, verifications are carried out for 2056 persons (and their relatives) involved in human trafficking and other criminal activities, which are object of the Anti-mafia law, and the confiscated assets are approximately 571.355 Euro (without involving here the confiscations of some not valued real estate) (*Drejtori i Pergjithshem i Policise se Shtetit, 2013*).

#### 6. Conclusions and Recommendations

Albania has now a developed legal framework for preventing organised crime, trafficking, terrorism and corruption by seizing and confiscating illicit income and assets through a civil and very fast procedure. In 2010 entered into force the law on prevention and fight against organized crime and trafficking through preventive measures against property. The purpose of the Anti-mafia law is to hit the human trafficking and other serious crimes in its wealth, to decriminalize the economy and to decrease informality in the economy.

In 2014 it has been amended with the purpose to be a more effective tool against criminality through the seizure and confiscation. Thanks to these changes, the value of assets seized and confiscated has continuously increased. The highest priority is given to law implementation, especially referring to the subjects that represent high levels of the Albanian state officials. Based on the investigation of the criminal assets, it results that the number of subjects referred in the Serious Crimes Prosecution has increased. The undertaken measures before passing the Anti-mafia law have not brought the desired consequences in investigating and punishing the corruptive practices, since corruption is highly present. A highly important factor is the duly implementation of the law especially referring to judges, politicians and other high level state officials. The limited number of the prosecutors in Serious Crime Prosecution involved in financial investigations raises serious barriers progress in this sector. Some main issues refer to the proper implementation of the Anti-mafia law, mainly in confiscating the seized assets. Also the number of proactive investigations toward assets

derived from crimes should be increased, especially relating the assets derived from crimes committed outside Albania and which are ri/invested inside the country (*EC Report 16.10/2013*).

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