

THE RIGHT TO PROPERTY AND MECHANISMS FOR RECOVERY OF CRIMINAL ASSETS IN THE LEGISLATION OF THE REPUBLIC OF MOLDOVA FROM THE PERSPECTIVE OF FUNDAMENTAL RIGHTS PROTECTION AND THE EFFECTIVENESS OF COMBATING CRIME

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Abstract: *State interference with the right to property in the context of criminal proceedings represents a particularly sensitive and complex issue, as it entails the restriction of a fundamental right enshrined in both the Constitution and international treaties, including the European Convention on Human Rights. According to the jurisprudence of the European Court of Human Rights, any measure that limits the right to property such as seizures, confiscation, inquisition, asset freezing, or the imposition of criminal fines, must meet three essential criteria: it must be prescribed by law, pursue a legitimate aim, and be proportionate to that aim. Failure to satisfy these conditions may render the measure arbitrary, thereby exposing the state to liability for the violation of fundamental rights.*

In the Republic of Moldova, amid an intensified campaign against organized crime and corruption, special mechanisms have been established to enable state intervention with respect to assets owned by individuals involved in criminal activity. These instruments include extended confiscation, the administration of seized assets by the Criminal Assets Recovery Agency, and other procedural measures specific to the criminal justice system. However, the implementation of such mechanisms raises serious concerns regarding their compatibility with European human rights standards.

These developments give rise to a series of practical and constitutional challenges: the risk of abuse by public authorities, the

difficulty of maintaining a fair balance between the public interest and individual rights, and the pressing need to align the domestic legal framework with the standards established by the European Court of Human Rights (ECtHR).

Only by ensuring such a balance can the effective protection of the right to property in criminal proceedings be guaranteed.

Keywords: *property; criminal proceedings; criminal assets; procedural coercive measures.*

Introduction

Within the constitutional and legal framework of the Republic of Moldova, protecting public interest and combating criminal phenomena require the establishment of special legal tools enabling the state to intervene in assets acquired or used for criminal purposes.

Such legal interferences are regulated by a complex set of legal norms from the Criminal Code (Criminal Code of the Republic of Moldova 2002), the Criminal Procedure Code (Criminal Procedure Code of the Republic of Moldova, 2023), the Law on the Criminal Assets Recovery Agency (Law on the Criminal Assets Recovery Agency, 2017), the Government Decision approving the Regulation on the evaluation, administration, and valorization of (seized) criminal assets, and other normative acts in the Republic of Moldova.

Among these mechanisms are: special and extended confiscation of assets, administration of seized assets by the Criminal Assets Recovery Agency, criminal seizure, and other measures.

The Criminal Code of the Republic of Moldova (Criminal Procedure Code of the Republic of Moldova, 2023) provides in articles 106 and 106¹ two main forms of confiscation:

1. Special confiscation, applied to assets used in the commission of a crime, obtained from a crime, or directly or indirectly resulting from a crime. This measure is ordered by a final court decision and results in the loss of ownership rights.
2. Extended confiscation, a more advanced intervention measure, applicable when the court establishes beyond a reasonable

doubt that the assets were acquired through criminal means, even if they cannot be linked to a specific crime. This may apply to assets obtained before or after the crime if there is a clear discrepancy between the person's assets and their lawful income. Specifically, if:

a) the value of assets acquired by the suspect/accused/convicted person in the five years before and, if applicable, after the offense exceeds their lawful income by more than 20 average monthly salaries as forecasted by government decision;

b) the court is convinced that the assets may derive from criminal activities. This conviction can be based on the gap between lawful income and asset value, lack of a plausible legal source, or links to organized crime (Criminal Code, 2002, art. 106¹).

1. Legal analysis of extended confiscation in Moldovan legislation

Extended confiscation is an extraordinary legal-criminal mechanism designed to combat illicit accumulation of wealth or property in the context of serious and organized crime. As described in article 106¹ of the Criminal Code (Criminal Code of the Republic of Moldova, 2002), it complements special confiscation, surpassing the principle of *nulla poena sine culpa*, as it allows the seizure of assets not directly linked to a specific crime, but presumed to be of criminal origin.

The legal norms suggest that extended confiscation can be used upon conviction for certain serious crimes, corruption, money laundering, drug trafficking, organized crime, if the court finds a substantial discrepancy between legal income and acquired assets. Unlike classic confiscation, this tool partly shifts the burden of proof: once the prosecutor shows a major discrepancy and that the assets were acquired during a relevant timeframe, the burden shifts to the defendant to prove the legal origin of the assets.

A similar mechanism exists in the United States, where the burden partially shifts to the defendant once authorities demonstrate a significant discrepancy between assets and lawful income. This is often expressed in “*but for*” terms, so that property constitutes criminal proceeds if the

offender would not have obtained or kept it but for the offense. This includes both direct and indirect proceeds and auxiliary benefits (Brun, 2021, p. 30).

In the UK, the Proceeds of Crime Act (POCA) 2002 allows criminal confiscation post-conviction and extends to assets acquired through criminal activity, especially if the court establishes a “criminal lifestyle” based on recidivism or illicit income from other offenses (Smith, 2003, p. 184).

Unlike Moldovan law, which considers a five-year window before and after the offense, UK law considers a period of at least six months.

Conceptually, extended confiscation relies on a material approach to criminal liability, aiming to restore social fairness and remove the economic benefit of crime. It reflects a legal fiction focusing on asset recovery rather than personal punishment, aligned with international standards like the UN Convention Against Corruption and EU Directives.

In Moldova, like in other countries, a key element in applying extended confiscation is ensuring the protection of fundamental rights, especially property rights (Constitution of the Republic of Moldova, 1994, art. 46; ECHR, Protocol No. 1, art. 1)

The ECHR has consistently ruled that such measures are compatible with the right to a fair trial and the principle of proportionality if there is a clear legal framework, possibility of court challenge, and a reasonable presumption of illicit origin (Phillips v. United Kingdom, 2001).

In practice, applying extended confiscation faces numerous challenges: difficulties documenting asset-income discrepancies, lack of a unified financial analysis methodology, and complexity in investigating systemic corruption. In this context, Criminal Assets Recovery Agency plays a crucial role by offering technical and informational support to law enforcement through financial expertise and asset tracing in foreign jurisdictions.

2. National jurisprudence on extended confiscation

Despite legislative alignment with international standards, extended

confiscation in Moldova is rarely applied. Reports from the National Anticorruption Center and Criminal Assets Recovery Agency show an increase in asset freezes, but finalized extended confiscation cases remain isolated.

Notable cases involve convictions for corruption by public officials, where courts confiscated property well above lawful income (e.g., vehicles, real estate, bank accounts). In several post year 2020 rulings, defendants failed to justify assets worth hundreds of thousands of euros, which were confiscated under art. 106¹ (Criminal Code of the Republic of Moldova, 2002).

However, jurisprudence is still developing, and courts apply this measure cautiously, often demanding direct evidence of origin, even though the mechanism allows confiscation without a direct link to a specific crime.

This cautious approach may stem from a desire to avoid infringing on rights protected by Art. 1 of Protocol No. 1 ECHR.

Extended confiscation is indispensable in combating financial and economic crime, but its success depends on political will and legal provisions ensuring the mechanism's application, including specialized training for prosecutors and judges on handling illicit origin presumptions.

Although Moldova has a relevant legal framework, judicial practice needs consolidation, inter-institutional cooperation must improve, and law enforcement and financial investigations require adequate preparation.

The Constitutional Court of Moldova, in its Decision No. 6 of April 16, 2015, ruled that: "Legally acquired property cannot be confiscated (Art. 46 para. 3 of the Constitution). Such sanctions may be applied if property was used for or resulted from a crime (Art. 46 para. 4). Confiscation is a sanction applied to the owner for criminal or administrative offenses. [...] However, such confiscation must always be legally regulated. According to Art. 72 (n) of the Constitution, only Parliament can regulate offenses and penalties through organic laws."

The Court emphasized that special confiscation applies to assets used in or resulting from crimes, while extended confiscation also targets other assets presumed to stem from criminal activity.

The Venice Commission, in its interim opinion for Bulgaria (82nd plenary session, 2010), stated: “It is important for the legislator to clarify the level of evidence required for confiscation, to avoid unjustified interferences with property or fair trial rights. Such clarity ensures legal security and predictability.”

Regarding third-party transfers intended to avoid confiscation, the Constitutional Court cited Directive 2014/42/EU, which allows confiscation if the third party knew or should have known the purpose of the transfer.

The Court concluded that extended confiscation, as regulated, does not infringe private property or the presumption of innocence, provided the state proves the illicit origin of the assets.

Currently, the Constitutional Court is reviewing Challenge No. 108g of May 5, 2025, concerning the constitutionality of provisions in the Criminal Procedure Code and Art. 106¹ of Criminal Code on extended confiscation. A ruling is still pending.

3. The Seizure Imposed During Criminal Investigation

The Criminal Procedure Code of the Republic of Moldova (Criminal Procedure Code of the Republic of Moldova, 2003) regulates the imposition of criminal seizure over the assets of the suspect, accused, or defendant, with the purpose of ensuring special or extended confiscation, or guaranteeing the recovery of damages caused by the crime.

This measure may also be applied to assets held by third parties, if it is proven that the transfer was made to avoid confiscation.

In the field of combating economic and financial crime and corruption, a key role is played by mechanisms for identifying, seizing, managing, and realizing assets acquired through criminal means.

In the Republic of Moldova, this competence is entrusted to the Criminal Assets Recovery Agency, a specialized body established under

Law No. 48 of March 30, 2017, on the Criminal Assets Recovery Agency, with autonomous status within the National Anticorruption Center.

Under the legal framework, the Criminal Assets Recovery Agency is responsible not only for identifying criminal assets, but also for their temporary management during the criminal proceedings, in order to preserve their patrimonial value and prepare them for potential confiscation.

According to the provisions of the aforementioned Law, Criminal Assets Recovery Agency may administer the seized assets either directly or through public or private entities. These assets may include movable and immovable property, financial assets, or shares in commercial companies.

The administration of seized assets must comply with the principles of legality, transparency, economic efficiency, and integrity in public administration.

Criminal Assets Recovery Agency's competence in managing seized assets is a key element in the chain of recovering damage caused by criminal offenses. The success of asset recovery does not depend solely on the efficiency of criminal investigations or court confiscation orders, but also on the state's ability to preserve and capitalize on the seized assets.

Thus, strengthening Criminal Assets Recovery Agency's role is a priority within the national anti-corruption strategy and the broader justice reform agenda.

4. The Right to Respect for Property

Confiscation, in any form, constitutes an interference with the right to property. However, the European Court of Human Rights (ECtHR) has established as a principle that such measures can be compatible with the Convention, provided they are prescribed by law, pursue a legitimate aim, and are proportionate and necessary in a democratic society.

The ECtHR has held in numerous cases (e.g., *Philips v. the United Kingdom*, 2001; *Gogitidze and Others v. Georgia*, 2015) that extended confiscation does not violate the right to property, as long as appropriate procedural safeguards are in place, such as:

- the possibility to challenge the measure before a court;
- the existence of a fair trial (ECHR, 1950, art. 6);
- the reasonable and justified nature of the presumption regarding illicit origin.

Therefore, the national mechanism regulated by Article 106⁴ of the Criminal Code of the Republic of Moldova, which allows for confiscation of assets in cases of a significant discrepancy between wealth and lawful income, is in line with ECtHR jurisprudence, insofar as it is applied with respect for the principles of proportionality and fairness.

Hence, the legal provisions of the Republic of Moldova do not contravene Article 6 § 2 of the Convention (ECHR, 1950), provided that courts do not automatically presume the illicit nature of assets and ensure the possibility of effective defense.

Accordingly, the imposition of seizures, the realization, and administration of assets must take place within a clear and foreseeable procedural framework, with safeguards against abuse.

The right to defense, the reasoning of imposed measures, and the opportunity to challenge them in court are essential to ensure compatibility with the standards of article 6 of the ECHR.

A key aspect concerns the proportionality of the measures in relation to the legitimate aim pursued. In this sense, confiscation must not be arbitrary or disproportionate to the gravity of the offense or the value of the damage. The application of the mechanism must be individualized, based on objective criteria and well-reasoned in each case.

Therefore, property is one of the areas to which the European Court of Human Rights has recognized the applicability of article 6 of the Convention (ECHR, 1950).

Conclusions

Confiscation, including extended confiscation in the Republic of Moldova, represents an essential legal-criminal mechanism for combating illicit enrichment and organized crime.

Regulated by Article 106¹ of the Criminal Code, it provides the state with tools to act upon assets whose legal origin cannot be justified, in cases where a significant discrepancy between declared wealth and lawful income is identified.

Although compatible with ECHR standards, practical application remains limited due to evidentiary challenges and the reluctance of courts. The mechanism involves a partial reversal of the burden of proof, while still requiring a fair trial. The success of this instrument depends on the professionalism of prosecutors, the specialization of judges, and the technical support provided by Criminal Assets Recovery Agency.

Extended confiscation is not a criminal sanction in the classical sense, but rather a measure for the recovery of the value of assets acquired unlawfully, ensuring the balance between the right to property and the public interest is essential.

To this end, precise legislation, coherent and transparent financial analysis methodologies, and institutional will are required. Consolidating jurisprudence in this area is fundamental for the effective application of such measures.

Respecting the principles of legality, proportionality, and procedural fairness is imperative to ensure the legitimacy and sustainability of these instruments in a state governed by the rule of law.

Extended confiscation thus stands as an essential tool in the modern era of criminal justice, addressing the need for an effective response to profit-driven crime.

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