

The General Prosecutor's Office
Republic of Moldova

GUIDELINE

on
conducting

**PARALLEL
FINANCIAL
INVESTIGATIONS**



Organizația Internațională pentru Migrație (OIM)
Agenția ONU pentru Migrație

GUIDELINE
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investigations

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Acronyms

AIS - Automated Information System

CARA - Criminal Assets Recovery Agency

CC - Criminal Code

CPC - Criminal Procedure Code

CS - Customs Service

FATF - Financial Action Task Force

GP - General Prosecutor

ISS - Intelligence and Security Service

ME - Municipal Enterprise

MIA - Ministry of Internal Affairs

MJ - Ministry of Justice

NIA - National Integrity Authority

SE – State Enterprise

SPCML - Service for Preventing and Combating Money Laundering

STS - State Tax Service

I. INTRODUCTORY PROVISIONS

1.1 Origin and relevance

The Guideline on conducting parallel financial investigations (*hereinafter - Guideline*) has been developed in line with the provisions of art. 11 para. (1) letter f) of the Law on Prosecution and point 9, letter e), point 12 and point 14 of Chapter II of the Regulation on Prosecutor's Office normative acts, approved by the order of the General Prosecutor No. 24/28 of 12.06.2018, in line with art. 53¹ para. (4) of the Criminal Procedure Code, in order to ensure an accurate and uniform implementation of the legislation, to streamline the process of preventing and combating criminal activities generating illicit income, to ensure the recovery of criminal assets as well as to enforce the punitive policy by effectively applying special and extended confiscation precautionary measures.

The Guideline was developed to implement art. 1.2 of the Action Plan for mitigating the risks in the field of money laundering and terrorism financing for 2017-2019, approved by the Government Decision No. 791 of 11.10.2017 and to implement point 4.1.10 of the 2018-2020 Action Plan for the implementation of the National Strategy for preventing and combating trafficking in persons for 2018-2023, approved by the Government Decision No. 461 of 22.05.2018¹.

The Guideline drafting activity was developed within the implementation of the International Organization for Migration project - "*Enhancing the Government's Counter Trafficking Response and Improving the protection of Victims of Trafficking and Witnesses in the Republic of Moldova*", funded by INL Office, US Embassy to Moldova, with the participation in the working group of the prosecutors from the General Prosecutor's Office, the Anti-Corruption Prosecutor's Office and of representatives of the Criminal Assets Recovery Agency.

The evolution in the field of punitive policy is driven by the need of the law systems to respond to the latest forms of crime, especially to those generating illicit profits.

These categories of offenses are developing at a fast pace, being driven in particular by the progress of the information technology, a greater access of individuals to databases, as well as the metamorphoses of the financial and banking systems.

The highly developed and industrialized countries have overcome the "first wave" of this phenomenon, finding that it is better practice to use pecuniary sanctions than retributive sanctions to suppress economic crimes and those generating profits. Retributive sanctions, according to the classical view, are the main tools to determine that the individual does not commit delinquencies, and which perceives that the restriction on personal liberty is the condition for restoring the rule of law. Pecuniary sanctions are now considered better practice as they would combat specifically the offenders' objective and the financial aspect in particular.

The Republic of Moldova has ratified several international treaties, which address the importance of the financial aspects of the offenses as being one of the minimum standards set for law enforcement bodies, as: the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 08.11.1990; the Criminal Law Convention on Corruption of the Council of Europe of 27.01.1999; the Civil Law Convention on Corruption of the Council of Europe of 04.11.1999; the United Nations Convention against Transnational Organized Crime of 15.11.2000; the United Nations Convention against Corruption of 31.10.2003; the Council of Europe Convention on Action against Trafficking in Human Beings of 16.05.2005; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16.05.2005².

¹See: point 1.2.1. of the Prosecutor's Office Action Plan, No. 58/28 of 03.11.2017, approved by the General Prosecutor, as well as point 16 of the Prosecutor's Office Operational Plan, No. 26/15 of 28.06.2018, approved by the Order of the General Prosecutor.

² Ratified by the Republic of Moldova by the Laws No. 914/15.03.2002, No. 428/30.10.2003, No. 542/19.12.2003, No. 15/17.02.2005, No. 158/06.07.2007, No. 67/30.03.2006, No. 165/13.07.2007.

In this context, the Financial Action Task Force³ (*hereinafter FATF*), in Recommendation 30, states that the countries shall adopt measures, including legislative ones, to enable the competent authorities to freeze or seize and confiscate the following, without prejudicing the rights of bona fide third parties: *property laundered, proceeds obtained or instrumentalities used or intended for use in committing money laundering or predicate offenses, the property that are proceeds obtained from or are used in or intended for use in the financing of terrorism, terrorist acts or terrorist organizations, or property of corresponding value.*

Such measures should include the authority to identify, trace and evaluate property which is subjected to confiscation; carry out provisional measures, such as freezing and seizing, to prevent any dealing, transfer or disposal of such property; take steps that will prevent or void actions that prejudice the country's ability to recover property that is subjected to confiscation; and take any appropriate investigative measures⁴.

Thus, currently, the pecuniary sanctions and the recovery of the proceeds of crime, which are either given back to the victim or confiscated by the state, have become a proportionate, as well as an effective response to the criminal offenses committed for cupidity purposes.

The confiscation of profits from offenses has gradually become the core objective of the criminal justice systems – aiming implicitly to reduce the offenses that generate profits which have often been reinvested to commit other crimes.

The success obtained as a result of laying emphasis on the proceeds of crime recovery and confiscation, when combating drug trafficking, has become a model of repression and deterrence of other serious profit-generating crimes, such as economic crimes, trafficking in persons, corruption, cybercrime, crimes committed by organized criminal groups etc.

However, a major challenge for the law enforcement institutions has been to identify, determine, trace, freeze and, as a result be able to seize the proceeds of crime, which, are more and more often hidden, veiled and shown as a legal income by the beneficiaries of the crime.

So far, the authorities' efforts were focused on creating and developing legal instruments to detect, seize, and confiscate illegally acquired property, in order to reduce the motivation for offenders to get involved in such criminal activities and to reduce the operating capital used again to carry out actions not allowed by the law.

Therefore, to date, it has become necessary to develop a Guideline for practitioners to ensure efficient implementation of normative acts, to justify the interaction between the actors conducting financial investigations versus the criminal investigation bodies, to implement operating techniques to anticipate sophisticated criminal schemes etc.

The special concepts used in this Guideline are to be interpreted and applied in the meaning of the concepts specified in the Criminal Code (CC), the Criminal Procedure Code, the Law No. 308/22.12.2017 on preventing and combating money laundering and terrorism financing, the Law No. 48/30.03.2017 on the Criminal Assets Recovery Agency and other normative acts.

³FATF is an inter-governmental body, which sets standards, develops, and promotes policies to combat money laundering and terrorism financing. It currently has 33 members: 31 countries and governments and two international organizations; and more than 20 observers: five FATF-type regional bodies and over 15 other international organizations or bodies. In February 2012, the recommendations were updated. A list of all members and observers may be found on the FATF website at <http://www.fatfgafi.org/Members.en.htm>.

⁴ The standards for conducting parallel financial investigation are encountered also in other documents that set guidelines for the European Community law enforcement bodies, such as Directive 2011/36 / EU of 05.04.2011 of the European Parliament and the European Council on preventing and combating trafficking in persons and protecting its victims; 2001/500/JHA: Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime and the Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.

1.2. Main definitions:

Parallel financial investigations - all the criminal investigation activities and special investigative measures undertaken in order to collect evidence on the suspect, accused, indicted or convicted, the assets and property he/she holds as the beneficial owner, the asset owner and the administrator of the property held by the suspect, accused, indicted or convicted as the beneficial owner, to recover the criminal assets;⁵

beneficial owner – an individual who ultimately owns or controls a natural or legal person or a beneficiary of an investment firm or the manager of an investment firm or a person in whose name an activity is carried out or a transaction is conducted and/or directly or indirectly holds ownership or control over at least 25% of the shares or of the voting rights of the legal person or over the assets in fiduciary management;⁶

property - financial resources, funds, income, any category of values tangible or intangible, movable or immovable (assets) as well as legal acts or other legal instruments in any form, including electronic or digital, evidencing a title or a right on, including any share (interest) with regard to these values (assets);

illicit goods - goods meant for, used or resulting, directly or indirectly, from committing a crime, any benefits from these goods, as well as goods converted or transformed, partially or integrally, from goods meant for, used or resulting from committing a crime and the benefit obtained from these goods;

criminal asset – an asset that can be seized under the Criminal Procedure Code, as well as an asset amenable to special confiscation and extended confiscation;

suspect goods - goods that the reporting entity knows or indicate reasonable grounds for suspecting that they are of an illicit nature;

money laundering related crimes - offenses under the Criminal Code (CC), including terrorism financing, as a result of which illicit goods, including income, funds and other benefits that are the object of money laundering are obtained;

restrictive measures on assets - measures that hinder the movement, transfer, change, use or handling of assets in any way that could result in changing their volume, value, location, ownership, possession, nature or purpose or any other change which would enable the use of the assets;

individuals carrying out important public functions at the international level - individuals who held or have held the positions of a head of state, prime minister and a head of cabinet, members of the government, deputy ministers, heads of State Chancellery, MPs, political party leaders, judges of the Supreme Courts of Justice, also members of courts of accounts and of the national bank board, officers with higher and supreme military ranks, members of the board and management of state enterprises, members of royal families, ambassadors and higher-ranking staff of diplomatic missions, directors, deputy directors and management board members of international organizations;

⁵The notion of parallel financial investigation (Article 6 point 201 CPC) is different from the concept of financial investigations provided in Article 3 of the Law No. 308/12.22.2017 - activities consisting in data collection, analysis and verification of all financial and economic relations, as well as checking customers who may be linked to the actions of money laundering, offenses associated with them and providing financing for terrorist activities related to the identification, setting source and tracking assets that derived from such offenses, the terrorist funds and other assets that are or may be the subject of precautionary measures and/or seizure and investigation activities of criminal network size and the degree of criminality involved. The financial investigations are distinct from the special investigations regulated by the Law No. 59/2012 on special investigation activity.

⁶ The Regulation on the way of filling out the declaration of assets and personal interests in electronic form, approved by the NIA Order No. 15 of 02.27.2018 stipulates as *beneficial owner* – an individual ultimately controlling another natural or legal person or the person in whose name a transaction is conducted, or an activity is carried out and/or holds, directly or indirectly, the ownership or control over an asset.

individuals carrying out important public functions at the national level - individuals who held or have held prominent public positions in line with the legislation, as well as members of the board and management bodies of state enterprises, municipal enterprises and trading companies controlled by the state, political party leaders and officers with higher and supreme military ranks;

business relationship - professional or commercial relationship related to the professional activities of reporting entities and of individuals, provided for in this law, which, when contact is established, is deemed to be of a certain duration;

cessation of an activity or transaction - temporary interdiction to change the ownership, to transfer, liquidate, transform, place or move the goods or temporarily assuming custody or control over the goods;

money laundering - actions set out in art. 243 of the Criminal Code and in the international treaties Moldova is a party to;

terrorism financing - actions set out in art. 279 of the Criminal Code and in the international treaties Moldova is a party to;

transaction - actions based on previous agreement between two or more parties, by which goods are transferred, disposed of, transformed, placed or their circulation is ensured;

complex and unusual transaction - a transaction conducted through a single or multiple operations which do not meet the ordinary activity and/or are not characteristic for the type of the client's activity;

occasional transaction - a transaction conducted through a single or multiple operations by one or more individuals or legal persons, without having any business relationship with the reporting entity.

II. INITIATION OF PARALLEL FINANCIAL INVESTIGATIONS

2.1. Grounds for initiating parallel financial investigations

In order to trace and collect evidence on criminal assets, the prosecutor/criminal investigation body conducts parallel financial investigations.

Asset tracing is conducted while investigating the criminal activities which aim at getting directly or indirectly illicit benefits.

IMPORTANT: As a rule, asset tracing has to be conducted as early as possible and concurrently with the direct investigation of the income-generating crime, as well as measures including with regard to the family members, relatives and other individuals involved in managing the assets/businesses.

The investigation of unjustified income is necessary when:

- an investigation is conducted related to certain facts on tax evasion by the individual or the legal entity;
- a profit-generating offense has been committed by a criminal group, an association or a criminal organization (the amount of the unjustified income is irrelevant in these cases);
- an economic offense has been committed, except for tax-related ones, the amount of which exceeds **20 projected average monthly salaries per economy**, set by the Government decision in force at the time the offense was committed;
- offenses against proper conduct of activities in the public sphere (corruption offenses and those related to them);
- an offense provided for in art. 330² of the Criminal Code - *illicit enrichment* (the value of assets substantially exceeds the acquired funds) is being investigated;

- a money laundering investigation (art. 243 of the Criminal Code)⁷ is being conducted;
- an investigation within the criminal investigation of terrorism and terrorism-related crimes is being conducted⁸.

IMPORTANT! Based on the decision of the prosecutor or of the investigating officer, the parallel financial investigations can also be conducted in other cases, depending on the nature of the action, the prospects of damage recovery and other important circumstances, on the basis of the specificity of the profit-generating crime.

2.2. Initiation and content of parallel financial investigations

The initiation of parallel financial investigations is the stage where the methods for approaching and planning proactive measures carried out by the competent bodies are set in order to establish the financial profile of the beneficial owner, to identify and freeze the proceeds of crime.

When initiating the financial investigations, it is necessary to set clear objectives for such actions.

Objectives pursued through proactive financial investigations⁹:

- ✓ **Proving money laundering crimes** and, where appropriate, the predicate offense that generated the funds subjected to laundering, by identifying and documenting the financial flows into the criminal activity, respectively the links between the source of funds and the beneficiaries;
- ✓ **Establishing the criminal network by:**
 - highlighting the accomplices and the connections between people and places, identifying and using services (telephone, transport, computers ...), locating the suspects, providing information on their movements, as well as on the witnesses and victims;
 - establishing the sequencing (in time) of the committed offenses;
- ✓ **Establishing the financial profile of the individual** who holds/owns the goods subjected to confiscation, while analyzing the ratio between the value of the goods that were purchased versus the income acquired from the criminal activities and the illicit funds that justify their acquirement;
- ✓ **Identifying and applying constraining measures on the perpetrators**, when the actions necessary to discover the predicate crime and the financial investigations have been exhausted;
- ✓ **Freezing the illicitly acquired assets and funds.**

2.2.1. Modus operandi

Per general, there are two types of approaches:

upstream (the concentric mode):	when the investigator starts from the proceed of crime trying to prove that it originates from an illegal activity that meets the content of a predicate offense, without specifying
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⁷ Ghidul privind metodică de urmărire penală a infracțiunilor de spălare a banilor și finanțarea terorismului, approved by the General Prosecutor's (GP) Order PG No. 41/26 of 09.09.2018.

⁸ Ibid.

⁹ Chantal Cutajar, Introduction la troisième session du Collège Européens des Investigations Financières et de I Analyse financière Criminelle CEIFAC, Strasbourg, 27.10.2014.

	exactly the conditions under which the criminal actions have occurred;
downstream (the eccentric mode):	when the investigator starts from the profit-generating crime (the predicate offense) to trace the destination of the funds that originated from the respective crime.

The aforementioned approaches are not the only ones and are used as a rule, in typical situations, but, depending on the specific crime, the investigators may use other approaches to financial investigations as well.

The *upstream* investigation mode is used, as a rule, in conducting financial investigations of the crimes provided for in art. 243 of the Criminal Code (CC) - "Money laundering", art. 181² of CC - "Illegal funding of political parties or electoral campaigns, violating the way of managing the funds of the political parties or of the electoral funds." art. 279 of CC - "Terrorism financing" and other crimes where the funds are identified whose sources are allegedly acquired illegally.

These offenses are focused on the latitude of establishing the financial profile, the mechanisms used by perpetrators while recycling the funds acquired in a criminal way and the beneficial owners of these amounts.

The *upstream* investigation mode and the investigation techniques of these crimes have been described in the content of the Guidelines on the respective categories of crimes¹⁰.

The *downstream* investigation is the method used, particularly in the investigation of crimes referred to in art. 229¹ of CPC, and namely art. 141, 144, 158, 164, 165, 165¹, 166¹, 167, 168, 181², 206, 217¹, 2173, 218, 220, 239-240, 242¹-244, 248, 249, 259, 260, 260²- 260⁴, 260⁶, 279, 283, 284, 324-329, 330¹, 330², 332-335¹, 352¹ and 362¹ of the Criminal Code.

IMPORTANT! These crimes, provided by the legislator as those for which the Criminal Assets Recovery Agency is empowered to conduct financial investigations, are not the only ones in which pecuniary investigation needs to be carried out.

Thus, to recover the damages caused by a profit-generating offense, the legal costs, the expenses for special or extended confiscation, parallel financial investigation shall be conducted by investigators, investigation officers, as well as by the prosecutors within other crimes, including:

Crimes against the life and health of an individual- in particular:

- art. 145 of CC, especially para. (2) letter b) "Homicide committed for material purposes", para. (2) letter m) "Homicide committed to retrieve and/or use or sell victim's organs or tissues", or para. (2) letter p) "Contract murder";
- art. 151 and 152 of CC especially aggravated by "contract", which is usually remunerated with money or other goods etc.;

Crimes against political, employment rights and other constitutional rights of citizens in particular:

- art. 185¹ of CC - "Violation of copyright and related rights" especially when the revenue was obtained as a result of the offense;
- art. 185² of CC - "Infringement of industrial property objects" etc.;

Offenses against assets - in particular:

- art. 186-196 of CC;

¹⁰ Guideline on the methodology of criminal investigation of money laundering and terrorism financing crimes, approved by the General Prosecutor's (GP) Order No. 41/26 of 09.09.2018 and the guideline on the investigation and prosecution of voters' corruption, illegal funding of political parties, electoral campaigns and the use of administrative resources, approved by GP's Order No. 6/11 of 30.01.2019.

- art. 199⁴ of CC - "*Unauthorized sale of mobile archaeological goods and classified movable cultural goods*";

Offenses against family and juveniles - in particular:

- art. 208 CC - "*Involving juveniles in criminal activity or determining them to commit immoral actions*";
- art. 208¹ of CC - "*Child pornography*" art. 208² – "*Resorting to child prostitution*".

Crimes against public health and social cohabitation - in particular:

- art. 213¹ of CC - "*Advertising to obtain illegal organs, tissues or human cells or with regard to illicit donation*"
- art. 214 of CC - "*Illegal practice of medicine or pharmaceutical activity*";
- art. 214¹ of CC - "*Production or sale of counterfeit medicines*" etc.

Environmental crime- in particular:

- art. 227-230 of CC; - art. 231 of CC - "*Illegal logging of forest vegetation*"
- art. 233-234 of CC.

Economic crimes;

Offenses against public authority and state security - in particular:

- art. 337 of CC - "*Treason against Home country*";
- art. 338 of CC - "*Espionage*"
- art. 339 - 344 of CC; - art. 352 of CC - "*Arbitrariness*"
- art. 360-361 of CC, especially in cases where these crimes are committed for material interest.

In these cases, the investigation starts from the predicate offense which clearly aims to generate profit and then identified are:

- the benefits gained from the criminal activity;
- the destination of the revenue gained and the beneficial owners;
- the material goods and the funds acquired as a result of criminal activity or the equivalent amount that is to be frozen (seized).

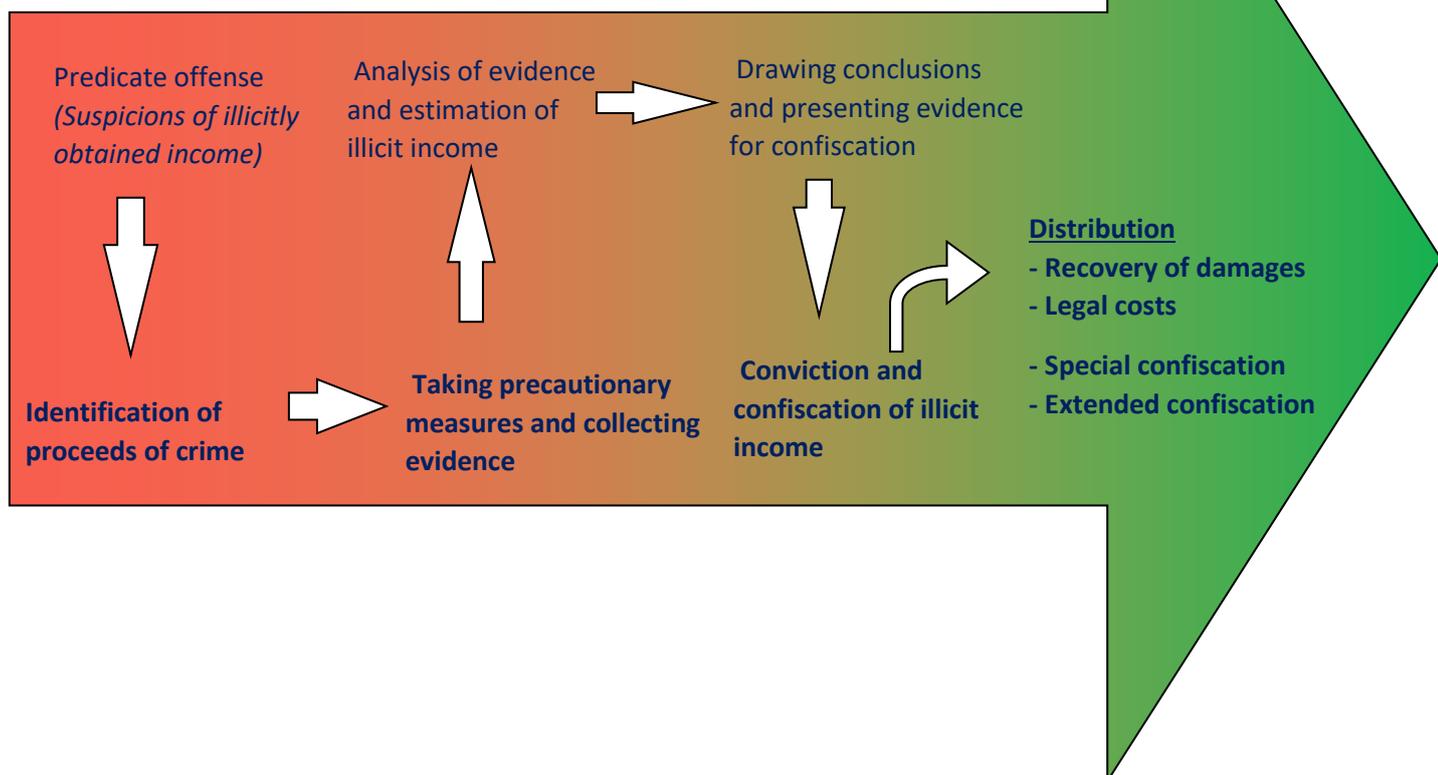
Note:

- the list of offenses outlined *above* is not exhaustive, however it has been established from a practical analysis that namely within these profit-generating offenses, no parallel financial investigations are conducted and as a result no confiscation of criminally acquired goods is carried out;
- following the financial investigations, the prosecutors shall include in the charges the amounts of money acquired from crimes (**so that when establishing the predicate offense the courts identify also the benefits obtained in a criminal way**);¹¹
- unlike the predicate crime investigation, the financial investigation shall not be limited only to the authors and perpetrators of the crime but shall also extend to the beneficial owners and the fictitious ones (*with the help of whom a legal aspect shall be attempted to be assigned to the income*).

¹¹ As an example of a positive practice: a criminal case is presented that accuses the so-called C.O. and S.T. of committing the offense provided for in art. 42 para. (5), 220 para. (2) letter a) and c) of CC. The indictment specifically indicated that "**... in such a way in the period of 27.11.2015- 16.03 2016, C.O. and S.T. received an illegal income from a criminal activity from S.A. amounting to USD 4,500, E.A.- the amount of USD 2,000, B.C.-USD 1,850 and from T.V. – the amount of USD 17,473, obtaining in total USD 25,823, that in line with the exchange rate of the National Bank of Moldova in that period, amounted to MDL 517,751.15 ...**".

Thus, in the situation when the indictment indicated exactly the funds obtained from the infringement and the court states this fact when pronouncing the sentence, based on the provisions of art. 106 para. (2) letter b) of the Criminal Code, there is a factual coverage, as referred to in the legal norm, to subject the funds to special confiscation (see the decision of Chisinau Court of Appeal on the case No. 1 a-1464/18 of 27.02.2019).

Downstream investigation



2.2.2. Planning a parallel financial investigation

As a rule, it shall be developed when planning the criminal investigation and shall include elements related to:

- collection of information on the financial profile of the investigated individual including the identification of the goods, income and assets to be frozen;
- collection of evidence on the identified goods, income, assets (for e.g. bills, bank statements, extracts from state institutions, receipts etc.);
- identification of the beneficial owner and collection of evidence (debit or credit cards, vehicles in real possession etc.).

Where the parallel financial investigations are complex and require the involvement of other subjects than the criminal investigators and investigating officers, it is reasonable to develop a separate plan, different from the one on the income-generating crime.

The financial investigation plan shall take into account the timeframe of the criminal investigation actions, the persons involved in carrying out these actions, and also

the need for a periodic analysis and corroboration of evidence collected while implementing the actions of both plans.

At this stage, **it is useful to create the team** that will carry out the financial investigation, to whom, in order to increase effectiveness and timeliness, the tasks should be distributed in line with the established plan.

Firstly, the joint investigation team shall be created: the prosecutor, criminal investigators, officers conducting special investigative activity and specialists.

When investigating cases that include cross-border elements, it is desirable to consider the possibility of setting up joint investigation teams (*JIT*).

Where parallel financial investigations are carried out by the Criminal Assets Recovery Agency (CARA), it should be noted that in line with art. 8 para. (1) of the Law No. 48/30.03.2017 on the CARA, criminal investigators, investigating officers, experts, specialists in accounting and auditing, other specialists may be working within the Agency.

In line with the international standard included in FATF Recommendation No. 30 (aforementioned), when establishing multidisciplinary investigation groups (TASK-FORCE), the prosecutor may request finance specialists, financial analysts, tax authorities etc. be included directly in the team he/she coordinates.

The financial investigation team members shall be presented only the information that is necessary to carry out the assigned tasks, avoiding, unless absolutely necessary, the situations where all the information collected within the investigation is made available to all the team members.

2.2.3. Financial profile

The financial profile of an individual shall be established by analyzing the unjustified assets, the lifestyle disparity as compared to the justified licit income.

To compile the financial profile, the following elements shall be analyzed¹²:

Relevant elements to compile the financial profile	
<u>ASSETS:</u>	<u>EXPENSES:</u>
<ul style="list-style-type: none"> • real estate; • cars, airplanes, yachts; • bank accounts; • shares, share capital and bonds; • cash; • funded life, property, health insurance; • private funded pensions; • jewelry, works of art or collectors' pieces; • amounts won at casinos, sports betting; • disputed rights; • claims; 	<ul style="list-style-type: none"> ▪ rent\loan, leasing rates; ▪ loans and mortgages; ▪ overdraft; ▪ cash or credit card payments; ▪ travels, holidays; ▪ tuition fees; ▪ duties, taxes; ▪ insurance premiums; ▪ alimony; ▪ money spent in casinos or at parties; ▪ funds sent through Western Union, Moneygram etc.

¹² Gabriel Nicusor Cristian, Marius Grigore, Improving the investigation methods and institutional cooperation to combat the VAT fraud, Final Report, 2016, HOME\2013\ISEC\AG\FINEC\ 4000005184, pp.59-61.

<ul style="list-style-type: none"> • income from independent activities; • income from agriculture or forestry; • lease income; • dividends; • income from trading activities of individuals or unincorporated associates; • income from freelance activities; • entitlements received from family events; • intellectual property rights; • funds received through Western Union, Moneygram etc.; • income derived from property (rent, interest, etc.); • cash found when conducting searches or which was known, in one way or another, to be held. 	
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For each asset or liability the acquisition\transaction date, the person from whom it was acquired or what the expense was on, its purpose, how the acquired amount was used, the payment method (cash, payment order, commercial letter of credit, letter of credit) and the source of funds, the guarantees used, if there are any documents proving these elements shall be identified.¹³

To establish the amount of income from unknown allegedly illicit sources, the difference shall be calculated between:

"Assets" - "Illicit income" = "Unknown income "(allegedly illicit)

The assets of the investigated individual shall be established not only by identifying the amounts indicated in the database of state institutions, such as the cost of buildings or vehicles, which are often included in the transfer of ownership/possession contracts at a lowered price.

If suspicion of lowering the value arises, an investigation/expertise shall be carried out to determine the market value of the assets that are owned or held by the investigated individuals.

III. TRACKING CRIMINAL ASSETS AND COLLECTING EVIDENCE

One of the basic actions of a parallel financial investigation is to identify the proceeds of crime and this activity shall be held concurrently with the criminal investigation. This stage involves several methods set to be used separately, concurrently or consecutively, depending on the specific crime.

¹³ Ibid.

3.1. Identification methods

The primary sources for collecting the information needed to conduct financial investigations, are the references from:

- open source information;
- information from the databases of state and private institutions.

3.1.1. Open source information

These sources of information shall be accessed at an early stage of the financial investigation and represent intelligent sources with the help of which the plan of the future investigation, the financial profile panorama and the eventual evidence can be established.

One of the methods of getting access to open source information used the most is the search engines.

It is important to know that "*google.com*" is not the only search engine and there are alternatives, some of which are also specialized according to the nature of the information that is being checked. Thus, the following can be mentioned:

- <u>AltaVista</u> ; - <u>F-search</u> ; - <u>Ask</u> ; - <u>Baidu</u> ; - <u>Bing</u> ; - <u>Blekk</u> ; - <u>DuckDuckGo</u> ; - <u>Entireweb</u> ; - <u>FExalead</u> ; - <u>Excite</u> ; - <u>Gigablast</u> - <u>Google</u> ; - <u>GrayMatter</u> ; - <u>Info.com</u> ; - <u>LeMoteur</u> ; - <u>Lycos</u> ; - <u>MSN</u> ; - <u>Neuralcoder</u> ; - <u>Panguso</u> ; - <u>Qwant</u> ; - <u>Qwer</u> ; - <u>Sogou</u> ; - <u>Soso</u> ; - <u>Spezify</u> ; - <u>Trovei</u> ; - <u>V9</u> ; - <u>Voila</u> ; - <u>Volunia</u> ; - <u>Yahoo!</u> ; - <u>Yandex</u> ; - <u>Yauba</u> . ¹⁴

The aforementioned sources shall be accessed to collect primary information on specific circumstances of the investigated event, the profile of the investigated subject etc.

Some of the open source information is the accounts created on **social media** webpages, of which the most widely used are:

<ul style="list-style-type: none">- Facebook;- V Kontakte;- Odnoklassniki;- Twitter;- Whatsapp;- Instagram;	and other less popular such as: Myspace, Xtreme Chat, faces.com, Flickr, Netlog, My Opera, Hylife, Tumblr, Wasabi, Triluliu, plzzz funda.
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Those sources are used in particular for determining the circle of interests and friends of the individual that is being subject to analysis, the lifestyle, entertainment and recreation places, the real estate and vehicles actually used etc.

Moreover, if the information reflected on the social media webpages presents a high interest for investigators, which in the future will have to be presented as evidence to confirm the data about the account user, it is possible to request from the respective companies' information about the electronic account.

For example, for Facebook, the company with the same name provides the following information about the situation of the account:

- the name, surname of the user; email and IP address; phone number; last IP address used to access the account etc.

The requests for information are to be submitted in English, scanned and sent electronically to: [//https://www.facebook.com/records/](https://www.facebook.com/records/).

¹⁴ https://ro.wikipedia.org/wiki/List%C4%83_de_motoare_de_c%C4%83utare

Subsequently, the box "*I am an authorized law enforcement agent or government employee investigating an emergency, and this is an official request*" shall be ticked, after which you should write the mailing address to which the information and a link to access the database of interpellations should be sent.

After filling out the questionnaire, you will be directed to the page which will enable you to send the requests.

Other open source information related to the **email addresses** of individuals and legal entities that are being traced are as follows:

- the account used by the person and the IP addresses which the mails were sent to or received from;
- correspondence of the person;
- people who the investigated person corresponds with, etc.

To make certain **searches of legal entities registered in offshore jurisdictions**, the following open databases can be used:

- <https://offshoreleaks.icij.org/>;
- <https://investigativedashboard.org/>;
- <https://opencorporates.com/>.

3.1.2. Information from the databases of state institutions

Working with information from official databases is a crucial activity in the field of asset recovery. The data contained therein, usually offer the widest range of primary information, which, if combined with the information obtained from other sources (*within the criminal investigation, special investigative measures etc.*) enable to provide the prosecutor with a well-defined and structured output, which subsequently is the basis of the reasoning of the request for the application of seizure on one or another criminal asset.

Institution	Information system (IS)
Public Services Agency	State Register of Population State Register of Vehicles State Register of Legal Entities
	State Register of Transportation
	"Civil Status" Register
	State Register of Real Estate
	Electronic Cadaster Records
State Tax Service (STS)	STS database reports.fisc.md

	Automated Information System (AIS) "Current account of the taxpayer"
	IS "Fiscal Cadastre"
Customs Service	Exporters, Recipients, PV-14, TV-25, TV-28, Financial Officers modules
	AIS "Asycuda World"
Border Police	Information Program on state border crossing, prohibitions of border crossing (PASSENGER)
	Access to analytical portal (passenger manifest of airline companies)
National Social Insurance Office	Data base for calculation and payment of social security contributions by individuals and legal entities
Collection of Information from Indirect Sources database system	Information program on data collection from indirect sources E-DATA
National Integrity Authority (NIA)	Database on declarations of property and conflicts of interest, with full display of information
National Health Insurance Company	AIS " National Health Insurance Company insured persons"
Ministry of Agriculture	AIS "AIPA On-line" - Agency of Interventions and Payments for Agriculture
	"SITA" Register- animals record keeping system
	Register of agricultural machinery "RTA"
Public Procurement Agency	Public Procurement Register
Ministry of Internal Affairs (MIA)	"SIA-RAR" database for record-keeping of contravention files and penalties managed by the NPI
	Register of road accidents (since 01/01/2014)
	Record of criminal offenses and cases (БПД)
	Past records, criminal records (F-246)
Police Cooperation Center of General Inspectorate of the Border Police (GPI)	AIS Interpol
Bureau of Migration and Asylum of MIA	AIS "Migration and Asylum"

Competition Council	State Aid Register
Ministry of Labor and Social Protection	AIS "Register of Social Assistance" https://siaas.gov.md
National Administration of Penitentiaries	AIS "Detained, arrested and convicted persons"
Legal Information Center of Ministry of Justice (MJ)	Register of pledges
National Commission for Financial Markets (NCFM)	AIS "RCA Data"
National Road Transport Agency	AIS "Autotest"
SE (State Enterprise) "MoldData"	Register of domains and sub-domains.md
State Chancellery	Register of state controls
	Register of civil servants
Ministry of Foreign Affairs	"Visa" Subsystem from AIS "Migration and Asylum"
Ministry of Education, Culture and Research	AIS "State Register of Education"
Ministry of Transport and Roads Infrastructure	Register of contravention offenses
Ministry of Finance	E-Trezor, budget allocations

Data basis of entities providing certain services:

ME (Municipal Enterprise) "Infocom"	"Infocom-Bon" Register www.bon.infocom.md
ME "Credit Bureau" LLC	IS "Credit history"
Moldovan Railway	IS "Trip Tracer" - monitoring train ticket purchase operations
ME "Autosalubritate" (Municipal waste management)	Contracts register "Infosapr" LLC

Apa Canal (Water and wastewater service provider within Chişinău)	Register of consumers
Gas Natural Fenosa (Energy company)	Register of consumers
Moldova Gaz/Chisinau Gaz (Energy company)	Register of consumers

3.2. Cooperation with state institutions

3.2.1. Criminal Assets Recovery Agency

The Criminal Assets Recovery Agency is an autonomous, specialized subdivision within the National Anti-Corruption Center.

In exercising its duties, the Agency cooperates closely with the state institutions, the cooperation being mainly based on providing information which is relevant for the recovery activity.

It should be noted that the Law No. 48/2017, provides a set of norms on obtaining information by the Agency, notwithstanding the existing procedural norms.

The information (documents, materials etc.) transmitted to the Agency as a provider of relevant data, by the investigation bodies, the prosecution bodies, the courts or other competent authorities for the purposes stipulated in the Law No. 48/2017 is not a disclosure of commercial, banking, professional nor personal privacy.

The access of third parties to the information resources of the Agency is prohibited. Only the Agency employees have access to the information stored in the databases held by the Agency and the right to process this information, based on a prior authorization obtained from the management.

The relevant data providers are prohibited to inform individuals and legal entities, including the beneficial owners about the fact that their data are to be transmitted or have been presented to the Agency. The relevant data providers shall submit a written statement on non-disclosure of the information submitted to the Agency and on the fact that they have been informed about the criminal liability under art. 315 of the Criminal Code.

The Agency, upon the request of persons or of the personal data processing control body, shall provide information regarding the processing of personal data only after the situation that justifies the processing thereof ceases.

In other words, at the request of the information providers with limited availability, the Agency shall prepare a reasoned request, invoking the provisions of art. 14 of the Law No. 48/2017. Thus, the information is obtained much faster as it excludes the authorization procedure of the investigating judge.

In its activity, the Agency shall cooperate productively with the Prevention and Combating Money Laundering and Financing Terrorism Service, by addressing direct requests, with the Public Services Agency through direct access to databases and by applying the court decisions on freezing the movable and immovable assets, with the National Integrity Authority, the Customs Service and other entities. In this regard, the National Anti-Corruption Center has signed a series of cooperation agreements with the state entities, and the Agency, as a subdivision of the Center, may refer to them in its work.

In line with art. 229² para. (2) of the Criminal Procedure Code, in case of the prosecution of one or more of the offenses specified in this provision, the criminal investigation body/prosecutor order, **by mandate**, CARA to conduct parallel financial investigations to trace criminal assets, to collect evidence and freeze them.

The mandate shall include:

- the place and date of drafting;
- the position and name of the issuer;
- the criminal case number, the date the criminal proceedings was initiated, the offense, the description of the circumstances of the case;
- the status of the individual subject to parallel financial investigations (suspect or accused) in the criminal proceedings and the date of his recognition as such;
- the need and grounds of parallel financial investigation;
- data on the individual (name, surname, patronymic, date, month, year of birth, domicile, residence visa, PIN and other data upon the discretion of the issuer).

The goal of the parallel financial investigation conducted by CARA is to identify (trace) the criminal assets held by the individual subjected to criminal investigations as the owner, as well as the beneficial owner, and to collect evidence on these assets in order to freeze them.

If in the course of conducting parallel financial investigations, assets belonging to the individual subjected to investigations are identified, the CARA investigators can freeze the identified assets concurrently with the investigations until their completion, to secure that the traced assets are not be alienated, hidden, concealed, damaged or spent.

The criminal investigation body/prosecutor shall enclose to the mandate the following procedural documents and materials:

- a copy of the order on initiating the criminal case (including joint criminal cases);
- a copy of the order on recognition as a suspect or indictment,
- a copy of the civil case and the order on recognition as a party to a civil case;
- other procedural documents confirming the individual subjected to investigations is the owner or the beneficial owner (*the reports on the witnesses' hearings; the seized documents or goods, including as a result of previously conducted searches or of the precautionary measures (seizure) applied; the report recording the special investigative measures etc.*).

Given the fact that within the parallel financial investigations the assets shall be identified which the individual holds as the beneficial owner (*including in some cases it is necessary to initiate an international cooperation, which implies a complex process of collecting evidence on the concerned assets*), the criminal investigation body/prosecutor shall order parallel financial investigations to be conducted, so as to provide CARA with a reasonable timeframe to carry them out.

In order to achieve the purpose of the parallel financial investigations, the Agency shall collect evidence and materials on the individual subject to parallel financial investigations and his/her assets, including with regard to other individuals, to identify the goods that he/she holds as the beneficial owner, as:

- financial transactions conducted and bank accounts held;
- ownership of securities;
- shares in the equity capital of legal entities;
- revenue;
- movable and immovable assets;

- identification of other sources of income which have increased or
- decreased the assets of the individual subject to investigations.

IMPORTANT! During the parallel financial investigations, the criminal investigation body/prosecutor who initiated those checks is to achieve cooperation through good communication and by maintaining regular contact with CARA representatives who directly conduct the investigations, to avoid duplication of certain actions and to provide efficiency to the implemented measures.

3.2.2. Service for Preventing and Combating Money Laundering

In the context of financial investigations, it should be mentioned that during the criminal investigation, the prosecutor and the criminal investigation body, need to engage, in the most direct and active way, not only the representatives of CARA, who are legally empowered to directly conduct parallel financial investigations, but also the Service for Preventing and Combating Money Laundering (*hereinafter SPCML*), which, in line with the provisions of art. 19 para. (1) letter d) of the Law No. 308/22.12.2017 on preventing and combating money laundering and financing terrorism, conducts financial investigations to identify the source of the assets suspected of money laundering and terrorism financing that are distinct from those carried out by CARA.

In this context, the prosecutor/criminal investigation body shall interact with SPCML and decide on its role in the financial investigations, until the criminal investigation is completed, making full use of its functional tasks.

In this regard, it should be taken into account that the SPCML is an independent public authority in relation to other legal entities and individuals, regardless of the type of property and the legal form of the organization, and operates as a central specialized autonomous and independent body. The SPCML aims at preventing and combating money laundering and terrorism financing, contributes to ensure state security and carries out its duties freely, without external, political or governmental interference, which could compromise its independence and autonomy, it is also sufficiently staffed and resourced, financially and technically, to secure an effective operation at the national and international level.

In order to carry out its legal competence, the Service shall:

- receive, register, analyze, process and transmit to the competent bodies information on the activities and transactions suspected of money laundering and crimes associated with them, and of terrorism financing, submitted by the reporting entities, as well as other relevant information;
- notify the competent law enforcement bodies immediately when identifying pertinent suspicions of money laundering, terrorism financing or other crimes that led to acquirement of illicit goods, as well as the Intelligence and Security Service with regard to terrorism financing;
- notify the reporting entities, the supervision authorities of the reporting entities and other competent authorities on the risks of money laundering and terrorism financing, new trends and typologies in the field of money laundering and terrorism financing, the offenses identified in the areas of competence and the gaps in the normative acts with regard to prevention of risks related to money laundering and terrorism financing.

3.2.3. National Integrity Authority

The National Integrity Authority (hereinafter NIA), in line with the Law No. 132/17.06.2016, is a public authority, independent from other public organizations, other public or private legal entities and individuals, operating as a single body at the national level.

NIA ensures the integrity of civil servants and officials in fulfilling the duties and the prevention of corruption by exercising control of the assets and personal interests, and the observance of the legal regime of conflicts of interest, incompatibilities and restrictions.

To achieve its mission, the Authority has the following duties:

- exercises control of assets and personal interests;
- exercises control of the compliance with the legal regime of conflicts of interest, incompatibilities and restrictions;
- finds and penalizes the infringements of the legal regime of property and personal interests, conflicts of interest, incompatibilities and restrictions;
- cooperates with other institutions, both nationally and internationally;
- ensures a proper organization of the Agency and manages the activity of promoting the integrity of the subjects of declaration.

3.2.4. State Tax Service

The activity of the State Tax Service (*hereinafter - STS*) is focused on providing public administrative services to taxpayers aiming at ensuring the supervision and control in the fiscal field, and at finding offenses.

To carry out the tasks outlined in the Tax Code, STS has a number of rights some of which can be accessed at the time of parallel financial investigations:¹⁵

- carry out controls over how the taxpayers, the tax and local levies collection services and other persons comply with the fiscal legislation;
- carry out tax visits in line with the Tax Code;
- open and examine – seal if applicable – production premises, warehouses, shops and other places used for acquiring income or storing taxable objects, other objects, documents, regardless of their location, except for domicile and residence places;
- access the electronic/computerized recordkeeping system of taxpayers and take away the technical equipment containing these systems to obtain evidence about violations and crimes in its competence. The taxpayer is entitled to obtain from the State Tax Service, within 5 working days, a copy of the electronic/computerized recordkeeping system of taxpayers collected by the State Tax Service;
- check the accuracy of the data from the records and the taxpayer's fiscal reports;
- collect documents from the taxpayer in the cases and as prescribed by the Code, as well as collect the cash registers and tills from the taxpayer, that are used for cash receipts, to verify the software installed in them, drawing up a report in the established manner;
- find violations of fiscal legislation and implement measures to ensure, enforce the settlement of tax liability and accountability provided for in the legislation;
- use direct and indirect methods and sources to estimate taxable items and to calculate taxes and levies;
- request from financial institutions (their branches and subsidiaries) documents on their customers;

¹⁵ <http://demo.weblex.md/item/view/iddbtype/1/id/LPLP199704241163/specialview/1/ref/sf#T5>.

- request fiscal controls to be conducted and conduct them in other countries based on the international treaties the Republic of Moldova is a party to;
- ask the competent bodies from other countries for information on the taxpayers' activity without the consent of the latter;
- set criteria to identify the taxpayers, who, when performing VAT taxable supplies in the country have to provide the buyer (beneficiary) with an electronic invoice and to approve the list of such taxpayers.

When carrying out fiscal controls, if necessary, the State Tax Service may contract or involve specialists, experts, interpreters, who are qualified in the concerned field, to assist and contribute to the clarification of certain findings. The legal requirements and provisions for the tax service employees are binding for all the persons, including for those holding positions of responsibility.

IMPORTANT! Within parallel financial investigations, in the absence of a justification of the origin of money or property of the traced individual, it is appropriate to determine the source of assets including with the help of STS, which, in addition to the contribution provided in the pecuniary investigation, shall also determine if the taxes and levies have been paid in line with the Tax Code.

3.2.5. Customs Service

The Customs Service is an institution, which is part of the country's law enforcement and security system, whose mission is to ensure the economic security of the country by efficient collection of taxes and levies, combating customs fraud, facilitating international trade and protecting the society, applying the customs legislation in a uniform and impartial way.

In addition to the information provided by the Customs Service, as presented in the table in point 3.1.2 - "Information from the databases of state institutions", in order to perform its basic tasks, the Customs Service carries out a range of duties including some that are used by the investigators when conducting financial investigations, among them the following should be noted:

- conducting special investigative activities in order to detect the persons guilty of preparing and committing customs offenses, smuggling and other crimes in the competence of the Customs Service's criminal investigation body;
- sampling;
- applying enforcement actions;
- applying customs procedures regulating economic and trade relations;
- collaborating with other public authorities, institutions and law enforcement bodies that are required to assist them;
- determining the value of goods at the customs,¹⁶ etc.

3.2.6. Intelligence and Security Service

The Intelligence and Security Service of the Republic of Moldova (*hereinafter - ISS*) is the state body specialized in ensuring the national security by exercising all the appropriate intelligence and counterintelligence measures, collecting, processing, testing and making use of the information necessary for identifying, preventing and counteracting any action which, according to the law, pose domestic or external threats to the

¹⁶ Customs.gov.md/files/acte/legi_ru/1380(1).doc.

independence, sovereignty, unity, territorial integrity, constitutional order, democratic development, internal security of the country, society and citizens, the Republic of Moldova's statehood, stable operation of the vital national economy sectors, both on the territory of the Republic of Moldova and abroad.¹⁷

One of the Service's tasks provided for in art. 7, letter d) of the Law on the Information and Security Service is "*d) conducting activities to combat terrorism, financial and material support for terrorist acts*".

Thus, when carrying out financial investigations on crimes related to financing and supporting terrorist acts, the contribution of the Service may be requested in addition to the work to be undertaken by the SPCML.

Furthermore, ISS can provide information on certain financial aspects of certain offenses, other than those, which are under the responsibility of that institution. These sources need to be taken over and developed within investigations in the field, while observing human rights and freedoms.

3.3. Cooperation with international organizations

Financial investigations can often go beyond the borders of the Republic of Moldova requiring the involvement of and cooperation with international organizations.

Among these, the following international organizations and networks can be noted:

- Eurojust
- Europol;
- CARIN network;
- Interpol;
- SELEC;
- UNODC;
- ARSIN, RRAG, ARIN-AP, ARIN-WA, ARIN-EA etc. from Africa, Latin America, North America and others.

3.3.1. Eurojust

The Republic of Moldova and Eurojust cooperate within the remit of Eurojust's competence, to prevent and combat serious international crimes, where there is factual evidence and reasonable suspicion that a cross-border organized crime structure is involved and one or more EU Member States are affected. Eurojust also cooperates if the interests of the European Community itself are impacted so as to require a common approach, owing to the scale, significance and consequences of the offense concerned.

The cooperation between the Moldovan Prosecutor's Office and Eurojust is based on a Regulation¹⁸, and the focal point is the General Prosecutor's Office¹⁹.

Other forms of serious crimes falling under the competence of Eurojust are: illicit drug trafficking, money laundering, crimes with nuclear and radioactive substances, trafficking in migrants, trafficking in persons, crimes related to vehicles, murder and grievous bodily harm, illicit trafficking in organs and tissues, racism and xenophobia,

¹⁷ Law No. 753 / 23.12.1999.

¹⁸ Regulation on the cooperation between the Moldovan Prosecutor's Office and Eurojust, approved by the order of the General Prosecutor No. 29/7 of 17/10/2016.

¹⁹ GP Order No. 40/7.2 of 21.11.2016 on the appointment of Eurojust focal point.

organized robbery, illicit trafficking in cultural goods, including antiques and works of art, deception and fraud, racketeering and extortion of funds, counterfeiting and piracy, forgery of administrative documents and their circulation, counterfeiting money and other means of payment, information crimes, corruption, illicit trafficking in firearms, ammunitions and explosives, illicit trafficking in endangered animal species, illicit trafficking in endangered plant species, ecological crimes, illicit trafficking in hormonal substances and other growth promoters.²⁰

3.3.2. Europol (SIENA)

Europol is the European Union unit for Law enforcement, which is based in the Hague, Holland. Europol cooperates with law enforcement authorities in the Member States of the European Union and other countries that are non-EU members including Australia, Canada, the USA and Norway.

Europol investigates all forms of organized crime, involving at least two Member States and serious criminality as listed in the Annex to the Council Decision (art. 3,4 Europol Council Decision).

The Republic of Moldova cooperates with the *European Police Office* (Europol) based on the Strategic Cooperation Agreement signed in 2007 and the Operational Cooperation Agreement signed on 18.12.2014 in Chisinau. Since 2013, Moldova has seconded a liaison officer to Europol.

Among the services provided by Europol, the following can be mentioned:

- facilitating the exchange of information between Europol, Member States and third parties;
- organizing and providing databases for the introduction and use of information;
- analyzing the information on crime and criminals and disseminating the information to Member States;
- providing operational support.

The national unit, which manages and facilitates the exchange of intelligence at the international, regional and national level in the field of fighting against crime through Europol liaison channels, is the International Police Cooperation Centre²¹ (hereinafter IPCC).

The same center ensures the exchange of information with Interpol and SELEC/GUAM.

Europol manages a secure information system 'Secure Information Exchange Network Application' - **SIENA** through which information in the field can be accessed.

The request for access to information should include the following information:

- the type of information requested;
- the country from which information is to be requested;
- the data about the individual on who information is being requested (if possible PIN shall be indicated);

²⁰ In line with Article 4 of the Decision No. 2009/426/JHA of 16.12.2008 of EU Council on strengthening Eurojust and amending the Decision No. 2002/187/JHA of 28.02.2002 on establishing Eurojust in order to strengthen the fight against serious crimes.

²¹ <http://politia.md/ro/content/informatii-despre-ccpi>.

- the links between the individual concerned and the state addressed;
- the criminal case number;
- the gist of the crime investigated and the legal classification of the investigated crime;
- the urgency of the request and the justification of the need.

SIENA network cooperates with other countries that are not members of the European Union through CARIN network (Camden Asset Recovery Interagency Network) and through the Secretariat provided by Europol, information may be requested from other regional networks as CARIN: ARINSA (Asset Recovery Inter-Agency Network Southern Africa), RRAG (Red de Recuperacion de Activos de GAFISUD – Latin American Asset Recovery Network), ARIN-AP (Asset Recovery Interagency Network Asia Pacific), ARINWA (Asset Recovery Interagency Network for West Africa) and ARIN-EA (Asset Recovery InterAgency Network for Eastern Africa).

3.3.3. CARIN network

Camden Assets Recovery Interagency Network (hereinafter CARIN) - is a project developed by Europol and is an informal network of practitioners and experts in the identification, seizure and confiscation of the proceeds of crime. This entity includes 54 jurisdictions from several countries including the EU member states and nine international organizations.

IMPORTANT! Prior to formally requesting information on the identification of the proceeds of crime, with the remark that the response serves as evidence, the proceeds of crime have to be identified informally through the CARIN network and its sub-networks: RRAG (for South America) ARINSA (Southern Africa), ARINEA (East Africa), ARIN WA (West Africa) and ARIN SA (Southern Africa).

The Republic of Moldova has the status of an observer in the network and IPCC is the liaison point.

3.3.4. Interpol

Interpol is the International Criminal Police Organization, which is based in Lyon, France and has 190 member states including the Republic of Moldova.

Within the cooperation through Interpol, the Member States may benefit from the following services:

- provides a 24/7 system for exchange of information between Member States;
- intelligence exchange;
- interconnection for police officers;

- provides the police with access to the Interpol database on suspects, wanted individuals, lost or stolen passports, stolen vehicles, fingerprints, DNA profiles, missing artworks etc.

IPCC is the national unit, which facilitates the Interpol exchange of information in the Republic of Moldova.

3.3.5. SELEC

The Southeast European Center for Law Enforcement (SELEC), based in Bucharest, is an international law enforcement organization that brings together 12 member states. SELEC aims at providing support to member states and enhancing the coordination in preventing and combating cross-border crime, being the follower of the Cooperation Initiative in South Eastern Europe (SECI).

The SELEC member states are: Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the Republic of Northern Macedonia, Greece, the Republic of Moldova, Montenegro, Romania, Serbia, Turkey and Hungary.

The SECI Center partner states and the USA, that financially supported the Center, raised the issue of strengthening the relations between the Center and the Europol and sought a prospect development of institutionalized relations with the EU bodies with competence in the field of security.

SELEC is the only organization in South-East Europe acting in combating cross-border crime at an operational level, bringing together police and customs authorities from the 12 member states.

From an operational perspective, SELEC maintains the flexibility and operational efficiency of SECI, whereas the analysis capacity has been improved by installing more performing information and technical systems, ensuring an adequate level of protection of personal data in line with the EU standards. The ratification and the entry into force of the Convention, provides SELEC an international legal personality and also defines the terms and manner of cooperation with other important law enforcement international organizations.

The cooperation with SELEC is possible for any state, organization or international body that has a special interest in law enforcement cooperation in the South-East Europe region.

The **Operational Partner** status confers the right to participate in the operational activities held by SELEC and to exchange information, personal data and classified information. Also, the Operational Partners are entitled to attend all the meetings and activities held by SELEC.

Currently, Interpol, Italy and the USA have the status of Operational Partners.

3.3.6. UNODC

The United Nations Office on Drugs and Crime (hereinafter UNODC), a co-sponsor of UNAIDS since 1999, has the mandate to coordinate all the control activities on illegal drugs and prevention of terrorism and cross-border crime. The Agency supports the member countries to ensure the access to healthcare, security and justice for all the citizens in the circumstances of the existence of these global

threats. However, UNODC consults and helps governments in combating trafficking in persons and in mitigating the health conditions of the trafficked victims, particularly with HIV.

The Agency is developing the unodc.org site where one can obtain information on the international legal cooperation instruments and networks.

Moreover, the Agency has developed the IMOLIN database (www.imolin.org) which provides information on UN member states' legislation, in terms of money laundering and the conventions, which the countries are a party to.

The IMOLIN database developed by the Agency (www.imolin.org) provides information on UN member states' legislation, in terms of money laundering in the legislation of these countries and the conventions which each state is a party to. The database can be used based on a user account, which can be created using a business email, and the information is available only to the civil servants from the public system.

3.4. Operational phase of the investigation

IMPORTANT! The planned criminal investigation actions and the special investigative measures are conducted during the operational phase. They shall be continuously tailored both to the nature of the offense and to the results obtained in the course of a criminal investigation. In this context, a certain hierarchy of evidence can be established in the planning phase, in the light of which the status quo shall be maintained.

Typically, during the operational phase, **after checking the open sources of information and accessing the databases** to get different data on individuals and legal entities, the following shall be carried out:

- conduct special investigative measures;
- perform searches;
- interview the witnesses;
- interview the accused/suspect;
- joint investigation teams;
- interview the specialists.

It should be noted that the investigation of a criminal activity is usually conducted using modern investigative means, but the evidentiary purposes shall be decided upon depending on the types of concealment of the proceeds of crime the criminals resort to.

3.4.1. Special investigative measures

These are used to determine the position and the control exercised by the suspect/accused on certain persons or to verify the financial transactions of the individuals involved.

Not all of the special investigative measures provided for in art. 132² of the Criminal Procedure Code, widely used in the investigation of crimes, shall be highlighted.

IMPORTANT! The prosecutors and the criminal investigators at the time of ordering a special measure to be carried out and when authorizing it, in orders and requests, along with the pertinent information about the spectrum of evidence of the predicate offense, shall seek and collect information on the financial profile of the individuals who have been subjected to the special measure.

As applicable, from the range of own special investigative measures used to conduct parallel financial investigations the following can be noted:

- ✓ **art. 133 of CPC** - "*Sequestration, examination, handing over, or collection of correspondence*" – the following correspondence may be sequestered, examined, handed over or collected: letters of any kind, telegrams, radiograms, parcels, packages, mail containers, postal money orders, faxes and **email messages**.

The investigation of the electronic mails can be a valuable source of financial information because, currently, namely this particular means of communication is used more often, especially in profit-generating offenses.

- ✓ **art. 134¹ of CPC** - "*Monitoring the telegraphic and electronic communications connections*"- consists in the access and verification, without notifying the sender or the recipient, of the communications that were transmitted to institutions that provide electronic mail delivery services or other communications and the incoming and outgoing calls of the subscriber. This activity allows the penetration into a computer system or a data storage medium either directly or remotely, by using certain adapted software or through a network, in order to find evidence.
- ✓ **art. 134⁴ of CPC** - "*Monitoring or control of financial transactions and access to financial information*"- represent operations that provide content knowledge of financial transactions conducted through financial institutions or other competent institutions, or that acquire documents or information from financial institutions that they have about an individual's deposits, accounts or transactions.

It should be taken into account that the monitoring or control of financial transactions and access to financial information shall be ordered in the criminal proceedings on the crimes provided for in art. 189-192, 196, 199, 206, 208, 209, 217-217⁵, 220, 236, 237, 239-248, 251-253, 255, 256, 278, 279, 279¹, 283, 284, 290, 292, 301¹, 302, 324-327, 330¹, 333, 334, 343, 352, 361 and 362 of the Criminal Code.

- ✓ **art. 136 of CPC** - "*Covert investigation*" - is used in particular to establish the subjective side of the offense, to identify all the participants in the crime and the actual course of the offense, and in addition to determine the time and place where it is being carried out.

Though, the special investigative measure – the undercover investigation – shall take into account the financial aspects of the case so that once the infiltrator gains the trust of the suspect(s), he/she could also collect information on the goods, the real estate and the vehicles used by the suspects, the lifestyle, the sources of income, expenses and payment systems used.

IMPORTANT! When recording the results of the investigation, in line with art. 132⁵ CPC, the investigating officer shall examine in a vigilant manner the product received after documenting the measure, and in addition to the information on the predicate offense, he/she shall highlight, as well, the evidence on the financial profile of the individual subjected to special measures.

3.4.2. Searches of homes, residences, business offices, and accounting offices

Within the criminal investigation activity, art. 125-132 of CPC, the searches carried out in most profit-generating crimes, are often omitted as parallel with the necessary evidence for the predicate offense, in order to check also the financial aspects of the case.

During the searches conducted within the criminal investigation, the prosecutors and the investigators shall reflect in the orders and in the requests for authorization of the criminal proceeding, along with the objects of crime (e.g. drugs, firearms, allegedly false documents etc.) also the objects that reflect or contain information on the financial activity of the investigated individuals.

For example, in cases of profit-generating offenses it is sensible to collect also documents on the financial profile of the individual²² including:

- documents on real estate, vehicles or other property (ownership documents, invoices, commercial and insurance contracts, loan and mortgage contracts, receipts on interest payment on deposit accounts, tax payment receipts, documents that confirm the refurbishments of owned property, especially real estate);
- keys to buildings or vehicles;
- documents on bank accounts and safe deposit boxes;
- documents on enterprises;
- electronic equipment, including mobile phones, smartphones, tablets, computers, or information storage devices (sticks, hard disks etc.).

The memory of these technical systems can store information on payment systems used by the beneficiaries, the expenditure and income records, purchases via online shops, a spectrum of other relevant information for establishing the financial profile.

The home searches can be carried out at the houses of suspects/accused, and at the locations identified through other evidence that has been established in other criminal proceedings, special investigative measures etc.

Prior to searches, in order to identify the objects that will be of interest for financial investigation, in each individual case, the persons who will conduct this measure are to inform themselves about the individuals living in these real estates

²² See above in the previous chapter.

and respectively their situation as related to the investigated offense, the objects that can be found or that may be detected in the searched house.

3.4.3. Examination of witnesses

Based on the peculiarities of the profit-generating crime, the examination of the witness, the information on the financial profile of the individual is to be collected alongside with the evidences for the predicate offense.

When carrying out the financial investigation of a crime, the examined witnesses can be divided into three categories, and namely:

- a) witnesses - interested in the results of the investigation;
- b) witnesses - allegedly involved in the crime;
- c) witnesses - third parties.

It is necessary to identify the category of the witnesses in order to establish the approach to be taken by the investigator at the hearing and the questions to be asked.

a) witnesses - interested in the results of the investigation - are the individuals, that the suspects/accused point at, indicating that the source of the funds/goods are specifically from these individuals.

The persons mentioned by the suspects/accused who may be relatives, friends, other close persons or individuals managed by them, as a rule, confirm the allegations on the origin of money/goods under investigation.

The statements of these persons are to be checked thoroughly, following which it is sensible to conduct a repeated hearing of witnesses to clarify especially the aspects that do not match the data collected from objective sources.

b) witnesses - allegedly involved in the crime - are those individuals, who based on some sources, are connected to the offense, but the collected evidence is not sufficient to recognize these individuals as suspects/accused, while the objective circumstances make it necessary to hold hearings.

The examination of these witnesses – who may be the accountants of an enterprise, administrators, persons interposed by the beneficial owner and who hold valuable information for the investigation – requires a specific approach taken by the investigators to check the involvement of the investigated person in particular and respectively to collect evidence on the financial aspects of the case.

c) witnesses - third parties - are the individuals who know certain circumstances of the case and can objectively reflect on the investigated facts. The examination of these witnesses is to be prepared with a range of information from open sources of information and databases of state and private institutions to prove certain financial aspects of the investigated case.

3.4.4. Examination of the suspect/accused

The suspect or the accused, in line with art. 64, 66 of the CPC, is entitled to choose to make statements or to use the right to remain silent. Moreover, when

agreeing to testify, they often cheat without being constrained by the law to make true testimonies.

Thus, depending on the position assumed, the inquiries related to the financial profile have to be formulated concurrently with the hearings related to the income-generating offense.

At this point, it is sensible to use a procedural trick and despite the position to use the right to remain silent (with regard to the accusation in the income-generating offense) the police investigator or the prosecutor could ask the suspect/accused separate questions whether he/she might want to explain the origin of the goods detected or identified in the criminal proceedings, and respectively the circumstances under which he/she got them or the conditions under which he/she uses them.

In this situation, taking into account the case No. 44652/98 of 08.10.2002 *Beckles v. United Kingdom*²³ of October 8, 2002, whereby the European Court of Human Rights held that "*... the right to remain silent cannot and should not prevent the silence of the accused, in cases that require clear explanation from the latter, to be taken into account when determining the relevance of the evidence presented by the prosecution ...*" the right to remain silent shall not be regarded as an absolute right, because the justification of the origin of the material goods and assets is a positive obligation for the owner or the holder, whereas the lack of explanations may lead to the conclusion that they originate from illegal income.

The ECHR's practice with regard to the obligation of the accused/defendant to justify the origin of the financial resources can be noted as well in the case No. 23572/07 of 02.05.2017 - *Steve Mitchell ZSCHÜSCHEN v. Belgium*²⁴.

In the second scenario when the suspect/accused accepts to be examined, in addition to questions related to the charges on the predicate offense, questions are to be formulated about the income and assets of the accused.

With regard to the funds, the origin of which is more difficult to establish, questions can be formulated on:

- a) the maximum amount that is claimed to be held at the beginning of the period;
- b) what was the origin of that amount;
- c) where was the amount kept;
- d) who knew about this amount;
- e) if anyone counted the money;
- f) if anyone else knows about these amounts;
- g) what currency was the amount kept in.

All of these need to be checked during the examination of the witnesses or of the accomplices to the investigated crime.

²³<http://hudoc.echr.coe.int/eng?i=001-60672>

²⁴<http://hudoc.echr.coe.int/eng?i=001-174209>

3.4.5. Joint investigation teams

The investigation of the profit-generating crimes, which involve the need to conduct financial investigations, often goes beyond the country borders due to its transnational nature.

The international legal assistance in criminal matters is provided for in Chapter IX of the Criminal Procedure Code, and the most commonly used form is the rogatory commission letters.

Currently, the investigators often cooperate in joint investigation teams to conduct investigations on the territory of two or more countries.

The competent authorities of at least two countries may set up, together, a joint investigation team for a specific purpose and a limited period of time, which may be extended by mutual consent of all the parties, to carry out criminal investigations in one or more of the countries that are members of the team. The composition of the joint investigation team is decided by mutual agreement.

The joint investigation team can be set up when:

- within an ongoing criminal investigation in the requesting country some difficult criminal investigations are to be conducted, which also involves the mobilization of substantial resources in other countries;
- a number of countries are conducting criminal investigations requiring a coordinated and concerted action in those countries.

The request to set up a joint investigation team shall include information on the authority that made the request, the subject and the reason for the request, the identity and the nationality of the person, the name and the address of the recipient, if applicable, and proposals for its composition.

The constituents of the joint investigation team appointed by the Moldovan authorities have the status of members, while the members appointed by a foreign state have the status of seconded members.

The joint investigation team shall operate in Moldova based on the following rules:

- the joint investigation team leader is a representative of the authority involved in criminal investigation from the member state on the territory of which the team is operating and is acting within the limits of his/her competence under his/her national law;

- the team's duties are carried out in line with the legislation of the Republic of Moldova. The team members and seconded members perform their duties under the responsibility of the person appointed as the team leader, taking into account the conditions set by their own authorities in the agreement on setting up the team.

The seconded members of the joint investigation team are entitled to be present at any procedural activities, unless the team leader, based on special grounds, decides otherwise.

When the joint investigation team is to take procedural steps on the territory of the requesting country, the seconded members may request their competent authorities to take those measures.

A seconded member of the joint investigation team may, in line with his/her national law and within his/her competence, provide the team with information for conducting the criminal investigations, which is available to the country that has seconded him/her.

The information acquired jointly by a member or a seconded member while participating in a joint investigation team and which cannot be obtained otherwise by the competent authorities of the countries involved, may be used:

- for the purpose the team was set up;
- to detect, investigate and trace other crimes, upon the consent of the country on the territory of which the information was obtained;
- to prevent an immediate and serious threat to the public security;
- for other purposes, if this has been agreed upon by the countries setting up the team.

In case of joint investigation teams operating in the Republic of Moldova, the seconded team members shall be integrated with the members from the Republic of Moldova with regard to the offenses committed against them or by them.

The processes of setting up and the operation of the joint investigation teams are regulated both by the national legislation, namely art. 540² CPC, and by the Instructions on setting up and on the operation of the joint investigation teams, approved by the Order No. 40/215/324-0/92 of 23.07.2014.

3.4.6. Establishing findings/conducting expert analysis

Within the financial investigations conducted by investigators to establish the pecuniary aspects of the offense, certain types of findings/expert analysis are ordered including accounting, economic, financial and banking, and merchandising ones etc.²⁵

The objects of **accounting findings/expert analysis** are: the primary accounting documents; the accounting records; the registers-orders, the reports, the ledger; and the recordkeeping books (registers, analytical records, cumulative records).

During the investigation, the specialists/experts can use statistical data, reviews, control reports, STS documents, conclusions of experts of other specialties, and minutes attached to the file, if this information is necessary for the specialist/expert to conduct the investigation and is related to the accounting files.

The objects of the **financial and banking** findings/expert analysis are the accounting records, the primary accounting documents and the banking documents; minutes; the financial documents and economic data, the lending files, other documents on credit analysis and the relationship between the lender and the borrower; the financial and economic data of the economic agent, the lending agreements, associated meeting minutes; the control and revisions documents, the normative acts regulating the taxes and calculation rules; investigation of the materials of the agent the loan is granted to; and the inventory documents.

²⁵ <http://www.justice.gov.md/pageview.php?l=ro&idc=245>

The objects of **economic** findings/expert analysis are: the budgeted expenditures; the business plan; the accounting records; the normative acts on wages, annual leaves, premiums; the calculation of the economic headcount for optimization and proposals; the budgeted expenditures of funds and material goods; the review and control documents on the construction object, and the conclusions of the technical specialist/expert.

In criminal cases, the criminal investigation bodies need to establish the cost of certain assets. To this end, a **merchandising** finding/expert analysis can be conducted.

The objects of study thereof are: the industrial goods for large consumption, textiles, clothing, knitwear, leather goods, footwear, furs and hides, carpets, furniture, sports items, jewelry, perfumes and cosmetics, household goods etc.; food and agri-food; packaging; documents related to goods and products, the accounting inventory lists, property recordkeeping cards on the warehouse goods, purchasing invoices; certificates of quality and origin, certificates of laboratory analysis; documents which reflect the quantitative and qualitative characteristics of the products upon delivery, during the transportation, storage and sale.

IV. RECORDING PARALLEL FINANCIAL INVESTIGATION RESULTS

4.1. Competence and general rules

In line with art. 258 para. (3) of the Criminal Procedure Code, the **Criminal Assets Recovery Agency** shall inform the criminal investigation body/prosecutor about the measures taken under the mandate by submitting the report documenting the results of parallel financial investigations.

The execution timeframe of the mandate ordered to the Agency cannot exceed a reasonable term of the criminal investigation, notifying every 60 other days the criminal investigation body about the results of the parallel financial investigations conducted.

In line with art. 93 para. (2) point 9) of the Code, the actual facts included in the report documenting the results of parallel financial investigations are allowed to be provided as evidence in criminal proceedings.

Thus, the report documenting the results of parallel financial investigations, when drafted accordingly, is both an important source of evidence and a detailed review of the actions taken within parallel financial investigations.

4.2. Reports documenting the results

The report documenting the results of parallel financial investigations shall be drafted in line with art. 260 of the Criminal Procedure Code, and the provisions of art. 5 letter a) of the Law No. 48/2017, if developed by the criminal investigation officer of the Agency.

The report **shall include information** on:

- the person responsible for drawing up the report;
- the date of receiving the mandate;

- the subject of the investigation and his/her status (suspect or accused);
- the place of residence, conditions, domicile, marital status, way of life and lifestyle of the subject of parallel financial investigation, of the family members, as appropriate;
- the workplace of the subject of the investigation and of the family members;
- the owned movable and immovable goods and their value, the position of the founder or the administrator of the legal entity;
- the owned movable and immovable property and their value detailing the arguments and evidence confirming the period and method of entry into possession, the funds used, the intermediaries;
- the legal revenue and expenditure of the subject of the investigations and of the family members;
- the bank accounts (a card, current/credit/debit account etc.), the funds availability on the account, safe deposit boxes held, money transfers received/made;
- the information on whether the investigated person was/has been involved in litigation;
- identifying the income obtained:
 - a) the information from the declarations on assets and personal interests;
 - b) the information from the information systems of the State Tax Service on the revenues and dividends earned;
 - c) where appropriate, the information from relevant institutions on the submitted annual reports;
 - d) the information on family events in which the subject could have collected funds (birthdays, weddings, christenings and other events);
- the information on assets held abroad and, where necessary, expenses incurred abroad (travels with the family for holidays, purchases of goods abroad etc.);
- the analysis of data obtained by collating data on property owned, income and expenditure incurred;
- notes, in case of substantial difference between the person's revenue and expenditure;
- notes on seized assets and justification for this (*the date of seizure, the number of the court decision, the justification, the de jure, de facto owner etc.*)

All the original materials, evidence, documents shall be attached to the report to confirm its content.

V. ILLICIT ENRICHMENT. ESTABLISHING UNJUSTIFIED INCOME

5.1. Overview and regulation of illicit enrichment

The criminal law sanctions the illicit enrichment offense, describing this in art. 330² as "*Ownership by a person in a position of responsibility or a public person, personally or through third parties, of assets if their value exceeds substantially the*

acquired funds and where it was found, based on evidence, that there was no way for those to be obtained lawfully."²⁶

The prosecutors/criminal investigation bodies shall pay more attention to the investigation of the criminal cases related to public persons/officials or to the criminal cases, which reveal activities of public persons/officials.

The information on illicit enrichment can be revealed from the results of special investigative measures (*particularly the special investigative measures that enable the use of audio recording, photo or video devices*) and other procedural actions which reveal unjustified income (*collecting the information containing banking secrecy, collecting documents, site investigation or searches*).

If the procedural actions carried out in a criminal case reveal data or information on a public person/official owning goods or properties whose origin is not justified, the criminal police investigator/prosecutor shall initiate investigations within criminal proceedings to identify the reasonable suspicion that such an action has been committed.

The unjustified origin is to be understood as where the value of property substantially exceeds the lawful income acquired by the public person/official and is incompatible with his/her actual expenses.

The substantial difference is to be determined by the **net income method**. The criminal investigation body, the prosecutor shall establish the amount of the income declared by the public person/official, from which the amount of the property acquired during the referred to period and the amount of the actual expenses incurred by that person is to be deducted.

If it is impossible to identify the actual expenses, these should be related to the minimum subsistence amount in line with the data of the National Bureau of Statistics²⁷.

Where special expenditures are identified (*e.g. purchase of luxury items, incurring expenses for leisure or entertainment, etc.*) they shall be combined with the minimum subsistence amount in line with the data of the National Bureau of Statistics.

In order to identify the net income, the criminal investigation body or the prosecutor shall access the national databases to determine the assets of the public person/official (*for e.g. the electronic register of transport, the real estate registry, the records of border crossing, the portal of declarations of assets and interests, etc.*).

The difference between the value of the assets held and the licit income shall be deemed the difference exceeding 20 average monthly salaries per economy between the acquired assets and the income received by the subject of the declaration together with the family members, cohabitants during the mandates or while holding public functions in the same period (art. 2 of the Law No. 133/17.06.2016 on the declaration of assets and personal interests).

²⁶ Art. 330² introduced by the Law No. 326/23.12.2013, in force since 25.02.2014.

²⁷ Access <http://statistica.gov.md/>

In any conditions, the information shall be obtained without prejudicing the investigation, based on the principles of lawfulness and, where appropriate, confidentiality.

The criminal investigation shall comply with the provisions of the Criminal Procedure Code on the competence for conducting criminal investigations. If the criminal investigation body, which initiated the criminal proceedings on the illicit enrichment case is not competent to continue the criminal investigation, it shall proceed in line with art. 271 of the Criminal Procedure Code.

When transferring the materials of the criminal case by competence, the necessary measures shall be taken not to allow the disclosure to third parties of data and information identified prior or after the initiation of the criminal proceedings.

When entering the criminal case into the AIS criminal investigation "E-file", it is advisable not to indicate data on the investigated crime or the public person/official, unless he/she is recognized as a suspect or is under indictment.

The investigation of an illicit enrichment offense shall be focused on identifying the following circumstances:

- the legally acquired income;
- the declared income;
- the property held;
- the incurred expenses;
- the lifestyle of the subject.

5.2. Legally acquired income

The legally acquired income of the public person/official is the income acquired by him/her and his/her family members from legal sources, the origin of which is justified by official documents or civil legal documents which are not void due to being fictitious or simulated (*wages, allowances, bonuses, daily allowances, material assistance, payments from other activities allowed by law based on the position held, donations etc.*)

The criminal investigation body or the prosecutor shall verify the authenticity of the legal income source.

If the income has been acquired as a result of a civil legal activity, the following shall be verified and established, including:

- the relationship between the public person/official and/or his/her family members and the contractor, where applicable, with the former owners, service providers, lender, inheritor etc.;
- when the intention to draft the legal document occurred or who the initiator of the transaction was;
- if the asset value or price specified in the legal document matches the price amount or the actual value typical for such a transaction or whether or not the payment has been made as indicated in the contract;
- if the person who concluded a free civil legal document, to the benefit of a public person/official and/or their family members had a real possibility to perform the obligation.

5.3. Declared income

The declared income of a public person/official represents the income indicated in the declarations of the assets and personal interest, the income declared annually to the State Tax Service and the income declared by the family members.

To identify the declared income, the criminal investigation body or the prosecutor shall access, confidentially, as appropriate, the relevant databases (the portal of declarations of assets on the www.ani.md or reports.fisc.md sites).

5.4. Held property

The investigation is to identify all the assets held by the public person/official and/or the family members, personally or through third parties.

When identifying the assets held, the information from the declarations of assets and interests or the declarations submitted to the State Tax Service and databases (for *e.g. the register of real estate or the register of the means of transport*) shall be verified. At the same time, the existence of other property such as collections, antiques shall be identified. Equally, the information contained in media materials or the petitions of other persons shall be checked and as applicable, the information in the court judgements related to those properties shall be verified.

The criminal investigation body or the prosecutor shall determine whether the public person/official and/or the family members own property through third parties (*in-laws, friends or other intermediaries*), including by checking the regime of possession and use of property.

In addition, the actual prices of the assets purchased or sold indicated in the declarations shall be verified.

5.5. Incurred expenditure

The expenditure category shall include the costs incurred by the public person/official and/or the family members to purchase goods or services (*the purchase of cars and other technical equipment, the expenses on leisure and entertainment, the expenses on training, the expenses on organizing different types of events etc.*) including donations, consumption expenditure and the costs of maintaining the assets (*maintenance of real estate, cars, payment of utilities etc.*).

In addition, the liabilities shall be identified (*loans from individuals or legal entities or loans from banks or lending institutions*) and the repayment thereof. In this respect, the criminal investigation body or the prosecutor shall establish the full amount of the debt by relating them to the lawful income acquired and shall compare the debt amount to the real possibilities of the public person/officials and/or of the family members to extinguish the liabilities from legal sources.

5.6. Lifestyle of the individual and/or the family members

Any evidentiary procedures allowed by the law on criminal procedure to establish the lifestyle of the public person/official and/or their family members shall be applied.

After the initiation of criminal proceedings, in order to determine the lifestyle of the person and/or of the family members, it is necessary to order and authorize special investigative measures, the following being useful in particular:

- documentation using technical methods and devices;
- interception and recording of communications;
- monitoring or control of financial transactions and access to financial information.

Based on special investigative measures, the circumstances related to the actual expenditure shall be established.

Expenditure may be of the following nature:

- systematic (for *e.g. systematic visits to certain places or points of sales of goods*);
- periodic (for *e.g. investments made in the construction or repair of real estate or other assets, holiday travels*);
- sole (for *e.g. purchasing an apartment or car or paying for a service*).

Potential witnesses who would confirm the expenditure shall be identified by implementing special investigative measures (for *e.g. by identifying the contractor or the service provider or vendor*). In addition, based on special investigative measures, the places for on-site investigations, searches or seizure of objects or documents shall be identified.

Based on the on-site investigation, searches or seizures the objects and documents that describe the lifestyle of the person and/or his/her family members as well as those that prove their actual expenditures shall be found and collected.

The on-site investigation or search shall be mandatorily performed by using audio, video and photo devices. These devices shall be used to record the procedural activity and for the purpose of making an inventory/identifying the assets and property of the individual.

VI. FREEZING OF CRIMINAL ASSETS

The identified criminal assets shall be frozen, as appropriate, based on a court decision on sequestration or on a freezing order, issued under the Law No. 48/2017 on the Criminal Assets Recovery Agency.

6.1. Seizure

The precautionary measures consist in *freezing* movable or immovable assets by establishing a *seizure* on them. The seizure of property is the most common precautionary measure.

The precautionary measures are provided for in art. 202 of the Criminal Procedure Code. The purpose of taking these measures is to avoid: concealing, damaging, spending (alienation), withdrawal from tracing of goods that are subject to **special or extended confiscation** or which may serve as a **guarantee for the execution of the sentence of fine or of the reparation of the damage caused as a result of the offense**.

The precautionary measures are *provisional*. By establishing them, any activity of the suspect, accused, defendant, the civilly liable person or of any person who holds or owns the assets is foreclosed. The seizure of the assets is a coercive procedural measure, which consists in making the inventory of the assets and prohibiting the owner or holder to dispose of them, and if necessary, to use these goods. After the seizure of the bank accounts and deposits, any operations on them shall cease.

6.1.1. Time of ordering the measure

Since the goods that represent the proceeds of crime can be moved in a few minutes or sometimes even by a simple click of a mouse, the criminal investigation body should be extremely time sensitive when taking precautionary measures. Any delay in the execution of a seizure after the detention, arrest of the suspect or after the nature of the charge was revealed to the suspect, can be fatal for the recovery of the damage caused as a result of the offense.

The decision on the time factor to order and carry out precautionary measures takes priority over the economy of the case. If the precautionary measures are introduced too early, there is a risk that the procedures carried out may be disclosed to the offender and that he/she might divest the assets or activities in which he/she manages the proceeds of crime. Most often, this happens when certain actions such as searches, wiretaps, examination of witnesses, detention, disclosure of the charges, etc. are conducted.²⁸ Consequently, other procedural activities aiming at collecting evidence on the contribution of other participants in the criminal mechanism, monitoring the activities on the bank accounts or identify all criminal typologies will be difficult to carry out²⁹.

It is crucial that funds be frozen within a few hours after being detected, the jurisdictions where this fundamental principle of recovery of proceeds of crime is not respected, are then perceived as oases of tranquility for criminals³⁰.

The sequestration measure is usually preceded by the identification of goods that are to be subject to this measure.

The *identification* consists in the individualization and listing of goods indicating their exact characteristics when it comes to certain goods and in the individualization by indicating the number, quantity and characteristics of the species or categories they belong to when it comes to generic goods.

6.1.2. Categories of goods subject to seizure

In line with art. 204 of the CPC, the following can be seized:

a) the goods of suspect, accused, defendant

- to repair the damages caused by the offense, to the likely value of the damage;

²⁸ Jean-Pierre Brun, Clive Scott Kevin, M. Stephenson, Larissa Gray, *Asset Recovery Handbook: A Guide for Practitioners*, Washington, 2011, p.85;;

²⁹ Ibid;

³⁰ M. Pieth, preface to the International Centre for Asset Recovery, *Tracing Stolen Assets: a Practitioner's Handbook*, Basel Institute on Governance (II-nd edition), 2010

- to ensure that the fine is enforced, *only the assets of the accused or the defendant*, according to the maximum amount of the fine that may be established for the committed crime;

- to ensure an eventual special or extended confiscation of assets;

b) the goods of the civilly liable party – to repair the damages caused as a result of the offense, to the likely value of the damage;

c) the goods of a third party - to ensure an eventual special and extended confiscation of the goods provided for in art. 106 para. (2) and art. 106¹ of the Criminal Code.

6.1.3. Limited circumstances for applying precautionary measures

Precautionary measures shall be taken for seizing/confiscating the equivalent value of the goods where:

- the goods that were to be subject to special or extended confiscation no longer exists, cannot be found, cannot be recovered;
- the goods that were to be subjected to special or extended confiscation or have been onerously transferred to a person who didn't know nor should have known about for purpose of use or the origin of goods;
- the goods that are to be seized for the repair of damage caused or to guarantee the enforcement of a fine sanction are used for or are part of the technological process of production and their seizure would inevitably stop the person's economic activities.

If the goods subjected to seizure are a share of a joint property, only the share from the joint property subjected to special or extended confiscation may be placed under sequestration.

The assets that are jointly owned by spouses can be seized. If just one of the spouses has the status of a suspect, accused or defendant the provisions of art. 24 of the Family Code shall apply, in line with which the spouses are liable with all of their assets to repair the damages caused as a result of the crime, if the offense led to an increase in the joint property of the spouses.

The investigation shall also analyze the unexpected causes of changing the matrimonial regimes or those of formal dissolution of marriage to conceal the proceeds of crime/circumvent the obligation to compensate the damage, the precautionary measures are to be ordered to be taken with regard to these goods.

The seizure *shall not prevent the suspect, accused or defendant from purchasing livelihoods*. However, due to the seizure limitations in his/her possibility to continue the work and thus to secure livelihoods, this is inherent. When establishing the measure, it does not matter if by ordering it the suspect, accused or defendant will no longer be able to provide to him/herself the same level of existence, which he/she used to enjoy.

In line with art. 24 para. 6 of CPC, the following **cannot be seized**:

- the food necessary for the owner, the holder of goods and their family members;

- the fuel;
- the specialized literature and professional equipment;
- the dishes and kitchen appliances used permanently, that are not of high value;
- other items of primary need, even if later they can be confiscated.

Similarly, when determining the categories of goods subject to seizure, some provisions of the Enforcement Code³¹ shall be taken into account which establish certain categories/types of goods and income with a priority status, because they *cannot be subjected to a forced seizure, due to being uncountable*.

Thus, the public assets of the state or of the administrative-territorial units, as well as a number of assets strictly necessary for the personal or household use of the individual debtor and his family members shall not be subject to seizure; including *the items necessary for the debtor to continue his job, the special transport for disabled persons, the items needed to take care of people with disabilities and sick people; the food needed to feed the debtor and his family members for three months; the necessary fuel for cooking and heating the family homes in the cold season of the year*.

The following income of the debtor cannot be traced:

- the amounts paid for business trips, transfer, employment or deployment to work in another locality, the additional payment for work related to frequent travels;
- the allowances to mothers with many children or single mothers;
- the alimonies;
- the single indemnity paid upon childbirth and the monthly allowance for childcare until the age of 3;
- death benefits and death allowance;
- additional payments for the heavy and harmful working conditions;
- dismissal allowances;
- allowances to individuals who have suffered from the Chernobyl accident;
- survivor's pension to the parent or guardian (custodian) for children;
- nominal compensations;
- state social allowances;
- pension share in the amount of the minimum guaranteed wage in the real sector, except for support allowance.

The social insurance indemnities paid in case of temporary disability may be traced based on the enforcement documents on the collection of the support allowance and on the repair of the damage caused by mutilation or other damage to health, as well as for the loss of the breadwinner.

The salaries, other income, including scholarships, pensions of any kind and the amounts due under copyright law, inventor or innovator rights, can be traced and enforced only partially - the rule that has to be observed when placing the respective account under seizure.

³¹ For details see Article 89, 105-110 of the Enforcement Code

6.1.4. Competence to issue precautionary measures

The seizure of assets may be applied by the criminal investigation body/prosecutor or by the court under art. 205 of the CPC.

a) In the criminal investigation phase, the seizure of property is applied based on an order issued by the criminal investigative body or the prosecutor, upon the authorization issued by the investigating judge. The prosecutor, files a request to the investigating judge ex officio or upon the request of the civil party, together with the order on placing the assets under seizure. The investigating judge authorizes the seizure of goods, where there is a reasonable suspicion that the traced assets may be concealed, damaged or spent.

In case of a flagrant delict or a case that cannot be postponed, the prosecutor is entitled to seize the goods on his/her own order, without having the authorization from the investigating judge, but they are required to inform the investigating judge immediately about it, no later than 24 hours from the time of conducting this procedural action.

When receiving this information, the investigating judge shall verify the legality of the seizure and confirm its results or its invalidity. If the seizure was found to be illegal or ungrounded, the investigating judge shall order the total or partial release of the seized goods.

b) After sending the criminal case to the court for a substance examination, the competence to issue precautionary measures rests with the court, that judges the case based on the conclusion.

The court decides on the request of the civil party or any other party if the reasonable suspicion that the goods will be concealed, damaged or spent is justified.

In the order issued by the criminal investigation body/prosecutor or, where appropriate, in the court judgement on placing the assets under seizure the seized good shall be indicated to the extent they have been established in the criminal proceedings and the value of the assets required and sufficient to ensure the civil action.

If there is an obvious doubt about a voluntary listing of assets for seizure, the investigating judge or, where appropriate, the court concurrently with authorizing the seizure of assets, authorizes also the search to be conducted.

6.1.5. Coverage of seizure decision

If the seizure is applied **to repair the damages caused as a result of the offense**, assets should be frozen amounting to the likely value of the damage. In line with art. 206 of the CPC, the value of the assets placed under seizure, aiming to cover the civil case filed by the civil party or the prosecutor may not exceed the value of the civil case. Where determining the share of assets to be seized belonging to each of several accused persons, defendants or several persons liable for their actions, the extent of their involvement in the crime shall be taken into consideration. All the property of one of these persons can be seized in order to cover the civil case.

It should be noted that it is mandatory to take precautionary measures also with regard to confiscation even if the "damage" is covered, with no civil party claim for compensation.

From the assimilation of the international standards on this issue, the conclusion is drawn that the repair of the damage occurs with regard to the profit-generating crimes to repress those not only by providing compensation to the victim, where there is a civil party claim for compensation, but also by confiscating all of the proceeds of crime that they have generated. The proceeds of the crime shall be identified and frozen at the criminal investigation phase to the extent that the judge weighs according to the standard of proof – the preponderance of evidence that the security measure of special confiscation has to be taken in order to be able to have the eventual confiscation effectively guaranteed.

If the seizure is applied to **guarantee the enforcement of the sanction of fine**, the goods shall be frozen according to the maximum amount of any fine that may be established for the committed offense.

If the seizure is ordered **in order to ensure an eventual special confiscation**, the measure shall cover all the direct, indirect proceeds of crime and the seizure shall be decided by the court at the deliberations.

If the seizure is ordered for special confiscation, this shall not be ordered until a certain amount is established; the practice of the bodies responsible for the enforcement of the precautionary measures to include in the report on the fulfillment of the freezing measure that the seizure has been ordered to cover the amount mentioned as damage is a wrong one.

The proportionality of the involvement in this case shall be analyzed by the investigating judge or the court, based on the materials made available to them, including the analysis and the identification of the assets resulting from parallel financial investigations.

The seizure ordered to **ensure the eventual extended confiscation** shall cover the difference between legal and illegal income of a person during the referred to period, specified in art. 106¹ of the Criminal Code. For an extended seizure, the financial profile with assets and liabilities, of both the individuals and the legal persons under investigation, as well as of the related third parties, shall be developed.

The preventive seizure measure shall be motivated and the measure-ordering document shall show the fulfillment of the legal requirements on:

- the need;
- with regard to the aforementioned distinctions, if any, the extent of the damage and the amount for which seizure is required and the amount to be guaranteed in this way.

6.1.6. Enforcement of seizure

After the competent body has ordered the precautionary measures, the second phase is to ensure their implementation.

A representative of the investigation body shall hand over, under signature, to the property owner or holder a copy of the order or decision on the sequestration of

goods and shall request them to be transmitted. In case of refusal to fulfil voluntarily this requirement, the sequestration of goods shall be carried out forcibly. If there are grounds to assume that the goods have been concealed by the owner or holder, the criminal investigation body, having legal powers, is entitled to conduct searches.

The bailiff shall carry out the sequestration of goods based on the court decision, which was made following the criminal proceedings.

A representative of the criminal investigation body shall draft the report on the assets' seizure in line with art. 260 and 261 of the CPC, and the bailiff shall prepare the inventory list. In the report or, if necessary, in the inventory list, in particular:

- 1) all the sequestered material assets shall be listed, indicating the number, size or weight, the material they are made of and other individual elements, and to the possible extent, their cost;

- 2) the material assets that have been collected and those that are left for storage shall be indicated;

- 3) the statements made by present individuals and others about the ownership of the seized goods shall be recorded.

A copy of the report or of the inventory list is handed over under signature to the owner or the holder of the seized property and if he/she is missing – to an adult family member or to a representative of the local administration executive authority. Where the goods that are located on the territory of an enterprise, organization or institution are seized, a copy of the report or the inventory list is handed over under signature to a representative of the administration.

If the securities are seized, the copy of the seizure document shall be sent to the entity that keeps track of securities holders. The entity shall record the seizure of securities in the respective register, immediately after receiving the copy. Since then, no operation with the seized securities shall be made.

If real estate is seized, a copy of the seizure documents shall be sent to the territorial cadaster bodies to register the seizure.

In the case of mobile goods that are subject to state registration, a copy of the order/decision on the enforcement of the precautionary measure shall be transmitted to the authority carrying out state registration and keeping the respective register.

As a rule, the seized assets are taken away, except for the real estate and large objects.

Precious metals, precious stones and items made of those, securities and bonds shall be transmitted for safekeeping to the State Tax Service in line with the established procedure.

Other seized objects shall be sealed and kept by the authority upon whose request the respective assets have been seized or shall be transmitted for storage to the local public administration executive authority.

The seized assets that have not been collected shall be sealed and shall be allowed to be stored by the owner or holder or an adult member of their family, whom the liability provided for in art. 251 of the Criminal Code for acquiring,

alienation, substitution or concealment of such goods is explained to and from whom a written commitment shall be requested.

6.1.7. Challenging the precautionary measures

The assets seizure may be appealed as provided by the Criminal Procedure Code (art. 298, 299, 299¹, 302, 305, 313). The complaint has to be filed within 15 days, whereas the appeal within 3 days.

The complaint or appeal does not suspend the execution of this action.

Persons other than the suspect, the accused or the defendant who believe that the seizure of their property is illegal or ungrounded, are entitled to request the criminal investigation body/prosecutor or the court to remove the seizure from the assets.

Art. 209 of CPC stipulates that the term of examination of such a request is 10 days from its filing. Where refusing to comply with the request or failing to inform the respective person about the settlement of the request in due time, the person is entitled to demand the removal of the seizure from the assets *in line with the civil procedure*.

The court decision on the civil claim with regard to the release of the seized assets may be challenged by the prosecutor in a higher court of appeal within 10 days, but after its entry into force, it is mandatory for the criminal investigation body and the court that judges the criminal case when resolving whose assets have to be confiscated or, where applicable, traced.

6.1.8. Removing seizure from the assets

The assets are released from seizure by the decision of the criminal investigation body/prosecutor or by the court if, following the withdrawal of the civil action, the change of the legal classification of the offense the suspect, accused, defendant is charged with, or otherwise, the need to maintain the seized assets has decayed.

The court, the investigating judge or the prosecutor, shall, within the limit of their competence, release the seized property where it finds that the illegality of the seizure applied by the criminal investigation body without having the required authorization.

Based on the request of the civil party or other persons interested in seeking compensation for material damage in civil proceedings, the criminal investigation authority or the court is entitled to retain the goods under seizure after the trial, the dropping of criminal charges or the acquittal of the person, *for one month after the entry into force of the respective decision*.

6.2. Issuance of freezing order

In line with art. 10 of the Law No. 48/2017 on the Criminal Assets Recovery Agency, CARA shall issue the order on freezing the criminal assets for a period of up to 15 days, **based on the written request of the competent foreign authorities**. The freezing of assets based on the order issued by the Agency shall not prevent the seizure within the criminal proceedings.

The freezing order shall include:

- a) the information about the owner, holder or beneficial owner of the criminal assets;
- b) the legal classification of the case which has allegedly generated the criminal assets;
- c) the criminal assets to be frozen and the evidence related to these assets;
- d) the reasons that justify the need to freeze the criminal assets;
- e) where applicable, the individuals and public and private legal entities that are prohibited to participate in any form in operations and transactions with the indicated criminal assets as well as to facilitate the move, transportation or transit of criminal assets.

Based on the freezing order issued by CARA, the owners, holders and the beneficial owners of the criminal assets, other individuals and public or private legal entities involved in the operations and transactions involving the criminal assets may be required to suspend any operations and transactions related to the respective assets or any participation in them.

The freezing order issued by the Agency shall be made known to the individuals referred to in the order, immediately, but not later than three days after it was issued, in writing, by a telephone or telegraph note or electronically.

Such an order can be challenged in the administrative court without complying with the preliminary procedure.

The violation of the freezing order that has been made known to the concerned individuals by the Criminal Assets Recovery Agency entails criminal liability in line with art. 251 of the Criminal Code.

6.3. Assessment and management of criminal assets

The value of goods to be seized is determined in line with art. 206 of the CPC, *according to the average market prices* in the respective locality, by applying no coefficient.

However, in line with art. 207 para. (3) of the CPC, *a merchandiser* can be involved in the process of asset seizure to determine the approximate cost of the material goods in order to exclude the seizure of assets to the value that does not meet the amount specified in the order issued by the criminal investigative body/prosecutor or in the court decision.

Art. 229⁶ of the CPC stipulates that the valuation and the administration of the criminal assets, i.e. the storage, maintenance and management of the seized assets shall be ensured by the Ministry of Finance and, in case of the criminal assets provided for in art. 229² para. (2) of CPP³², by the Criminal Assets Recovery Agency.

³² In the case of intentionally committing one or more crimes of which at least one is provided for in article 141, 144, 158, 164, 165, 165¹, 166¹, 167, 168, 181², 206, 217¹, 217³, 218, 220, 239-240, 242¹-244, 248, 249, 259, 260, 260²-260⁴, 260⁶, 279, 283, 284, 324-329, 330¹, 330², 332-335¹, 352¹ and 362¹ of the Criminal Code and for crimes committed by using the official position provided for in art. 190 and 191 of the Criminal Code

The Agency carries out the valuation of the seized property, determining the cost of the seized asset on a specific date, taking into account the physical, economic, social factors and those of other nature, including the time evolution indices affecting the value.

CARA can contract individuals and public and private legal entities, whose specialization will ensure the most effective implementation of the valuation and management of the seized criminal assets. The services provided by these persons shall be paid from the financial resources obtained from selling the frozen criminal assets/from the financial resources allocated from the budget of the National Anti-Corruption Center.

In line with the *Regulation on the valuation, management and sale of criminal assets (seized)*, approved by the Government Decision No. 684 of 11.07.2018³³, if necessary, CARA shall organize the management of the seized assets located in the country and abroad by managing, administering and overseeing them, by assigning an administrator to recover the damage.

The conditions and the special cases of seized assets administration based on their nature:

- the seized cash in the domestic and foreign currency shall be transferred to the treasury accounts managed by the Agency;
- the seized electronic money held in the country and abroad shall be converted into the domestic currency or a convertible foreign currency, as appropriate, through national and/or authorized international legal persons, being subsequently transferred to the treasury accounts managed by the Agency.

The Agency shall ensure a single recordkeeping of information on the seized assets it manages and on goods for which seizure, special or extended confiscation was ordered, including by setting up a specialized database for this purpose.

6.4. Sale of criminal assets

In the cases referred to in art. 207¹ of CPC, the Ministry of Finance or CARA³⁴ shall ensure the sale of the seized criminal assets.

³³The decision was issued to implement the provisions of the Criminal Procedure Code and the Law No. 48/2017 on the Criminal Assets Recovery Agency, the Regulation establishing the principles of organization and carrying out the valuation, management and sale of criminal assets. The Regulation is implemented by CARA together with the Ministry of Finance through the State Tax Service.

Similarly, the document regulates the actions of the State Tax Service; the arising disputes; the exclusion from public auction of *counterfeit, fake, adulterated, corrupted, overused goods, weapons, ammunition, explosives, radioactive substances, drugs, precursors, ethnobotanics and their analogs, chemicals and harmful substances, and other goods under the law that have other use, including those whose civil circuit is limited or prohibited by law*; registering the funds in the name of the suspect, accused, defendant; and sets forth that the regime of the seized assets administered by the Agency, upon the final court decision, shall be regulated in line with the provisions of the Enforcement Code No. 443/2004 and of the *Regulation on the recordkeeping, valuation and sale of the confiscated, seized assets with no owner/holder, perishable or with a limited validity term, of the delinquent items, the property passed into state ownership with the right of succession and of the treasures*, approved by the Government Decision No. 972/2001.

³⁴ For the criminal assets under art. 229² para. (2) of CPC

The court that applied the seizure, during the criminal investigation, or the court judging the case, may, during the trial, before pronouncing a final decision, immediately order the sale of the seized goods:

- at the request of the owner of assets;
- upon his consent;
- or, where appropriate, upon the prosecutor's request.

If the owner's consent is missing, the seized property may be sold in advance, *as an exception*, in the following cases:

- the storage, maintenance or management of seized assets implies costs that are disproportionate to their value;
- the value of goods decreased significantly, by at least 10% within one year since the seizure;
- the assets' warranty or validity expires;
- the goods are flammable, oil products or pose another risk to life, health or the environment;
- the goods are live animals or birds.

In order to manage the process of criminal (seized) assets sale and to implement the *Regulation on valuation, administration and sale of criminal assets (seized)*, approved by the Government, the *Rules on the organization of the criminal assets (seized) sale*³⁵ was approved by the Order of the head of the State Tax Service No. 58 of 14.02.2019, the Seize Asset Management Division of the General Tax Administration Division from Chisinau having been appointed as responsible for implementing the measures of the Regulation.

In order to organize the sale process, STS takes over from CARA the documents on the criminal assets to be sold (*the procedure document for the application of seizure, the valuation document, the court's decision on the sale of asset, quality certificates, extracts from the database confirming the ownership of the asset, as appropriate*) and initiates the sale procedure upon the request of the Agency.

The seized criminal assets shall be alienated at a public auction, at an equal or higher price than the valuation price. If the seized assets fail to be sold after holding two public auctions, the sale takes place at public auctions with a gradual decrease of the price or where there is a single buyer - by direct negotiations. The securities shall be put up for sale in line with the legislation on the capital market.

The funds obtained from the sale of the criminal assets shall be placed on a temporary deposit account opened on the name of the suspect, accused or defendant. The receipt document of that amount shall be handed over to the criminal investigation body that requested the seizure no later than three days from the sale of the assets.

The disputes arising from tenders can be resolved amicably by the tender commission. The disputes that failed to be settled amicably shall be settled by the

³⁵ Official Gazette No. 76-85 (6999-7008) of 01.03.2019

court which ordered the sale of the seized criminal assets, in line with the Criminal Procedure Code.

The information about the process and the results of the sale of the criminal assets frozen based on the actions taken by CARA shall be published on the official website of the National Anti-Corruption Center.

VII. CONFISCATION OF CRIMINAL ASSETS AND DAMAGE RECOVERY

7.1. Special confiscation

To deter criminal activities, it is essential that the offenders be deprived of the proceeds of crime. The organized criminal groups are building large-scale international networks and acquire substantial profits from various criminal activities. Through money laundering, these products are reintroduced into the legal economic cycle.

The assets of the criminal groups can still be identified with the help of financial information.

To be effective, any attempt to prevent and combat crime has to focus on identifying, tracing, freezing or seizing and confiscating the instruments and the proceeds of crime.

Special confiscation is regulated by art. 106 of the Criminal Code, as a security measure which consists in a forced and free of charge transfer of the following assets (including currency values) into the ownership of the state:

a) The goods used or intended for committing an offense:

- represented a means of committing the crime (for *e.g. the car used by the defendant to commit the smuggling offense, the means of transporting illegal migrants*);
- were not used as a means of committing the crime, but were intended to be used as such;
- have been produced, modified or adapted to commit the offense, if they have actually been used in the commission thereof, respectively created for this purpose (for *e.g., a key to enter a premises*), or that are meant for another purpose, but were modified to be used in committing the offense (for *e.g. a vehicle adapted to transport drugs, a room designed for the production and storage of substances forbidden by law*);
- were used by the perpetrators to stay in touch when committing the crime and to coordinate criminal acts (for *e.g. technical communication devices - laptops, computers, units of measurement*).

How the assets were used in committing the crime is irrelevant - **in any way**. For example, subject to confiscation shall be an asset that is not exclusively used for committing the offense, but is used for this purpose alongside with its legal purpose - for example, the vehicle used for legal transportation activities, but in which, taking advantage of legal load, assets held in violation of the law are hidden.

The confiscation measure, in the above-stated situation, can be taken only in crimes committed deliberately, and not in those committed out of negligence, in the

latter case the perpetrator cannot be considered to have used that good in committing the offense.

The asset has to be the perpetrator's, or if it belongs to someone else, the offender should have known the purpose of its use. When the asset belongs to the perpetrator it is sufficient to determine that the asset has been used by him, in any way, to commit the crime. If the asset is owned by another individual and has been used by the perpetrator to commit the crime, it should be determined that the person knew the purpose of its use, without participating in any way in the crime.

b) The proceeds of crime and any income from selling these goods, namely:

- which became the property/possession of the perpetrator by carrying out the material element (*e.g., funds obtained by tax evasion, embezzlement, illegal income from the sale of drugs, weapons, from sexual, labor exploitation, from other illegal profit-generating activities*);

- which replace the assets originally acquired by committing the offense (*items purchased with the funds acquired by committing the offense*).

In principle, the assets from this category shall be confiscated where they are not returned to the aggrieved person or cannot serve for the compensation of the damage. These goods are confiscated only if the aggrieved person is not a civil party or where the civil party renounces to compensation or when the aggrieved party does not claim the stolen assets back or any compensation by monetary equivalent.

If the defendant used stolen amounts to purchase goods or the stolen goods were converted into money, they shall be confiscated under the same conditions, i.e. to the extent that they do not serve to compensate the civil party.

If the asset acquired by committing the offense was alienated to a purchaser in good faith, it cannot be confiscated, but the defendant is obliged to pay the amount obtained by disposing of the asset subject to confiscation.

c) The goods given to induce someone to commit an offense or to reward the offender, respectively the goods that:

- have been transmitted to the perpetrator before committing the crime to induce him/her to commit the offense;

- have been transmitted to the perpetrator after the offense was committed as a reward for committing the crime.

The measure shall be applied even though the instigated individual has not started executing the crime or denounced the offer that had been made and even if the offense remained an attempt or if it meets the elements of an offense other than that envisaged by the perpetrator.

d) The goods held contrary to the legal provisions and namely:

- holding of which is subject to an authorization regime, which has not been satisfied;

- holding of which is prohibited by law, such as: *tools and materials held for counterfeiting coins or other valuables; toxic substances; drugs, radioactive, poisonous, explosive substances etc.*

The special confiscation, on these grounds, shall be ordered whatever the solution under the criminal aspect is, including when the defendant is acquitted and even if the asset held against the legal provisions belongs to another individual than the perpetrator (*unless that individual was legally holding that asset*), when the criminal proceedings are terminated and where the prosecutor orders the termination of tracing and criminal proceedings, as in these cases the perpetrator can avoid special confiscation only by providing evidence of having a legal authorization to hold that asset.

e) **The goods of the proceeds of crime and resulting from the income from those goods, converted or transformed, in part or in whole**, given the activity by which a proceed of crime is replaced by another asset of legal origin: the disposal of a car of criminal origin against a real estate of legal origin; the exchange of large quantities of small denomination banknotes having a criminal origin into large denomination banknotes; exchange of large amounts of money of criminal origin from one currency into another, changing the forms and the destination of goods, changing certain elements and keeping others etc.

f) **The goods that are the proceeds of:**

money laundering - actions set forth in art. 243 of the Criminal Code and in the international treaties the Republic of Moldova is a party to;

terrorism financing- actions set forth in art. 279 of the Criminal Code and in the international treaties the Republic of Moldova is a party to.

The object of these crimes is the illicit goods. In line with the Law No. 308/2017 on preventing and combating money laundering and terrorism financing, the illicit goods mean the goods intended for, used or resulting directly or indirectly from an offense, any benefits acquired from these goods, and the goods converted or transformed, in part or in whole, from the goods intended for, used or resulting from an offense and from the benefits acquired from these goods. Under the same legislative act and in line with art.132¹ of the Criminal Code, goods are considered to be financial resources, funds, income, any type of tangible or intangible values (assets), tangible or intangible movable or immovable assets, and legal documents or other legal instruments of any type, including electronic or digital, which attest a title or a right, including any share (interest) related to these values (assets).

7.1.1. Confiscation of equivalent value

If these assets no longer exist, they cannot be found or cannot be recovered, their equivalent value shall be confiscated.

If the proceeds of crime and the income from those assets have been merged with the assets acquired legally, that part of the goods or their equivalent value that corresponds to the value of the proceeds of crime and to the income from those assets shall be confiscated.

If the assets were used or intended for committing a crime, the proceeds of crime and any income from selling these assets belong to or have been transferred onerously to an individual who did not know nor should have known about the purpose of use or the origin of goods, their equivalent value shall be confiscated.

7.1.2. Confiscation from third parties

If those goods (*used or intended for committing a crime; the proceeds of crime and any income from selling these assets*) were transferred free of charge to a person who did not know nor should have known about the purpose of their use or about their origin, the goods shall be confiscated.

The security measure of the special confiscation of the assets of other individuals who are not a party in the criminal proceedings sometimes derives in practice from the location of the fraudulently acquired goods in the assets of a number of individuals, to dissimulate them. It is then possible to confiscate the assets acquired through a criminal offense even when they were **alienated to a third party**, depending on the good or bad faith of the third sub-acquirer and on the onerous or free of charge nature of the alienation.

The standards in line with which the good or bad faith of third parties in whose assets the proceeds of crime are, could be analyzed by the domestic prosecutors and judges by taking into consideration paragraph 11 of the Preamble of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 *on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union*, according to which the confiscation from third parties should be possible at least in cases where the third parties knew or should have known that the purpose of the transfer or acquisition was to avoid confiscation, based on facts and concrete circumstances, including the fact that the transfer occurred free of charge or in exchange for an amount significantly lower than the market value of the goods.

The confiscation from third parties is not a new institution in the criminal law: in the case of **Silickiene against Lithuania**, the European Court of Human Rights emphasized that in the legal systems of the Council of Europe, the confiscation relates generally to a measure that results in a permanent deprivation of an asset by transferring the ownership to the state. The Court points out that in seven countries (Albania, Germany, Georgia, the **Republic of Moldova**, Romania, Sweden and Switzerland) the confiscation may be ordered even if there is no judgement of conviction³⁶. The object of confiscation is represented, as a rule, by the assets acquired through illegal activities.

If the origin of goods cannot be justified, as shown by the Court, then these goods shall be confiscated. In the same paragraph, the Court states, *expressis verbis* that in these law systems, the criminal liability of the defendant is irrelevant for confiscation.

The European Court of Human Rights shall, however, check if the individuals whose property is susceptible to be confiscated have been officially given the quality of a party to the proceedings in which confiscation is ordered, giving them the reasonable and sufficient possibility to adequately protect their interests so that there is no violation of their rights guaranteed under art. 6 § 1 of the Convention³⁷.

³⁶ ECHR judgment of April 10, 2012, paragraph 33, <http://hudoc.echr.coe.int/eng?i=001-110261>

³⁷ Ibid, paragraph 50

In this case, the Court has also stated that by confiscating from the applicant the assets representing the proceeds of the crime committed by her husband, not even art. 6 § 2 of the Convention was infringed upon, because the applicant was not punished for the offenses committed by her husband and consequently, did not inherit his guilt. Therefore, the confiscation order is not an evaluation of the applicant's guilt of committing an offense³⁸.

Finally, the Court held that there was no violation of the applicant's rights under art. 1 of Protocol 1 of the Convention, given the margin of discretion enjoyed by states in adopting criminal policies capable to combat serious crimes³⁹, and the proportionality of the interference with the general interest of the state.

In the case of **Bongiorno and others, v. Italy**⁴⁰ the Court held that art. 1 of Protocol 1 of the Convention has not been infringed upon, even if the assets may formally belong to third parties. The rebuttable presumption of illegal acquisition of goods was based on the analysis of the financial situation of the applicants and on the nature of their relationships with the defendant.

7.1.3. Decision on confiscation

The special confiscation as a security measure is ordered as a rule by a judgment of conviction of the perpetrator for committing a crime.

But, the measure can be undertaken even if the perpetrator is not criminally sentenced. This can be ordered also where the court decided to terminate the criminal proceedings on grounds of non-rehabilitation, stating the intervention of a grounded reason (*as lack or withdrawal of prior complaint, amnesty, perpetrator's death, reconciliation, occurrence of limitation period etc.*).

The special confiscation can be applied by the court also where the criminal liability of the individual is replaced by a contravention liability because in this case the crime is still there; it's just the punishment that is being replaced (*from a criminal to a contravention one, art. 55 of the Criminal Code*).

The confiscation is a measure applied *in rem*, respectively on goods that are related to the crime. For this reason, it is imprescriptible and is not affected by the reasons that lead to the termination of the criminal proceedings or which exempt from criminal liability.

In cases of offenses committed by a mass-media authority or any other media, special confiscation shall not be applied.

7.2. Extended confiscation

While special confiscation consists in transferring, forcibly and free of charge into the ownership of the state of assets (including funds) used to commit crimes or of the proceeds of crime, the **extended confiscation** is applicable also to other goods, which, although have not been used to commit offenses, their origin arises from certain criminal activities.

³⁸ Ibid, paragraph 54

³⁹ Ibid, paragraph 70

⁴⁰ ECHR judgment of 05.01.2010, application [4514/07](#), <http://hudoc.echr.coe.int/eng?i=001-96519>

This measure consists in transferring forcibly and free of charge into the ownership of the state certain assets belonging to the individual who has committed a crime due to the origin of the income from criminal activities of the same nature, carried out by the respective individual, constantly, over a period of time, prior to the offense for which he/she has been convicted.

This measure has a wider application, allowing the confiscation of also other goods than those referred to in art. 106 of the Criminal Code, such as money and goods that cover the value of the assets under confiscation that cannot be found or were merged with the goods acquired legally. Confiscation can also be carried out for money or goods acquired by operating or using the goods subjected to confiscation, including those goods, in addition to the proceeds of criminal activities and the income or benefits deriving from these assets which have been transformed or converted.

In the domestic legislation, the extended confiscation is regulated as a security measure, thus as a criminal law sanction.

The extended confiscation was introduced by the Law No. 326 of 23.12.2013, in force since 25.02.2014, when the Criminal Code was supplemented by a new art. 106¹.

7.2.1. Presumption of lawful acquisition of property

The legally acquired property may not be confiscated. The legal acquirement shall be presumed.

The goods intended for, used or resulting from crimes or offenses may be confiscated only in line with the law (art. 46, para. (3) and (4) of the Constitution).

However, the presumption is **not absolute**, ceasing to exist when the asset includes values whose origin cannot be justified by legally acquired income and by administrative evidence.

In the judgment on the case **Geerings vs Netherlands**⁴¹, the ECHR held that "... it has been proven that the applicant held assets whose origin could not be established; it can be reasonably assumed that these assets derived from illegal activities and the applicant failed to provide a satisfactory alternative explanation".

7.2.2. Conditions for extended confiscation

The court shall order extended confiscation if it has checked the fulfillment of several conditions:

a) **The value of assets acquired by the convicted individual, over a period of five years before and, if necessary, after the time the offense was committed, by the date the document instituting the proceedings was issued, clearly exceeds the lawfully acquired income.**

The measure requires that a time interval be identified that begins five years before the date of the offense for which the conviction was established and ends on the date of the indictment.

⁴¹ ECHR judgment of 01/03/2017, application 30810/03, <http://hudoc.echr.coe.int/eng?i=001-79657>

Based on this timeframe, the total amount of the licit income acquired by the convicted individual and the difference between that amount and the total assets acquired during the same period shall be analyzed in order to determine whether there is an obvious disparity.

If by the time of the indictment the proceeds of crime have not been "reinvested" by the defendant and after the date the case was referred to the court the defendant acquires new goods through third parties, **they are not presumed to have been lawfully acquired**, as their source might have been the financial advantage obtained from the crime for which he was indicted.

If after the issuance of the indictment certain goods acquired before are identified, the court, upon the request of the prosecutor, may introduce precautionary measures, these goods having to be taken into account in assessing the obvious disparity.

When establishing the disparity between the legal income and the acquired assets, the value of the goods at the time of their acquisition and the expenses incurred by the convicted person shall be taken into account, including for persons referred to in para. (3) art. 106¹ of the Criminal Code.

Here, however, it should be noted that, based on the assertions of the Constitutional Court held in the judgement No. 6 of 16.04.2015, only the confiscated goods acquired after the entry into force of the law (February 25, 2014) can be extensively confiscated; the provisions of art. 106¹ of the Criminal Code cannot be applied retroactively to confiscate the assets acquired before the entry into force⁴².

b) The court is sure that the respective goods originate from criminal activities such as those referred to in art. 106¹ para. (1) of the Criminal Code.

The scope of the measure has been set so as to provide precisely the categories of offenses for which the extended confiscation institution can be applied, provided that the offense was committed for a material interest - if the person has been convicted for the offenses referred to in articles 158, 165, 206, 208¹, 208², 217-217⁴, 218-220, 236-240, 243, 248-253, 256, 260³, 260⁴, 279, 280, 283, 284, 290, 292, 302, 324-329, 330², 332-335¹ of the Criminal Code.

c) The extended confiscation may be ordered on:

- the person who committed the crime and has been convicted;
- a family member⁴³;

⁴² Published in the Official Gazette of 15.05.2015 no. 115-123

⁴³ According to art. 133¹ of the Criminal Code, **a family member** means:

a) if living together: married, divorced persons, individuals under guardianship, relatives, their in-laws, the spouses of the relatives, people in relationships alike those between spouses (cohabiting) or between parents and children;

b) if living separately: married, divorced persons, relatives, their in-laws, adoptive children, persons under guardianship, persons who are or have been in relationships similar to those of spouses (cohabiting).

In line with article 134 of the Criminal Code:

Kinship is the relation based on a person descending from another person or where more people have a common ascendant. In the first case, kinship is in a straight line and in the second case – in a sideline. The kinship is determined by the number of births. The relatives of one of the spouses are related persons to the other spouse. The line and degree of affinity are assimilated to the line and degree of kinship. The close relatives are the parents, children, adoptive parents, adopted children, brothers and sisters, grandparents and their grandchildren.

- the legal persons over which the convicted person has control;
- other persons who knew or should have known about the illicit acquisition of the assets.

When applying the extended confiscation, the value of the assets transferred to the latter by the convicted person or a third person shall be taken into consideration.

If the goods subject to confiscation have not been found or were merged with the assets acquired from legitimate sources, instead of them the funds and goods covering their value shall be confiscated.

The goods and funds acquired from the operation or use of assets subject to confiscation, including the goods the proceeds of criminal activities have been transformed or converted into, and the income or benefit deriving from these assets shall be also confiscated.

The confiscation may not exceed the value of the assets acquired during the timeframe indicated in art. 106¹ of the Criminal Code, that exceed the legitimate income levels of the convicted person.

7.2.3. Proactive activities

The criminal investigation body and the prosecutor are responsible for managing the criminal prosecution and for presenting to the court sufficient evidence to prove the applicability of the extended confiscation of goods.

To implement the security measure of the extended confiscation, certain financial investigations are to be conducted, involving the administration of a specific evidence material, along with the other relevant evidence, which is conclusive and useful for a fair settlement of the criminal case, while also being of a procedural nature, the results thereof, specified by evidence, represent a particular component of the prosecution material of the case.

The criminal investigation body shall conduct a financial investigation in order to take security measures of extended confiscation, by setting the following specific issues:

- verification of income acquired by the prosecuted person, a family member, a third party or by a legal entity the prosecuted person has control over, within a period of five years before the time the offense was committed and, where appropriate, after the time the offense was committed, until the date the document instituting the proceedings (indictment) was issued;
- verification of assets held or which have been held by the prosecuted person, a family member or a third party or by a legal entity the prosecuted person has control over, within a period of five years before the time the offense was committed and, where applicable, after the time the offense was committed, until the date the document instituting the proceedings (indictment) was issued;
- establishing the turnover on the bank accounts held by the prosecuted person, a family member or a third party or by a legal entity the prosecuted person has control over, within a period of five years before the time the offense was committed

and, where appropriate, after the time the offense was committed, until the date the document instituting the proceedings (indictment) was issued and identifying the current balances of the bank accounts held by the aforementioned persons;

- investigation of the assets acquired by authorized individuals or legal entities, including the shares and the share capital held in the companies involved;
- verification of asset declarations of the prosecuted person, a third party or a family member of the prosecuted person to the extent they hold or have held public positions;
- identification of securities held by the prosecuted person, a family member or a third party or by a legal entity the prosecuted person has control over, within a period of five years before the time the offense was committed and, where appropriate, after the time the offense was committed, until the date the document instituting the proceedings (indictment) was issued;
- using various evidentiary methods (*searches, wiretaps, surveillance by technical means, locating or tracking by technical means, using undercover agents, etc.*), in order to grasp and identify the accounting and extra-accounting documents which may indicate on the balance of expenses and revenues of the persons concerned and their way of life.

7.2.4. Standard of proof

In essence, with regard to this section, the following should be kept in mind⁴⁴:

- the presumption of a lawful acquirement of assets is a relative legal presumption, that may be challenged by the proof to the contrary;
- the court has to be convinced that those assets derive from criminal activities, without the need for a judgment of conviction for these crimes to be pronounced - a situation of "*relieve*" with regard to the proof of specific facts or of the documents like those that led to conviction and a "*distribution*" of the burden of proof, being able to prove the legality of the goods they hold;
- one should not start from the assumption that the presumption of lawful acquisition of property can be overthrown only by proving each criminal action from which the goods derive, in this case the institution of special confiscation is applicable and not the extended confiscation;
- the standard of proof in extended confiscation may be achieved by the use of **simple presumptions**, thus those "consequences which the law or the judge draws from a known fact to establish an unknown fact";
- it is not necessary to establish precisely the circumstances of the time and place where the crimes were committed from which the goods originate, nor to determine exactly all factual elements.

The standards of the European Court of Human Rights related to this, have been held in the case of *Grayson and Barnham against the UK*⁴⁵, in the case of

⁴⁴ See the Romanian Constitutional Court Decision No. 356 / 2014 <https://lege5.ro/Gratuit/gqydiojqgm/decizia-nr-356-2014-referitoare-la-admiterea-exceptiei-de-neconstitutionalitate-a-dispozitiilor-art-1182-para-2-lit-from-a-criminal-code-of-1969>

⁴⁵ ECHR judgment of 23.09.2008, 19955/05 applications19955/05 and 15085-06, <http://hudoc.echr.coe.int/eng?i=001-88541>

*Phillips against United Kingdom*⁴⁶, *in the case of Arcuri and others against Italy*⁴⁷, *in the case of Butler against United Kingdom*⁴⁸:

- the authorities have to prove their allegations based on a set of probabilities;
- the confiscation decision has to be issued by a judge within court proceedings, which shall include a public hearing;
- there was no need to prove that a crime has been committed, but the judge had to be convinced that the confiscated assets derived from crimes;
- compliance with the rights of all the holders of rights on the assets to participate in judicial proceedings and their right to defend themselves;
- the presumptions the prosecution bases on should not be absolute, so that they can be overturned by the defendant.

Therefore, it is sufficient:

- that the defendant has a criminal lifestyle, thus the offense for which he/she is convicted is liable to have been committed as a lifestyle and that there is proof that justifies based on the balance of probabilities the conclusion that it was committed within a time interval (*for e.g. corruption offenses, drug trafficking offenses, tax evasion offenses, trafficking in persons offenses*);
- there is an obvious disparity between the assets held and the income acquired in the previous period or the period subsequent to this interval before the competent court initiated the proceedings;
- that there is proof which justifies, based on the balance of probabilities, the court's belief that the criminal activities other than those for which the conviction was pronounced, existed, were committed by the defendant and were likely to procure a patrimonial advantage to generate the **simple presumption that the income derives from criminal activities of the same kind**.

Thus, with regard to extended confiscation, there is no need to achieve the same standard of proof as in the case of the conviction for the offense which the prosecution was carried out for. Therefore, it is not required to establish the certain circumstances of time and place the offenses which generated the goods that are to be confiscated extensively were committed.

So, regarding the asset disparity found in the convicted defendant, the **judge has to have a sufficient factual basis** to determine:

- the nature of the offense;
- the frequency of perpetration
- the amount of the acquired illicit proceeds.

The jurisprudence of a neighboring state⁴⁹ can serve as an example, in a case where the defendant was convicted of committing an offense related to setting up an

⁴⁶ ECHR judgment of 12.12.2001, application 41087/98, <http://hudoc.echr.coe.int/eng?i=001-59558>

⁴⁷ ECHR judgment of 05/07/2001, application 52024/99, <http://hudoc.echr.coe.int/eng?i=001-22586>

⁴⁸ ECHR decision of 27.06.2002, application 41661/98, <http://hudoc.echr.coe.int/eng?i=001-22577>

⁴⁹The criminal sentence No. 67 / 06.05.2014 of the Court of Appeal Brasov, final judgement No. 129 / 30.03.2016 of the High Court of Cassation and Justice

organized crime group in order to produce cigarettes in a clandestine way. During the searches, certain amounts of money had been collected, which were subsequently confiscated.

The judge, therefore, had a sufficient factual basis to determine:

- that the defendant has a criminal lifestyle, which derives from the profit-generating nature of the offense: the illegal production of cigarettes as a specific activity of an organized crime group and from the frequency it was committed as a permanent activity, the sole source of income;

- that there is an obvious disparity between the assets held and the income acquired: the amount of illicit proceeds acquired is of EUR 80.450, RON 14.600 and USD 500, whereas the defendant did not carry out any lawful business activities;

- that there is evidence which justifies, based on the balance of probabilities, the court's belief that criminal activities other than those for which the conviction was pronounced, existed, have been committed by the defendant and were of the nature to purchase him/her a property benefit: as it results from the report on the searches conducted at the defendant's place and of the safe-deposit box opened in the name of one of the witnesses, but for depositing the defendant's money (as the reports on the telephone conversations reveal, the latter holds large amounts of money, while having no occupation. The defendant's involvement in the organized crime group proving to be decisive in making and executing decisions, are in fact elements based on which the court has formed its belief that the funds derive from criminal activities. This conclusion is even more likely since the defendant made efforts to hide the money in a safe deposit box opened by the witness, acting under the directions of the defendant.

These elements having been established the **relative presumption emerges that the amounts of money discovered during the searches originate from criminal activities**. The standard of proof shall not be the same as that applied in the case of conviction, where it would have been necessary to prove the time and place the crimes that generated the illegal profit were committed and what amounts were acquired separately by each material action.

For example, the intercepted and recorded telephone conversations and communications may serve as the basis to conclude that the defendant must have committed offenses similar to the one for which the sentence has been pronounced and as a subsequent basis for the extended confiscation measure.

In the same sense the witnesses' testimonies on the pursuit of criminal activities of the same nature can be used, but which do not outline any conviction solution or data arising from the analysis of the financial transactions conducted by the defendant, acquired through special investigative measures.

The convicted defendant, respectively the holders of real rights or claim appearing in the criminal proceedings can exercise the *right to remain silent* during the criminal proceedings on the extended confiscation in the sense of making no statements on the sources of the funds that represent a surplus of their property. In principle, the proof of the origin of goods is an easy proof to be made by the

defendant and the other persons, since there is no self-incrimination, as no other criminal charge is put forward.

For people who are legally bound to declare their sources of income, the reluctance to prove the licit character of the undeclared income may arise from the risk of being criminally prosecuted for the misrepresentation offense (art. 352¹ of the Criminal Code). When being convicted only for this offense, the individual shall not be subject to extended confiscation, because the offense does not fall under the list provided for in art. 106¹ of the Criminal Code, thus a decision being necessary to be made on referring it to the National Integrity Agency.

7.3. ECHR standards and practices

The practice of the European Court of Human Rights⁵⁰ considers punitive the confiscation of the proceeds of crime, being a criminal sanction, in the meaning of art. 7 of the European Convention.

Moreover, the European Court of Human Rights held that neither the calculation of the profits acquired from drug trafficking nor confiscation **is incompatible** with the concept of a fair trial in criminal matters⁵¹.

Placing the burden on the defendant to prove⁵² in a credible way the current financial situation is not incompatible with the aforementioned principle either. In these cases, it has been demonstrated that the applicants were involved in very profitable drug businesses for a period of several years and, therefore, it is not unreasonable to require the applicants to justify what happened to the money/goods, which the prosecution proved they had allegedly had in their possession. It is also sensible to request the applicants the first stage of the proceedings to prove the legitimacy of the source of money/goods they hold.

In the case of **Butler against Great Britain**, where the confiscation without conviction of an amount of money was ordered, the Court held that art. 6 of the Convention is not applicable to the case on the criminal dimension, the applicant having the possibility to prove the origin of the source of funds, whereas his application was rejected as inadmissible.⁵³

The Constitutional Court held⁵⁴ that the aspects related to the issue of the confiscation of goods as an instrument for combating crime has generated an abundant jurisprudence of the European Court of Human Rights.

Thus, the European Court examined a wide range of cases on confiscation distinguishing between the confiscation of goods that formed the object of the crime (*objectum sceleris*) upon the conviction of the defendants (*Agos v. Great Britain*, judgment of October 24, 1986); the confiscation of the goods that represented the

⁵⁰ <http://hudoc.echr.coe.int/eng?i=001-57986> ECHR judgment of 26/02/1996, application 17440/90

⁵¹ The case of *Phillips v. Great Britain*, ECHR 41087/98, judgement of 12.12.2001

⁵² The case of *Grayson and Barnham v. Great Britain*, application 19955/05 and 15085/06, judgment of 23.09.2008

⁵³ <http://hudoc.echr.coe.int/eng?i=001-22577> ECHR judgement of 27.06.2002, application 41661/98

⁵⁴ See the Constitutional Court Decision No. 6 of 16.04.2015 for reviewing the constitutionality of certain provisions of the Criminal Code and the Criminal Procedure Code (*extended confiscation and illicit enrichment*) (*Application No. 60a/2014*) <http://lex.justice.md/viewdoc.php?action=view&view=doc&id=358414&lang=1>

instrument of the crime (*instrumentum sceleris*) after the sentencing of the defendants (*C.M. v. France*, the judgment of June 26, 2001) or the confiscation of assets held by third parties after the sentencing of the defendants (*Air Canada v. Great Britain*, judgment of May 5, 1995).

Meanwhile, with regard to the revenue that originated from a criminal activity (*productum sceleris*) the European Court examined the confiscation that followed the conviction of the applicant (see *Phillips v. Great Britain*, mentioned above), and cases in which confiscation has been ordered independently from the existence of criminal proceedings because the applicants' assets were presumed to be of illicit origin (see *Riela and others v. Italy*, the judgement of September 4, 2001; *Arcuri and others v. Italy*, judgment of July 5, 2001, *Raimondo v. Italy*, judgment of February 22, 1994) or as being used for illicit activities (*Butler v. Great Britain*, judgment of June 27, 2002, mentioned above).

In the case of **Raimondo v. Italy**⁵⁵ the European Court held: "When regulating the extended confiscation, it is important to determine clear criteria describing with sufficient precision the applicable situations". In this context, "the preventive measures cannot be adopted on the basis of mere suspicion and is justified only if it is based on establishing and objectively assessing the facts that stand out due to the behavior and the lifestyle of the individual. [...] Meant to block such movements of suspicious capital, the confiscation is an effective and necessary weapon to combat this scourge. It appears therefore proportional to the investigated objective, the more so because it does not entail in reality any additional restriction with regard to seizure. Finally, the preventive character of confiscation justifies its immediate and unconditional application despite any appeal." (Judgement of February 22, 1994, §30).

The European Court of Human Rights⁵⁶ has repeatedly held that factual and legal presumptions operate in every legal system, and are not incompatible with the presumption of innocence, provided they are reasonable and proportionate to the aim pursued, respecting the right to defense, whereas in terms of the admissibility of evidence, the domestic courts are required to assess the evidence presented to them.

In the case of *Yildirim v. Italy*⁵⁷, the Court found reasonable the presumption that the applicant has rented a bus to a company to transport people and knew that the shipments take place in an area with high illegal immigration. Since the driver made several illegal transportations, the bus was seized alongside with the conviction of the driver. The fact that the applicant could challenge the legality of seizure in adversarial proceedings leads to the conclusion that the incurred loss cannot be considered arbitrary.

⁵⁵ <http://hudoc.echr.coe.int/eng?i=001-57870> ECHR judgment of 22.02.1994, application 12954/87

⁵⁶ ECHR judgement *Falk against Netherlands* published in the excerpt and on the website: <http://jurisprudencedo.com> ECHR, *Ioan Pop against Romania*, 40301/04 judgment, published in Romanian on the website: www.ier.ro and ECHR jurisprudence cited in its content of the judgment.

⁵⁷ ECHR judgement *Yildirim against Italy*, 38602/02, published in the excerpt and on the website: <http://jurisprudencedo.com>.

Moreover, in the case of *Riela and others v. Italy*⁵⁸, with regard to confiscation, on the proportionality of the pursued goal, the Court concedes to the legislator a very wide margin of discretion within crime prevention policies. Therefore, in this case, the Court found that the courts examined the facts in an objective way, without relying on mere suspicion, analyzing the financial situation of the applicants to conclude that the confiscated goods could have been purchased only thanks to the use of illicit profits⁵⁹.

The Italian courts, in particular, have ordered the confiscation of a number of valuables belonging to the applicants (*the judgement being also upheld by the higher courts*) who were part of a criminal organization, on the grounds that the goods had been acquired through illegal activities.

The Constitutional Court also stated⁶⁰ that the issue of the application of seizure to secure a possible special confiscation without giving any procedural status to the individual was examined in the case of **Telbis and Viziteu v. Romania**⁶¹, where the assets of both applicants (spouses) were seized by the prosecutors when they conducted searches at their home, although the criminal case was initiated only with regard to the first applicant (see §§ 6 and 7 of the judgment).

Thus, the second applicant complained that her property could not be seized because, under the national law, she was not a suspect or defendant (see § 10 of the judgment). In this respect, the European Court held that, in principle, the persons whose property was confiscated should be given the formal status of a party to the confiscation ordering proceedings. However, even though the applicant has never participated in the procedure by which the measure has been ordered, the Court considered that the authorities should give the individuals a reasonable and sufficient opportunity to adequately protect the interests (see § 52 of the judgment).

In this context, the European Court said that the fairness of the proceedings should be assessed as a whole, and the factors to be taken into account should confirm whether the seizure of property was the result of a measure taken by the investigating authorities, i.e. the seizure of the individual's assets; if the person can initiate a judicial review to obtain the release of the goods from the seizure to challenge the reasons underlying it and to present evidence that those assets were acquired legally; if the person could reasonably foresee, that the seizure could lead to the confiscation of the property at a later stage of the procedure (see § 51 § 52 of the judgment).

In this context, the Constitutional Court held that the fairness of the proceedings is a common value for the Constitution of the Republic of Moldova and

⁵⁸ ECHR judgement 52439/99, published excerpts on the website: <http://jurisprudencedo.com>.

⁵⁹ In this case, the Italian courts have ordered the civil seizure of goods without analyzing the criminal guilt and without a conviction, the Italian law allowing the civil confiscation, but the Court's reasoning can apply for extended confiscation under the national legislation.

⁶⁰ See the Constitutional Court Decision No. 91 of 07.27.2018 on the inadmissibility of application No. 107G/2018 (the application of seizure in criminal cases), <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=378085>

⁶¹ <http://hudoc.echr.coe.int/eng?i=001-184058> ECHR application 47911/15, judgment of 26.06.2018, unofficial translation on <http://ier.gov.ro/wp-content/uploads/cedo/Telbis-si-Viziteu-impotriva-Romaniei.pdf>

for the European Convention. Therefore, when the national law provides for the seizure of goods of the third parties who have no standing to bring proceedings to ensure an eventual special confiscation, it **is important for the authorities to offer the person concerned the reasonable and sufficient possibility to protect the interests adequately and efficiently** in the same proceedings.

7.4. Enforcement of confiscation

The enforcement of special confiscation is based on the provisions of the Enforcement Code, by the bailiffs (art. 174 para. (5))

In line with art. 293 of the Enforcement Code, the court which, under art. 106 of the Criminal Code ordered the seizure of assets used to commit the offense or resulting from the offense or the equivalent value thereof, sends the judgment to the bailiff on whose territorial jurisdiction, established by the territorial chamber of bailiffs, the property is located.

The bailiff collects and sends the assets subjected to confiscation to the competent authority, as prescribed by the Government. In case of the confiscation of narcotics, psychotropic substances or the precursors thereof, weapons and ammunition the bailiff shall collect and hand them over to the competent body.

The bailiff shall inform the court that delivered the judgement within 5 days about the collection and handing over of the confiscated assets to the competent authorities.

In the process of enforcement, if another person considers that the seizure for the execution of confiscation was applied to the goods that are owned by him/her, the person may bring a contentious procedure to release the assets from seizure (art. 164. of the Enforcement Code).

If the seizure (inventory) of the goods was made under a criminal judgement on asset seizure, the release of seizure (deletion from the inventory document) is initiated against the convicted person and the financial body that will appear as defendant.

The seizure release suit filed by third parties shall be examined in contentious proceedings under the Civil Procedure Code. The judgment can be challenged by appeal. The decision by the Court of Appeal is not subject to appeal, being final and irrevocable.

Similarly, upon the final judgement of the court, the regime of the seized goods, including those managed by the Criminal Assets Recovery Agency, shall be regulated according to the provisions of the *Regulation on recordkeeping, valuation and sale of the confiscated goods, without an owner, seized, perishable or with a limited shelf life, the material evidence, the assets transferred to the state as inheritance and the treasures*, approved by Government Decision No. 972/2001.

The seized goods shall be sold by the State Tax Service.

The Criminal Assets Recovery Agency shall provide a single recordkeeping of the information on criminal assets for which seizure, special confiscation and extended confiscation ordered, including by creating a specialized database for this purpose.

7.5. Compensation of damage

7.5.1. General aspects

The compensation of damages as a result of the offense is ordered based on the court decision. With the settlement of the criminal case, the judge is obliged to settle the civil case.

Regardless of the value of the case, the trial of the civil proceedings in the criminal case shall be carried out by the court in whose jurisdiction is the criminal case.

When issuing the sentence of charge or of the application of medical coercive measures, the court, assessing if the grounds and the amount of damage required by the civil party have been proved, shall settle also the civil proceedings by accepting it fully or partially or by rejecting it.

The court decides on the fate of seized criminal assets, giving them back to the rightful owner or transferring it into the ownership of the victim, the civil party or the aggrieved party, and in their absence of thereof, the assets are passed free of charge into the ownership of the state.

So, the money and other assets acquired in a criminal way or which the criminal activities were targeted at shall be returned to the owner or, where appropriate, shall be passed into the state revenues. The other assets shall be handed over to their legal owners, and if they are not identified, are passed over into state ownership. In case of dispute on the ownership of these assets, the litigation shall be settled in civil proceedings. The marked money which the criminal activities targeted shall be passed into the state revenues and their equivalent shall be returned to the owner from the state budget. At the request of the victim, the equivalent of the money recognized as material evidence may be returned pursuant to the decision made by the investigating judge.

The compensation of the damage in kind can be done first of all by *returning the goods* that are the property of the aggrieved person or of another person or have been taken unjustly from their possession.

This type of compensation of the damage in kind *may be ordered by the prosecutor*, because, when putting forward a solution of terminating the criminal proceedings on grounds of non-rehabilitation, the prosecutor also refers to the return of the collected goods. The prosecutor can also order during the criminal proceeding that the goods collected from the person under criminal investigation or from any other person that received them for storing purposes, will be passed over to the aggrieved person or to other persons the goods belong to.

The criminal assets that are abroad shall be repatriated to the Republic of Moldova and those that are in the Republic of Moldova but are related to crimes committed abroad, either stay in the Republic of Moldova or are repatriated to the corresponding foreign state, as applicable, within the international legal cooperation.

If an acquittal sentence is pronounced, the court shall:

1) reject the civil action if the offense has not been ascertained or the offense was not committed by the defendant;

2) not rule on the civil action if the defendant was acquitted because the elements of the offense are not met or there is a situation which removes the criminal nature of the action as provided for in art. 35 of the Criminal Code.

In exceptional cases when to determine the exact amount of damage due to the civil party, the trial of the case would have to be postponed, the court may, in principle, accept the civil action and the amount of the due compensation shall be decided by the civil court.

If the civil action is accepted, the court may order, before the sentence becomes final, measures to be taken to ensure this action if such measures have not been taken earlier.

Based on the request of the civil party or of other interested persons seeking the compensation of material damage in civil proceedings, the court is entitled to retain the goods under seizure even after the trial or the acquittal of the person, *for one month after the entry into force of the judgment*.

When pronouncing the sentence with a special confiscation of property, the court shall take measures to ensure the confiscation thereof if such measures have not been taken earlier.

7.5.2. Applying the legislation when examining civil actions

The civil action in the criminal proceeding shall be settled in line with the Criminal Procedure Code.

The civil procedure norms and the civil disputes mediation process norms shall be applied if they do not contravene the principles of criminal proceedings and if the criminal procedure norms do not provide for such regulations.

The decision on the civil action shall be adopted **in accordance with civil law** and other areas of law.

The limitation period provided by the civil legislation does not apply to civil actions settled in criminal proceedings.

If the court accepted in principle the civil action or left it without settlement, since the date when the sentence becomes irrevocable a new limitation period of the civil action starts.

The final decision of the court on the civil action in criminal proceedings, including the decision of the criminal investigative body or of the court on the acceptance of the withdrawal of the civil action, and the decision of the court by which the reconciliation transaction between the parties in the same dispute is confirmed, prevents bringing further of new actions on the same grounds.

VIII. FINAL PROVISIONS

Compliance with this Guideline is mandatory for prosecutors and representatives of criminal investigation bodies.

The prosecutors and the criminal investigators shall take note of this Guideline and shall use the methodological recommendations for conducting efficient parallel financial investigations, in order to ensure the investigation of the criminal network dimension and of the level of related crime, as established, and to ensure that the investigations and lawsuits are compliant with the efficiency standards in the cases involving income-generating crimes (*corruption, human trafficking, drug trafficking, weapon trafficking, tax evasion, smuggling and other economic crimes etc.*), money laundering and terrorism financing crimes and to ensure the identification, establishment and tracing of criminal assets, of terrorists' funds and of other property that is or might be subject to precautionary measures and/or to confiscation.