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COMPARATIVE ANALYSIS OF THE USE OF CONFISCATION AND REQUISITION INSTITUTIONS IN CRIMINAL PROCEEDINGS

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A B S T R A C T

This article discusses the current problems of criminal procedure law concerning the issue of confiscation and requisition. The seizure of property as a forced reaction of the state to the actions of participants in legal relations is regulated by the norms of various branches of law, such as criminal, civil, administrative and land. The variety of regulatory norms indicates the need for an intersectoral study of compliance with the concepts used in regulatory legal acts and the grounds for the use of confiscation and requisition.

K E Y W O R D S

criminal procedure, civil law, confiscation of property, requisition, legal instruments, intersectoral regulation, current problems of criminal procedure, blank norms, seizure of property, compensation for harm.

Introduction

Today, the national criminal procedure legislation is undergoing large-scale reforms, which is due to socio-political changes in the country. The Decree of the President of the Republic of Uzbekistan "On the development strategy of the new Uzbekistan for 2022-2026" identifies "turning the principles of justice and the rule of law into a fundamental and necessary condition for the development of the country"as one of the main goals of further development. Attention is drawn to the issuesof strengthening the guarantees of inviolability and protection of private property, strict provision of property rights, including rights to a land plot [1]. In this aspect, attention is drawn to the issues of forced seizure of property, which has such forms, as" confiscation "and" requisition".

In turn, thelegislation of the Republic of Uzbekistan guarantees the inviolabilityof privateproperty, with the exception ofindividual cases. Thus, in the Civil Code, confiscation and requisition are considered as grounds for termination of the right of private property (Articles 203, 204 of the Civil Code). Requisition refers to the seizure of property from the owner by decision of state bodies with payment of the value of the property in the event of natural disasters, accidents, epidemics, epizootics and other circumstances of an extraordinary nature exclusively in the public interest (Article 203 of the Civil Code). Additionally, it is indicated that upon termination of the circumstances in connection with which the requisition was made, the former owner of the requisitioned property has the right to demand the return of the preserved property to him. Article статье27 of the Administrative Liability Code of the Republic of Uzbekistan also provides for the possibility of administrative confiscation of property. In

the Code of Criminal Procedure, requisition and confiscation presuppose the seizure by a court decision of property that is material evidence in a criminal case for a fee or free of charge (Article 289 of the Code of Criminal Procedure).

Itis noteworthy that the seizure of property is a unifying feature of requisition and confiscation as legal institutions. However, the legal consequences of requisition and confiscation are different.Upon confiscation of property, the right of ownership is terminated, and upon requisition, the termination has the effect of compensating the loss to the owner. The grounds for termination of rights to land plots are also regulated by article 36of the Land Code of the Republic of Uzbekistan, which specifies the difference between requisition and confiscation. Thus, the right of ownership to land plots is terminated in accordance with the established procedure in the following cases:: purchase of commercial and service objects, as well as residential premises and other buildings or parts of buildings together with the land plots on which they are located, for public needs and confiscation of commercial and service objects, as well as residential premises and other buildings or parts of buildings together with the land plots on which they are located, in cases of: established by law. We believe that such a revision of the norms is more accurate in protecting both public interests and the rights of private owners.как общественных интересов, тIt is noteworthy that theconcept of requisition is given differently than in civil legislation. The difference lies in the fact thatеквизиции подлежит property - a land plot-is subject to requisition also in cases of natural disasters, accidents, epidemics, epizootics and other circumstances of an extraordinary nature, i.e. civil legislation provides more detailed explanations of the grounds for property requisition.

Based on the above, it can be concluded that requisition is an administrative measure used to address such urgent issues of public life as threats of a man-made or natural nature.

In the legal literature, the opinion is expressed that "confiscation to a large extent does not imply the termination of the convicted person's property right to the seized property, although it should realize the main purpose of applying other measures of a criminal-legal nature" [2]. Others also support the position that "it is impossible to terminate ownership of property that is in the illegal possession of a person. Such seizure of property is of a public-legal nature, has no relation either to the civil-legal grounds for the termination of property rights, or to the intersectoral institution of confiscation", while putting forward the need to use a separate term, such as" taking away " [3]. The term "appeal to state revenue" is also used classically [4]. We believe that the correct definition of the institution used affects its legal definition. Since confiscation is cross-sectoral, its objectives, types and scope should be clearly defined.

Special attention should be paid to the application of these institutions in criminal proceedings. As noted earlier, requisition and confiscation are reflected in Article 289 of the Code of Criminal Procedure. However, as a legal institution, itis not included in the criminal legislation. It is well known that "confiscation" as a measure наказания функof punishment functioned in the criminal legislation of Uzbekistan in the period from 1995 to 2001 and had its wide application [5]. But despite the lack of legislative consolidation in the form of sanctions, punishments and other measures of criminal legal influence, this institution has its own practice of application in the framework of criminal proceedings. The experience of neighboring countries indicates the existence and functioning of only the institution of confiscation in both criminal and criminal procedure law. Chapter 15.1of the Criminal Code of the Russian Federation defines confiscation as other measures of criminal influence, while establishing that "confiscation is the forced gratuitous seizure and conversion into state ownership on the basis of a guilty

verdict of money, valuables and other property obtained as a result of the commission of crimes or for their commission, tools, equipment of crimes" [6]. The Code of Criminal Procedure of the Russian Federation additionally establishes that confiscation is a legal instrument for compensation for damage caused by a crime, which also serves to recover assets from the territory of a foreign state (Article 160.1 of the Code of Criminal Procedure of the Russian Federation) [7]. The criminal and criminal procedure laws of the Republic of Kazakhstan (Article 48 of the Criminal Code and Article 325 of the Criminal Procedure Code) adhere to the same approach [8]. In the Code of Criminal Procedure of the Republic of Azerbaijan, confiscation is singled out as a legal instrument for compensation for damage caused (Article 58 of the Code of Criminal Procedure), i.e. property is seized during a pre-trial investigation and subsequently the issue is resolved on the basis of a court decision. The Criminal Law of Azerbaijan distinguishes two types of confiscation of property, as general and special [9]. General confiscation means an additional penalty for the crime committed. Special confiscation in the form of a criminal measure consists in the compulsory and gratuitous seizure in favor of the State of the following property:

- tools and means used by the convicted person in the commission of a crime (with the exception of tools and means that are subject to return to the rightful owner);
- monetary funds or other property obtained by the convicted person in a criminal way, as well as income received at the expense of these monetary funds or other property (with the exception of monetary funds or other property and income received from them, which are subject to return to the rightful owner);
- other property or its corresponding part, into which funds or other property obtained by criminal means have been fully or partially transformed by entering into civil transactions or by other means;
- property provided for or used to finance terrorism, armed formations or groups, organized groups or criminal associations (criminal organizations) that are not provided for by the legislation.

The Code of Criminal Procedure of Georgia regulates the issueof property withdrawal in a different way. Thus , in the event of damage, loss or destruction of physical evidence, its owner or owner receives monetary compensation. This procedure does not apply to property subject to procedural confiscation, destruction and appeal for compensation of procedural expenses [10]. At thesame time, confiscation has an independent procedure in comparison with the seizure of property. Arrest is considered as a temporary restriction of the rights to use and dispose of property (i.e.жfreezing of assets, prohibition on the sale of real estate, etc.). The issue of confiscation of property is resolved only on the basis of a court verdict. Thus, physical evidencea in a criminal case is subject to confiscation. In case of loss of the seized property, the issue of mandatory compensation for the damage caused to the rightful owner or owner is resolved.

Analyzing the practice and legislation of foreign countries, we can note the logical sequence and interrelation of regulatory norms governing the issues of forced seizure of property in criminal proceedings. As such, we did not notice the institution of requisition in the criminal and criminal procedure legislation of the countries studied. Despite the fact that national legislation mentions requisition inthe Code of Criminal Procedure, an analysis of the materials of judicial and investigative activities indicates that itis not mentioned, and therefore we consider it appropriate to exclude it from the system of norms of criminal procedure legislation.

The analysis of the norms of the Code of Criminal Procedure shows that along with the concept of confiscation and requisition, the legislator also uses the term "seizure". So, in article 294 of the Code

of Criminal Procedure, it indicates the possibility of seizing property that has been seized. Having bound these notes, itpis necessary to establish the procedure under which objects and property should be seized by order of the inquirer, investigator, prosecutor or by court order with the seizure of them before their confiscation. At the same time, it cannot be excluded that theconcept can simultaneously be associated with both requisition and confiscation, and also often acts as an independent concept. Given the importanceость of the analyzed categories, such a provision of law enforcement cannot be considered acceptable. It is necessary to establish a single, well-defined understanding of the full content of the main types of forced seizure of property from owners. A comparative analysis of the current legislation and regulations of neighboring countries shows a clear superiority in the quality of the normative content of the latter.

Based on the results of the analysis of the institute of forced seizure of property, it is proposed that confiscation should be understood as the forced termination of property rights based on a court decision in a criminal case. Confiscation should be divided into general and special forms. The general form of confiscation should be understood as another measure of a criminal nature, the purpose of which is to compensate for damage caused by a crime. A special form of confiscation should be understood as "seizure of property that should be turned into state revenue" (tools and objects of crime, money or other property obtained by a convicted criminal, property provided for or used to finance terrorism, armed formations or groups, organized groups or criminal associations that are not provided for by law).

Due to the fact that requisition can be implemented only in the form of compulsory-paid seizure of property, this issue cannot be settled only by analogy of civil law. In this следует применясase, a special settlement procedure should be applied, since only material evidence in criminal cases is subject to requisition. For example, Citizen B. purchaseda Cobalt carfrom citizenS. for a certain amount on the basis of a purchase and sale agreement. After some time, the car of citizen B. is seized due to the fact that a criminal case has been opened against citizen S. under paragraph "a" of Part 2 of Article 168 of the Criminal Code. During the investigation, it is established that citizen S. illegally sold a car purchased on credit through a bank. In this case, the car will be seized as physical evidence with the imposition of arrest. In another case,the restriction may be related to the purchase of housing on the primary market without the relevant cadastral documents, which is being investigated under paragraph " a " of Part 4 of Article 168 of the Criminal Code. We believe thatакие these examplesmeetthe requirements of Article 289 of the Code of Criminal Procedure. In such situations, requisition may also be temporary or permanent.

This distinction makes it possible toidentify differences in the implementation of these forms of confiscation and requisition. It is also possible to achieve the solution of these problems by adopting a comprehensive regulatory act on the requisition and confiscation of property. The existence of a special law would allow us to solve many problems of a theoretical and practical nature.

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