

Seizure of property: Counteraction to the investigation of crimes and the execution of a sentence

Incautación de bienes: Oposición a la investigación de delitos y a la ejecución de la sentencia

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Abstract

The authors study the procedural, organizational, and tactical issues related to the seizure of property in order to overcome the counteraction to the investigation and execution of the sentence. The relevance of this article is confirmed by the fact that in recent decades, the system of forms and methods of such counteraction on behalf of suspects, accused, and other persons tends to expand, and any gap in the procedural regulation or organizational and tactical support for the investigation of crimes is used for criminal purposes. Moreover, the authors, considering the seizure of property as a means of overcoming the opposition to the investigation and execution of the sentence, offer recommendations aimed at minimizing it. The article states that the actual basis for the seizure of property is a set of evidence indicating that a crime has caused determined harm, or that a suspect or accused has committed an act that provides for the possibility of applying property penalties. Based on the results obtained, the authors conclude that the seizure of property has a preventive and interim nature, which is suppressing the intent of the suspect (accused) aimed at concealing, selling, or other illegally alienating property, money, securities, and other valuables in order to avoid the seizure of these objects.

Keywords: Seizure of property; measures of procedural coercion; counteraction to the investigation of crimes; counteraction to the execution of a sentence

Resumen

Los autores estudian las cuestiones procesales, organizativas y tácticas relacionadas con la incautación de bienes para superar la oposición a la investigación y la ejecución de la sentencia. La relevancia de este artículo se confirma por el hecho de que en las últimas décadas, el sistema de formas y métodos de dicha oposición a favor de los sospechosos, acusados y otras personas tiende a expandirse, y cualquier laguna en la regulación procesal o en el apoyo organizativo y táctico para la investigación de los delitos se utiliza con fines delictivos. Además, los autores, considerando la incautación de bienes como un medio para superar la oposición a la investigación y ejecución de la sentencia, ofrecen recomendaciones destinadas a minimizarla. El artículo afirma que el fundamento de la incautación de bienes implica un conjunto de pruebas conducentes a indicar que un delito ha causado un daño determinado, o que un sospechoso o acusado ha cometido un acto que prevé la posibilidad de aplicación de sanciones patrimoniales. A partir de los resultados obtenidos, los autores concluyen que la incautación de bienes tiene un carácter preventivo y cautelar, que consiste en suprimir la intención del sospechoso (acusado) dirigida a ocultar, vender o enajenar ilegalmente bienes, dinero, valores y otros objetos de valor con el fin de evitar la incautación de estos objetos.

Palabras clave: Incautación de bienes; medidas de coerción procesal; oposición a la investigación de delitos; oposición a la ejecución de la sentencia

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INTRODUCTION

Multi-faceted and consistent activities for overcoming the opposition to the investigation of crimes and the execution of the sentence are carried out by the investigator, the inquirer, taking into account the organizational aspects, systematically and tactically competently at all stages of the preliminary investigation.

An effective procedural means of overcoming the opposition to the investigation of crimes and the execution of a sentence is the use of such a preventive measure of procedural coercion as the seizure of property.

The seizure of property as a measure of procedural coercion is applied in most developed countries both near and far abroad in relation to the Russian Federation (Kochan, 1998; Basedeo, 2009; Kelly, 2015; Nguyen, Pushkarev, Tokareva, Makeev & Shepeleva, 2021).

In the Russian legal system, the presence of problems connected with the seizure of property is has a severe and undeniable character. It calls for a new understanding of approaches to creating a unified mechanism for regulating such measures at the State level and at the level of preliminary investigation bodies.

The practical application of provisions stipulated in the criminal procedure law on the activities of the parties to criminal proceedings to seize property revealed a number of problems that should be theoretically justified to understand the nature of the procedural act, the grounds to impose such a procedural coercive measure which implies a right to crime compensation.

Monitoring of problems in law enforcement practice revealed the need in a scientific research which would serve as a basis for theoretic and legal provisions aimed to improve the procedure of property seizure to guarantee effective crime investigation, crime compensation, and enforcement of the sentence.

Thus, we can state the fact that this study is very timely and relevant, since the measure of procedural coercion under study in the form of seizure of property has a truly international legal aspect. We believe that it will arouse interest not only among theorists and

practitioners in the Russian Federation, but will also be in demand in the international community, both process scientists and law enforcement officers.

The purpose of this paper is to create and justify provisions which would stipulate theoretic and legal grounds of the property seizure procedure as this procedure is highly important in the framework of crime investigation, social justice restoration, crime compensation, and enforcement of the sentence. Moreover, it is necessary to devise an algorithm of an investigator's actions in the property seizure procedure.

MATERIALS AND METHODS

The methodological basis of the study of the seizure of property in the investigation of a crime is determined by the subject of the study and includes the use of special legal methods: historical-legal, analysis, synthesis, system, formal-legal, sociological (questioning, conversation, interviewing).

The historical and legal method allowed us to consider the seizure of property as a procedural action carried out in order to overcome the opposition to the investigation of crimes and the execution of sentences, taking into account the constantly improving needs of both theory and practice.

Through the use of methods of analysis and synthesis, real information was obtained about the effectiveness of the seizure of property as an important means of overcoming the opposition to the investigation of crimes and the execution of sentences.

The use of the formal-legal method allowed to characterize the current situation associated with a number of problems occurring in practical activities of state bodies and officials in charge of the prosecution to overcome opposition to the investigation of crime and the enforcement of the sentence, and to analyze problems and offer optimal solutions.

The sociological method of research allowed us to obtain real results of empirical research, as well as to analyze, systematize and generalize them.

The empirical basis of this research is represented by materials of investigative, judicial, and prosecutorial practice in property seizure in the pre-trial proceeding in a criminal case. We conducted a written interview in Russian among 217 respondents, including 85 investigators, 36 heads of investigative bodies, 76 inquiry officers, and 20 heads of the internal affairs bodies conducting the initial inquiry. The questionnaire included 18 questions on the procedure of property seizure. The respondents were selected according to their position in the bodies of preliminary investigation, years of service, and the category of crimes under investigation.

To ensure the representativeness of the sample, the empirical material was collected in Moscow, Saint-Petersburg, the Krasnodar region, the Stavropol region, the Khabarovsk region, as well as in the Moscow region, the Tver region, the Leningrad region, the Lipetsk region, the Novgorod region, the Pskov region, Nizniy Novgorod region, the Smolensk region, the Tambov region, the Bryansk region, the Kursk region, the Volgograd region, the Rostov region, the Samara region, the Saratov region, the Tumen region, the Chelyabinsk region, the Omsk region, the Novosibirsk region.

RESULTS ANALYSIS

Currently, the importance of the activities of the preliminary investigation bodies in this process is increasing substantially, since it is in pre-trial proceedings when there are significant opportunities to establish the actual amount of damage caused by the crime and a set of measures is being taken to ensure the claims (Buldakova, 2015). The use of the seizure of property in order to overcome the opposition to the investigation of crimes and the execution of a sentence has particular importance.

The objective reasons for the particular interest of scientists is the seizure of property, which is used by the investigator, the inquirer in order to secure the filed claim and, as a result, for compensation for damage and possible confiscation of the property specified in Criminal Code of the Russian Federation (УК РФ, 1996, Part 1,

art. 104.1). It includes, in particular, property obtained as a result of the commission of a crime, the proceeds from this property; money, valuables used or intended for the financing of terrorism, an organized group, an illegal armed group, or a criminal community; tools, equipment, or other means of committing a crime. The procedural and tactical aspects of the application of this measure of procedural coercion should be discussed in more detail.

Some scientists ([Vdovtsev & Karkoshko, 2015](#)) are unequivocally convinced that the procedure for seizing property is currently regulated very fully, with which the authors, taking into account the provisions of the criminal procedure laws of a number of foreign states, cannot fully agree.

For example, the Criminal Procedure Code of Germany ([Björn, 2012](#)) contains §111 (in its scope and content of standards the paragraph of the Criminal Procedure Code of Germany is comparable with the paragraph of the Code of Criminal Procedure of Russian Federation), which reveals details of the nature and procedure of seizure of property (procedural support by means of arrest imposed on objects; a decree for the seizure and arrest; the authority for seizure and arrest; preferential satisfaction of claims of the injured during the arrest, return of movable property to the victim; the alienation of items subjected to the seizure or arrest of necessity; arrest imposed on objects due to a property fine; preliminary confiscation of property).

This is also evidenced by the comparative analysis of the norms governing the seizure of property in the Criminal Procedure Code of the Russian Federation ([YK PΦ, 1996](#)), with the criminal procedure legislation of the Republic of Azerbaijan. In particular, in the [Criminal Procedure Code of the Republic of Azerbaijan \(2000\)](#), there is a separate Chapter XXXII in which the essence of the process of seizure of property is described, its grounds and procedure for determining the cost of the property, order the seizure of property, the contents of the record of arrest, the complaint procedure erroneous seizure of property and order of its removal.

The legislation of Kazakhstan also pays close attention to the procedure of the seizure of property, devoting five articles (articles 161-165) to it in the current criminal procedure law. Moreover, [Criminal Procedure Code of the Republic of Kazakhstan \(2014, art. 164\)](#) is particularly relevant and interesting in its procedural nature, which provides for the possibility of a prosecutor to challenge the decision of the investigating judge to refuse to authorize the seizure of property. This power allows persons carrying out criminal prosecution to further defend their position and present evidence justifying the need to seize property, including for the purpose of securing a civil claim.

A detailed analysis of the provisions of the Criminal Procedure Code of the Russian Federation ([УК РФ, 1996](#)) regarding the possibility of appealing a judge's decision to refuse to seize property allows us to state that this issue has not been settled by the legislator, which, in our opinion, is a significant gap and requires its early resolution at the legislative level.

Everything said above, unfortunately, confirms our position that in domestic criminal procedural law this remedial action is given insufficient attention ([УК РФ 1996](#), art. 115, it. 1) which makes it impossible to apply it in practice.

The above justifies the need to develop an algorithm for the actions of the investigator, the inquirer on the application of this measure of procedural coercion due to its special significance in the general concept of restoring social justice and overcoming opposition to the investigation of crimes.

In this connection, the authors consider it appropriate to confirm their position and the opinion of the employees of the preliminary investigation and inquiry bodies regarding the importance of the issue being covered. Thus, 78.9% of the interrogated investigators and inquirers indicated that the seizure of property is used by them in order to ensure the compensation for damage much more often than other measures of procedural coercion. At the same time, such measures as the seizure of securities are used by only 21.1% of the surveyed employees.

Inspired by Pushkarev's article, that the inclusion of digital rights and assets leads to high risks, which threaten economic systems' normal functioning, undermine the economic security and can facilitate organized crime, such as corruption and terrorism financing (Pushkarev, Artemova, Ermakov, Alimamedov & Popenkov, 2020), the authors raised the question of the procedural order, organization and tactics of arresting cryptocurrencies. The results of the sociological survey indicate that the investigators and the inquirers have no idea about the ways to solve this problem in practice.

In this situation, it seems reasonable to study not the subject of scientific discussions concerning the theoretical views and practical significance of the nature of the seizure of property (Arshba, 2004; Ivanov & Lapin, 2007; Kovriga & Lyutikov, 1975; Kokoreva & Lavrova, 2016; Tutynin, 2005; Yutkina & Rostovshchikova, 2012), but the significance, procedural order, organizational and tactical aspects of the seizure of property as an effective tool for creating conditions for ensuring compensation for damage caused by a crime.

The basis for the application of this measure of procedural coercion is the presence of sufficient and reliable data that the suspect (accused) may conceal or expel or destroy property that may potentially become the subject of the arrest.

To ensure the satisfaction of the claims of the victim (civil plaintiff), the investigator or inquirer may apply to the court with a request to seize the property of the accused or persons who are legally liable for their actions, or other persons who have property acquired by criminal means.

The arrest in order to ensure the enforcement of civil claim of lien on the property of the person carrying the law liability to a civil plaintiff, which involves the person as a civil defendant in a criminal case according to Criminal Procedure Code of the Russian Federation (УПК РФ, 2001, art. 54). It is not allowed to seize the property of such a person if, by virtue of a contract or law, they must bear material responsibility for the failure of the suspect (accused) to fulfill his obligations arising from a reason other than causing harm.

It is also necessary to examine the list of property that, according to the current legislation, can be seized to satisfy claims for compensation for damage caused by a crime.

First and foremost, those are money, valuables, and other property obtained through the commission of crime stated in the Criminal Code ([YK PΦ, 1996](#), part. 1, art. 1041, para. a), or which are the subject of illegal movement across the customs border of the Customs Union within the Eurasian Economic Community-EurAsEC or across the State border of the Russian Federation with the States —members of the Customs Union within the EurAsEC, the responsibility for which is stipulated in Criminal Code ([YK PΦ, 1996](#), art. 2001; art. 2002; art. 2261; art. 2291), and any income from this property, with the exception of property and the income from it, to be returned to the rightful owner.

It is logical to note that if the fact of obtaining certain property by committing criminal acts by the suspect (accused) is proved, then, guided by the provisions of the Criminal Procedure Code of the Russian Federation ([YIK PΦ, 2001](#), art. 82; art. 115), when seizing property, the legal basis on which such property passed to the specified participants in criminal proceedings does not matter.

The arrest may be imposed on the money, valuables, and other property obtained through the commission of at least one of the crimes stipulated in the articles listed in the Criminal Code ([YK PΦ 1996](#), part 1, art. 1041, para. a) if the income from the assets was partially or entirely transformed or converted.

The seizure of property is carried out, as a rule, in conditions of conflict investigative situations, in which suspects, accused persons, and other persons use all available means of counteraction, trying to avoid (in an acute conflict situation) or delay the process of applying (in a low-conflict situation) this measure of procedural coercion. At the same time, interested parties can perform various actions for the purpose of countering, among which the following are most often found.

To delay the process of seizure of property, the following methods are used to avoid seizure and, in general, contact with the investigation and inquiry bodies: preparation of fictitious medical documents about being treated; ignoring calls and messages from the investigator; creating the appearance of departure, absence at the location of the property being seized; refusal to sign the protocol or include unsubstantiated comments in it, and subsequently appealing on the basis of far-fetched procedural violations, and others.

In an acute conflict situation, interested persons direct their efforts to create conditions that prevent the seizure of property and counteract the investigation as a whole: committing various illegal actions with the property subject to arrest (damage, destruction, concealment, transfer to other persons); reissuing title documents for the property; giving false testimony about the origin of the property (money), and others.

In this aspect, it should be noted that cases of seizure of funds that were obtained by criminal means, and then transferred to the accused's own account and issued to them for their own savings. So, in a criminal case initiated in the investigative unit SU ATC ZAO GU MVD of Russia in Moscow found that acting as part of an organized criminal group, S., and K. G. performed the theft of funds received from 35 of the victims, by deception, under the pretext of delivery vehicles. As part of the investigation of the criminal case, the victims were recognized as civil plaintiffs for the amount of damage caused to them. During the investigation of the criminal case, the statement on Sh. ' s account was seized in Svyaznoy Bank CJSC, as a result of which it was established that there were 779 204 rubles. 26 kopecks in his account. At the request of the investigator, the Nikulinsky District Court of Moscow decided to seize the money in the account of the accused Sh. ([Case No. 267912, 2018](#)).

Tools, equipment, or other means of committing a crime belonging to the suspect (accused) can also be arrested, especially since with their direct help the person was able to achieve the set criminal goal and cause harm.

Consequently, the next fact is interesting, indicating the use of technical means and computer equipment to commit fraud “at a high professional and criminal level”. During the investigation of the criminal case initiated in the investigative unit SU ATC CAO GU MVD of Russia in Moscow by Criminal Code ([УК РФ, 1996](#), art. 159, h. 3), it was found that an unknown person using the computer equipment, under non-determined circumstances got illegal access to trading accounts of I., in CJSC Finam, acquiring the ability to complete orders and manage their contracts and cash. After that, these unidentified persons, in order to steal I.’s property, made on his behalf, but in their own interests, deliberately unprofitable transactions for the purchase/sale of contracts on the MICEX Stock Exchange, as a result, funds from I.’s accounts in the amount of more than 1 500 000 rubles were transferred to a trading account under their control, opened in BCS Company LLC in the name of S. The funds held in S.’s brokerage account, opened in BCS Company LLC, were seized by the court ([Case No. 749254, 2014](#)).

If the property obtained as a result of the commission of a crime and (or) the proceeds from this property were attached to the property acquired legally, the part of this property that corresponds to the value of the attached property and the proceeds from it is subject to confiscation.

So, in the course of the investigation of the criminal case initiated in the investigative unit SU ATC SWAD GU MVD of Russia in Moscow on signs of the crime provided by of the Criminal Code ([УК РФ, 1996](#), part 4, art. 159), it was found that Sh. as a general director of OOO “Promo Expert” using key carrier “Bank-Client” OOO “ТПК “Frigate”, by deception and abuse of trust stole cash owned by LLC “Promo Expert” in the amount of 5 375 250 roubles 54 kopecks. Then Sh. bought equipment for the packaging shop with the stolen funds. During the search in the specified shop of Promoexpress LLC, it was established that the packaging activities of Promoexpress LLC, of which Sh. is the general director, are carried out using the above-mentioned equipment. In order to provide a sentence of civil action and considering that the property which

the suspect Sh., obtained as the result of his criminal actions, in order to prevent the further sale of the above property, real estate, criminal case No. 362927, investigator issued a decision instituting before the court application for the seizure of mentioned property, which Gagarinsky district court of Moscow satisfied ([Case No. 362927, 2017](#)).

Considering the above-mentioned criminal case, the court decided to confiscate the packaging equipment, since it was part of the property that was purchased with the money obtained by the accused in a criminal way. At the same time, the rest of the property of the packaging shop remained at the disposal of the legal owners.

At the same time, the current legislation provides for an extensive list of property that the suspect (the accused) actually owns, uses, or disposes of and which cannot be seized due to certain legal requirements.

On the basis of the provision of the Criminal Procedure Code of the Russian Federation ([УПК РФ, 2001](#), Part 4, art, 115), an arrest may not be imposed on property that cannot be foreclosed on in accordance with civil procedure legislation. A detailed list of this property is given in the Civil Code of the Russian Federation ([ГК РФ, 1996](#), art. 446).

In order to use the surprise factor, it is possible to implement the procedural possibility of applying this coercive measure against a suspect at the stage of initiating a criminal case, taking into account the criminally significant properties of their personality and all the circumstances of the case, the investigator (the inquirer) can file a petition to the court for the seizure of property at the very beginning of the investigation. This will help to neutralize the possible opposition of interested parties.

However, as [Pushkarev, Poselskaya, Skachko, Tarasov and Mutaliev \(2021\)](#) has a number of factors that objectively impede the receipt of meaningful information. Information may be collected through information systems of financial and economic entities, the Ministry of Internal Affairs' databases, and the Federal Financial Monitoring Service (Rosfinmonitoring) to identify the possibility of

criminal income laundering through: 1) The illegal nature of funds, immovable property, and other goods; 2) The whereabouts of the stolen property; 3) The allocation of stolen funds (immovable property, vehicles, cash balance, shares in the authorized capital of legal entities); 4) The affiliate organizations and persons involved in crimes in the financial and economic sphere; 5) The property status of the offender's relatives if the property was acquired within the period of his or her criminal activity (traveling abroad and within the country, including the purposes of trips; legal income is compared with expenditure and the property status (Pushkarev et al., 2021).

Speaking about the interrelation of such procedural aspects as the fact of filing a civil claim and the possibility of seizing property, there are polar opinions.

According to the position of Kokoreva and Lavrova (2016), in cases where a civil claim in a criminal case has not been filed, it is impractical to impose an arrest on property.

However, we consider it appropriate to support the authors who are convinced that the implementation of this proposal infringes on the rights of victims of crimes (Ionov, 2010; Pustovaya, 2012). Indeed, it should be considered possible and necessary to seize property, as well as until the moment of filing a civil claim in pre-trial proceedings. The investigator, the inquirer should not wait for the moment when the victim makes claims and files a statement of claim. Moreover, the criminal procedure law does not make any restrictions on the temporary, procedural, organizational, and tactical order.

The study of the identity of suspects, accused persons, persons who are legally liable for their actions, as well as other persons against whom a decision may be made to seize property, is a necessary element of the tactics of applying this measure of procedural coercion. The investigator, the inquirer, making a decision on the need to file a petition before the court, determining the time and place of seizure of property, must have not only evidence that is the procedural basis for their activities, but also collect the necessary criminally significant information about the identity of the

interested subjects of counteraction. Here we would like to focus on the need for a forensic study of the identity of such a participant in criminal proceedings as a civil defendant.

The methods of obtaining this information are mainly general: analysis (materials of the criminal case, results of activities, traces of a crime, information posted by the above-mentioned subjects in social networks); observation (behavior of persons against whom a decision may be made to order an arrest on property, during a preliminary investigation, their statements, etc.); biographical method; generalization of independent characteristics (from the place of residence, work, study, etc.). It is also possible to use psychological methods, including the use of special knowledge and the construction of a forensic model of the individual in order to predict the activities of the subjects of counteraction.

CONCLUSIONS

In conclusion, we emphasize the importance of the investigator's awareness of the fact of the intended use of this measure of procedural coercion, which consists in preventing the concealment, donation, sale, or other alienation of the property of the suspect (accused) or persons who are legally financially responsible for their actions.

The seizure of property as a measure of procedural coercion is of a preventive and at the same time protective nature, consisting in the suppression of the intent of the suspect (accused) aimed at concealing, selling, or otherwise legally alienating property, money, securities, and other valuables in order to avoid the seizure of these objects to ensure compensation for damage caused by the crime.

In order to increase effectiveness in revealing the property to be seized to help promote investigation, ensure the civil case, and ce thy sentence, it is reasonable to continue further improvement of law enforcement practice and criminal procedure law in the Russian Federation.

The authors are convinced that the successfully tested experience of the use of property arrest as a measure of procedural coercion in the Russian Federation can also be implemented in the criminal procedure laws of foreign states, which will allow at the level of international cooperation of law enforcement agencies to take measures to compensate criminally caused harm.

At the same time, based on the study of international norms and procedural mechanisms for the seizure of property in order to compensate for damage caused by criminal acts, mastered by many foreign countries, the authors come to the conclusion that it is necessary to amend the current Code of Criminal Procedure of the Russian Federation in order to improve the activities of officials conducting a preliminary investigation when applying this measure of procedural coercion.

Through the seizure of property, both in Russia and in many foreign countries, victims' opportunities for compensation for damage caused by crimes are realized. This conclusion is also confirmed by the thesis that full-scale and real compensation for harm to persons who have become victims of criminal acts has not unreasonably been elevated by the world community into a number of global and most serious universal problems that need to be resolved.

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