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ПОВЕРНЕННЯ АКТИВІВ, ОДЕРЖАНИХ ВНАСЛІДОК ВЧИНЕННЯ ЗЛОЧИНІВ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ: МІЖНАРОДНИЙ ДОСВІД І СУЧАСНИЙ СТАН

Анотація. *Корупція є деструктивним явищем, що спричинює небажані наслідки для розвитку суспільства і держави в цілому. Тому у статті досліджено теоретичні основи і практичні проблеми повернення активів, одержаних унаслідок вчинення злочинів у кримінальному провадженні, визначено мету, суб'єктів реалізації, об'єкти пошуку та етапи здійснення такої діяльності. Проаналізовано провідний міжнародний досвід у сфері повернення активів, одержаних унаслідок вчинення злочинів у кримінальному провадженні. Досліджено правовий статус, функції і повноваження Національного агентства України з питань виявлення, розшуку та управління активами, одержаними від корупційних та інших злочинів як нового суб'єкта такої діяльності. Встановлено, що для повернення активів у кримінальному провадженні необхідно пройти п'ять етапів.*

Ключові слова: корупція, кримінальне правопорушення, управління активами, фінансовий злочин.

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ВОЗВРАТ АКТИВОВ, ПОЛУЧЕННЫХ В РЕЗУЛЬТАТЕ СОВЕРШЕНИЯ ПРЕСТУПЛЕНИЯ В УГОЛОВНОМ ПРОИЗВОДСТВЕ: СОВРЕМЕННОЕ СОСТОЯНИЕ И МЕЖДУНАРОДНЫЙ ОПЫТ

Аннотация. *Коррупция является деструктивным явлением, что вызывает нежелательные последствия для развития общества и государства в целом.Поэтому в статье исследованы теоретические основы и практические проблемы возврата активов, полученных в результате совершения преступлений в уголовном производстве, названы цель, субъекты реализации, объекты поиска и этапы осуществления такой деятельности. Проанализирован ведущий международный опыт в сферевозврата активов, полученных в результате совершения преступлений в уголовном производстве. В работе исследован правовой статус, функции и полномочия Национального агентства Украины по вопросам выявления, розыска и управления активами, полученными от коррупционных и других преступлений как нового субъекта такой деятельности. Установлено, что для возвращения активов в уголовном производстве необходимо пройти пять этапов.*

Ключевые слова: коррупция, уголовное преступление, управление активами, финансовое преступление.

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RETURN OF ASSETS RECEIVED AFTER CRIMES IN THE CRIMINAL PROCEEDINGS:CURRENT STATE AND INTERNATIONAL EXPERIENCE

Abstract. *Corruption is a destructive phenomenon, which causes undesirable consequences for the development of society and the state as a whole.Therefore, the article investigates the theoretical foundations and practical problems of the return of assets obtained as a result of crimes committed in criminal proceedings, defines the purpose, subjects of realization, search objects and stages of such activity. Analyzed the leading international experience in this area of return of assets obtained as a result of crimes committed in criminal proceedings. The legal status, functions and powers of the National Agency of Ukraine for the detection, investigation and management of assets derived from corruption and other crimes as a new subject of such activity are investigated. It has been established that five steps are required to return assets in criminal proceedings.*

Key words: corruption, criminal offense, asset management, financial crime.

INTRODUCTION

Difficult living conditions in Ukraine, negative economic, political and social factors stipulate further *corruption* to spread and flourish. It can cause serious problems as a destructive phenomenon for society and development of the state as a whole, threaten their safety and economic well-being, democratic institutions and values, instigate crime development [1], hinder efficient resources use and promote undemocratic ways of power retention [2]. Therefore, corruption in Ukraine is considered *a major threat to its national security and interests* [3].

Widespread corruption in Ukraine is confirmed by the international ratings and national reports. So, the *Corruption Perceptions Index (hereinafter – the CPI)* of the international organization Transparency International (hereinafter – the TI) confirms that in 2017, Ukraine was ranked number 130 among 180 countries, obtaining 30 points out of 100. This is one point and one position higher than in 2016 [4]. If to compare with CPI 2015, Ukraine was rankednumber 130 among 168 countries of the world with 27 points [5]. The anti-corruption reform driven forward contributed to Ukraine's position improvement in the CPI, which, however, due to lack of effective judicial system and attempts to limit independence of the new anti-corruption bodies, did not allow Ukraine to overcome this 30-point barrier, called the "nation's shame". Moreover, it appears that Ukraine's position in the CPI is not sufficient for the coun-

try where combating measures with corruption were declared as a major priority by the government [6; 4].

At the same time, although the reports on the measures combating corruption in Ukraine for 2013–2017 show more "optimistic" indicators, they also include some evidence on *the size of material losses, their compensation, and the cost of seized items involved in criminal corruption*, which, in the context of this research, constitute certain theoretical and practical interest. In particular, the amount of material losses caused by corruption actions during this period increased by *60% (from 268,869,404 to 16,329,452,182* hryvnias), although the amount of losses compensated decreased by *8% (from 28,612,844 to 312,494,578* hryvnias). In the meantime, the value of the property seized during the criminal proceedings increased by *18% (from 285,164,085 to 1,626,530,830* hryvnias), while the ratio of material losses caused by corruption crimes to the value of the property seized showed a decrease in the value of the second relative to the first by *85% (from 95% to 10%)* [7].

Imperfection of the criminal and criminal procedural legislation of Ukraine, no effective mechanisms for the assets recovery derived as a result of criminal corruption (hereinafter – the assets recovery), overload of the pre-trial investigation bodies, the prosecutor's office and the court with the criminal proceedings, use by the subjects of such criminal activity complicated instruments and mechanisms, including international ones, to conceal criminal assets, as well as no special knowledge of the entities authorized to conduct criminal proceedings in the sphere resulted in such assets recovery to be a secondary issue in the criminal proceedingsfor a long time, and its implementation was accompanied by a number of law enforcement issues. So, until recently, property detection and search obtained as a result of crime committed in no way guaranteed for the subject of such crime to be deprived from its proceeds gained from such property use. At the same time, in case of a total prohibition to conduct any transactions with the property seized, the state did not have any sufficient mechanisms to manage such property, and, consequently, means to preserve its value. Therefore, in the event when the property seized lost its value, there was a violation both the interests of the owner of such property, since he obtained a depreciated property, but also the state – the criminal proceedings finished with the confiscation of depreciated property [8; 9]. This has shifted dramatically with the *anti-corruption reform driven forward in Ukraine*, during which the legal basis for the assets recovery underwent significant transformations caused by the Criminal Code of Ukraine (hereinafter – the CC) provisions update, adoption of the Criminal Procedural Code of Ukraine (hereinafter – the CPC) and certain special laws and regulationsadoption,which built the principle of such activities and introduced procedural mechanisms for its implementation in Ukraine.

1. MATERIALS AND METHODS

Materials and methods of research were selected taking into account the specific character of the purpose, tasks, object and subject of research. In the course of research, a set of general scientific and special methods for scientific knowledge

were used. So, the dialectical method contributed to research activities targeted at assets recovery obtained in a criminal way in a criminal proceeding as a special legal phenomenon of reality, as well as to study its legal framework and practical aspects of its implementation. System, formal and logical approaches allowed to investigate assets recovery process as a complex activity in terms of its integrity and connectivity of its separate structural elements, clarification of its essence and content. The comparative legal approach was used in the national and foreign legislation analysis on the grounds and procedure regulation for the assets recovery obtained as a result of crime in the criminal proceedings, systematization of the leading international expertise in this area and separation of two institutional models of the bodies functioning that conduct such activities. Using hermeneutic approach, the legal content of the norms of law was clarified and defects of the statutory regulation for the assets recovery obtained as a result of crime in the criminal proceedings were identified. The modelling and abstraction approaches allowed to elaborate proposals for amendments in the current laws of Ukraine. The approaches indicated were applied in an integrated manner, which made it possible to ensure comprehensiveness, completeness and objectivity of the scientific research conducted and to formulate justified conclusions.

2. RESULTS AND DISCUSSION

2.1. Assets recovery as a special complex activity of state authorities

Obligatory component of the process bringing person to the criminal responsibility includes assets recovery, since only in such condition during the pre-trial investigation and judicial proceedings of certain categories of criminal offences, real CC (art. 1) and criminal proceedings (art. 2 of CPC) tasks fulfilment was ensured. This is an important component for the state activities in the field of combating the crime. On the one hand, assets recovery is intended to minimize negative effects of crime, in particular through the illegally acquired assets conversion into state income, and, on the other hand, to make a preventive impact, since, in the event of its successful implementation, the ultimate goal of crime – rapid unlawful enrichment – remains inaccessible. Despite unconditional social significance of this activity aimed at assets recovery, the latter has become widespread in Ukraine only from 2015, which, compared with the practice of the European Union countries (hereinafter – the EU), cannot be stated as positive experience.

The term "assets recovery obtained through the commissioning of crime" is new for Ukraine and already traditional for EU Member States. This term became widespread after Decision made by the Council of the European Union No. 2007/845/JHA dated 06.12.2007 (hereinafter referred to as the "Decision of the CEU"), since it laid a common approach for all EU countries to understand this category and the procedure for its implementation. So, in accordance with the Decision of the CEU, assets recovery obtained through the commissioning of crime shall mean the search for and detec-

tion of income derived from commissioning of crime and other property related to the criminal offences, which may be the subject to seizure or confiscation by the court judgement during a criminal, or, if possible under the EU Member State legislation, civil proceedings [10]. Instead, the Ukrainian legislation does not operate with this notion at all, but includes such categories as: assets identification obtained through the commissioning of corruption and other crimes; their search and management. In particular, according to the Law of Ukraine "About the National agency of Ukraine concerning identification, search and asset management, received from corruption and other crimes" No. 722 dd. 10.11.2015 (hereinafter – the Law No. 722) assets identification is the activity targeted at establishing the existence of assets that may be seized in a criminal proceeding, and their search – activity targeted at determining location of such assets. Such assets management refers to the assets possession, use and / or disposal, i.e. to ensure preservation of assets, seized in the criminal proceedings, and their economic value or sale of such assets or their transfer to management, as well as sale of assets confiscated in the criminal proceedings [11]. The terminology used in the Decision of the CEU is appeared to be more attractive, since the notion "assets recovery" is generic and covers assets identification, their search, and, in some cases, their management. The "operational approach" and provisions of the criminal and criminal procedural legislation of Ukraine make it possible to assert that the notions proposed and their definitions do not provide a complete idea for assets recovery as a relatively independent activity, since they do not cover all possible stages of its implementation, in particular, seizure and asset forfeiture. Taking into account only the latter ones, assets recovery is operationally completed, and its goal is achieved.

Consequently, bringing a person to the criminal responsibility for committing corruption and other crimes should include comprehensive activities aimed at assets recovery (return), which has its own purpose, object, subjects for implementation, and stages for implementation. So, the purpose of assets recovery is to minimize negative effects of crime by converting the assets received into state income, as well as preventive effect. The object of such activity is the assets obtained through the commissioning of crime, namely: funds, property, property and other rights that may be seized in a criminal proceeding or confiscated by court order in a criminal proceeding (art. 1 of the Law No. 722). Such assets shall meet requirements of par. 7 of part 6 of art. 100 of theCPC. Concerning the stages, it appears the assets recovery from the beginning to the ultimate goal achievement by this activity can comprehensively cover the following operations: detection, search, arrest, management and special confiscation of assets.

2.2. Specific features of activities undertaken by the National agency of Ukraine concerning identification, search and asset management, received from corruption and other crimes

It shall be noted concerning the subjects of assets recovery that their range has slightly increased in 2015. So, the obligation to take necessary measures in order to

detect and search the property to be seized in criminal proceedings shall be attached to investigator, the prosecutor who carries out it, in particular by requesting all necessary information from the National agency of Ukraine concerning identification, search and asset management, received from corruption and other crimes (hereinafter – the ARMA), other state bodies and local self-government bodies, individuals and legal entities (art. 170 of the CPC) [12]. In addition, according to art. 92 of the CPC the investigator or the prosecutor is obliged to prove the circumstances provided for by art. 91 of the CPC, including those who confirm that funds, valuables and other property subjecting to special confiscation and obtained as a result of criminal offence and (or) are proceeds from such property. At the same time, asset recovery is a complex activity and includes not only such assets detection and search, but also their seizure (arrest), control and special confiscation. In particular, the decision on the property seizure in a criminal proceedings is entrusted to an investigating judge or court (art. 170–175 of the CPC), but on a special confiscation to the court (art. 96^1–96^2 of CC, part 9–12 of art. 100 of the CPC). At the same time, part 6 and 7 of art. 100 of the CPC provides for the possibility of assets transfer seized in a criminal proceedings for management or implementation by ARMA. Therefore, the subjects of the assets recovery obtained as a result of crime in the criminal proceedings shall be the investigator, prosecutor, investigating judge, court and ARMA officials.

ARMA is a national analogue of the bodies (institutions, agencies) that successfully operate for more than 10 years in the EU countries according to the Decision of CEU. So, the Law No. 722 defines ARMA as a central executive body with a special status that ensures state policy formation and implementation in the field of assets detection and search that may be seized in a criminal proceedings and / or seized or confiscated assets management in the criminal proceedings (art. 2). The ARMA functions, among other things, include: measures on assets detection, search and evaluation at the request of the investigator, detective, prosecutor or court (investigating judge); activities arrangement related to assets evaluation, accounting and management; the Unified State Register of Assets, which are subject to seizure in a criminal proceedings, formation and maintenance; cooperation with bodies of foreign states, which competence involves assets recovery by other competent authorities of foreign states or relevant international organizations; explanations, methodological and consulting assistance to investigators, detectives, prosecutors and judges, etc.In order to implement these functions, ARMA is empowered: to demand and receive from the state bodies and local self-government bodies information necessary for its duties performance; to have access to the Uniform Register of Pre-trial Investigations, automated information and data directory systems, registers and data banks, the owner (administrator) of which are the state bodies, local self-government bodies; to conclude interdepartmental international cooperation agreements with the foreign bodies, whose competence involves assets recovery, etc. (articles 9–10 of the Law).

After law adoption regulating the ARMA activities as a whole, the issue of the procedural mechanism implementation for this body's activities in the criminal pro-

ceedings was raised. To this end, by the Law No. 722 amendments were made to articles 100 and 170 of the CPC, the analysis of which in the system with the provisions of the Law No. 722 makes it possible to state that the ARMA interacts with the pre-trial investigation bodies, the prosecutor's office and the court in the following areas: 1) at the request of the investigator, the prosecutor ARMA provides information and takes measures to detect and search the assets that may be seized in a criminal proceeding (par. 2 of part 1 of art. 170 CPC); 2) ARMA accepts assets seized in criminal proceedings for management and sale (par. 7 of part 6 and 7 of art. 100 PDAs); 3) ARMA execute requests for international legal assistance, the purpose of which is to detect and seize property, funds and valuables obtained as a result of crime, as well as property owned by a suspect, accused or convicted person (art. 568 of the CPC). Additionally, this issue is also regulated by the Procedure for interaction in considering the appeals of pre-trial investigation bodies, prosecutor's office and requests execution submitted by the foreign states regarding assets detection and search dated 20.10.2017. The latter also refers to the areas of ARMA's interaction with the pre-trial investigation bodies and prosecutor's office: 1) execution of ARMA's requests by pre-trial investigation bodies and prosecutor's office on information provision necessary to provide a reply by this body to a request submitted by the foreign state body authorized to perform functions of the asset recovery agency; 2) ARMA's information review by the pre-trial investigation bodies or prosecutor's office regarding the crime signs detected during the functions and powers of ARMA exercise determined by law, and other issues related to ARMA powers exercise [13].

So, the legislator has taken decisive steps towards procedural settlement of activities targeted at assets recovery obtained as a result of crime in a criminal proceeding. At the same time, many issues in this area require clarifications or more detailed legal settlement.

Firstly, one of the unsettled and debating issues remains the issue of an independent procedural status of ARMA in a criminal proceeding. It appears that in settling this issue it is necessary to base both on the specific features of the national model of the criminal procedure and from the leading foreign experience in this field. For example, in order to comply with the Decision of the CEU, which obliges the state to establish National Central Contact Points for rapid assets detection obtained as a result of criminal activities, the national asset recovery offices ("Asset Recovery Offices"), in the EU countries, about 28 such offices are currently operating. Determination of direct model and mechanism of such offices activities remains at the discretion of the states [14].

The analysis of the global practice conducted by the asset recovery bodies makes it possible to state that there are currently two main institutional models of such bodies. The first model is represented by law enforcement agencies, which, by virtue of their status as a law enforcement agency, carry out activities for assets recovery. Thus, depending on the law enforcement agencies system in the country, the function of

assets recovery can be relied on the police (Republic of Austria, the Federal Republic of Germany, the Republic of Lithuania), Bureau of Investigation and its departments (Hungary, the Republic of Finland, the Kingdom of Sweden), the Office of the Attorney General or a special state prosecutor for serious economic crimes (the Republic of Bulgaria, the Kingdom of Denmark, the Republic of Lithuania). For this purpose, special units are established in the law enforcement body, for example, the police (the Republic of Estonia – the Unit of Investigation Department, the Republic of Latvia – the Department of Economic Police, the Republic of Poland – the Assets Search Unit). Such bodies, as a rule, have the procedural status of a participant in the criminal proceedings. At the same time, in some countries, such as the Republic of Bulgaria, the Federal Republic of Germany, the Republic of Lithuania, the Kingdom of Spain, the French Republic, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, the obligations on assets recovery are imposed not only on the law enforcement agencies, but also on the Units of the Ministries which role is usually limited to information and coordination functions or international cooperation in this area [14]. Such Departments of Ministries, as a rule, play a coordination and enforcement role with respect to law enforcement agencies. For example, in Germany, the powers of assets recovery are simultaneously imposed on the police and the Ministry of Justice, in particular by the Federal Office of Justice and the Financial Intelligence Division at the Federal Criminal Police Department. So, the first body is responsible for cooperation with the national and foreign asset recovery bodies, and the second body is empowered to collect and analyse criminal financial intelligence data, investigation of financial crimes, etc. [15]. Instead, the second model is represented by independent specialized bodies dealing exceptionally with asset recovery (the Kingdom of Belgium, the Republic of Cyprus, the French Republic, Romania, the Kingdom of the Netherlands, etc.). For example, according to art. 706–159 of the CPC of the French Republic in this country, the Agency for assets management and search subjecting to seizure or confiscation (accountable to the Ministry of Justice and the Ministry of Budget) has been established and operate in this country. Its main task is to manage property seized, confiscated or temporarily seized during a criminal proceeding. The Agency can receive assistance and any information from the individuals or legal entities, as well as provide information and assistance on assets recovery obtained as a result of crime at the request of law enforcement bodies and judicial authorities [16]. At the same time, in some cases, specialized agencies may be empowered to investigate offences involving illegal assets acquisition. In the Republic of Cyprus, in accordance with the Law "On Money Laundering and Terrorism Financing", a Money Laundering Unit has been established, which involved representatives of the Prosecutor-General, the Head of the Police and the Director of the Customs Department [17]. Such persons have a status of participants in the criminal proceedings and vested with investigative powers (equivalent to police officers) [18]. The powers of the Unit include: information collection, analysis and

assessment concerning crimes related to money laundering obtained as a result of crime, as well as relevant predicate offences and activities related to the terrorism financing; investigation of the said crimes, investigative activities and application of measures for ensuring criminal proceedings, etc. [17]. The model of specialized assets recovery agencies is very popular today, which are subordinated or co-operate with the Ministries (Romania, the French Republic). Their role in the criminal proceedings is limited to information and answers to inquiries provision. Such agencies take part in the international cooperation with the bodies set up under the Decision of the CEU, as well as international asset recovery initiatives: The Stolen Asset Recovery Initiative (StAR) and the Camden Asset Recovery InterAgency Network (CARIN) [14].

Moreover, both in the first and second models analysed, the substantive activity of the respective bodies authorized to recover assets, depending on the operational powers, may fundamentally differ: from the sole assets detection and search activities (the Republic of Cyprus, the Republic of Ireland [19]) to their management (Romania, the French Republic, the Netherlands).At the same time, it is important to emphasize the different procedural status of such bodies in the criminal procedure of the EU countries. So, law enforcement agencies are endowed with such status. Instead, in the same countries where specially established independent agencies operate, the issue is settled differently.

2.3. Analysis of ARMA functioning in Ukraine

European experience study in assets recovery bodies establishment and operation allows to state that a mixed institutional model for bodies establishment and operation authorized to recover assets obtained as a result of crime is implemented in Ukraine, which, by its characteristics, represents a combination of the first and second European models investigated. First, in Ukraine, ARMA, which is an executive body with a special status (obligatory feature of the second model), is established and operates in Ukraine, and secondly, the responsibilities for assets detection and search in criminal proceedings are relied on the prosecution (obligatory feature of the first model), and decision to seize such property and its special confiscation – on the investigating judge and the court correspondingly. It appeared ARMA prototypes became relevant agencies of the French Republic and Romania. At the same time, the specific features of the national model of criminal justice in Ukraine, in our opinion, require to provide ARMA with the procedural status of a participant in criminal proceedings and formalise its powers in the CPC.

Secondly, some contradictions were found in legal regulation for certain issues of assets recovery. So, in par. 7 of part 6 of art. 100 of the CPC it is stated that material evidence to the value more than 200 subsistence wages for working age and able-bodied persons, if possible without prejudice to criminal proceedings, shall be transferred with the written consent of the owner, and in the absence thereof, by the decision of the investigating judge, the ARMA court, for implementing measures

managing them in order to ensure their preservation or preservation of their economic value, and the material evidence referred to in par. 1 of part 6 of art.100 of the CPC, of the same value – for their implementation taking into account the specific features as provided for by the law. At the same time, in part 1 of art. 19 of the Law No. 722 it is stipulates that ARMA shall manage the assets seized in the criminal proceedings, including as a means of provisional remedy – only in respect of the claim brought in the interests of the state, imposing prohibition on the disposal and / or use of such assets, the amount or value of which equals or exceeds 200 subsistence wages established on January 1 of a given year.

In accordance with the Law of Ukraine "On the subsistence minimum" dated July 15, 1999, the subsistence minimum is a sufficiently large amount to ensure the normal human body functioning, to preserve its health with a set of food, as well as a minimum set of non-food products and minimum set of services required to satisfy basic social and cultural needs of the individual [20]. So, the amount of the subsistence minimum for the able-bodied persons for 2018 is set by the Law of Ukraine "On the State Budget of Ukraine for 2018" No. 2246-VIII dated December 07, 2017 (hereinafter – the Law No. 2246) in amount of UAH 1,762 [21]. Instead, according to the Law of Ukraine "On Labor Payment" dated March 24, 1995, the minimum wage is a statutory wage amount for simple, unskilled labor, below which the payment for the work done by the employee cannot be made on a monthly or hourly labor rate basis [22]. According to sub-cl. 8 of cl. 1 of art. 40 of the Budget Code of Ukraine, this indicator is determined in the law on the State Budget of Ukraine for the relevant year [23] and, according to the Law No. 2246, amounts to UAH 3,723 from January 1, 2018.

So, part 1 of art. 19 of the Law No. 722 conflicts with provisions of par. 7 of part 6 of art. 100 of the CPC, in particular, in determining the value of the assets seized that may be transferred to management or to ARMA for sale in the criminal proceedings. With a view to part 3 of art. 9 of the CPC, where it is indicated, that in the course of a criminal proceeding, the law conflicting the CPC cannot be applied, norms of part 1 of art. 19 of the Law No. 722 should not be applied when resolving the issue of the property seized in the criminal proceedings transfer for management or for sale by ARMA.

Thirdly, provisions of articles 1 and 22 of the Law No. 722 do not comply with provisions of parts 6 and 7 of art. 100 of the CPC, in particular concerning correlation between the notions "management" and "sale" of the property seized in the criminal proceedings, as well as features to which such property should correspond for the possibility of its sale. So, with regard to the first notion, it shall be noted that in CPC management and sale of material evidence (part 6 of art. 100 of the CPC) are independent operations. Instead, in art. 22 of the Law No. 722 movable and immovable property, securities, property and other rights management covers both such assets transfer to management and their sale. With regard to the second one, it is worth

noting that according to par. 7 of part 6 of art. 100 of the CPC, material evidence that does not contain traces of criminal offence were excluded, in the form of objects, large batches of goods, storage of which due to cumbersome or for other reasons is impossible without unnecessary difficulties or expenses for special conditions of storage correlated with their value, as well as material evidence in the form of goods or products which are subject to rapid spoilage to the value more than 200 subsistence wages for able-bodied persons shall be transferred with the written consent of their owner, and in the absence thereof, by the decision of the investigating judge, ARMA court for their sale taking into account specific features as defined by law. At the same time, in parts 4 and 5 of art. 22 of the Law No. 722 it is stipulated that, among other things, the property, the costs of special management conditions of which are correlated with its value, as well as property that is rapidly losing its value shall be sold [24; 11]. Consequently, a special rule of the Law No. 722 extends the list of features for the property seized, which makes it possible to be sold by ARMA. This allows to state inconsistency of art. 22 of the Law No. 722 with provisions of par. 7 of part 6 of art. 100 of the CPC, and, therefore, in this part the norm of a special law cannot be applied in solving the issue of the possibility to sell such property.

Fourthly, in the practice of law enforcement ambiguous situation occurred regarding the type of petition with which the investigator, in consultation with the prosecutor, or the prosecutor shall address the investigating judge of a local court, within the limits of territorial jurisdiction of which pre-trial investigation is carried out, or to the court during the trial in the order of parts 6 and 7 of art.100 of the CPC. So, the analysis of judicial practice makes it possible to state that the prosecution party usually addresses petitions raising the issue on: (a) property seizure; (b) determination of the procedure for material evidence storage by determining the procedure for executing a ruling on the property seizure; (c) property transfer to management, which has been seized in a criminal proceeding. In most cases, the investigator, in consultation with the prosecutor, or the prosecutor acted on the following algorithm: a) appealed to the investigating judge or the court with a petition for property seizure in the order as prescribed by art. 170-175 of the CPC; (b) received decision on such petition satisfaction; (c) appealed to the investigating judge or the court with a petition to determine the procedure for material evidence storage by determining the procedure for executing a ruling on property seizure or a petition property transfer to management seized in a criminal proceeding [25; 26]. At the same time, in some cases, the prosecution appealed with a petition to seize property in a criminal proceeding, in which it requested to determine the procedure for the material evidence storage [25].

Indeed, in the CPC, the legislator does not specify requirements for a petition with which the prosecution party should appeal to the investigating court or the court in order to transfer seized property to management or sale by ARMA. In part 7 of art. 100 of the CPC it is stated that (a) in cases provided for in par. 7 of part 6 of this article, the investigator, in consultation with the prosecutor, or the prosecutor shall

appeal to the investigator of a local court with the "relevant petition" within the territorial jurisdiction of which a pre-trial investigation is conducted, or to the court during litigation proceeding which is (b) considered in accordance with art. 171–173 of the CPC.

The systematic interpretation of the CPC provisions convinces that the issue settlement concerning property seizure in the criminal proceedings and such property transfer to management or sale by ARMA (parts 6, 7 of art. 100 of the CPC and art. 170–175 of the CPC), on the one hand, are interconnected and complementary, and on the other hand, relatively independent criminal procedural operations. So, the seizure of property in the criminal proceeding is always preceded by material evidence transfer to management or sale by ARMA, as indicated in par. 7 of art. 6 of art. 100 of the CPC. At the same time, the legal basis for the seized property transfer to management or sale by ARMA, as defined in par. 7 of part 6 of art. 100 of the CPC, is not always represented by a decision taken by the investigating judge or the court, because in cases where the owner of such property provides written consent to these actions, it can be transferred to ARMA without the latter. Taking this into account, it seems that in par. 7 of part 6 and, 7 of art. 100 of the CPC it can be the issue of an independent form of petition – a petition for the property seized transfer to management or sale by ARMA. In this context, the decision of the Supreme Court (hereinafter – the SC) No. 760/16341/17 is quite interesting. So, while investigating the arguments of cassational appeal, the SC, among other things, stated that the reference to the lack of powers by the investigating judge to consider a "petition for determining the procedure for material evidence storage by defining the procedure for executing a ruling on property seizure", conflicts with the legislation. Referring to part 6 of art. 100 of the CPC, the SC stated that the court of appeals, having established that the decision taken by the investigating judge on determining the procedure for material evidence storage by defining the procedure for executing a ruling on property seizure, is not subject to appeal, and refusing to enforce proceedings under the appeal, acted in accordance with requirements of the criminal procedural law [27]. This, in the aspect of the legal position, formulated in the SC Ruling dated October 12, 2017 [28], convinces that by taking the same decision on the consequences of a petition for determining the procedure for material evidence storage by defining the procedure for executing a ruling on property seizure, the investigating judge acted within the limits of its authority as defined by the CPC. In fact, the same conclusion was made by the SC in the above decision. In particular, referring to parts 6 and 7 of art. 100 of the CPC, the SC directly stated that both a "petition determining the procedure for material evidence storage by defining the procedure for executing a ruling on property seizure", and a "decision of the investigating judge on determining the procedure for material evidence storage by defining the procedure for executing a ruling on property seizure" as provided for by the regulations of the current CPC, therefore, the first service document was legally considered by the investigating judge, and the

second, in accordance with part 1 of art.309 of the CPC, shall not subject to appeal during pre-trial investigation [27].

At the same time, some doubts raise the titles of these service documents. So, if the prosecution, having received the decision of the investigating judge or court to satisfy a petition to seize property, additionally appeals to the investigating judge or the court with a petition as provided for in part 7 of art. 100 of the CPC it appears that such an appeal shall be conducted by filing a petition for seized property (material evidence) transfer to management or sale by ARMA. In this case, the title of the petition and the corresponding ruling will be such that correspond to their content.

At the same time, it should be stressed that the responsibility to determine the procedure for ruling execution on the property seizure, including by determining the procedure for material evidence storage, in accordance with cl. 5 of part 5 of art. 173 of the CCP shall be imposed on the investigating judge or the court which, in case of petition satisfaction to seize the property, is obliged to determine in its decision the procedure for such ruling execution, indicating the way of information provision to the interested persons. For this purpose, the investigating judge or the court shall determine the concrete actions that shall be taken to execute its ruling on the property seizure [29, p. 353] and indicate the institution or official responsible for [30, p. 418]. Therefore, the practice of such issue settlement concerning material evidence transfer to management or sale by ARMA, as specified in par. 7 of part 6 of art. 100 the CPC, when considering a petition on such property seizure (cl. 5 of part 5 of art. 173 of the CPC) in the criminal proceedings is also lawful.

Fifthly, the adherence to principles in settling the issue on the type of petition with which the investigator, in consultation with the prosecutor, or the prosecutor shall appeal to the investigating judge or the court in order to transfer property to management or sale by ARMA is connected with the following discussion issues – the possibility of appeals, issued by the results of such petitions review, decisions of the investigating judges or the courts.So, the analysis of the judicial practice makes it possible to state that following the results of petitions consideration, the investigating judge or the court shall resolve on following types of rulings: (a) property seizure; (b) determination of the procedure for material evidence storage by determining the procedure for executing a ruling on the property seizure; (c) property transfer to management, which has been seized in a criminal proceeding [31; 32].

In part 3 of art. 392 of the CPC it is stated that the investigating judge's rulings may be appealed in cases as stipulated by the CPC. In particular, such cases are listed in part 1 of art. 309 of the CCP, according to which the ruling of the investigating judge on the property seizure or its refusal may be appealed during the pre-trial investigation. At the same time, claims against the other rulings of the investigating judge are not subject to appeal, and objections against them may be filed during the preliminary procedure in court (part 3 of art. 309 of the CPC). Consequently, accor-

ding to the general rule, the list of the investigating judge's rulings, which may be appealed in the appeal procedure as provided for in cl. 303 of the CPC, is exhaustive.

Formal interpretation of provisions specified in cl. 9 of part 1 of art. 309 of the CPC suggests that among all above types of rulings issued by the investigating judge only ruling on property seizure, in which the issue on property transfer to management or sale by ARMA is directly settled, may be appealed against in an appeal procedure during the pre-trial investigation. At the same time, the content of this regulation convinces that, indicating the possibility of appeal during the pre-trial investigation in an appeal procedure the investigating judge's decision on the property seizure or refusal in it, the legislator meant the operation of property seizure. However, if the ruling issued by the investigating judge on the property seizure immediately settled the issue of such property transfer to management or sale by ARMA, it appears that the latter, guided by cl. 9 of part 1 of art. 309 of the CPC, cannot be appealed, except as in the form of appealing against property seizure or refusal to it [33].

Concerning the possibility to appeal the ruling on determination of the procedure for material evidence storage by determining the procedure for executing a ruling on the property seizure, SC provided its opinion (case no. 757/53393/17). So, the decision taken by the investigating judge of Pechersk District court in Kyiv upheld the motion of the senior investigator for especially important cases of the Chief Military Prosecutor's Office of the General Prosecutor's Office on determination of the procedure for material evidence storage by determining the procedure for executing a ruling on the property seizure. The court of appeal in Kyiv, guided by part 4 of art. 399 of the CPC, refused to enforce proceedings on appeal by the representative of a legal entity under the said ruling of the investigating judge. By disagreeing with such a decision, the person appealed to the SC with a cassation appeal, in which it requested to cancel the ruling and appoint a new trial in the court of appeal. Having reviewed the cassation appeal and attached copies of court decisions, the panel of judges of the Supreme Court refused to enforce the cassation proceeding, referring to the fact that the ruling issued by the investigating judge, which according to art. 100, 170–173 of the CPC the procedure for the material evidence storage was determined, by their transfer to ARMA, in accordance with art. 309, 392 of the CPC, is not subject to appeal [34]. A similar position was expressed in the decision of the Supreme Council dated January 15, 2018 (case number 760/16341/17) [27].

The situation with impossibility to appeal the ruling of the investigating judge or the court on the property transfer to management or sale seized in the criminal proceedings resulted in the owners of such property to apply with administrative claims to ARMA. The administrative courts generally refuse to enforce proceedings with such claims, referring to cl. 1 of part 1 of art. 170 of APC of Ukraine, since such claims are not subject to consideration in the administrative jurisdiction procedure [35; 36; 37].

So, an analysis of the law enforcement practice concerning the possibility to appeal the decision of the investigating judge on property transfer seized in the criminal

proceeding to management or sale by ARMA convinces that the latter currently requires an additional legal settlement. In particular, it appears that in part 1 of art. 309 of the CPC it shall be provided clause 9^1 as follows: "the ruling of the investigating judge on property transfer to management or sale by ARMA".

Sixthly, the issues raise the circumstances to be proved by the prosecution party when considering the petition under par. 7 of part 6 of art. 100 of the CPC before the investigating judge or court. The general conclusion for law enforcement practice makes it possible to state that the investigator or the prosecutor shall provide its evidence of the following circumstances: 1) property correspondence transferred to management by ARMA to the signs of material evidence, as defined in art. 98 of the CPC [38]; 2) transfer of such material evidence to the management by ARMA will not prejudice the criminal proceedings tasks [25; 26]; 3) the cost of objects transferred to the management by ARMA is more than 200 subsistence wages for able-bodied persons; 4) the owner of the property refuses to consent to its transfer to the ARMA management; 5) the property seized requires special management measures targeted at its preservation or preservation from its economic value reduction as a result the owner continues to possess the property [38; 39].

CONCLUSIONS

Criminal prosecution of the person for committing corruption and other crimes should include comprehensive activities targeted at assets recovery obtained as a result of crime, since only under such condition it can be guaranteed the real tasks fulfilment set by the Criminal Code (art. 1) and criminal proceedings (art. 2 of the CPC) during the pre-trial investigation and judicial proceedings for criminal offences.The purpose of such activity is to minimize the negative effects of crime by converting illegal assets obtained into the income of state, as well as preventive influence, and the object will be assets obtained as a result of crime, namely: funds, property, property and other rights that may be seized in a criminal proceeding or confiscated by court order in a criminal proceeding. Such assets shall meet requirements of par. 7 of part 6 of art. 100 of the CPC.

Assets recovery in the criminal proceedings, from the date of its commencement to the ultimate goal of such activities, covers the following operations in substance: detection, search, arrest, management and special confiscation of assets. The subjects of such activities in the criminal proceedings shall be investigator, prosecutor, investigating judge, court and officials of ARMA.

The analysis of law enforcement practice in the field of assets recovery allows setting a number of problematic issues that, in general terms, are reduced to the following: 1) gaps in the CCP in terms of legal regulation of the for property seized in the criminal proceedings transfer to management or sale by ARMA; 2) non-compliance of the provisions of the Law No. 722 with the norms of parts 6 and 7 of art.100 of the CPC.

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