

## **Proceedings for confiscation**

### **1. The state of the legislation**

1. Material benefits acquired by the commission of criminal offences.

Article 82 of Kosovo Criminal Code:

“no person may retain a material benefit acquired by the commission of a criminal offence.

The material benefit provided for in paragraph 1 of the present article shall be confiscated by the court judgment establishing the commission of a criminal offence”.

Kosovo Code of Criminal Procedure (KCCP) articles 490 – 499:

Material benefit acquired by the commission of a criminal offence or as a result thereof shall be determined by the Court ex officio and, in case of property claim filled by the injured party, only for the part exceeding the property claim.

The Court will temporary secure the claim.

Confiscation may be imposed in a judgment in which the accused is declared guilty.

The enacting clause will specify the object and the sum of money to be confiscated.

Persons, business organizations and legal persons to whom the material benefit has been transferred have the right to be heard, to propose evidence and to ask the reopening of criminal proceedings in regard to the decision of the confiscation.

2. Objects originating from or constituting the result of a criminal offence (article 498 KCCP).

Objects originating from the criminal offence under article 272 of KCC (receiving stolen goods) and unlawfully given or accepted rewards, gifts or benefits as provided in articles 250 (unjustified acceptance of gifts), 251 (unjustified giving of gifts), 343 (accepting bribes), 344 (giving bribes) and 345 (trading in influence) of KCC shall be confiscated even in case of a judgment where the accused is not pronounced guilty if:

- if the legal elements of the above mentioned criminal offences are established and is also established that certain object originate from a criminal offence (art. 272) or that a reward, gift or benefit was given or accepted (articles 250, 251, 343, 344, and 345).

The panel shall render a separate ruling on confiscation upon the reasoned application of a public prosecutor, the ruling will be served to the owner of the confiscated property, who will have the right to file an appeal.

3. Dangerous objects.

Article 489 KCCP:

“objects which in accordance with the Provisional Criminal Code have to be confiscated shall be confiscated even when criminal proceedings do not end in a judgment in which the accused is declared guilty if there is a danger that they might be used for a criminal offence or where so required by the interests of public safety or by moral considerations”.

The decision on confiscation shall be taken with a separate ruling if this is taken at the time when the proceedings have been completed and even if the judgment where the defendant is declared guilty does not contain a decision to that effect.

The owner of the object has the right to file an appeal.

#### 4. Evidence

Evidence can be defined any element which is deemed by the Court as admissible and relevant and has probative value with regard to the specific criminal proceedings (article 152 KCCP).

Evidence can be constituted also by material objects, which can be:

- the result of the criminal offence (the drug unlawfully produced, the object which was stolen),
- the mean used to commit the crime (the weapon used to murder the victim),
- the price of the crime (the money paid to the killer by the instigator of the murder),
- the advantage obtained from the criminal offence (the car bought by the material perpetrator with the money received for committing the murder),
- a mean to demonstrate the criminal offence (the picture portraying the murder in the moment he shoots the victim and similar).

For the first four categories apply the above mentioned rules.

For the fifth category evidence remains part of the case file for documentary aims and the possibility of a reopening of the criminal proceedings (article 438 KCCP).

## 2. The question

5. Kosovo Courts (Municipal and District) generally do not present suitable facility or rooms in order to keep seized objects and substances.

For example in September 2008 (see MMA Report 8.9.2008) the District Court of Peja suffered the theft of six weapons from the deposit of seized materials. After a brief examination the respective deposit room, which was is under the responsibility of the Court Administrator and the supervision of a centralized office within KJC, appeared to be unsuitable.

Not to speak about other consequences when those items are not under a strict judicial control (source of corruption, illegal selling, illegal use of weapons....):

The second problem is the delay with which the Courts decide upon confiscation or release of seized objects different from evidence (see above point 4).

Timely and economic management of seized objects (it is enough to think of seized buildings and vehicles) is an important part of an efficient rule of law system, where the comply with simple rules allows the State budget to save considerable amounts of money and gives to the citizen the certainty of his property rights.

## 3. DISCUSSION

The above mentioned topic deserves consideration also by EULEX, being part of the best practice in the legal decisions and in the administration of the Courts.

EULEX teams should therefore be charged with a monitor activity related to the situation and the practices ongoing in the different Courts, activity which is the first step of a possible advice to the KJC on this topic.

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