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Confiscation as an Essential Criminal Mechanism for Countering Transnational Organized Crime

The paper addresses one of the challenging issues of modernity. Although many international and domestic tools¹ have been developed in recent decades, including the fight against transnational organized crime, it is becoming increasingly extensive and global. “According to the International Monetary Fund, revenue from drug trafficking and money laundering accounts for six to eight percent of the global economy.² Thus, the fight against this phenomenon necessitates a continually updated approach.

The increased use of digital technologies in the public and private sectors made criminals inclined to commit crimes causing immeasurably great economic harm to society. The leading driving factor for Transnational Organized Crime is to make the maximum profit in a short time. The effective fight against this complex criminal event is about recovering and confiscating assets acquired through committing crimes.³

The paper is based on an analysis of doctrine and judicial practice. It also discusses distinct aspects and modern challenges related to the return of criminal assets in the fight against transnational organized crime.

The study aims to identify gaps and measures taken to ensure their solution.

Keywords: Organized Crime, Transnational Organized Crime, Crime Property, Return of Crime Property (Asset Recovery), Confiscation of Crime Property.

1. Introduction

The groups committing organized crime have been known since the Middle Ages. The formation of nation-states, the development of capitalism, industrialization, and, finally, modern achievements of science and technology, together with tremendous excellence, opened the wide area for the emergence of a new generation of organized crimes. As a social phenomenon, it is characterized by a complex, criminal nature, including a wide range of interactions with corruption, and economic crimes. Striving to maximize profits, organized crime oppresses and exploits not only

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¹ Tumanishvili G., Jishkariani B., Shrami E. (Eds.), Influence of European and International Law on Georgian Criminal Procedure, Tbilisi, 2019, 800-801 (in Georgian).

² Shelley, L., Transnational organized crime and seized assets: moral dilemmas concerning the disposition of the fruits of crime, 7 Maastricht J. EUR. & Comp. L.35 (2000), [24.01.2023].

³ “Crime does not pay”, – White paper on best practices in Asset Recovery, 1, <<https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/seguridad-ciudadana/White-paper-on-best-practices-in-asset-recovery-NIPO-126-12-071-X.pdf>> [05.08.2024].

ordinary citizens, violates their legitimate interests, but also competes with the government in a global sense and primarily, law enforcement agencies in specific cases.

Although many national and international regulations have been imposed to overcome this challenge, organized crime is so disguised that the current legislative instruments often fail to provide tangible practical results, making it difficult to discover and deprive the criminal asset.

This complex socio-economic problem can only be solved through legal measures and criminal liabilities. The paper, using a comparative-legal method studies and analyzes the material which refers to the practice and theory of launching a global effort to overcome this problem.

Globalization offers opportunities to speed up the internationalization of criminal activities. The study aims to review the practices of the common courts confiscating criminal property.

2. Basic Provisions of Organized Crime

Organized crime has always arisen when the state becomes sovereign. Criminal forces create a criminal system with the mechanisms of tumor development spreading metastases in its body, feeding at the expense of the state and society, building structures, weakening and intimidating it, and even competing with it.

Organized crime has become more dangerous since the 19th century.

“Organized crime having a history (at least) of two centuries, has been the subject of scientific research for several decades.”⁴

“Organized crime is the most dangerous type of crime committed by conspiratorial groups confederated for continuous criminal activities which encompass violence, intimidation of population, bribery to obtain gains from profitable illegal businesses, as well as unfair business practices striving for its legalization and penetration into the field of legal business and politics.”⁵

“Organized crime is one of the complex and dangerous types of crime that primarily encroaches on the economic, political, legal and moral spheres of society.”⁶

Organized crime is the most acute problem in the world attributed to the “delicacies of the global threat” with the effect of its devastating impact on society⁷.

The history of organized crime should be considered in connection with the pace of developing the state, because “in the process of confrontation with the public, the criminal phenomenon has undergone an evolution and found a resistant form of existence to the anti-criminal impact of the state and society.”⁸

“Organized crime is not only a problem of one or more countries, but it is transnational.”⁹

⁴ Shalikashvili M., *Criminology*, Tbilisi, 2011, 84 (in Georgian).

⁵ Godziashvili I., *Criminology*, Tbilisi, 1998, 179 (in Georgian).

⁶ Tsulaia Z., *Criminology (General Part)*, Tbilisi, 2003, 224 (in Georgian).

⁷ Ugrehelidze M., *Charged with Hazard Delicts*, Tbilisi, 1982, 60 (in Georgian).

⁸ Avanesov G.A. (ed.), *Criminology*, Tbilisi, 2007, 570 (in Georgian).

⁹ Nachkebia G. (ed.), *Problems of criminalization and legal relationships of modern manifestations of organized crime in Georgian Criminal Law*, Tbilisi, 2012, 22 (in Georgian).

A typical example is the illegal movement of foreigners seeking “political asylum”, which is driven by criminal organized groups. The U.S. Congress passed the Racketeer Influenced and Corrupt Organization Act (RICO). Since the 1950s, the U.S. Senate has regularly charged the committees to analyze organized crime and find ways to combat it. The conclusions of these committees were known by the names of the heads of the committees Kefauver (1950-1951); Katzenbach (1966-1967); Byrne (1975-1976); and Kaufman (1983-1986).

The term “Organized Crime” was first mentioned by the Kefauver Committee when the commitment to crimes went outside the scope of ordinary gangster crime. The term has defined the essence of this dangerous phenomenon.

European Union Strategy to tackle Organized Crime 2021-2025 states that “Hidden from public view due to the opaque nature of its activities, organized crime is a significant threat to European citizens, businesses, and state institutions, as well as the European economy as a whole.”¹⁰

According to the National Strategy to Combat Organized Crime, the transnational nature of organized crime presents a significant challenge for Georgia and the entire world.

Organized crime violates fundamental values of society, hinders economic, social, cultural, and political development, contradicts the principles of the rule of law, and threatens national and international security.”¹¹

Following its transnational nature National Strategy considers the fight against organized crime as one of the main priorities of our country. After the collapse of the Soviet Union, the civil and separatist wars impelled human trafficking and drug transition in Georgia.¹²

3. General Characterization of Transnational Organized Crime

The origin and development scheme of organized crime without considering its criminal content, can be compared with an entrepreneurial activity, with its signs and characteristics:

1. The tendency to expand capital turnover and conquer new markets;
2. The areas of activity that generate large incomes for organized crime cross over the nations and increasingly adopt a transnational nature. Anything from human organs to nuclear, and atomic materials and poisonous industrial waste can become a means of trade.¹³

“Modern transnational organized crime takes advantage of the opportunities offered by globalization and free trade using new technologies to commit new types of crimes, including moving cash, services, and people. The diversification of crimes, criminal markets, and networks by transnational organized crime groups is gradually increasing.”¹⁴

¹⁰ The EU Strategy to tackle Organised Crime 2021-2025, <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0170&qid=1632306192409>> [03.08.2024].

¹¹ The National Strategy to Combat Organized Crime 2021-2024, 2, <<https://matsne.gov.ge/ka/document/view/5256554?publication=0>> [03.08.2024].

¹² *Ciklauri-Lammich E.*, Menschenraub, ein blühendes Gewerbe in der Kaukasusregion, Monatshefte für Osteuropäisches Recht, Hrsg. Dr. Günter Tontsch, Hamburg 2000, 2-9.

¹³ *Ciklauri-Lammich E.*, The problem of crime between late migrants from ISC in Germany, Georgian Lawyers, Tiflis 2001, 45-51.

¹⁴ *Zagaris B.*, U.S. International cooperation against Transnational organized crime, 44 Wayne L. Rev. 1402, 1998, [24.01.2023].

Modern technologies have created an amazing impetus for crime businesses making it easier to obtain information about demand and opportunities in different parts of the world. Applying cyber technologies has vastly increased the frameworks of organized crime and its revenues around the world. Drug and cybercrimes, money laundering, and huge construction projects are produced through corrupt systems at the expense of encroaching on the state and public interests.¹⁵

It was the global threat that the famous Italian judge Falcone mentioned in his book “Organized Crime – as a World Problem in the Early 90s. Italian Mafia as an example of world organized crime” (Falcone, *Organisiente Kriminalitat-ein Weltproblem. Die Italienische Mafia als; Vorbild fur das international organisierte Verbrechen in Bundeskriminalamt*), where the author appealed and warned the public, especially police agencies, to focus on this dangerous crime and declare a joint fight against it. Falcone's sermon appeared to be prophetic. Over time, organized crime has taken a toll on other European countries, such as Switzerland, Germany, France, the Netherlands, and others. Combatting organized crime took the lives of hundreds of policemen in Italy. That is why in September 1992, in Brussels, the Interior and Justice Minister of Italy and his colleagues asked European and world law enforcement agencies for help to fight against organized crime.¹⁶

One of the main threats of transnational organized crime is its lucrative nature, which provides the criminal world with stable additional economic resources every year. The amorphousness of this calamity and the difficulty of structuring it as a particular criminal category is not a sufficient basis for refusing to fight against it with repressive measures in law, on the contrary, every new conclusion of international organizations highlights the growing threat of organized crime, which has been increasingly digging into the field of legal business for years and capturing it.¹⁷

According to the UN Drug and Crime Organization, transnational organized crime is big business. In 2009, its revenue amounted to USD 870 billion, which is 1.5% of the global domestic gross product.¹⁸

In 2017, the gain from transnational organized crime was valued at an average of \$1.6 trillion to \$2.2 trillion annually.¹⁹

The quality and practical advantages of implementing international and local instruments should also become the subject of an individual study. Organized crime is a crime industry²⁰, and management in any field of production serves to make profits with intensification and lower costs, which is a necessary condition for the progress and growth of certain businesses. According to annals,

¹⁵ *Ciklauri-Lammich E.*, Kapitel 2 Abschnitt 2. Der Kampf gegen die Korruption in den europäischen Ländern in der Monographie: Die Korruption in Georgien: Kriminologische Analysen und Kommentare der gerichtlichen Praxis, Hrsg. TSU & Tsereteli Inst., Tiflis 2010, 50-76 (Georgisch).

¹⁶ Pressnachvit Interior und Iustic Ministers Meeting, Brussel, 18 September, 1992.

¹⁷ International Organized Crime (Ed. Prof. Dr. Ulrich Sieber. Carl Heymanns Verlag KG), Cologne. Berlin. Bonn. Munich, 1996, 6-8.

¹⁸ UNODC about transnational organized crime <<https://www.unodc.org/toc/en/crimes/organized-crime.html>> [03.08.2024].

¹⁹ Global Financial Integrity about transnational organized crime <<https://gfintegrity.org/issue/transnational-crime>> [03.08.2024].

²⁰ “Crime industry”, *Ciklauri-Lammich E., Letizia P.*, Combating the Illicit Turnover and Use of Drugs in the Territory of the Russian Federation, in *Prawo i Politika*, St. Petersburg, 2002, 29-34.

some groups have always tried to obtain large quantities of property in criminal ways and influence the official government.

“Organized crime takes advantage of flaws in the law. Also, in individual cases, law enforcement agencies find it difficult to respond quickly to doing criminal business, as the sophisticated and renewable methodology used by the criminal world makes it hard to detect their criminal activities and revenues because it takes advantage of globalization and modern information technology.”²¹

According to the European Union's Grave and Organized Crime Threat Assessment Report (2021 EU COCTA), serious and organized crime is a main threat to EU security. The organized crime landscape is characterized by a network environment where cooperation between criminals is fluid, systemic, and focused on making profits.²²

Across the EU, criminal revenue from nine major criminal markets reached \$139 billion in 2019²³, up 1% against the EU's gross domestic product.²⁴

“In the past, organized crime was primarily a national issue. However, today it has become a dark side of globalization. It has transcended geographical boundaries, becoming a continental issue, and takes advantage of open border policies and modern technologies. Illicit revenue is now tied to global activities.”²⁵

It is impossible to list the types of transnational organized crime since it manifests itself in almost all areas where making high profits can take place, after which there is an illegal legalization of such revenue (money laundering).²⁶

“Transnational and organized crimes are a particular threat to public order, national and global security. This is why international cooperation on this type of crime is one of the priorities for the Prosecutor's Office of Georgia.”²⁷

The National Strategy for Organized Crime focuses on three areas, such as the thieves in law and the criminal world, cybercrime, and drug trafficking, which is partly provided by the framework of fighting heavy and organized crime in Europe.²⁸

²¹ White paper on transnational organized crime, 2015, 7, <<https://edoc.coe.int/en/organised-crime/6837-white-paper-on-transnational-organised-crime.html>> [24.01.2023].

²² EU SOCTA 2021 – serious and organized crime assessment report, <https://www.europol.europa.eu/cms/sites/default/files/documents/socta2021_1.pdf> [03.08.2024].

²³ Mapping the risk of serious and organized crime infiltrating legitimate businesses, <<https://op.europa.eu/en/publication-detail/-/publication/ab3534a2-87a0-11eb-ac4c-01aa75ed71a1/language-en>> [24.01.2023].

²⁴ The EU Strategy to tackle Organised Crime 2021-2025 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021DC0170&qid=1632306192409>> [03.08.2024].

²⁵ *Ciopec F.*, compatibility of Romanian legislation with the UN convention against transnational organized crime, 39 Zbornik Radova, 2005, 213.

²⁶ CRIMINAL CODE OF GEORGIA, Article 194, <<https://matsne.gov.ge/document/view/16426?publication=262>> [08.08.2024].

²⁷ 2022-2027 Strategy of the Prosecutor's Office of Georgia, 38 <<https://pog.gov.ge/uploads/7f5da215-saqarTvelos-prokuraturis-2022-2027-wlebis-strategia.pdf>> [05.08.2024].

²⁸ EU SOCTA 2021 – Serious and organized crime assessment report, <https://www.europol.europa.eu/cms/sites/default/files/documents/socta2021_1.pdf> [03.08.2024].

The mentioned studies specify that the criminal world is acquiring access to more and more economic resources annually, which deprives the effectiveness of fighting against organized transnational crime.

This indicates that law enforcement agencies traditionally are still focused on the offender's conviction rather than on finding, returning, and confiscating the revenue, and property gained from the crime.

4. Crime Proceeds

The success of combating organized crime depends on the possibility for law enforcement agencies to fight effectively based on operative search, procedural, and other legal means. The main purpose of organized crime activities is to make profits and legalize them. In mid-March 2012, the European Commission asked the European Parliament to harmonize legislation to combat serious transnational crimes to facilitate the issues of corruption of organized crime or the confiscation of property gained through economic crimes. Because this form of criminal liability is now considered the most effective way to combat these offenses.²⁹

Property is protected by a high constitutional standard, which implies that it is recognized and secured.³⁰

According to the Civil Code of Georgia, assets are both, tangible and intangible, that can be possessed, used, and administered by natural and legal persons and which may be acquired without restriction unless this is prohibited by law or contravenes moral standards.³¹

According to the Criminal Code of Georgia, confiscation of property (assets) means gratuitous deprivation of the object and an instrument of a crime or the article intended for the commission of a crime and/or criminally obtained assets.³²

This does not contradict the high standard of protecting the right to property provided by the Constitution and the law.

“Many states have introduced the confiscation of assets as one of the effective forms of combating crime. Although the scope of its distribution is different in various countries, the scope of use, and the approach to the regulation of criminal, administrative, customary, or civil norms of this institution is varied. However, this measure of responsibility is considered to be a relevant institution to democratic principles allowed by the constitutions of democratic countries.”³³

²⁹ Vorschlag für eine RL des Europäischen Parlaments und des Rates über die Sicherstellung und Einziehung von Erträgen aus Straftaten in der Europäischen Union, COM(2012) 85 final v 12.3.2012, kurz: RL-Entwurf, abrufbar unter <<http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0085:FIN:DE:PDF>> [03.08.2024].

³⁰ The Constitution of Georgia, Article 19, <<https://matsne.gov.ge/ka/document/view/30346?publication=36>> [03.08.2024].

³¹ Article 147 of the Civil Code of Georgia, <<https://matsne.gov.ge/document/view/31702?publication=131>> [03.08.2024].

³² Article 52 of the Criminal Code of Georgia, <<https://matsne.gov.ge/document/view/16426?publication=262>> [03.08.2024].

³³ Decision No 1/2/384 of the Constitutional Court of Georgia of 02 July 2007, II-2, <<https://constcourt.ge/ka/judicial-acts?legal=291>> [3.8.2024].

The Constitution of Georgia protects “property obtained only by law.”³⁴

“The Constitutional Court of Georgia has developed a special approach, quite successful and interesting practice concerning the right to property and its definition. The guarantee of the acquisition of property protects the possibility of lawful acquisition of property.”³⁵

The Criminal Code provides a defendant, a convict to confiscate all kinds of property including the property obtained criminally if it is proved. Investigating transnational organized crime should be on recovering and returning criminally acquired property.

5. Return of Asset Recovery

Following the 2022-2027 strategy of the Prosecutor's Office of Georgia, “the main motivator of most serious and organized crime is financial benefits.”³⁶ Strengthening international cooperation in the field of search and seizure of criminal assets is one of the priorities (CARIN, EU ARO PLATFORM).³⁷

The Camden Asset Recovery Inter-Agency Network was established on September 22-23, 2004 in The Hague on the initiative of Austria, Belgium, Germany, Ireland, the Netherlands, and Great Britain. It is a global network of professionals and experts aimed at enhancing their knowledge of the methods and techniques of transnational identification, seizure, and confiscation concerning property and other crime-related assets.³⁸

Carin is an informal network that includes cooperation in all aspects of the fight against criminal property. Its goal is to increase the effectiveness of member states and deprive the criminal world of criminal assets.³⁹

Aro (Informal platform of Asset Recovery Offices of the EU) is an informal platform across Europe. During the periodic meetings, information on the implementation of European regulations on criminal assets, the activities of the member states, or the agencies that temporarily hold the function of Aro has been collected since 2009.⁴⁰

Several countries, including the founding states of Carin, have accumulated decades of experience in confiscating criminal assets.

³⁴ Demetrashvili A., Commentary on the Constitution of Georgia (Chapter Two), Tbilisi, 2013, 203 (in Georgian).

³⁵ Loladze B., Pirtskhalashvili A., Basic Rights – Comment, Tbilisi, 2023, 497 (in Georgian).

³⁶ 2022-2027 Strategy of the Prosecutor's Office of Georgia, 37, <<https://pog.gov.ge/uploads/7f5da215-saqarTvelos-prokuraturis-2022-2027-wlebis-strategia.pdf>> [03.08.2024].

³⁷ Ibid.

³⁸ White paper on best practices in asset recovery, 11, <<https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/seguridad-ciudadana/White-paper-on-best-practices-in-asset-recovery-NIPO-126-12-071-X.pdf>> [05.08.2024].

³⁹ Camden Asset Recovery Inter-Agency Network (Carin Manual), 5, <<https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/seguridad-ciudadana/White-paper-on-best-practices-in-asset-recovery-NIPO-126-12-071-X.pdf>> [05.08.2024].

⁴⁰ White paper on best practices in asset recovery, 12-13, <<https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/seguridad-ciudadana/White-paper-on-best-practices-in-asset-recovery-NIPO-126-12-071-X.pdf>> [05.08.2024].

Ireland was one of the first countries to create the Bureau of Criminal Assets in 1996 to combat organized crime (this was led by the activation of organized crime and drug-related murders). Its key function was to find, seize, and confiscate a criminal asset. In Belgium, the Public Prosecutor's Office established a central service for seizure and confiscation in 2003. It was instructed in full coordination of the battle and the realization of criminal assets between them. To identify criminal property, an independent commission was created In Bulgaria, in 2005. In the UK, based on Proceeds of crime Act, passed in 2002, established an accredited system of financial investigation. The Department of Combating Severe and Organized Crime in Germany (BKA) has been providing analytical support against economic crime since the 1970s. The agency has expanded further and added to the direction of money laundering since 1994.⁴¹

Despite some current international regulations⁴², an updated directive on the return and confiscation of criminal assets was adopted upon the recommendation of the European Commission on April 24, 2024⁴³.

According to Directive (2), the primary motivation for criminal organizations to operate transnationally, including high-risk criminal networks, is financial gain. To reduce the serious threat of organized crime, competent agencies should put more institutional efforts into finding effective ways to identify, and seize criminal activities and confiscate illegal assets.

An effective system of reclaiming a criminal asset involves the rapid tracing and identification of assets and objects of criminal origin. They must be seized and confiscated applying the criminal procedure to avoid concealment.

An effective criminal asset return system also includes effective management of seized assets (Asset management) to maintain their value as much as possible when reimbursing the damage to the state or other private victims⁴⁴.

In Georgia, the agency responsible for the return and management of criminal assets does not have a centralized form. The function of the asset recovery is implemented by the Prosecutor's Office of Georgia.⁴⁵ The Asset Management task is carried out by the relevant investigative divisions, which use some seizure measures applied by the court in criminal cases. Additionally, in 2023, the Investigation Service of the Ministry of Finance of Georgia, considering investigative purposes, created the department responsible for the management and disposal of assets seized from offenders in a pilot mode.⁴⁶

⁴¹ White paper on best practices in asset recovery, 61-62, 85, 87, 91, 95, <<https://www.interior.gob.es/opencms/pdf/archivos-y-documentacion/documentacion-y-publicaciones/publicaciones-descargables/seguridad-ciudadana/White-paper-on-best-practices-in-asset-recovery-NIPO-126-12-071-X.pdf>> [05.08.2024].

⁴² Orlovska, N., Stepanova J., confiscation of proceeds and Property related to crimes: International standards and the ECHR practice, 10 Juridical Trib, 2020, 499-502.

⁴³ Directive (EU) 2024/1260 of the European Parliament and of the Council on asset recovery and confiscation, <<https://eur-lex.europa.eu/eli/dir/2024/1260/oj>> [05.08.2024].

⁴⁴ Directive (EU) 2024/1260 of the European Parliament and the Council on asset recovery and confiscation (5).

⁴⁵ Organic Law of Georgia on the Prosecutor's Office, <<https://matsne.gov.ge/ka/document/view/4382740?publication=10>> [05.08.2024].

⁴⁶ Order N19 of the Minister of Finance of Georgia of 26 January 2023, <<https://matsne.gov.ge/ka/document/view/87634?publication=17>> [05.08.2024].

The Directive of the European Union and the Council of Europe of 24 April 2024 obliges member states to harmonize the internal legislative framework by 23 November 2026.

6. Confiscation of Property (assets) Gained from Criminal Activities

Since the 80s of the 20th century, legislation related to the confiscation of criminal assets has become an important tool for combating all types of crimes.⁴⁷

Confiscation in Georgia has been applied since ancient times. The confiscation was also a lawful countermeasure in the Soviet Union for additional punishment⁴⁸.

The confiscation of assets in Georgia was widely used for various crimes involving illegal appropriation of property.

The confiscation of the assets was applied for the murder crime, – Iv. Javakhishvili cites an example from the life of Basil Zarzmeli about the temporary seizure of property.⁴⁹ According to Iv. Javakhishvili, the confiscation is referred to as “expropriation of the estate”.⁵⁰

Following Al. Vacheishvili, King Vakhtang uses the term “parish” (Article 177, the Law Book of Vakhtang VI)⁵¹ and “impoverishment” (which is identical to “proscription”) (Article 220, the Law Book of Vakhtang VI).⁵²

The confiscation of assets in the form of a sanction on various types of murders (on desertion, Article 19) also envisages the confiscation of property following “Dzeglisdeba” (the laws issued by George V the Brilliant). It finds a use for the terms “taking the estate” (verses 1, 43rd), “to deprive the estate” (Articles 3rd, 5th, 9th, 11th, 17th, 19th), and “to confiscate the estate” (Article 6, 13).⁵³ The confiscation of the estate was temporary and permanent (Articles 1 and 3).

The deprivation of material benefits gained from criminal activities was also a widely applied sanction in ancient Georgian law. An obvious example of this is theft (with the term “parva” used in ancient Georgian).

A theft was punished by depriving stolen assets and several (triple, five-fold, seven-fold) taxes.

Following an agape charter by Shalva Kvenipneveli to the Largvisi monastery (1470) – “If he steals, he shall restore sevenfold.”⁵⁴

According to the Soviet Criminal Code of Georgia (Article 34), by confiscation of property, all the property or part of the personal property of a convicted person was gratuitously transferred to the state.⁵⁵

⁴⁷ *Borgers M.J., Moors J.A.*, Targeting the proceeds of crime: Bottlenecks in International Cooperation, 15 Eur. J. Crime Crim. L. & Crim. Just., 2007, 1.

⁴⁸ *Tumanishvili G., Jishkariani B., Shram E.*, Influence of European and International Law on Georgian Criminal Procedure Law, Tbilisi, 2019, 801 (in Georgian).

⁴⁹ *Javakhishvili Iv.*, Writings in 12 Volumes, Vol. 7, Tbilisi, 1984, 225 (in Georgian).

⁵⁰ *Javakhishvili Iv.*, Writings in 12 Volumes, Vol. 7, Tbilisi, 1984, 230-231 (in Georgian).

⁵¹ *Vacheishvili Al.*, Essays from the History of Georgian Law, vol. I, Tbilisi, 1946, 119 (in Georgian).

⁵² *Ibid.*

⁵³ *Davitashvili G.*, Placing a Monument of Giorgi Brtskinvale (Comments), Tbilisi, 2018, 69-70 (in Georgian).

⁵⁴ *Dolidze I.*, Georgian Law Monuments, Vol. 2, Tbilisi, 1965, 142 (in Georgian).

⁵⁵ Criminal Code of Georgia SSR, Tbilisi, 1977, 13, 28 (in Georgian).

Confiscation (deprivation of property) has originated in modern Georgian criminal law since 2000.⁵⁶ At first, it had a limited application. “Before December 28, 2005, until the amendments to the CRIMINAL CODE OF GEORGIA were made, the deprivation of the subject or means in a crime had not been a punishment and it had been applied only to two crimes.

These crimes are under Article 214 of the Criminal Code of Georgia (violation of customs rules) and Article 344 of the Criminal Code of Georgia (illegal crossing of the state border of Georgia).”⁵⁷

“The law of December 28, 2005, changed Article 52 (“Property Confiscation”) of the Criminal Code of Georgia and it became broader. It complies with the requirements of many international treaties regarding the confiscation of assets obtained through criminal activities or equal to its value.”⁵⁸

“The last amendment to Article 52 of the Criminal Code of Georgia was made on September 24, 2010. It was a terminological change to comply with the criminal procedure code of Georgia, in particular, the legislator removed the term 'suspect' ⁵⁹ without changing the article.”⁶⁰

To examine the application of Article 52 of the Criminal Code of Georgia on organized transnational crime by common courts, all cases were analyzed.⁶¹

⁵⁶ CRIMINAL CODE OF GEORGIA, Article 52, <<https://matsne.gov.ge/ka/document/view/1720?publication=0>> [06.08.2024].

⁵⁷ *Tumanishvili G., Jishkariani B., Shrami E.*, Impact of European and International Law on Georgian Criminal Procedure Law, Tbilisi, 2019, 802 (in Georgian).

⁵⁸ *Turava M.*, Criminal Law, General Part Review (8th Edition), Tbilisi, 2010, 293 (in Georgian).

⁵⁹ *Tumanishvili G., Jishkariani B., Shrami E.*, Impact of European and International Law on Georgian Criminal Procedure Law, Tbilisi, 2019, 802 (in Georgian).

⁶⁰ Criminal Code of Georgia, Article 52, <<https://matsne.gov.ge/document/view/16426?publication=262>> [06.08.2024].

⁶¹ Article 194 (Legalization of Illegal Income (money laundering) of the Criminal Code of Georgia 2021-2023 Verdicts: Verdict No1-1024/21 of September 08, 2021, of the Batumi City Court; Verdict No1-181/21 of November 01, 2021, of the Batumi City Court; Verdict No1-453/22 of 19 April 2022 of the Batumi City Court; Verdict No1-711/23 of the 30 May 2023 of the Batumi City Court; Verdict No1/328-23 of the Kutaisi City Court of 04 April 2023; Verdict No1/659-23 of July 06, 2023, of the Kutaisi City Court; Verdict No1/632-22 of 26 April 2023, of the Zugdidi District Court; Verdict No1/3934-21 of 29 October 2021, of the Tbilisi City Court; Verdict No1/1044-21 of November 10, 2021, of the Tbilisi City Court; Verdict No1/3944-20 of 11 March 2021, of the Tbilisi City Court; Verdict No1/4152-20 of the Tbilisi City Court of June 23, 2021; Verdict No1/996-21 of April 23, 2021; Verdict No1/4697-20 of the Tbilisi City Court of May 11, 2021; Verdict No1/4744-20 of 14 April 2021, of the Tbilisi City Court; Verdict No1/3611-21 of 23 August 2021, of the Tbilisi City Court; Verdict No1/4535-20 of 26 April 2021, of the Tbilisi City Court; Verdict No1/4280-21 of the Tbilisi City Court of October 11, 2021; Verdict No 1/4171-21 of October 01, 2021, of the Tbilisi City Court; Verdict No1/3434-21 of July 27, 2021, of the Tbilisi City Court; Verdict No1/4804-21 of May 02, 2022, of the Tbilisi City Court; Verdict No1/1434-22 of the Tbilisi City Court; Verdict No1/1233-22 of the Tbilisi City Court; Verdict No1/1233-22 of 20 June 2022, of the Tbilisi City Court; Verdict No1/696-21 of 26 April 2022, of the Tbilisi City Court, 1/5434-21 of 21 June 2022; Verdict No1/2181-21 of April 12, 2022, of the Tbilisi City Court; Verdict No1/1708-22 of 13 April 2022, of the Tbilisi City Court; Verdict No1/1832-22 of 20 July 2022, of the Tbilisi City Court; Verdict No1/4855-19 of 16 March 2022, of the Tbilisi City Court; Verdict No 1/3065-20 of September 08, 2022, of the Tbilisi City Court; Verdict No 1/3270-21 of February 14, 2022, of the Tbilisi City Court; Verdict No1/3631-22 of the Tbilisi City Court of July 11, 2022; Verdict No1/2638-22 of the Tbilisi City Court; Verdict No1/2638-22 of the Tbilisi City Court; Verdict No1/292-22 of 04 May 2022, of the Tbilisi City Court; Verdict No1/3845-21 of 25 March 2022, of the Tbilisi City Court; Verdict No1/2716-23 of

According to the verdict of the Tbilisi City Court of April 23, 2021, N.K. was convicted of fraud and money laundering of 17900 euros. The confiscation of property was not applied as an additional punishment.⁶²

Following the verdict of the Tbilisi City Court of May 11, 2021, F.O.K. and others were convicted of fraud and money laundering of USD 134,208. The confiscation of property was not used as an additional punishment, but the accused was deprived of an apartment of 49.19 m² purchased for USD 10,200 in Tbilisi in a procedural confiscation.⁶³

Based on the verdict of the Tbilisi City Court of July 27, 2021, F.O.K. and others were convicted of legalizing unsubstantiated revenue (money laundering) of GEL 619,839 and USD 669. Seven luxury cars purchased for \$168,000 were deprived of additional sentences to disguise illegal revenue.⁶⁴

Based on the verdict of the Tbilisi City Court of October 11, 2021, G.M. and others were convicted of fraud and money laundering of 700 300 euros and USD 40 802. Real estate of various values obtained through criminal activities was deprived as an additional punishment.⁶⁵

As maintained by the verdict of the Tbilisi City Court of October 29, 2021, T.J. and others were convicted of fraud and money laundering of €48900. A vehicle as a proceeds of crime was deprived as an additional punishment.⁶⁶

Following the verdict of the Tbilisi City Court on February 14, 2022, M.K. and others were convicted of fraud and money laundering of 73 995 euros and USD 13,100. No additional punishment was applied to deprive the property.⁶⁷

According to the verdict of the Tbilisi City Court on March 16, 2022, N.G. was convicted of theft and money laundering of GEL 41,212. No additional punishment was used, but the court confiscated GEL 2118, GEL 72, and USD 277.90 in bank accounts.⁶⁸

As claimed by the verdict of the Tbilisi City Court on March 25, 2022, F.N. and others were convicted of pseudo-entrepreneurship and GEL 1,268,036.6, USD 15,385,489.6, EUR 20,786,875, EUR 3,030 Swiss francs and 57 645 pounds of sterling. F.N. was deprived of various expensive real estate purchased through criminal activities.⁶⁹

December 04, 2023, of the Tbilisi City Court; Verdict No1/2860-23 of the Tbilisi City Court; Verdict No1/2951-23 of 07 July 2023, of the Tbilisi City Court; Verdict No1/1578-23 of November 09, 2023, of the Tbilisi City Court; Verdict No1/1579-23 of 12 June 2023, of the Tbilisi City Court; Verdict No1/3114-23 of the Tbilisi City Court; Verdict No1/529-22 of December 27, 2023, of the Tbilisi City Court; 1/2476-22 of the Tbilisi City Court; Verdict No1b/2124-22 of the Tbilisi Court of Appeals of 16 March 2023; Verdict No1/3423-22 of February 13, 2023, of the Tbilisi City Court; Verdict No1/3555-22 of 14 September 2023, of the Tbilisi City Court; Verdict No1/3091-22 of October 06, 2023, of the Tbilisi City Court.

⁶² Verdict No 1/996-21 of April 23, 2021, of the Tbilisi City Court.

⁶³ Verdict No 1/4697-20 of 11 May 2021, of the Tbilisi City Court.

⁶⁴ Verdict No 1/3434-21 of July 27, 2021, of the Tbilisi City Court.

⁶⁵ Verdict No 1/4280-21 of October 11, 2021, of the Tbilisi City Court.

⁶⁶ Verdict No 1/3934-21 of October 29, 2021, of the Tbilisi City Court.

⁶⁷ Verdict No 1/3270-21 of February 14, 2022, of the Tbilisi City Court.

⁶⁸ Verdict No 1/4855-19 of 16 March 2022, of the Tbilisi City Court.

⁶⁹ Verdict No 1/3845-21 of 25 March 2022, of the Tbilisi City Court.

Based on the verdict of the Tbilisi City Court of April 12, 2022, J.H. was convicted of fraud and money laundering of GEL 119,941.54, EUR 467 341,31, and USD 1528. J.H. was confiscated of various expensive cars purchased through criminal activities.⁷⁰

Following the verdict of the Tbilisi City Court of May 04, 2022, M.O. and R.O. were convicted of fraud and money laundering of GEL 29 767.49. 7,700 GEL was deprived of GEL 7,700 obtained by some means contrary to law.⁷¹

According to the Tbilisi City Court verdict of May 23, 2022, J.A. was convicted of money laundering of GEL 5,201.2, EUR 63 065 825.49, and EUR 88 132 376.82. The money generated by criminal activities was deprived of additional punishment for GEL 37,685.52, EUR 153,467.48, and USD 7,831,116.04.⁷²

Based on the verdict of the Tbilisi City Court on May 31, 2022, N.A. and others were convicted of fraud for money laundering of USD 256,174. No additional punishment was applied to deprive the property. The amount of USD 60,000 and €29,450 was returned to the victims.⁷³

According to the Tbilisi City Court verdict of July 20, 2022, M.G. was convicted of money laundering of 1 358 222,36. M.G. was deprived of various expensive cars purchased by criminal means.⁷⁴

As claimed by the verdict of the Tbilisi City Court of September 08, 2022, V.L. was convicted of fraud and money laundering of USD 206,782.2. He was deprived of the real estate of various values acquired through criminal activities as an additional punishment.⁷⁵

Following the verdict of the Tbilisi City Court of February 13, 2023, N.A. was convicted of fraud and money laundering of 5,460 Lari (GEL) and EUR 4041.14. Confiscation was not applied as an additional punishment.⁷⁶

Following the March 16, 2023 verdict of the Tbilisi Court of Appeals, M.R. was convicted of fraud and money laundering of USD 4,005. The accused was not deprived of the property.⁷⁷

According to the verdict of the Tbilisi City Court of June 12, 2023, A.K. and others were convicted for fraud and money laundering of GEL 314,173.45. Various expensive cars purchased by criminal means were also deprived of their sentences.⁷⁸

Based on the verdict of the Tbilisi City Court of June 26, 2023, Sh.H. was convicted of money laundering of USD 3,610,434. Real estate of various value acquired through criminal means was confiscated as an additional punishment.⁷⁹

⁷⁰ Verdict No 1/2181-21 of 12 April 2022, of the Tbilisi City Court.

⁷¹ Verdict No 1/292-22 of May 04, 2022, of the Tbilisi City Court.

⁷² Verdict No 1/2638-22 of May 23, 2022, of the Tbilisi City Court.

⁷³ Verdict No 1/1434-22 of the 31 May 2022, of the Tbilisi City Court.

⁷⁴ Verdict No 1/1832-22 of the Tbilisi City Court, July 20, 2022.

⁷⁵ Verdict No 1/3065-20 of the Tbilisi City Court, September 08, 2022.

⁷⁶ Verdict No 1/3423-22 of the Tbilisi City Court, February 13, 2023.

⁷⁷ Verdict No 1b/2124-22 of March 16, 2023, of the Tbilisi Court of Appeals.

⁷⁸ Verdict No 1/1579-23 of 12 June 2023, of the Tbilisi City Court.

⁷⁹ Verdict No 1/3114-23 of 26 June 2023, of the Tbilisi City Court.

As claimed by the verdict of the Tbilisi City Court of July 11, 2023, M.G. was convicted of fraud and money laundering of USD 12,500. No additional punishment was used to deprive the property.⁸⁰

According to the Tbilisi City Court verdict of September 14, 2023, L.F. was convicted of fraud and money laundering of USD 24,180. The property was not confiscated as an additional punishment.⁸¹

Considering the verdict of the Tbilisi City Court of September 27, 2023, A. Kh and F.S. were convicted of fraud and money laundering of GEL 306,314. They were deprived of €5,080 and USD 68,195 as an additional sentence.⁸²

Based on the verdict of the Tbilisi City Court of October 06, 2023, E.J. and EC were convicted of fraud and money laundering of GEL 1,898,880, EUR 39,550, and USD 9,000. They were confiscated money and real estate of various values as an additional punishment.⁸³

According to the verdict of the Tbilisi City Court, December 04, 2023, A.I.B. was convicted of money laundering of USD 102,000. Three real estates of different values purchased through criminal means were deprived as an additional punishment.⁸⁴

7. Conclusion

The paper revealed that in the fight against crime, including transnational organized crime, the recovery, return, and confiscation of criminal assets is one of the most necessary and effective tools.

Only the traditional approach, limited to judging a person and even imposing a strict criminal sentence in the form of imprisonment for him/her, discourages the effectiveness of the fight against such a crime.

The criminal world should be sent a clear message that crime including organized transnational crime does not pay!

The study revealed that Article 52 of the Criminal Code of Georgia (confiscation of property) is a modern international experience and it is applied as an additional punishment by common courts, although judicial practice is scarce at this stage.

The institutional division in a centralized form, which periodically analyzes the effectiveness of the activities of the law enforcement agencies in the field of crime, including the scale of the property obtained through organized transnational crime, its discovery, return, and confiscation, does not exist at this stage and the Prosecutor's Office of Georgia shall perform this function.

The study found that the direction of return of criminal assets (Asset recovery) in international and individual states has already gained institutional experience.

There is a possibility of creating a unit equipped with the function of asset recovery in the system of the Prosecutor's Office of Georgia because the mentioned important legal mechanism is operatively compatible with it.

⁸⁰ Verdict No 1/2476-22 of July 11, 2023, of the Tbilisi City Court.

⁸¹ Verdict No 1/3555-22 of September 14, 2023, of the Tbilisi City Court.

⁸² Verdict No 1/2860-23 of September 27, 2023, of the Tbilisi City Court.

⁸³ Verdict No 1/3091-22 of October 06, 2023, of the Tbilisi City Court.

⁸⁴ Verdict No 1/2716-23 of December 04, 2023, of the Tbilisi City Court.

It is essential to focus on the effective management of seized criminal assets (asset recovery). The institution should be established independently of law enforcement agencies where the seized criminal assets will be fully organized and made efforts to maintain the value of confiscated property to be used to compensate for the damage caused to the state, private sector, and citizens as a result of organized transnational crime.

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