

# Financial Investigations Concerning the Ordering of Precautionary Measures, of Special and Extended Confiscation During Criminal Proceedings

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## Abstract

*The financial investigation is an important process in carrying out the prosecution, particularly concerning economic and financial cases, which involves the collection, obtaining and analysing of data and information necessary for the tracking and identification of goods obtained or used in the commission of such offences.*

*The investigation of economic and financial crimes is an activity which involves collecting and linking legal, economic and financial data, with the aim of identifying and proving criminal activity and taking precautionary measures with regard to the proceeds of crime, i.e. the confiscation or the recovery of the damage caused by them.*

*The purpose of the article aims to identify the errors that may occur in the application of incidental procedures in the field as well as to highlight the best practices for successful application of precautionary measures of special and extended confiscation during criminal proceedings.*

**Key words:** confiscation, crime, illicit, investigation, prosecution.

**J.E.L. classification:** K42

## 1. Introduction

The financial investigation is an important process in carrying out the prosecution, particularly concerning economic and financial cases, which involves the collection, obtaining and analysing of data and information necessary for the tracking and identification of goods obtained or used in the commission of such offences. The results of the financial investigation are fleshed out in evidence as part of all the prosecution material, which will serve to resolve the criminal case.

In order to identify the appropriate ways of implementing the provisions of the law, this article aims to research the elements of legislative content, to analyse the practices used by the judicial bodies in the field, as well as to research specialized bibliographic sources.

## 2. Theoretical background

In order to deepen the legislation in force on precautionary and confiscation measures, we studied the Criminal Code and the Code of Criminal Procedure.

From the study of the specialized literature in the field, several authors were highlighted, who analyzed the issue of confiscation, among which we mention: Phd Professor Marius Pantea teacher at the Police Academy with the works "Fraud Investigation", "Economic-Financial Crime Investigation", "Forensic Methodology Applications in Fraud Investigation" which contain ample references to the analyzed subject.

Another reference element is the work of Mr. Mirel Dumitru entitled "Economic crimes provided in the new Criminal Code" in which he took into account the latest decisions of the constitutional court and considered a multidisciplinary approach by initiating issues of substantial procedural and civil law, as well as civil procedure incidents on the criminal procedural level.

Another study worth mentioning is the work entitled "Extended confiscation" designed by Andrei Viorel Iugan which presents the relevant jurisprudence of the European Court of Human Rights and the Constitutional Court, for an in-depth study of extended confiscation compared to the standard required to respect rights and fundamental freedoms.

Finally, it is worth mentioning the study entitled "Extended confiscation: between why and how much?" of the author Flaviu Ciopec

This study represents a contribution to the understanding of the reception in Romanian criminal law of the original European message. The author considers that without displaying a rigid conservatism, the national criminal law had the traditional instrument of special confiscation, overlapping the extended confiscation, a circumstance that determines the question of why we need this new instrument of confiscation and did not stimulate the application of an institution that already exists.

### **3. Research methodology**

The significance of this article arises from the objectives and directions of scientific research which have been based on the empirical research of the field, documentary study and as a result of the experience gained as a judicial police officer. The scientific approach has proposed a practical perspective on this evidentiary instrument by identifying the main ways of its implementation.

The type of research used is a descriptive one for the purpose of documenting and understanding of phenomena and as research methods observation, document analysis and content analysis were used. The research methodology was achieved by reading several written sources and also by studying websites to learn information from several sources, thus using descriptive research for the purpose of documenting and understanding the phenomena.

### **4. Findings**

#### **4.1 Competent police structures**

According to Law No. 218/2002 on the organisation and functioning of the Romanian Police, The General Inspectorate of the Romanian Police is the main body of the police, with legal personality and overall competence, that directs, guides and controls the activity of subordinate police structures, fulfills tasks of research and investigation of serious offences, specific to organised crime, economic and financial crime, other offences subject to criminal cases under the supervision of the Prosecutor's Office of the High Court of Cassation and Justice, as well as any other tasks given in its jurisdiction by law.

Regarding the competence of the investigation of offences circumscribed to economic-financial or banking crime, it is the responsibility of the Directorate for the Investigation of Economic Crime, which operates within the General Inspectorate of the Romanian Police.

The Directorate of Investigation of Economic Crime functions as a specialized unit in the field, ensuring the uniform implementation of the normative acts in force and having as its priority, the prevention and combating of crime circumscribed to the economic and financial field under the direction and control of the appointed prosecutors, in accordance with the legal provisions. Based on modern European principles, the work of the Economic Crime Investigation Directorate is based on new working practices, supported by innovative systems. In general terms, it is intended to be a proactive and reactive police management, which means ensuring a way of organisational management adapted to current and prospective requirements, which will create the capacity to respond adequately to the increasingly complex operating conditions, with a view to achieving a modern, flexible structure compatible with similar institutions within the European Union ([https://www.politiaromana.ro/ro/politia-romana/unitati-centrale/directia-de-investigare-a-criminalitatii-economice.](https://www.politiaromana.ro/ro/politia-romana/unitati-centrale/directia-de-investigare-a-criminalitatii-economice))

## **4.2 The necessity of establishing the financial profile**

In particular, the Economic Crime Investigation Officer does have the following prerogatives: a) organises and carries out the work of gathering information for the purpose of ascertaining offences circumscribed to financial economic crime; b) under the coordination and supervision of the case prosecutor carries out criminal proceedings in the criminal cases assigned to him; c) collaborates with other information structures for the purpose of obtaining information in order to prevent and combat economic crimes; d) solves applications or petitions which concern the field of activity and which do not represent any of the referral methods provided for by law; e) carries out acts of prosecution on the basis of delegation orders in the cases involving offences falling within the exclusive competence of the prosecutor; f) carries out financial investigations with a view to ordering the precautionary measures, confiscations and establishing the financial profile of the person under investigation.

The investigation of economic and financial crimes is an activity which involves collecting and linking legal, economic and financial data, with the aim of identifying and proving criminal activity and taking precautionary measures with regard to the proceeds of crime, i.e. the confiscation or the recovery of the prejudice caused by them.

The financial investigation activity is carried out at the same time as the prosecution activity, also having a complex role, in the sense that it focuses simultaneously on both the crime generating illicit profits and the study of financial flows.

Furthermore, the financial investigations are tools for a dynamic activity of identifying and freezing the proceeds of the crime, with the aim of preventing their disappearance or their introduction into the legal economy or their use in other criminal actions.

The economic and financial data and information obtained as a consequence of the financial investigations may be used productively to prove the criminal activity from which the amounts of money to be subject to special confiscation or extensive confiscation have resulted.

The activity of financial investigation, unlike prosecution, is not limited only to the perpetrators and participants, but it also extends to a circle of third parties resulting from the financial investigation, which can lead to the genuine beneficiary who has the task of taking decisions.

The proceeds of financial investigations are being materialised in a report to be used as evidence and intended to facilitate the understanding of the functioning of the criminal organisations, of the financial flows and of the presentation of the factual situation in its entirety, in a logical sequence, by the criminal investigation bodies.

## **4.3. The Objectives of the financial investigation**

### **4.3.1. Ways of achieving the financial profile**

In order to establish a financial profile of those who commit crimes of economic nature, which could help to identify assets acquired in illicit manners, it is necessary to be undertaken the following activities for each asset or liability: establishing the exact moment of the acquisition of the goods; the identification of the person with whom the transaction was concluded; discovering the ways of using the acquired count; the identification of sales actions of the goods; the identification of the consignee of the sale; establishing the method of payment; finding out the sources of the amount of money obtained.

In order to properly create a financial profile, the analysis of the actual income (assets and expenditure) acquired/conducted during the reference period will be carried out initially, then the revenues obtained from lawful sources in the relevant period will be analysed.

For the analysis of the genuine income acquired and expenses incurred in a certain period of time, the following will be taken into account: movable property (cars, motorcycles, aeroplanes), immovable property (houses, land), sums of money found during house searches, significant expenses made (excursions, purchase of jewellery or precious art), loans granted, paid-up loans, grants, fees or charges, rates relating to loans to banking institutions, life or health insurance, performance of contract obligations, the conclusion of simulated contracts.

For the verification of revenues obtained from lawful sources in the reference period, the following will be considered: salaries, wages or allowances of members of the board of directors, pension income, self-employed income, farm or fishery income, gifts, legacies, donations received, income from dividends, rental money, intellectual property rights, etc.

Therefore, the comparative analysis of the two types of income is carried out, establishing the real/genuine income. Following the analysis, the difference between the real and the lawful revenues may be the subject of extensive confiscation.

#### **4.3.2. Databases and institutions which can be demanded to provide useful information for the financial investigations**

For the purpose of financial investigations, judicial bodies may submit requests to various state institutions, legal persons or online sources in order to obtain data and information of interest to the case. Therefore, it is possible to request and access information from several online sources: in order to obtain financial ratios of companies, <http://www.mfinante.ro/agentcod.html> can be accessed; in order to obtain declarations of wealth and interests, [declaratii.integritate.eu](http://declaratii.integritate.eu) may be accessed; public procurement can be checked on <http://www.e-licitatie.ro>; requests can be sent via the law enforcement portal to PAYPAL, Western Union and Ebay.

Property information may be requested from the following institutions: Directorates of Local Taxes and Duties (they possess information on cars or immovable property owned by citizens for whom there is an open tax role and for local taxes are paid); DRPCIV (keeps information on vehicles owned by citizens). Local or regional financial administrations; National Agency for Tax Administration; CEDAM database (which is managed by the Financial Supervisory Authority, which includes all compulsory RCA car liability insurances concluded on the territory of Romania); DEPABD (M.A.I. database, which provides information on the person's identification data, domicile or residence history); National Bank of Romania (which can provide information on the loan situation); General Directorate for Customs (providing information on import and export operations); banking institutions (may provide documents submitted for the application of a bank loan, signature specimens, declarations of the provenance of the amounts deposited in cash); Labour Inspectorate (holds information on employees and employers); National Naval Authority (holds information on craft listed in the names of citizens); Romanian Civil Aviation Authority (holds information on aircraft in support of a natural or legal person and registration history); National Health Insurance Fund or National Public Pension Fund (may provide data on declarations submitted on pension, unemployment and health insurance contributions); National Office for the Prevention and Combating of Money Laundering (on information relating to possible financial analyses carried out on different subjects); ANCPPI (information on immovable property); General Inspectorate for Immigration within the Ministry of Internal Affairs (information related to the situation of foreign nationals); The Central Depository and financial investment services companies (provide information on shares held by a natural or legal person); Romanian Copyright Office (provides information on copyright and related rights); Electronic Archive of Real Mobility Guarantees (contains a system for registering mortgages).

#### **4.3.3. Taking precautionary measures and the confiscations**

The judicial bodies have the duty to identify all goods or amounts of money derived from criminal activity which form the subject of the case. The Financial investigations must also cover all movable or immovable property owned by/ in the possession/detention of the suspect, the defendant, the civilly responsible person or the other third parties in situations where the precautionary measures are to be taken for the reason of special confiscation, extended confiscation or for the reason of guaranteeing the enforcement of the sanction of the fine or judicial expenses or compensation for the damage caused by the offence.

According to law (Lupaşcu D., 2019, p.303-305), during criminal prosecution, the prosecutor may take precautionary measures, by order, to avoid hiding, destruction, the transfer or the removal from prosecution of movable or immovable property which may be the subject of special or extended confiscation or which can serve to guarantee the execution of the penalty of the fine or legal expenses or the compensation of the damage caused by the offence. The precautionary measures consist of freezing the goods by the imposition of a seizure on them. In order to

guarantee the enforcement of the penalty of the fine, precautionary measures may be taken only on the goods of the suspect or of the defendant. Precautionary measures concerning the special or extended confiscation may be taken on the property of the suspect or defendant or of other third parties in the property or possession of the goods to be confiscated. Preservation measures to mend the damage caused by the crime and to secure the execution of legal costs can be taken on the assets of the suspect or defendant and of the person responsible, up to the presumable value of the of the proceedings.

The judicial body carrying out the seizure is urged to identify and assess the seized goods and may, if necessary, use auditors or specialists. Short-lived goods, objects made of metals or precious stones, domestic securities, art and museum pieces, valuable collections, as well as amounts of money subject to seizure will be compulsorily collected. Perishable goods are handed over to the competent authorities in agreement to their activity profile, that are supposed to receive and assess them shortly. Precious metals or stones, or pieces made out of them and foreign currencies, are deposited at the nearest bank. Domestic securities, art or museum pieces and expensive collections are handed over for preservation to specialized institutions. The items which were picked up shall be handed over within 48 hours of the time it were picked up. If the objects are highly necessary for the prosecution, for the preliminary chamber procedure or the trial, the handing over shall be made at a later date, but not later than 48 hours after a definitive solution has been reached. Seized items are being kept until the seizure is lifted. The amounts of money are being recorded, as appropriate, to the name of the suspect or the defendant or of the person civilly responsible, at the disposal of the judicial body which ordered the establishment of the seizure, to which the receipt of the sum shall be handed over, no later than 3 days after the money was collected or the goods were monetized.

According to the law (Bodoronca G., Cioclei V., Kuglay I., Lefterache L., Manea T., Nedelcu I., Vasile F. M., 2014 , p. 255, 260-261), in order to solve the criminal case in all aspects, the judicial bodies may order the measure of special confiscation and extended confiscation.

In accordance with Article No. 112 of the Penal Code, are subject to special confiscation: the assets derived from the commission of an offence regulated by the criminal code; assets that have been used in any way or planned to be used in the commission of an act regulated by criminal code, if they belong to the criminal or if, belonging to different person, he has known the goal of their use; the assets used, immediately after the act, to secure the escape of the criminals or the preservation of the use or product gained, if they belong to the criminal or if, belonging to different person, he was aware of the purpose of their role; assets that have been given to complete the commission of an act provided for by criminal code or to reward the criminal; goods acquired by the commission of the offence regulated by criminal code, if they are not given back to the prejudiced person and or if they do not serve to compensate him; property of which the possession is prohibited by criminal law. Except for assets from the commission of the offence regulated by criminal code, if the assets subject to confiscation are not identified, money and assets may be confiscated up to the amount of their value.

The extended confiscation security measure, regulated by Article 112 of the Penal Code, is a variety of the security measure of confiscation and represents a forced and free passage into the state ownership of certain property belonging to the person who committed a crime of certain gravity, individualized by the legislator (it is punishable with a penalty of 4 years' imprisonment or more and is liable to obtain material benefits) , belonging to the convicted person or to a third party who transferred assets to a family member, to persons with whom the criminal actually has family-like connections or to a legal person over whom he had control. In contrast to some of the hypotheses envisaged by the special confiscation, in the case of extended confiscation it is mandatory that the person has been convicted of committing a crime or of any offences falling within the description of the legislature – the expression being in all cases in manner: 'if the person is convicted', 'the value of the property acquired by the convicted person' , "the transfer by the convicted person" (<https://www.juridice.ro/488766/corelatia-dintre-confiscarea-extinsa-si-investigatia-financiara-procesul-penal-roman.html>).

Therefore, in accordance with Article No. 112 of the Penal Code, in the case of most economic offences, the extended confiscation may be ordered if the value of the property acquired by the convicted person, within a period of 5 years before and, where appropriate, after the time of the

offence, until the date of issue of the document of referral to the court, clearly exceeds the revenue obtained by the convicted person. In this situation, the court must be convinced that the assets in question are derived from criminal activities. In order to carry out the extended confiscation, account will also be taken of the value of the goods transferred by the sentenced person or by a third party to a family member or legal person over whom the sentenced person has control. By assets, the amounts of money are also presumed. In establishing the difference between the lawful income and the value of the acquired assets, account will be taken of the value of the assets at the time of its purchase and the expenses incurred by the sentenced person, members of his family. If the goods subject to confiscation are not identified, money and property will be confiscated up to the value of the assets. Assets and money gained from the exploitation of assets subject to confiscation, as well as the goods produced, will also be confiscated

## 5. Conclusions

The commission of economic offences causes considerable property damage and may lead to the destabilisation of society. Thus, in order to solve such crimes, it is necessary to improve the bodies specialised in the investigation of economic crime assuming the existence of knowledge of specificity.

Therefore, in order to take precautionary measures which may be subject to special confiscation or extended confiscation or which may serve to guarantee the execution of the penalty of the fine, the legal costs or the repair of the damage caused by the commission of offences in judicial practice, the concept of financial investigation has emerged, which involves obtaining custom data and information in relation to the specifics of the offence which is the subject of the criminal case.

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