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ISSUES OF RECOGNITION AND ENFORCEMENT OF JUDICIAL DECISIONS ON THE RETURN OF CRIMINALLY DERIVED ASSETS

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Abstract: This article presents the recognition and enforcement of judicial decisions related to the return of criminally derived assets in regulations and international treaties, as well as proposals to existing international treaties.

Keywords: recognition and enforcement, Treaty, Minsk, Kishinev Conventions.

Legalization of proceeds of crime poses a serious threat to national security due to the fact that it creates the necessary conditions for the emergence and functioning of organized crime in various spheres of society.

In accordance with the procedure stipulated by international treaties, when enforcing enforcement documents of domestic courts on confiscation or return of property in a foreign country, one may face such problems as recognition of the court decision and its enforcement in the foreign country, inventory of property, if necessary, revaluation and creating conditions for its full preservation, its sale, including through auctions in accordance with the requirements of foreign law.

Currently, the Republic of Uzbekistan has signed bilateral and multilateral agreements on legal assistance in civil, family and criminal cases on the recognition and enforcement of judgments with more than 30 countries.

Among them are such agreements as the Minsk Convention (January 22, 1993, Minsk) and the Chisinau Convention (October 7, 2002, Chisinau) on legal assistance and legal relations in civil, family and criminal cases, the bilateral agreement "On legal assistance in criminal matters" signed with the United Arab Emirates (November 11, 2014, Abu Dhabi).

In accordance with article 3 of the Law of the Republic of Uzbekistan of August 29, 2001 "On enforcement of judicial acts and acts of other bodies" compulsory enforcement of judicial acts and acts of other bodies is entrusted to state enforcement officers of the Bureau of enforcement under the General Prosecutor's Office of the Republic of Uzbekistan, confiscation of property in favor of the state on the basis of court decisions is regulated by this law and the Regulations approved by the Cabinet of Ministers on July 15, 2009 "On improving the procedure for seizing, selling or destroying property to be turned over to the state" and other regulatory and legal acts.

These Regulations also regulate the procedure for accounting, storage and destruction of seized property transferred to the state, the adoption of such decisions, the specifics of accounting, transfer and disposal of vehicles and immovable property, as well as the procedure for accounting proceeds from the sale of property.

According to this order the state executor of the Bureau of compulsory execution under the Prosecutor General's Office of the Republic of Uzbekistan within one working day shall decide on the initiation of enforcement proceedings. Sale of property transferred to the state, except for vehicles and immovable property, shall be carried out on a commission and contractual basis or on an auction basis. Sale of vehicles and immovable property shall be carried out at specialized public auctions in the manner prescribed by law.

The procedure for enforcing decisions of foreign courts and arbitral tribunals is regulated by laws and international treaties of the Republic of Uzbekistan. In particular, in accordance with Article 363 of the Civil Procedure Code of the Republic of Uzbekistan and the requirements of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958, ratified by Oliy Majlis Decision № 184-I of 22 December 1995.

A writ of execution issued by a court of the Republic of Uzbekistan on the basis of a decision of a foreign court or arbitration, unless otherwise provided by an international treaty of the Republic of Uzbekistan, may be submitted for compulsory execution within three years from the date the decision enters into legal force.

The following problems may arise in the enforcement of domestic court decisions on the return of assets located in a foreign country and the legalization of proceeds of crime:

- article 51 of the Minsk Convention provides that Contracting Parties shall recognize and enforce judgments of courts in criminal cases in the territory of another Contracting Party[1] (due to the fact that this convention does not provide for the return of assets located in the territory of a foreign country, it is not possible to enforce such enforcement documents).

- despite the fact that the Chisinau Convention is considered a logical continuation of the Minsk Convention, Article 54 of which states that the Contracting Parties shall recognize and enforce the decisions of criminal courts of the other Contracting Party relating to compensation for damages, criminal fines and confiscation of property[2], this Convention is not ratified by the Russian Federation (it is not possible to enforce in the Russian Federation execution documents on asset recovery based on the requirements of this Convention.)

- The Abu Dhabi Agreement specifies rules such as the return of items (Article 16), assistance in confiscation (Article 17), and the return of embezzled state assets, but does not specify how such judgments will be recognized and enforced[3] (it is impossible to enforce judicial decisions to return assets derived from criminal activity on the territory of a foreign state)

In our opinion, to solve the problems considered and to further improve the legislation in this area it is advisable to make the following proposals:

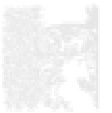
- 1) develop a draft international treaty between the CIS states regulating the procedure for sending and receiving documents directly between the authorized bodies of the Contracting Parties without the participation of a central body (Prosecutor General's Office) of mutual legal interaction using modern information technologies by sending and accepting requests and instructions for the recognition and enforcement of judgments. This will save time in sending and receiving requests, instructions to the competent authorities of the Contracting Parties without the involvement of the central authority, prevent the alienation of property or concealment of funds from bank accounts, resulting in the execution of court decisions;

- 2) preparation of a draft bilateral treaty between the Republic of Uzbekistan and the Russian Federation on mutual legal assistance in the recognition and enforcement of decisions on reparation of damages, criminal fines and confiscation (as a supplement to the Minsk Convention). The implementation of this proposal will ensure the enforcement of sentences and rulings issued by criminal courts of the Republic of Uzbekistan on the territory of the Russian Federation in criminal cases related to the legalization of proceeds of crime (Article 243 of the Criminal Code) in the territory of the Russian Federation.

References:

1. Resolution of the Supreme Soviet of the Republic of Uzbekistan of May 6, 1993 "On Ratification of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases," Article 51 of the Convention.
2. Law "On Accession of the Republic of Uzbekistan to the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Chisinau, October 7, 2002)" of August 26, 2019, Article 54 of the Convention.
3. Law on Ratification of the Agreement on Mutual Legal Assistance in Criminal Matters (Abu Dhabi, November 11, 2014) between the Republic of Uzbekistan and the United Arab Emirates of May 21, 2015, Articles 16-18 of the agreement.

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