



RULING OF THE PLENARY SESSION OF THE SUPREME COURT OF THE RUSSIAN FEDERATION

No. 17

Moscow

14 June 2018

On Certain Issues regarding Confiscation of Property in Criminal Judicial Proceedings

With regard to issues encountered by the courts during confiscation of property in criminal cases, in order to ensure the correct and uniform court application of norms of criminal and criminal procedural legislation regulating the grounds and manner of confiscation of property, the Plenary Session of the Supreme Court of the Russian Federation, guided by Article 126 of the Constitution of the Russian Federation, Articles 2 and 5 of Federal Constitutional Law No. 3 of 5 February 2014 “On the Supreme Court of the Russian Federation”, hereby rules to provide the following clarifications:

1. It is brought to the attention of the courts that the use of a criminal law measure in the form of confiscation of property (Chapter 15.1 of the Criminal Code of the Russian Federation, hereinafter referred to as the CrC RF), understood as its compulsory non-compensatory seizure and appropriation by the state, may involve the limitation of the constitutional civil right to private property and must be performed by the court in strict accordance with the provisions of the Constitution of the Russian Federation, the universal principles and norms of international law and international treaties of the Russian Federation, the requirements of criminal and criminal procedural legislation.

2. Money, valuables and other property, as well as income derived from such property, are subject to confiscation by virtue of Items “a” and “b” of Part 1 of Article 104.1 of the CrC RF, only if they were acquired as a result of the crimes stipulated in those norms or were illegally transferred across the customs border or across the State border of the Russian Federation (liability for the latter actions is stipulated in Articles 200.1 [Smuggling of Cash Monetary Funds and (or) of Monetary Instruments], 200.2 [Smuggling of Alcoholic Produce and (or) of Tobacco Products], 226.1 [on smuggling of dangerous substances, weapons, etc.] and 229.1 [on smuggling of narcotics drugs, etc.] of the CrC RF). Moreover, in accordance with Item “c” of Part 1 of Article 104.1 of the CrC RF, money, valuables and other property used or intended for the financing of terrorism, extremist activities, for the financing of an organised group, illegal armed group, criminal community (criminal organisation) are subject to confiscation.

Herewith, the law does not limit the range of crimes in cases regarding which the court may confiscate the instruments of crime, equipment or other means of perpetration of the crime that belong to the defendant (Item “d” of Part 1 of Article 104.1 of the CrC RF).

By implication of Item “b” of Part 1 of Article 104.1 of the CrC RF, the property into which the property obtained as a result of a crime was fully or partially turned or transformed may include new property objects, appearing as a result of reconstruction of illegally procured real property.

3. Based on provisions of sub-paragraph c of Article 1 of Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism of 16 May 2005, Item 8 of Part 1 of Article 73, Part 3 of Article 115 and Item 10.1 of Part 1 of Article 299 of the Criminal Procedure Code of the Russian Federation (hereinafter referred to as the CrPC RF), the instruments of crime, equipment or other means of perpetration of the crime should include the items used or intended for use in commission of a criminal act or in order to achieve a criminal result (e.g. a car equipped with special storage for concealment of goods during their movement across the customs border or the State border of the Russian Federation; echo sounders and navigators used during illegal procurement (catching) of aquatic biological resources; copying machines and other office equipment used to produce forged documents).

When resolving the issue of confiscation of the instruments of crime, equipment and other means of perpetration of the crime by virtue of Item “d” of Part 1 of Article 104.1 of the CrC RF, the court should ascertain the fact that such property is owned by the defendant.

4. It is clarified to the courts that by implication of Item “a” of Part 1 of Article 104.1 of the CrC RF and Item 4 of Part 3 of Article 81 of the CrPC RF, the property referred to in those norms is subject to confiscation and may not be returned to its owner, if that person participated in the perpetration of the crime with regard to which confiscation takes place. For example, contraband articles may not be returned to their owner, who participated in their illegal movement.

In cases on corruption-related crimes, money, valuables and other property transferred as a bribe or the subject matter of commercial bribery are subject to confiscation and may not be returned to the bribe-giver or to the person that committed commercial bribery, in particular where such persons are exempt from criminal liability by virtue of, correspondingly, Note to Article 291 of the CrC RF [Giving a Bribe], Note to Article 291.2 of the CrC RF [Petty Bribery] or Item 2 of Note to Article 204 of the CrC RF [Commercial Bribery], Note to Article 204.2 of the CrC RF [Petty Commercial Bribery].

Herewith, the money and other valuables, transferred as a bribe or the subject matter of commercial bribery under the control of bodies engaged in operative-investigative activities for the purpose of arresting the person that requested a bribe or commercial bribe *in flagrante delicto* are returned to their owner, if the owner voluntarily provided information about said request before transferring the valuables.

5. In cases on terrorist crimes and crimes on criminal extremism, any property owned by the defendant and being the instrument of crime, equipment or other means of perpetration of the crime is subject to confiscation. Such property may include mobile phones, personal computers, other electronic communication devices, used by the defendant, in particular:

- to publish text, audio, video or other materials containing public justification of terrorism and (or) public incitement to terrorist activities in mass media or in electronic or information and telecommunication networks;
- to directly prepare for terrorist activities (studying for the purposes of engagement in terrorist activities; propaganda and dissemination of prohibited terrorist or extremist literature, etc.).

Money, valuables and other property used or designated for the financing of terrorism, extremist activities, of an organised group, illegal armed group, criminal community (criminal organisation) are subject to confiscation by virtue of Item “c” of Part 1 of Article 104.1 of the CrC RF, independent of who they belong to.

6. In accordance with Part 3 of Article 115 of the CrPC RF, in order to secure the possible confiscation of property, the court may arrest the property referred to in Part 1 of Article 104.1 of the CrC RF, where it is held not only by the suspect, defendant or the persons materially liable for their actions in accordance with the law, but also by other persons, if there are sufficient grounds to believe that such property was acquired as a result of criminal activities or was used or intended for use as an instrument of crime, equipment or other means of perpetration of the crime or for the financing of terrorism, extremist activities (extremism), of an organised group, illegal armed group, criminal community (criminal organisation). Such property may also be arrested where the identity of the suspect or defendant in an initiated criminal case has not been established.

With due regard to Part 3 of Article 115 of the CrPC RF, the descriptive part and statement of reasons of a ruling that satisfies the corresponding motion must state the reasons for selecting the concrete limitation or limitations pertaining to possession, use and disposal of the arrested property, which are necessary and sufficient to ensure that the property is preserved. Such limitations (e.g. prohibition to dispose of said property through contracts of sale, lease, donation, pledge and through other transactions resulting in alienation or encumbrance of that property) are stipulated in the operative part of the ruling, which should also indicate the time for which the property is arrested, determined with regard to the established duration of the preliminary investigation in the criminal case and the time necessary for transfer of the criminal case to the court. This period may later be prolonged in the manner stipulated in Article 115.1 of the CrPC RF.

7. Proceeding from Part 3 of Article 104.1 of the CrC RF, in order to resolve the issue of confiscation of property transferred by the defendant to a different person (organisation), the court must study the evidence and establish that the person currently holding the property knew or must have known that said property was obtained as a result of criminal acts or was used or intended for use in perpetration of a crime.

8. If no measures were taken to secure the possible confiscation of property during the preliminary investigation, the judge, when preparing the criminal case for the court session, may adopt a ruling regarding the arrest of property, in accordance with Item 5 of Part 1 of Article 228 and Part 2 of Article 230 of the CrPC RF and upon the motion of the victim, her/his representative or of the prosecutor. The judge makes such a decision based on information regarding the property subject to confiscation, which may be arrested. Such information may be contained in the materials of the criminal case or may be provided additionally.

Such a motion may also be submitted and considered by the court during the trial.

9. If, taking into account the facts of the criminal case, it is impossible to confiscate a certain item, as it is in use, has been sold, or for a different reason, the court may appoint an expert examination pursuant to Part 2 of Article 104.2 of the CrC RF, which requires confiscation of property of equal value.

10. It is brought to the attention of the courts that by virtue of Article 104.3 of the CrC RF the issue of restoring the damage caused to the lawful owner should have the highest priority among the issues pertaining to confiscation of property and resolved by the court. In particular, damage may be restored at the expense of the property subject to confiscation.

11. The descriptive part and statement of reasons of a judgement of conviction adopted in the general manner should refer to the evidence of the fact that the property subject to confiscation was obtained as a result of crime, or is a form of income derived from such property, or was used or intended for use as an instrument of crime, equipment or other means of perpetration of the crime or for the financing of terrorism, extremist activities (extremism), of an organised group, illegal armed group, criminal community (criminal organisation). Reasons on which the decision to confiscate the property is based must also be provided (Items 4.1 and 5 of Article 307 of the CrPC RF).

12. When a criminal case is considered under the rules of Chapter 40 or 40.1 of the CrPC RF, and the judgment is adopted in the special manner, the court should resolve the issues indicated in Items 10.1–12 of Part 1 of Article 299 of the CrPC RF with due regard to Part 5 of Article 316, Part 4 of Article 317.7 of the CrPC RF, based on the materials of the criminal case and indicating the reasons for the adopted decision. Where necessary, the court reads out the materials contained in the case and additionally provided by the parties in order to ascertain the facts

that have significance for the resolution of said issues. The court gives the parties and the defendant (in her/his last word) an opportunity to state their opinion, in particular as regards the possible confiscation of property.

13. In accordance with Items 1 and 4.1 of Part 3 of Article 81 of the CrPC RF, the court may decide to confiscate the instruments, equipment and other means of perpetration of the crime, owned by the defendant and recognised as material evidence (and also money, valuables and other property, where Items “a”–“c” of Part 1 of Article 104.1 of the CrC RF apply), both when a judgement of conviction is adopted, and when the court terminates the criminal case (criminal prosecution) on non-rehabilitating grounds. It is only allowed to terminate the case on non-rehabilitating grounds when the legal consequences of the adopted decision, in particular the possibility of confiscation of property, are explained to the accused (defendant), and he/she does not protest against such termination. If the criminal case is subject to termination by virtue of Item 4 of Part 1 of Article 24 and Item 1 of Article 254 of the CrPC RF due to death of the accused (defendant), the court explains the aforementioned consequences to her/his close relatives.

If the accused (defendant) or her/his close relatives protest against the termination of the criminal case, proceedings in the case continue in the general manner.

14. If certain items are transferred to the corresponding institutions or destroyed by virtue of a court decision, this is not regarded as confiscation of property, where such items attached to the materials of the criminal case as material evidence pertain to property listed in Items “a”–“d” of Part 1 of Article 104.1 of the CrC RF or to income derived from such property, but are prohibited from circulation or removed from illegal turnover. In such situations, the court adopts a decision not on confiscation, but on transfer of the items to the corresponding institutions or on destruction of items prohibited from circulation (by virtue of Item 2 of Part 3 of Article 81 of the CrC RF), or on destruction of consumer goods removed from illegal turnover (by virtue of Item 2.1 of Part 3 of Article 81 of the CrPC RF).

15. During proceedings in a court of appeal (Article 389.24 of the CrPC RF) or in a court of cassation, a judgment of conviction, court ruling or court decree regarding the confiscation of property may be cancelled or amended to the deterioration of the convicted person or of the person in whose regard the criminal case (criminal prosecution) was terminated only upon address of the prosecuting official (prosecutor) and (or) upon appeals filed by other participants of proceedings on the side of the prosecution. The limiting period stipulated in Article 401.6 of the

CrPC RF also applies when court decisions are cancelled or amended in a court of cassation with deterioration of the defending party in regard of confiscation of property.

Chief Justice of the Supreme Court of
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V.M. Lebedev

Secretary of the Plenary Session, Judge of
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V.V. Momotov