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ANTI-CORRUPTION CONFISCATION

Abstract: this article is a comparative analysis of foreign regulatory legal material regulating confiscation tools as an element of anti-corruption policy. As an Annex to the textbook attached author's translations with brief comments on the legal acts of the European Union, the United States, the UK and Switzerland.

Key words: criminal liability, alternative means of solving the criminal law conflict, corruption, anti-corruption policy, confiscation, comparative studies.

The institution of criminal and legal confiscation realized outside the framework of the traditional criminal process (the so-called confiscation of assets of criminal origin) has developed significantly in foreign practice.

In the considered key, the issue of the prospects of so-called confiscation in rem, which is a civilian instrument, is a very effective means of counteracting vicious crimes, and, first of all, corruption.

Traditionally, the focus is on so-called confiscation in rem. Often, a very effective instruments in achieving the goals declared by criminal law is a civilian tool. Such kind of claim as a claim not to a person (in personal), but to a thing (in rem) is known from the time of Roman Law. The most common lawsuit in rem is a reclamation of property from unlawful posssesion (where I find my property, there I reclaim it). The institution of confiscation is equally ancient in civil law. In the late 60s of the last century, ideas arose to unite these two institutions and use them in the legal field, traditional for criminal law. A kind of subinstitute of "confiscation in rem" emerged, which many specialists characterize as the most effective tool in countering any mercenary (including corruption) crime. Its basic idea: to make any criminal enrichment meaningless (extraordinarily risky). Several acts of International Law are devoted to regulating various issues of confiscation in rem[2].

At one time, the author of these lines received curious information in discussion with English, French and German colleagues who had introduced the confiscation in rem in the European Legal Field in the 80s: when they persuaded opponents of the expediency and necessity of the normative consolidation and application of this institution in practice, they referred to the socialist experience. First of all, cultural experience - the famous artwork of Ilf and Petrov "The Golden Calf": Koreyka stole millions of rubles, but, around him, was created a society in which there was no place for these millions. In addition, the jurisdic-

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[2] A.17 Resolutions of the Council of Europe No. 97 of 11/06/1997. “Twenty Principles for Combating Corruption”; Article 2 of the Convention on Combating Bribery of Foreign Officials in International Business Transactions. OECD, Istanbul, 11/21/1997; Council of Europe Civil Law Convention on Corruption, Strasbourg, 11/04/1999; The Istanbul Anti-Corruption Action Plan for Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, and the Russian Federation. Ukraine and Tajikistan, OECD and others.

tional experience - the work of the OBBS service and the company against fraudulent gains. Thus, it can be stated that Russian Jurisprudence has also contributed to the formation and establishment of the institution under consideration.

Confiscation in rem is characterized by efficiency and ease of use. The process of proof is elementary. The burden of proof is on the title owner of the property. Since this is a civilian tool, there is no presumption of innocence; on the contrary, each party proves the circumstances they referred to in the civil process, if the person claims to be the owner of the property, then he/she must prove the source and legitimacy of its origin. As the practice of law enforcement demonstrates, the most effective mechanisms in countering corruption are not a criminal ban, but civil law institutions that are clearly underestimated by domestic lawyers. At the moment, there is a gap in this area of anti-corruption activity in the legislation of the Russian Federation.

International Law pays special attention to this issue. Thus, the UN Convention against Corruption in part 8 and 9 of article 31 fixes the following provision: "States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation... The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties". Subsection "c" of Part 1 of Art. 54 of this act offers: "Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases". In chapter 5 of the analyzed Convention: there are several forms of enforcement of judicial orders for the confiscation or seizure of property issued by foreign courts; taking into account the fact that foreign courts actively use confiscation in rem, hence, this institution can be applied in the territory of the Russian Federation. Resolution of the Council of Europe No. 97 (Committee of Ministers 101 st session 6.11.1997) "Twenty Principles for Combating Corruption" also proposes to develop a system of civil-law means of combating corruption in Art. 17.

These provisions are traditionally considered as a legal basis for applying the institution of "confiscation in rem". In modern common law (the United Kingdom and the United States), confiscation of property in rem is a form of solving traditional criminal law problems by civil means and means recovering the property of a natural person in the state's income if it (the property) significantly exceeds the source of its income and there are suspicions that it acquired by criminal means (the following verbal turnover was obtained in some countries: ... if the title holder could not prove the legitimacy of the origin of such asset); meanwhile traditional civil procedure methods actively and effectively applied to ensure claims (for example, the seizure of the property of both the suspect himself and his relatives and friends - for a period of 5 years in some countries, during this period, owners are prohibited from disposing of this property, while retaining the right to own and use it, the burden and risks of maintenance remain, if at that time the claims of third parties are not presented to the property, the arrest is repaid, the arrest can be withdrawn and ahead of schedule if the owner proves the legality of its origin).

Since civil suit is not a suitto a person, but to property, so far no "witch hunt" is happening. Nobody calls a suspect a fraudster. Nobody does not say: you are a thief and a bribe-

taker, bring back an unjustly acquired one! The approach is differ: rather you are an honest man, which means, as an honest man, you must tell where the concrete property came from; and if you do not, then you will remain like an honest man, but without this concrete property.

Often the confiscation in rem corresponds to the criminal responsibility: the criminal procedure law abounds in many guarantees of the rights and interests of the suspect and the accused and it is not always possible to prove the person's involvement in the committed crime. As a result, criminal prosecution terminates. But this is not over yet. Then follows the initiation of a claim for confiscation in rem: from the fact that it was not possible to accuse a person of the crime, it does not follow yet that this person can freely use unjustly acquired property assets.

In most countries where confiscation in rem was introduced, everything began with assets that are subject to state registration: securities, real estate, transport, etc. The instrument in question is a significant source of replenishment of the state budget in a number of countries (for example, Italy or the USA).

It is considered that such a confiscation as a civil institution is not burdened with the presumption of innocence, which creates an effective mechanism for ensuring the "transparency" of the state mechanism and the accountability of public officials. As a civil action, seizure in the order of actiones in rem does not terminates with the death or liquidation of the defendant, since the provisions of legal-procedural succession apply (in this connection, the heirs of corrupt officials can not sleep peacefully in a civilized society). Also, such confiscation is applied in the court at the location of the property, the absence of the defendant does not serve as an obstacle to its disposal (the lawsuit of certain state to certain property); thus, if a certain person is hiding far away in the traditions of Russian corrupt officials and oligarchs, then this does not hamper the recovery against property, similarly we can "return" property from abroad. Since the lawsuit is not against the person, but against the property, the efficiency of registration the unjustly acquired property by corrupt officials for fictitious person(relatives, spouses) is gone flat-out.

It is universally recognized that the institution under consideration is distinguished by a high level of effectiveness in the sphere of countering corruption (in a way it deprives corruption of economic sense). But its implementation in practice is fraught with serious abuses. If such a powerful anti-corruption tool "falls into the hands" of corrupt officials, this kind of criminal behavior will be institutionalized and move to a higher (political) level.

In the domestic legal field, such confiscation appeared in ruther "truncated" form. Part 2 of Article 235 of the Civil Code of the Russian Federation "Grounds for Termination of the Right of Ownership" was enriched by paragraph 8 - claim to property for which the evidence of its acquisition for legitimate proceeds was not presented in accordance with the legislation of the Russian Federation on combating corruption by court order to the income of the Russian Federation " during the legal reform of 2012. (Federal Law of December 3, 2012 No. 231-FZ). On the same day, the Federal Law of 03.12.2012 № 230-FZ "About control over the compliance of expenditures of persons holding public office and other persons with their income" was adopted; article 17 of which entrusted the Prosecutor's Office of the Russian Federation with the function of handling a suit in court for such confiscation;

as well as control items: land plots, other real estate objects, vehicles, securities ... in relation which the official did not provide information confirming the acquisition of them for legitimate earnings. Also article 8.1 "Presentation of information on expenses" was introduced by Law No. 231-FZ on 03.12.2012. in the Federal Law of 25.12.2008. No. 273-FZ "About Counteracting Corruption'.

In pursuance of this legal requirement, the Prosecutor General of the Russian Federation issued Order No. 177 dated 14.04.2015. "About the implementation by prosecutors of the powers provided for by the Federal Law of 03.12.2012. No. 230-FZ "About the control over the compliance of expenses of persons holding public office and other persons with their incomes", in which the actions of the prosecutor on applying to the court with a claim for such confiscation are detailed.A question may arise: where do prosecutors' offices get the information and documentation necessary to prepare such a claim?

Order of the Ministry of Labor and Social Protection of the Russian Federation of 31.03.2015. № 206n approved "Instructive and methodological directives on the procedure for preparing and sending to the Prosecutor's Office of the Russian Federation the materials necessary for the prosecutor to apply to the court with a request for the circulation of land plots, other real estate, vehicles, securities, shares (shares, shares in the authorized (collateral) capitals of organizations) for which no information is provided that confirms their acquisition for legitimate revenues. " The work of the conflict commissions to identify unjust assets of officials is detailed in this normative act. "Methodological Recommendations on the Procedure for Preparing and Submitting to the Procurator's Offices of the Russian Federation the materials necessary for the prosecutor to apply to the court with a request for the circulation of land plots, other real estate, funds, securities, shares (interests, shares in the authorized (joint-stock) capitals of organizations) for which no information is provided, confirm digits together with their acquisition of lawful income" were approved later on - December 21, 2016. by the Order No. 86t of the Main Directorate of Special Programs of the President of the Russian Federation. These new recommendations correspond in essential part with the developed by Ministry of Labor and Social Protection of the Russian Federation ones, but they also have some differences. Currently processes are proceeding simultaneously on the basis of materials formed by both for those and other methodological directives, which somewhat complicates the uniformity of judicial practice.

Constitutional Court of the Russian Federation also paid attention to the practice of applying the confiscation under consideration: Decree of 29.11.2016. №26-P. In this document, the Constitutional Court of the Russian Federation gave the following characterization of the confiscation in question: "This measure consists in the gratuitous withdrawal of such property from the owner by a court decision in connection with the alleged and not refuted by the commission of an unlawful act by the state (municipal) employees" (p.6), "the generally recognized principle of bringing to responsibility in all branches of law is the presence of guilt - either proven, or presumed, but refutable - as an element of the subjective side of the offense ... " Thus, the presumption of the guilt of an official in committing an offense was vested.

The problems of implementing such a repressive legal instrument could not be left without attention of the Supreme Court of the Russian Federation. The Presidium of the Supreme Court of the Russian Federation approved the "Review of judicial practice in cases on applications of prosecutors on the circulation of property in the income of the Russian Federation, in respect of which, in accordance with the legislation on anti-corruption, evidence of its acquisition for legitimate proceeds is not submitted" in 30.06.2017. The object of proof as a prosecutor is clearly defined in this act of interpretation: 1) the ownership of the disputed property to the defendant or his close relatives and spouse, 2) the value of the disputed property, 3) excess of the value of the disputed property of the aggregate income for 3 years; the burden of proving the lawfulness of the source of origin of the funds that made it possible to acquire the disputed property is vested in the defendant (in particular, if the respondent refers to the execution of civil transactions as the source of origin of his funds, he must prove the reality of the execution of such transactions and the reality of obtaining funds on them).

The dynamics of the application of this legal instrument is very noteworthy: if in 2016, under this procedure, property worth 2,000,000,000 rubles was recovered, then in 2017, - by 13 000 000 000 rubles.

The practice of applying this measure of influence on offenders demonstrates a whole range of problems. The amount of penalties is infinitesimal against the background of the identified assets only for some corrupt officials in resonant criminal cases. Officials "learned", to draw up assets for frontmen, to invest unjust capital in cash bills, jewelry, antiques, art ... or build financial schemes for the turnover of these assets. When the measure was discussed at the stage of the bill, the opinion was expressed: how much money can you store "under the mattress"? - this is an infinitesimal values against the background of a real corruption turnover. But the "Zakharchenko case" clearly demonstrated that "under the mattress" you can accumulate 9 billion of cash banknotes. Obviously, the considered legal situation needs serious reform; for which it seems advisable to monitor the best foreign experience. But now such an experience has shown very alarming signals.

CONFISCATION EXPERIENCE OF THE SWISS CONFEDERATION

The repressive nature of the invastigating phenomenon is manifested most grotesquely in the Federal Law of Switzerland of 1.10.2010. "About Restitution of Illegally Acquired Property Values of Politically Significant Persons" (unofficially called "Lex Duvalier")[3].

There is a certain dissonance between the title of this legal act and its content: the title declares the status of a restorative process, but its contents are fixed in the provisions of confiscation in rem. The title refers to the application of a restitution penalty on illegally acquired property, which implies the need to prove the illegality of its acquisition, but the content of the document establishes the presumption of "improper origin of assets". The notion of a politically significant person is interpreted so widely that even a justice of the

[3] Bundesgesetz uber die Rukerstattung unrechtmassig erworbbener Vermogenswerte politisch exponierter Personen – RuVG. 01.10.2010.

peace falls under it. This law regulates the blocking and confiscation of assets of non-residents of Switzerland.

The penalties can be applied to assets held in Switzerland, which also belong to Russian natural or legal persons; it is important that these assets have at least an indirect relationship to Switzerland. Its relevance to Switzerland is construed very broad: it is enough that it was located in the territory of this state, or even transit payments through Swiss banks.

Unlike traditional restitution (return to the original position), the Swiss legislator fixed an entirely different legal mechanism: not a direct return to States affected by the illegal activities of a particular person (for example, in the case of the withdrawal of assets obtained abroad by criminal means), but the confiscation of such property (or other assets) in favor of Switzerland; and the affected states can claim to return illegally withdrawn assets in subrogation form from the Swiss government[4]. But if Switzerland confiscates property in the order of a claim in rem, the subrogation requirements are satisfied only if the claimant proves its claims. Taking into account the methods of legalization of criminal proceeds worked out by the criminal world, the level of proof of such requirements is extremely low; proportionally the level of "subsidence" of assets in the Swiss budget is high. From the point of view of the basics of civil law – a good example of unjust enrichment, but legalized by Swiss law. But even if the state of origin of the disputed assets illegally withdrawn abroad, will achieve its return, the restitution still will not happen: the assets are not returned to the state budget or to the victim, the assets are transferred to non-profit non-governmental organizations, whose statutory activities are anti-corruption[5].

The process of determining the "states of origin" of illegally acquired property values, fixed in this normative legal act, is noteworthy (Article 4 (2), par. b of the Law): they include states that are "total or substantial collapse, or the impairment, of its judicial system (failure of state structures)". Therefore, any process for the "restitution" under consideration begins with the "defamation" of the state of origin of the contested property. Against the background of the triumph Russophobic views in Europe in recent years, it seems that it will not be difficult to convince the Swiss court of inoperable Russian justice, or that the Russian state is in a state of significant collapse. Par. 1 of this Article establishes a formal criterion testifying to the "decay" state of the state, which also serves as a legal reason for initiating the confiscation procedure: the inability of state structures in a foreign country to fulfill Switzerland's request for international legal assistance in criminal matters (an extradition request is expected). At the same time, the fact that most of the constitutions of different states enshrines the principle of non-extradition of their own citizens, ignores a whole package of international and national normative acts on immunities of various levels. Moreover, the logical connection between the refusal to satisfy the request (in extradition) and the conclusion about the state of the disintegration of the state is more than doubtful.

[4] Such requirements are implemented within the framework of special international agreements, and in the absence of such (which is most often the case) on the basis of the rules established unilaterally by the Bundesrat of Switzerland (see art.9(5) of the restitution Law...).

[5] A good way to Finance non-systemic opposition.

In the case under consideration, a legal idea has found its manifestation, previously secured in Article 17.1 of the "a" of the Rome Statute: "Internetional Criminal Court shall determine that a case is inadmissible where the case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution". In addition, the Swiss national court system has appropriated to itself the status (in this respect) of an international judicial body. It is assumed that the law in question will apply to any state that has not fulfilled the request of Switzerland[6].

The original quasi-sanction: firstly, the property assets were stolen and withdrow from the state; secondly, it (the state) was restricted in sovereign right to refuse in satisfing a foreign request, and thirdly, it was restricted in right to demand property belonging to it according to its own or acceptable laws.

Types of property values that can be blocked and confiscated by the law in question are not defined and are not limited in any way. The formulation used by the legislator allows to extend the provisions of this normative legal act to any assets, including intangible ones (patents and copyrights, title documents for which are kept in Swiss depositories.

The subject of arrest and confiscation may be not only property formally-legally owned by the "politically significant persons" specified in the law, but also property in actual or legal possession, or disposal of these persons or "their surroundings". The term, which involves the most incredible of its interpretations in law enforcement. The analyzed law defines such a unique status of property ownership as"administrative power". Property values can be in the administrative power both direct and indirect: for example, through controlled legal entities, through a power of attorney, through the implementation of family and friendly relations (ad lib).

Article 15 (1) of the Law establishes the requirement that only illegally acquired property values are subject to blocking and confiscation. In this case, the illegality of the origin of the property is determined by a combination of two conditions: 1)the wealth of the individual who has the power of disposal over the assets or who is the beneficial owner thereof increased inordinately, facilitated by the exercise of a public function by a foreign politically exposed person (but the concepts many and unlawful are not synonymous); 2) the level of corruption in the country of origin or surrounding the foreign politically exposed person in question was notoriously high during his or her term of office (the formulation is unbelievable in its abstraction : a) if it is a question of a certain level, then some criteria for its definition must be given, but there are none; b) if the level is high, how much it should be?, and by what criterion is such a height determined, c) what is the corruption of the state and official and how should it be measured?

[6] Such legal provisions are enshrined in the foreign corrupt practices Act (Foreign Corrupt Practices Act - USA 1977). - the formal attitude of foreign companies to the jurisdiction of the United States provides for trading in the U.S. market securities (including ADR) of foreign companies (foreign companies). One of the most well-known cases of such confiscation is the trial of companies belonging to the Simens concern, in which the defendant paid an amount of 450 000 000 dollars.

The most interesting thing is that the stated legal position of determining the level of corruption extends not only to politically exposed persons, but also to their associates: with this approach, the level of uncertainty of the legal dictates increases exponentially. This creates conditions for random (and even spontaneous) enforcement. The above signs of illegitimacy of the acquisition of property (with all their problems) suggest the process of their proof. However, Article 15 (1) of the Law establishes "Presumption of illicit origin". In such a case, a conflict arises: either the illegality of the property is subject of proof by the specified two criteria, or it is presumed and this presumption is subject to refutation. There are two mutually exclusive methods of legal regulation of the same phenomenon in the normative legal act. The following provision is of interest: if it is established that the property was acquired illegitimately (against the backdrop of the presumption of illict acquisition of property, such an establishment does not require special difficulties) not the court, but the executive body - the Bundesrat - decides to freeze such property values and instructs the Federal Department of Finance to file a lawsuit in rem about the confiscation of such property to the Federal Administrative Court. In such a case, the said court shall decide on the merits. As for the above-mentioned circumstances, it is not difficult to predict the version of the decision taken by the court because the participation of participants other than the government of Switzerland is "maximally minimizing" in the process. The situation is aggravated by the fact that, in accordance with Art. 14 (3) of the Law of the submitted category of cases, the statute of limitations (submission of a claim, bringing to criminal or administrative responsibility, etc.) shall not be applicable.

Particular interest is Art. 7 "b" of the law, which is an absolute legal novel:"all mandatory claims that belong to all creditors of the owner / administrator of the disputed property are terminated" because of the blocking of "illegally acquired property" (such unacceptably severe consequences do not even generate a competitive process in which creditors have the possibility, not always real, but the possibility - the formally recognized right - to state their property claims to the debtor). The civil procedure law of legally developed countries is characteristically that all disputes concerning the property included in the bankruptcy estate of the bankrupt enterprise are considered within the framework of the bankruptcy process.But by virtue of Art. 7 "b" of the Law, this provision is leveled. This state of affairs creates a breeding ground for "raider hacking" of legal procedures of bankruptcy in the mainstream of national legal systems and gross violations of the interests of competitive creditors.

It seems that the State of Switzerland has declared absolute security of property assets placed on its territory, the secret of the bank deposit, etc. over the past 500 years. There was accumulation of property assets in such a financial "Eldorodo" in more than half a thousand years[7]. And an uncompromising demand is presented now: everything that was brought to us, we will take away. And if someone has the illusions of the rule-of-law state (a variant of the American-European democracy) and the "sacred cow of private property" of the American-European legal field, I invite you to a discussion.

[7] The assets of Swiss banks are truly “beyond the limits”.

METAMORPHOSES OF CRIMINAL-LAW CONFISCATION IN THE LAW OF THE EUROPEAN UNION.

A number of "framework agreements" (programmatic documents) aimed at regulating the detection, freezing, seizure and confiscation of criminal assets in a regime significantly different from the traditional criminal law confiscation of property obtained by criminal means, instruments or means of committing a crime, implemented as part of the conviction of a criminal case in compliance with the minimum standards for the protection of the rights of citizens in the implementation of criminal prosecution within the framework of the European Union in the period from 2001 to 2006.[8]

It all began with the consideration of traditional situations in which the implementation of the resource of classical property confiscation was impossible due to illness (severe illness) of the offender, his bail jumping abroad (the person is escape from justice), the withdrawal of assets abroad into offshore zones (excluding the transparency of the movement of assets), etc. They proposed to develop a simplified procedure for the confiscation of any assets that could lead to the extraction, directly or indirectly, of any economic benefit from the fact of the commission of the crime. The precondition for using such a mechanism was initially considered the initiation of criminal prosecution (the entrance into force of the conviction of the court was not required) and that the prosecuted prosecution has judicial prospects (that is, with a high degree of probability it can be assumed that, if the criminal process is favorably carried out, the accused / defendant will be brought to criminal responsibility in accordance with the entered into force of the conviction of the court). This approach represented a significant departure from the presumption of innocence in its classical sense; but after lengthy discussions it was accepted as "the least evil," a forced and temporary measure (until the change in the criminal situation in Europe, but ... nothing is more permanent than temporary). The second condition was a legal fiction: confiscation is carried out according to the same procedure as if the defendant was directly brought before the court and adduce his assets to the court; It is noteworthy that an important role is played by the presumption of the average conscientious citizen, characteristic of the Anglo-Saxon legal family in the structure of this fiction.

The developers of such special confiscation refused to operate with such concepts as income or property and adopted the long-established concept of "assets" in the single European accounting system. Assets in accounting are understood as any phenomenon involved in economic turnover, capable of: a) generating revenue, b) accumulating financial resources, c) converting at least one of the currencies; the main feature of the asset is its liquidity, i.e. the ability to appeal to money (cash, non-cash, virtual), although money is

[8] Council Framework Decision 2001/500/JHA of 26 June 2001 on Money Laundering, the Identification, Tracing, Freezing, Seizing and Confiscation of Instrumentalities and the Proceeds of Crime // OJ. L 182 of 05.07.2001. P. 1; Council Framework Decision 2003/577/ JHA of 22 July 2003 on the Execution in the European Union of Orders Freezing Property and Evidence // OJ. L 96 of 02.08.2003. P. 45; Council Framework Decision 2005/212/ JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property // OJ. L 68 of 15.03.2005. P. 16; Council Framework Decision 2006/783/JHA of 6 October 2006 on the Application of Mutual Recognition to Confiscation Orders // OJ. L 328 of 24.11.2006. P. 59.

also an asset; assets may be tangible and intangible, property and non-property, negotiable and non-negotiable, but their inherent feature is their valuation in monetary terms.

Not only the assets received as a result of the crime will be confiscated, but also even indirectly related to the fact of the crime at the discretion of the court (the highest level of judicial discretion - the discretion of law enforcement). First of all, the emphasis was on assets and their derivatives obtained from the economic turnover of assets acquired as a result of the crime. So, if the embezzler put stolen property into the business and received certain incomes, which in turn also placed in the economic turnover and received another profit, then the confiscation is subject not only to the stolen item, but also all the aggregate income (profit) received from its turnover). So, if the embezzler put stolen property into the business and received certain incomes, he also place in the economic turnover and receive another profit, then the subject of confiscation is not only to the stolen item, but also all the aggregate income (profit) received from its turnover(operations). Thus, the value of the confiscated assets can significantly exceed the price of the stolen item.

The economic benefit from the turnover of criminal assets can be either direct or indirect (for example, the cost of improving business reputation in the conduct of charitable activities - business reputation is also subject to valuation as an intangible assets according to the Goodwill system). The notion of "production" of an asset from a crime has become popular: a criminal asset is at the beginning of the cause-and-effect chain of economic turnover, as a result, all assets, due to its appearance by this cause-and-effect link, are subject to forfeiture in the state revenue. This economic-legal approach was divided into two areas: a) the majority supposed that confiscation procedures should be limited by the "direct" causal link - an asset derived from the commission of a crime and derivatives from its turnover; b) but in a number of cases, in the order of pilot projects, any asset, even indirectly connected with a criminal asset, was subject to confiscation (for example, if a criminal asset is invested in a legal business, then the whole business is "infected" with criminality and is subject to confiscation, the same thing happens when legal assets are invested in the turnover of criminal funds; in this case, the fault of persons who have not committed a crime and who lost their assets in confiscation is determined by the lack of due diligence and scrupulousness when choosing counterparties in business; the discretion of law enforcement is also of great importance in determining such guilt).

It is worth paying attention to the fact that the institution of a bona fide purchaser is not subject to the application of such confiscation (criminal assets are withdrawn from whomever they are), operations with criminal assets, which entile losses also are not subject to accounting (the law enforcers are abstracted from them, they as though does not exist). The foregoing confiscation procedure is implemented in court order, but under a simplified scheme.

It is noteworthy that the evidence of the criminal nature of assets can not only be a proven link between their origin and a specific committed and disclosed crime. The court may conclude that the assets are criminally if it established on the basis of the submitted evidence that the value of the assets belonging to the suspect significantly exceeds the amount of his/her legal income . The threshold values of such “ materiality” are determined at the national level in each of the states that have joined the framework agreement. The

court has the right to choose: a) to prove the origin of the asset as criminal income derived from the commission of a particular crime; b) or to realize the presumption of criminal origin of the asset in case when a legal subjects income does not correspond to its actual financial and property status. Such an approach in Anglo-Saxon Law is called the principle of "balance of probabilities", when with a high degree of probability, there is reason to believe that assets are derived from criminal activity rather than from any other activities. So, in order os adopting of Intergovernmental Framework Agreements, the institute of "extended confiscation" was born (or rather we can say, acquired updated content). April 3, 2014 an intergovernmental directive of the European Union "On the arrest and confiscation of instruments of crime and criminal proceeds" was adopted.

April 3, 2014 an Intergovernmental Directive of the European Union on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union was adopted[9]. The concept of a criminal asset (income) has been developed further in this International Regulatory Legal Act; which began to include any even indirect benefits and advantages, obtained including as a result of the system of subsequent reinvestment and any forms of transformation and convertation of the primary economically materiality results of criminal activity; the following terms and concepts have received detailed coverage: a) various forms of transformation of criminal assets (transfer of property actives to non-property and vice versa ...); b) splitting and redistribution; c) mixing with legal assets; d) the introduction of criminal assets to legal assets; e) the introduction of legal assets to the criminal ones. Special attention is paid to such specific items of confiscation as official documents, acts certifying property rights and their transitions, various kinds of financial instruments (both legalized - derivatives, and non-legalized - cryptocurrency), documents of primary accounting, which themselves do not give rise to financial and property rights but can generate liabilities, payables or claims in conjunction with other documents or events in the future.

The considered provisions on the implementation of "extended confiscation" in the international Normative Legal Acts of the European Union, being implemented in the National Law of particular European states, acquired interesting specificity. So the threshold values that determine the fact of materiality of the discrepancy between the real financial and property status of the subject and his legal income in different European countries have significant differences: So the threshold values that determine the fact of materiality of the discrepancy between the real financial and property status of the subject and its legal income in different European countries have significant differences: somewhere triple enough, somewhere required tenfold; in other states, they proceed from the question of fact: if there is such a deviation, this is already significant in any case, the severity of this approach is leveled by the development of the institution of insignificance. The assets of third parties may be subject to confiscation as well; not only in cases when they own property obtained through criminal means, but also in cases when they received income from joint activities with operators of criminal assets. The principle of economic scruples is of

[9] Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the Freezing and Confiscation of Instrumentalities and Proceeds of Crime in the European Union 29.4.2014 // Official Journal of the European Union L 127/39.

particular relevance at the present time. The Case Law of the European Court of Human Rights (Strasbourg) has been forming a legal position on the presumption (presumption refuted) of the guilt of the asset owner when initiating a confiscation procedure against him for over 17 years; the burden of refutation of such presumption is also imposed on him by proving the legality of the assets belonging to him on various grounds, or not reaching the threshold values of the deviation of the real financial and property status of the subject from accumulating funds received from legal sources of his income[10]. It is generally accepted that the implementation of "extended confiscation" does not infringe upon the property rights, the presumption of innocence, or the right to a fair trial of the dispute guaranteed by the European Convention on the protection of fundamental rights and freedoms.

In this situation, the classic reception of offenders with the registration of assets on fictitious person loses its effectiveness: the car or cottage belonged to other persons, and the subject in question was simply sheltered or given a ride by car, but the rental relationship is also an asset that has a price to be imputed when initiating confiscation procedures; in addition, in such a case, confiscation claims against the fictitious person (owner) of the property having a criminal origin arise quite naturally.

EXPERIENCE OF THE UNITED STATES OF AMERICA

Confiscation procedures were defined by the following legal axiom at the constitutional level, and it is still in force: "No one shall be deprived of property without due process of law; private property may be seize for public use where it necessary with a just compensation."[11] We can compare this provision with the text of part 3 of article 35 of the Constitution of the Russian Federation: "No one can be deprived of his property except by a court decision. Forced alienation of property for state needs can be made only with prior and equal compensation. " This provision enshrines the possibility of extrajudicial confiscation of property in the United States.

The confiscation procedures reached a new level in 1990 in America when the USA joined the Vienna Convention[12], providing for the confiscation of illicit profits, the seizure of accounts, the freezing of financial transactions and the confiscation of any property obtained or used in the transport of drugs and the laundering of criminal proceeds. In accordance with this international legal act, a State addressed to a claim for seizure of unlawful property may confiscate property at the request of another state in one of two ways or in both of the ways indicated below: The country to which the request was sent may independently initiate proceedings in relation to a particular property, using the evidence submitted by the country that sent the request. Alternatively, the country to which the request was sent may

[10] ECHR judgment in the case of Riela and Others v. Italy of September 4, 2001, complaint No. 52439/99; ECtHR judgment in the case of Arcuri and Others v. Italy of July 5, 2001, complaint No. 52024/99; ECHR ruling on the case of Raimondo v. Italy of February 22, 1994, Series A, No. 281-A, § 29.

[11] Mishin A.A. Constitutional (state) law of foreign countries: a textbook for universities. - 17th ed., Rev. and add. - M .: Statute, 2013. - p. 477.

[12] UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances: ratified Post. Top. Of the USSR Council, 10/09/1990. - 1990. - №42, art. 842.

rely entirely on the confiscation decision made by the competent authorities of the country that sent the request[13].

In addition to acts of a conventional nature, confiscation procedures in the US legal space are provided for by a number of bilateral international treaties, the subject of which is to counter the laundering of assets of criminal origin: with Argentina, Austria, the Bahamas, the British Virgin Islands, the United Kingdom, Hungary, Italy, Spain, Canada, the Netherlands, Switzerland, Thailand, Turkey, South Korea, etc. These agreements provide for a procedure to apply to the US authorities with the requirement to confiscate illegal profits, illegal property, or confiscation of property that has criminal origin in other states by the US authorities unilaterally with the right of the country of origin of the confiscated property to claim for this assets.

The application tool that implements these international agreements in the national legal framework of the United States is also provided for in the current US legislation:

1. First of all, it is criminal confiscation, which is a type of additional criminal punishment (Section 18 of the United States Code § 982) one of the additional punishments imposed by a court sentence is criminal confiscation (criminal forfeiture), imposed in criminal proceedings (in personam). It may be attached to any of the penalties referred to in this section as “authorized”, namely: fine, probation, imprisonment. Criminal confiscation is carried out on the basis of a court order on criminal confiscation in accordance with the aforementioned norm.[14] In accordance with section 18 of the United States Code (§ 982), confiscation as a form of additional punishment is provided for in more than 60 offenses. Thus, in the exercise of freedom of judicial discretion, it may be appointed for crimes of a corruption nature, illicit trafficking in narcotic drugs and psychotropic substances, trafficking in works of a pornographic nature, crimes against the sexual inviolability of minors.
2. Civil confiscation, used on suspicion that certain assets are of criminal origin. The regulation of this form of coercive measures is carried out by normative acts having a civil nature. The considered measure is referred to as “real estate confiscation” (Asset Forfeiture) or “confiscation of civil property” (Civil Asset Forfeiture) in different sources of law, and is implemented in the order of civil proceedings (in rem).
3. "Administrative" confiscation. Many public institutions have the right of extrajudicial arrest and recovery of assets on suspicion of their criminal origin (or any other connection with the commission of a crime — used as an instrument or means of committing a crime), according to US law: police, Ministries of Justice, Ministries of Finance, prosecutors, fiscal institutions and even the Postal Service[15]. To implement such confiscation, the legal significance has neither the gravity of the crime commit-

[13] International cooperation in the field of confiscation and division of assets - [electronic resource] - Access Mode: http://www.infousa.ru/laws/confiscation.htm (access date: 02.01.2018).

[14] Kandalov V.S. Features of the legal regulation and practice of the use of confiscation of property in the criminal law of foreign countries // Electronic peer-reviewed journal “SCI-ARTICLE.RU” - [electronic resource] - Access mode: http://sci-article.ru/verxx.php?i= 12 (date of appeal: 01/02/2018).

[15] Confiscation of civil property - [electronic resource] - access Mode: http://kstati.net/konfiskaciya-grazhdanskogo-imushhestva/ (date of application: 02.01.2018).

> ted, nor the involvement of the owner of the confiscated property in the fact of the crime, (the institute of a bona fide purchaser is not valid in this case), nor a causal link between the confiscated property and the fact of the crime (the property may arise after a substantial time after the end of criminal acts - for example, as a result of the commodity-money turnover of criminal income; axiom: the income from criminal income is also criminal).[16]

There is no question of compliance with the presumption of innocence, on the contrary, there is a presumption of guilt that is characteristic of the claim proceedings in the second and third cases: Each party of the dispute proves the circumstances to which it refers. If the competent authority has a suspicion of the illegitimate origin of a certain property,its owner must prove two circumstances in this case: a) that this property really belongs to him; b) that this property is of legal origin (not at all that this subject acquired it in accordance with the law, but that this property initially arose from a legitimate source, and that its further turnover from the owner to the owner - step by step - corresponded to the prescriptions of the law). If at least one of the circumstances is not proven, then the disputed property is subject to confiscation. The reason for initiating a confiscation procedure is the occurrence of a suspicion of the illegality of the origin of this asset, and the initiator of this procedure is not obliged to substantiate and prove such a suspicion. A peculiar historical rudiment of the Great French Revolution of the times of the Great Terror: the suggestion of suspicion to the French people is a crime worthy of guillotine.

The specifics of administrative confiscation in the United States is the provision according to which a so-called bonus fund is formed from the mass of confiscated assets: from 40 to 80% of the confiscated property goes to the fund of the body that confiscated as a bonus. It is an interesting mechanism for increasing the motivation of representatives of a particular public body to display professional activity: the funds received in this way are directed to the logistical support of this organization and to the bonuses paid to its employees. The US Department of Justice declares the confiscation of criminal assets with a view to "share it with law-enforcement agencies cooperating with the Justice Department, in order to increase the effectiveness of cooperation between organizations"[17] as the main goal of their own activities without false modesty and hampering in its program documents. Just like Bulgakov wrote, the Sharikov's principle: to take away and divide. It is noteworthy that no special form of responsibility of representatives of public authorities in the implementation of the described confiscation functions is vested. Responsibility for the official becomes on a common basis. Excessive professional zeal (free from corruption, protective engagement) is not listed among such grounds.

The increase in annual revenues to the US exceeds $ 4.5 billion budget from the confiscation of property on suspicion of its criminal origin for the period from 1986 to 2014 (an in-

[16] Kozochkin I.D., Gamzalov D.A. Confiscation of property under criminal law of the United States. - State and law. - 2014. No. 10. - P. 62.

[17] International cooperation in confiscation and sharing assets [electronic resource] – Mode of access: http://www.infousa.ru/laws/confiscation.htm (date accessed: 02.01.2018).

crease of 46%).[18] American law enforcement agencies tightened their tactics further, carrying out almost 70,000 confiscations after the September 11 terrorist attack. The US Congress expanded the powers of the authorities in the area of confiscation of property in 2006.[19] At the moment, the given vector for the expansion of confiscation procedures implemented outside the criminal process (the lion's share of which is carried out without a court ruling at all) continues to evolve.

In the United States, the confiscation procedures are implemented against the backdrop of the fact that "confiscation is an additional measure that strengthens the role of the main punishment in the legislation of most countries"[20] and are carried out on the basis of a judicial act (in most cases on the basis of a conviction) only, in compliance with the requirements of generally accepted principles of international law in the field of the administration of criminal proceedings.

The real state of affairs allows government agencies to enforce any property into the state budget without any accuse the owner (or any other person) of any crime in the United States of America.

Cases of extrajudicial confiscation of not only movable property, but also real estate are common: for example, in Massachusetts the arrest of several guests for drug possession served as the basis for confiscating the entire hotel[21]; also the owner of a residential building in Philadelphia has been trying in court to challenge the actions of the Philadelphia prosecutor's office since 2014, which confiscated his house after the arrest of his son on suspicion of distributing drugs in the amount of $ 40;[22] prosecutors confiscated a 36-story skyscraper owned by the Iranian non-profit foundation Alavi Foundation in New York in 2013 , claiming that the building's own fund was used to conceal Iranian assets in violation of the sanctions imposed by the United States against Iran.[23] At the same time, of course, no evidence was presented by public bodies carrying out the confiscation procedure, and could not be presented, since there was no trial, the owners of the confiscated property have no possibility to consider the arguments in their own defense at all in this case. According to Stephen Kessler, the Director of the Department of Confiscation of the city Prosecutor's office of the Bronx, neither the owners of the property, nor anyone else were

[18] Dick M., Knepper L., Erickson A.C., McDonald J. Policing for Profit. The Abuse of Civil Asset Forfeiture. 2nd Edition. Institute for Justice, 2015. P. 5. (Internet resource: http://ij.org/wp-content/uploads/2015/11/policing-for-profit-2nd-edition.pdf (accessed 04.11.2017).

[19] Strader K. Understanding white collar crime, Lexis Nexis. Matthew Bender&Co. 2006. P.399.

[20] Samoylova S. Confiscation of property in the modern criminal legislation of foreign countries. - 2009. - №40. - P. 62.

[21] Civil confiscation or the United States as a model of rights and freedoms– [electronic resource] - access Mode: http://www.liveinternet.ru/users/1993026/post338694309/?aid_refresh=yes (date of application: 02.01.2018).

[22] Pennsylvania Police are Seizing People's Homes and Not because they Can't Pay! - [electronic resource] - access Mode: http://guerillatics.com/?p=40208 (date of application: 02.01.2018).

[23] The arrest of the Islamic Foundation skyscraper in new York has angered Iran- [electronic resource] – access Mode: https://russian.rt.com/article/28895 (date of application: 02.01.2018).

charged with committing crimes or other administrative delicts in about 85% of cases of civil and administrative confiscation.[24]

It should also be noted that the implementation of the confiscation procedures under consideration is not limited to the requirements of any proportionality and adequacy (in proportion to the size of the harm, or in proportion to the income received as a result of the crime - if as a result of committing a crime, an income of $ 100 was received, but as a result of a successful placement on the market / stock exchange / securities, a profit of $ 1000 was obtained - all $ 1,100 are subject to collection).

The mechanism of protection of the rights of the owner of the property confiscated in the administrative order is of interest: firstly the property is seized and confiscated to the state budget and only after that the person has the right to bring a claim to the authority that carried out the confiscation within 30 days within the framework of Civil Asset Forfeiture(that is, confiscation is carried out in a simplified administrative procedure, and the return of unjustifiably collected property – in the order of judicial proceedings). But even in case of an attempt to return the unreasonably recovered property by its owner, the body-confiscator (the defendant in the lawsuit) is obliged to file a counter civil claim not against the owner of the already confiscated property, but against the property itself (the suit in rem) in which the owner of the confiscated property is obliged to refute the presumption of any relation of the disputed property to any crime; if such a presumption is not refuted, the property remains in the state Treasury.

With regard to criminal confiscation, the focus is not on the property, but on the subject. the withdrawal of assets abroad, it is reclaimed to America, if the property of a non-US citizen located in the United States is confiscated, then in the event of a withdrawal of assets abroad, the property is claimed on the condition that it is acquired in the United States or the fact of its acquisition affects the interests of the United States. Persons are hold to this type of crimihal responsibility if they have not been prosecuted in the territory of another state for the same crime.

The described statement allows us to make a very eccentric conclusion: US authorities may confiscate any property (in order of the forms of confiscatory procedures), on suspicion of its illegitimate origin, which they can "get" (regardless of whether this property is located in the United States or not, whether the owner is in the United States or not, whether it is acquired / created in the United States or not). The Office for the Control of Foreign Assets was established In the structure of the US Department for the resolution of such tasks which territorial scope of activity includes not only foreign assets located in the United States, but also those located outside the United States (including in the country of its origin).

In the context of this conclusion, it seems appropriate to draw attention to the Law “Countering America’s Adversaries Through Sanctions Act ” signed by US President D. Trump on August 2, 2017, extending the field of civil and administrative confiscation far beyond the United States. The third part of this law is devoted to countering corruption in other

[24] Us police have the right to confiscate property of citizens without a court decision - [electronic resource] - access Mode: https://russian.rt.com/article/93501 (date of application: 02.01.2018).

states. It is presumed that corruption, as an absolute evil, is antagonistic to human rights and security in the world, and since the United States is positioned as a stronghold of liberalism and the world order, any corruption in any state inevitably affects America's interests; that, according to the American legislator, grants the right of the USA to interfere in the internal affairs of other states for "good" purposes: to protect human rights and ensure world security. More than doubtful thesis.

The text of the document itself is drafted in a very incisive form. The title of section 241 of this regulatory legal act and a number of its other provisions contain the terms "oligarchs", "semi-state legal entities", "Russian regime", "ruling elite in Russia", "illegal financial activities of the Russian Federation". In this case, there is no reason to argue about any political and diplomatic correctness of the American legislative technic. The analyzed law has a personal addressing, namely, the President of Russia V.V. Putin; its specific tasks: a) evaluate the relationship between the said persons and Vladimir Putin (and no exceptions are made for private life), b) identification of any signs of corruption in relation to these persons (even domestic? even if they themselves were victims of corruption?). Not only money and property of certain individuals and their relatives, but any assets are subject to verification. Assets not only belonging to subjects on the property right, but also being in any form of "beneficial ownership"are investigated. P.A, B, E Part 1 of Article 241 define the task: searching for legal entities and assets whose beneficiaries are persons who have entered the sanction lists outside the Russian Federation for possible future confiscation. The concept of "beneficial ownership of a state and semi-state legal entity" was introduced into legal circulation. Prescribed (part 3) to identify and assess the risks (even the most minimal) of the impact of sanctions assets on the US economy (securities market, insurance, banking sector ...) - as justification of interests of the USA in the planned repressions according to the real and extraterritorial principles of action of the law in space. A peculiar official interpretation of the concept of "illicit financial activity" is given in section 243: the term ``illicit finance'' means the financing of terrorism, narcotics trafficking, or proliferation, money laundering, or other forms of illicit financing domestically or internationally, as defined by the President (it is noteworthy that the key factor in this definition is the opinion of the president - what the president will decide this will be illegal); at the legislative level, the executive power has been delegated the authority to determine the content and scope of the legal prohibition - a very original understanding of the constitutional principle of separation of powers. Section 1 of article 1 of the US Constitution proclaims: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.[25]

P. "a" Art. 242 provides for the blocking of assets whose beneficiaries are persons (both physical and legal), who are on the sanction lists and (for individuals) their relatives. The reason for the reprisals declared "the contributing such persons to the situation in Ukraine" - quite vague and abstract wording: a) what situation are we talking about (there are many events happening in Ukraine)? b) what should be the contributing (participation in the negotiation processes in the Norman or Minsk formats - also contributing, humanitarian assistance to the starving, the exchange of prisoners of war...)? c) it ignores the fact reflected

[25] http://brightonbeachnews.com/rus/constitution-of-the-usa-russian-text/

in the protocols of the Minsk agreements that Russia is not a party to the conflict developing in the east of Ukraine; d) the contributing of U.S. government agencies in the situation in Ukraine is silent. The subject of the impact may be even public debt - provides for the possibility of an unilateral refusal of the United States to pay debts on government securities and etc ... Since the sanctions lists are formed by the fiscal authorities, we encounter a legal phenomenon, when the volume and content of the seemingly legislative reprisals are determined by the executive branch again (see the constitutional principle of separation of powers).

Also the question of the compliance of the provisions of the normative legal act in question with the Amendment 4 to the US Constitution is doubtful, according to which: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.[26]

Strictly officially considered normative legal act is intended to protect the interests of the United States from the impact of foreign corrupt entities (officials and individuals, individuals and legal entities). At the same time, the following circumstance is noteworthy: the full power (or its main scope) for the implementation of the requirements of the analyzed Act was acquired by the US Department of the Treasury (in particular, its structurally secret office - OFAC (Office of Foreign Assets Control). The main goal of this secret unit is to control assets and finance around the world, as well as the analysis and development of sanctions policy against those states whose domestic and foreign policies are contrary to US interests. OFAC is also entitled to compile a list of persons banned from entering the United States. At the same time, OFAC is not obliged to provide any evidence of its position in relation to persons included in the sanction lists, to disclose the sources of information. The inclusion and exclusion from the sanctions lists is also OFAC's[27] exclusive competence. What was implemented January 29, 2018 - announcement of the list of Russian political figures and entrepreneurs whose activities are perceived as hostile to America. The text of the report consists of two parts: public and secret lists. Almost all Russian politicians (except the President of the Russian Federation) and major businessmen are on the public list; One can only guess: who is placed on the secret list? It is assumed that all persons indicated in these lists are potential addressees of future sanctions, including confiscation procedures.

The algorithm for implementing such a confiscation procedure is as follows:

1. Detection of "doubtful" assets (emphasize: we are talking not only about the property and any assets that have the financial equivalent according to the international rules shall be subject to accounting, the assets may be non-proprietary patent rights, information bases, etc.) which are in the "regulatory power" (i.e., not only in ownership and possession, and in any status that allows, directly or indirectly, to manage and

[26] http://brightonbeachnews.com/rus/constitution-of-the-usa-russian-text/
[27] Office of foreign assets control

control its legal destiny) of individuals involved in the sanctions lists in any part of the globe.

2. The arrest of suspicious assets and the "blocking" of accounts unilaterally. One of the effective tools for the implementation of these actions is the international cashless settlement system SVIFT. Despite its territorial location in the Netherlands, this system is under the effective control of American and British banks.
3. Confiscation of asset data in a simplified administrative procedure (the so-called financial liability). States that have assisted to the United States in the implementation of this confiscation procedure, as a reward for cooperation are encouraged by part of the confiscated assets (effective motivation to cooperation).

An actual revolution happened in the sphere of legal regulation of commodity-monetary relations, which was almost unnoticed by the economic and legal community: any bank, no matter where it is located, having correspondent accounts in US dollars (and these are practically all the smaller banks in the world) are obliged to submit to the OFAC comprehensive information on the final beneficiaries of any legal entities that have accounts in these banks for already half a year. It is an organization of total control by the US government for world finances. It should be taken into account, that such control was established not only to possess information (which in itself is already significant), but also to ensure confiscation procedures.

After the discovery of the assets, an application is submitted for obtaining official information on the movement of assets of a specific person (for example, a bank statement) on the basis of the 1990 Vienna Convention (and on the basis of bilateral international agreements on cooperation in criminal matters if they are present in the legal field). Then comes the appeal from the US government to the address of another state about the “blocking” of the mentioned assets in accordance with the legislation of this country (as a rule, the appeals of the USA are not ignored). Such a request may be based on the proposed or actual confiscation procedure carried out in the United States or in the country to which the request was sent. In this regard, the following novel of the aforementioned US Law is quite remarkable: the introduction of the "presumption of guilt" by analogy with the domestic procedure of the American Asset Forfeiture. Now, the person who has come under suspicion and whose property has been arrested, is obliged to prove the legality of its origin. This allows the United States to declare any property of any major foreign entrepreneur "doubtful" or "criminal» at any time, and such an announcement will be the basis for the freezing of accounts of the controlled person virtually anywhere in the world.[28] At the same time, there is no provision for initiating a confiscation procedure for presenting any evidence of guilt or, at least, the involvement of a person in a crime.

The United States Congress adopted a very interesting regulatory legal act to counter the implementation of "illegal banking transactions", aimed at laundering criminal capitals - §981 (a) (1) (B) of Chapter 18 of the United States Code, providing for the possibility of seizure and confiscation of any assets subject to US jurisdiction in the United States terri-

[28] International cooperation in confiscation and sharing assets [electronic resource] – Mode of access: http://www.infousa.ru/laws/confiscation.htm (date accessed: 02.01.2018).

tory directly or indirectly related to the commission of a crime. In accordance with this law, it is possible to confiscate assets acquired or created in another state without violating the national law of their place of origin. In accordance with §1355 (b) (2) of Chapter 28 of the US Code, US District Courts have extraterritorial jurisdiction and cognizance over property found outside the United States subject to confiscation in civil lawsuits in accordance with US law. Section 1355 (b) (2) enshrines the right of the United States to use the assistance of other countries in the implementation of confiscation. This provision, in particular, can be successfully applied in cases when a particular foreign state cannot confiscate property under its own laws, but can take other measures (to implement confiscation of property, to enforce a confiscation court decision issued in the United States or to repatriate the property).[29]

This state of affairs gives many researchers reason to assume that American law tends to expand its implementation of the extraterritorial principle, and not only in criminal, but also in civil proceedings. The adoption of the Us law "on countering America's opponents through sanctions" is one of the elements of the strategy to establish global control over large capital of individuals and companies and influence the political leadership of other States through this sanctions.[30]

Enactment of the US Law on Counteracting the Opponents of America by Sanctions gave rise to a curious collision in the aspect of the corresponding connections of the normative legal acts of the legal systems of various states. Undoubtedly, all states have sovereignty and an independent legal system, but such corresponding relations take place, and they are most acute in the case under consideration. The Russian Federation is legally defined as the adversary / enemy of America (i.e., the status of relations between these states is legally fixed as hostile) in the text of the aforementioned US Law. This law defines confiscatory reprisals as a tool to fight opponents. In addition to the US fiscal authorities, all US financial institutions are designated as subjects of confiscation procedures (first of all, banks, and not only American, but almost all the largest banks in the world); whose functions in the implementation of confiscation reprisals are not limited to providing information on clients' financial transactions (bank secrecy in this case is “zeroed out”), the range of options for banks to cooperate with US government agencies is very wide. OFAC has published a “proscription” list of citizens of the Russian Federation in February 2018 in which almost the entire political and economic elite of Russia has fallen; that is, the purpose of confiscation repression is marked by almost the entire state apparatus of the highest level of the Russian Federation. Thus, it can be assumed that the hostile actions of the USA against Russia have moved from the category of declarations to the active phase. At the same time, the overwhelming majority of russian credit institutions are related to the international banking system to varying degrees[31]. The beneficiary (at least minimally, directly

[29] International cooperation in confiscation and sharing assets [electronic resource] – Mode of access: http://www.infousa.ru/laws/confiscation.htm (date accessed: 02.01.2018).

[30] Interview with the partner of White & Case LLP law firm O. Pall - [electronic resource] - access Mode: http://rapsinews.ru/international_publication/20140416/271153652.html (access date: 02.01.2018

[31] First of all, due to the fact that the vast majority of non-cash financial settlements were carried out on the SWIFT system until recently. Many calculations are made in US dollars.

or indirectly) of virtually any financial transaction in Russian banks are American banks (and banks of other states that are closely associated with them)[32], whose hostile status in relation to the Russian Federation is enshrined in US law. As the result, any financial transaction, at least to some extent affecting the interests of the leading world banks, is the provision of financial assistance to a foreign state or foreign organization or their representatives in activities against the security of the Russian Federation. What by virtue of Art. 275 of the Criminal Code of the Russian Federation should be qualified as treason. Almost any debtor under a Bank loan agreement for a sufficiently large amount, paying interest on the loan is facing a dilemma: or maliciously evade the repayment of accounts payable (if there is a judicial act in force), the responsibility for which is provided for by art. 177 of the Criminal Code of the Russian Federation, or become a traitor to the Motherland and be responsible under Article 275 of the Criminal Code of the Russian Federation. The choice in favor of evading the repayment of accounts payable is due to the action of a legal institute of extreme necessity (Article 39 of the Criminal Code of the Russian Federation). The situation is funny in its essence; the only consolation in it can be only the reasoning that not the domestic legislative power gave rise to it.

CONFISCATION EXPERIENCE OF THE GREAT BRITAIN.

The Criminal Income Act has been adopted in 2002 in the UK. It is also known, depending on the translation option, as the Law “On the Proceeds from Criminal Activity” or “The Law on Criminal Finances”, although, if we proceed from the content of this regulatory legal act, especially considering its further changes, translation as the Law “on Criminal Assets” would be more appropriate, since legal objects that are considered as objects of the impact of this law go significantly beyond the concept of “income” , and more consistent with the concept of "asset".

We understand assets in accounting as any phenomenon involved in the economic turnover that can: a) generate income, b) accumulate financial resources, c) convert at least one of the currencies; the main property of an asset is its liquidity, that is, the ability to turn into money (cash, non-cash, virtual), although money is also an asset; assets can be tangible and intangible, property and non-property, negotiable and non-negotiable, but their inherent feature is their valuation in monetary terms. In accordance with the aforementioned British law, criminal assets are subject to confiscation, for example, even if the whole criminal activity was unprofitable. In this aspect, there is a pan-European "before-Brekzit" tendency to regulate such a circle of relations.

- In accordance with the 2002 edition. The law of great Britain "on Criminal Assets" fixed four types of confiscation of assets connected with criminal activity in one way or another:
- administrative (police) confiscation;
- fiscal confiscation (upon taxation);

[32] American banks pay regularly the corresponding taxes with each of the financial transaction to the budget of the United States.

- confiscation of criminal income, instruments and means of crime, implemented in the framework of criminal proceedings;

"Extended" confiscation, which is also special or simplified - is implemented outside the framework of the criminal process under a special simplified procedure for the assets involved in the crime[33].

The latter type of confiscation is of particular interest. The involvement of assets in the crime is determined by a set of regulations. For example, a subject acquired assets "in connection with criminal behavior of a general nature or a criminal lifestyle" (criminal lifestile) "is a good example of legal abstraction. It is obvious that it is not necessary to prove the causal relationship between the committed crime and the possession of a certain asset in this case. The concepts: "criminal conduct of a general nature", "criminal lifestyle" provide a wide scope for judicial discretion. Evidence of a criminal lifestyle can be, in particular, information about kinship, sexual and friendships with criminals, the lack of legal sources of income, "life beyond their means", etc. Both in the statute and in the common law of Great Britain, legal proceedings are based on such a concept as "standard of proof" (which constitutes a whole complex of requirements (necessity, sufficiency, relevance, immediacy, admissibility, reliability, etc.). It is obvious that in this category of cases the "standard of proof" has a very "truncated" construction.[34] If a person leads the so-called asocial lifestyle for a certain period of time and cannot demonstrate legal sources of income, the court may come to the conclusion about the criminal nature of his assets and confiscate it. The procedure for such confiscation is implemented in a simplified, so-called bailiff order: The judge make nor a decision, nor a sentence, nor ruling, but an order, which takes effect immediately. It is presumed that all income received by the subject during the antisocial lifestyle is criminal and subject to confiscation; the defendant has the right to refute this presumption and independently prove that some part of his income has a legal source of origin for the period under review; thereby, he can reduce the amount of confiscated assets. A court order fixes the monetary equivalent of criminal property or other benefits from criminal activity - "recoverable value"; but if the real assets owned by the defendant are less than the recoverable property, the court will foreclose on what it can - the so-called "affordable cost"; if the subject does not possess any assets at the time of collection (he has withdrawn from the jurisdiction of the state, concealed, legalized it), the so-called "nominal value" is levied, which is essentially zero. The difference between the recoverable value and the available (or nominal) value forms the person's indebtedness to the budget and is recovered during the entire life of this subject, and can sometimes be included as a burden in the inheritance mass after his death. Necessery element of a court confiscation order is the determination of the term for its execution, even taking into account possible extensions, execution (at the request of the parties) it cannot exceed six months (by way of exception, up to 12 months). In case of delay in execution of the court order, the debtor, by analogy with the civil process, is charged a penalty for each day of

[33] This term is not used directly in the text of a normative legal act, but is popular in legal doctrine.

[34] The UK Anti-Money Laundering Regime: Statutory Offences and the Role of the FSA. URL: http://www.slaughterandmay.com/what-we-do/publications-and-seminars/publications/client-publications-and-articles/t/the-uk-anti-money-laundering-regime-statutory-offences-and-the-role-of-the-fsa.aspx.

such delay (there can be an exception only if the debtor proves that such a delay was due to the fault of the collector, the absence of the fault of the debtor is not an excuse by itself). As you can see, we have an example of a very expeditious legal proceedings (the principle of speeding up, cheapening and simplifying the judicial procedure in action).

If the debtor evades the execution of a court order for the confiscation of assets involved in the commission of serious crimes (felonies), the court may decide to replace instead of calculating the penalty for each day of delay the confiscation by imprisonment based on the statutory fixed proportion: if the confiscated assets exceed one million pounds sterling, then imprisonment for a term of five years is appointed instead.

Australia as a state of the Union, also adopted the Law on Criminal Assets adjusting its national legislation in accordance with the requirements of British law, 2002.; it is identical to English Act in the basic points, but there is also its own specificity, especially it displayed in 2010. When this law was set out in the updated edition.[35] The institution of unexplained wealth (unexplained wealth) got secured in this law. The triumvirate of grounds (the set of requirements — a set of all three must be present) is legally defined for such a confiscation:

1. The owner of an asset cannot prove with due diligence the legal source of the origin of their property and other income.
2. The time of origin of the asset coincides with the period when the subject did not declare his property status (if he filed such a declaration but did not declare a certain asset in it, then a slightly different “fiscal” confiscation procedure is initiated.
3. The size of the identified assets owned by the person significantly exceeds the total amount of his legal income (in this case, the amount of the identified assets also includes the established expenses for a certain period - that is, “the person lives beyond his means”).

It is declared that the type of confiscation in question is not a measure of criminal responsibility; it is not carried out within the framework of the criminal process and is realized without establishing the debtor’s guilt (responsibility without guilt)- is an obvious vestige of civil law.[36] Australian lawyers do not deny, and even emphasize that this tool is aimed primarily at combating organized and corrupt crime and in borrowed its substantial part from the Italian experience in the fight against the mafia.[37]

The implementation of confiscation reprisals is devoted to the provisions of another British regulatory legal act - the UK Serious Crime Act 2015.[38] This law corresponds to the previously considered UK Law on Criminal Assets 2002. It contains provisions that the procedure for confiscating criminal assets is further simplified in relation to serious crimes - felonies. First of all, the changes affected the so-called "restrictive court orders" (an analogue

[35] Proceeds of Crime Act 2002, No. 85. URL: http://www.comlaw.gov.au/Details/C2013C00113.
[36] Crimes Legislation Amendment (UNEXPLAINED WEALTH and Other Measures) Bill 2014. Explanatory Memorandum.
[37] Australian Parliament, Report of the Australian Parliamentary Delegation to Canada, the United States, Italy, Austria, the United Kingdom & the Netherlands. June 2009. P. 62.
[38] Serious Crime Act 2015.// https://www.gov.uk/government/collections/serious-crime-bill

of the domestic court decision on the election of preventive measures or interim measures) - arrest (with leaving the defendant for safe custody), temporary seizure (with transfer to the custody of a specialized organization), transfer to the management of a specialized organization of criminal assets in order to ensure the forthcoming confiscation.

During the period of the restrictive order, the authorized bodies (the prosecutor or the representative of the fiscal authority, depending on the situation) identify third parties with rights in respect of the "frozen" asset, involve them in the process and impose on them the burden of proving that they have taken all necessary and sufficient actions from the point of view of an average reasonable and bona fide person to establish the legitimacy of the origin of the assets in respect of which they have acquired rights, that they objectively could not establish the criminal nature of the assets (at the same time, the mere suspicion of the illegitimacy of the source of the asset immediately precludes the bona fide of the person), that he became the victim of fraud or delusion. If such a third party failed to rebut the presumption of involvement in operations with a criminal asset, then he cannot expect the exclusion of his property or non-property rights from the mass of confiscated property. The most common way to prove one's own good faith in such a situation is to secure, insure or otherwise hedge the risk of being misled by the counterparty (the risk of the counterparty's bad faith) about the legitimacy of the origin of his assets.

Some of the third parties have a special status, to which the debtor has obligations arising from marriage and family, tort (obligations from causing harm), labor (wage arrears) and other similar relations. During the period of the "restrictive court order", these persons have the right to satisfy their claims through the debtor's seized property before applying confiscation to criminal assets. Assets from under the imminent confiscation, but the English parliament took this measure and agreed with it, as with the "lesser evil". Another problem is that, according to the rules of jurisdiction, this category of cases is under the jurisdiction of the Crown Courts, which specializes in criminal cases and does not have the experience and skills to deal with family, labor and civil cases.[39]

Of interest also the application of interim measures - "restrictive court orders" - to the assets of the debtor in its accounts with credit institutions (banks) - the court has the right to make a decision to debit funds from the bank account of the debtor and transfer them to the bank account of the court in order to secure future confiscation (in order to reliably exclude any manipulations with the arrested bank account). Before the adoption of the law in question, the compulsory direct debiting of funds from the debtor's account was possible only in case of the expiration of the terms of voluntary execution of the judicial decision on confiscation (that is, in the case of the debtor's evasion from the execution of the effective judicial act).

The novelty was a clarification of the provisions on the replacement by prison of debts for the confiscation of criminal assets, if their owner failed to fulfill his obligations to provide his property and other assets for recovery at a time specified by the court (i.e., if there is the suspicion of the origin of assets from committing felonies, the court may, at its discretion, not charge a penalty for the period of delay in the execution of confiscatory duties on the

[39] Winch D. Reform of Confiscation Law. URL: http://www.accountingevidence.com/blog/author/david-winch.

part of the debtor, but to replace the failed confiscation - if the defendant avoids its execution - for a certain period of imprisonment). We pay special attention to the fact that this repressive measure is applied outside the framework of the criminal process on charges of having committed a specific crime. It should be noted that the possibility of replacing the confiscation of property involved in the commission of serious crimes for imprisonment was also provided for by the UK Law on Criminal Assets 2002; However, if treason imprisonment, confiscatory debt of over one million pounds was replaced by five years of imprisonment (if he served half of that term, regardless of the size of the debt, he can count on early release regardless of the amount of the debt) until 2015., then according to the new law: if such debt does not exceed one million pounds, then - up to seven years, and if it exceeds, then - up to fourteen years. Moreover, if assets worth more than ten million pounds were to be confiscated, and for evading the voluntary execution of a confiscation order, it was replaced with a prison sentence, then the guilty person cannot claim early release while serving a prison sentence. The terms provided to the debtor for the voluntary execution of the confiscation decision were also reduced: if for all other crimes it is six months and as an exception - twelve, then for serious crimes (their list is statutory established) - no more than three months and as an exception - six.

A Russian lawyer is well aware of the situation when assets that are unjustly acquired in Russia are taken abroad and, most often, to the UK. It is noteworthy, but a similar problem worries the British law enforcement and judicial authorities. This problem is under the jurisdiction of a special institution: “Serious Fraud Office”. According to this service, more than half of the unenforced court orders for the confiscation of criminal assets relate to property and other income that is outside the jurisdiction of law enforcement and judicial authorities of the United Kingdom and the Union States (and this amount exceeds 40 million pounds sterling). Currently, this problem is open and tools for its solution are being developed.[40]

It is noteworthy that both under the laws of several states of the European Union (for example, Ireland and Iceland), and under the laws of the United States, the United Kingdom, Switzerland, Australia, etc. a mass of confiscated goods also includes accrued taxes and penalties for their non-payment (since it is not typical of criminals to declare their criminal incomes beforehand) on the income from criminal activities (liability, and taxes must be paid) - a kind of taxation of the criminal business. In this case, there is some competition for extended confiscation of criminal assets and fiscal confiscation. Such a conflict is solved in favor of extended confiscation of criminal assets, but in this case a representative of the relevant fiscal institution is involved in the process as an interested party (from the State party).

The considered type of confiscation is a peculiar hybrid of the traditional criminal-law confiscation of instruments and means of committing crimes and criminal proceeds and civil confiscation in rem, which features were considered earlier. In its content, it is very close to the “administrative” confiscation practiced by the fiscal authorities of the United States of America (which we also paid attention to before). But at the same time, it is a very distinc-

[40] Serious Crime Bill [HL]. House of Lords, 14 October 2014. URL: http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/141014-0001.htm#14101474000525.

tive independent phenomenon, which makes it possible to consider it as an autonomous legal phenomenon.

Law "on financial crimes" received the Royal sanction of the UK in April 27, 2017, entered into force on October 1, 2017.[41] A number of its provisions are evaluated by experts as revolutionary.[42]

The concept of corporate financial crime was introduced into legal circulation, by which is meant the non-prevention of even attempts to evade taxation not only by a member of a corporation, but also by associates, not only in the UK, but also abroad. By its legal construction, the composition of this crime is truncated. According to the direction of repression - it has double prevention. In addition, the composition of this crime is “prepredicate”: it is assumed the possibility of committing a fiscal crime by another person in the future (unlike the classic predicate crime, when the crime in question becomes possible after committing another crime, for example, acquiring property that was knowingly obtained by criminal means, or legalization of proceeds from criminal activity).

The subjects of this crime are both individuals - the leaders of the corporation, and legal entities - the corporation itself. At the same time, the corporation’s fault is presumed in the incriminated such a crime: if there was a fiscal tort in the depths of the corporation, then the company allowed it and did not take sufficient measures to prevent it; the management of the corporation is granted the right to refute such a presumption and prove that it has taken sufficient preventive measures that correspond to the declared risks (the entire arsenal of risk management, identification, assessment and hedging of risks is implemented in this case).

The circumstance that exempts a corporation from responsibility is the implementation of the so-called “adequate procedures” (a complex of anti-criminal preventive measures) in its activities.

The concept of an associate person was put into circulation previously by the UK Bribery Act 2010[43]; as such, any person is understood, communication with which forms the respondents association with a specific official (relatives, friends, attorneys, lovers, etc – - the widest range). In this vein, it seems an impasse in the efforts of the domestic legislator to reform the list of spouses and close relatives who are subject to control in the implementation of the anti-corruption policy. Associates are also subjects of sanctions (in particular, confiscation of criminal assets).

The concept of adequate procedures is also introduced into the UK Bribery Act 2010, these include systematic cooperation with law enforcement agencies in terms of preventing and combating fiscal and corruption crimes, systematic external independent accounting and anti-corruption audits, the formation of a corporate cult of an uncompromising attitude towards corruption and fiscal delicts (incentives, lectures, seminars ...), etc., adequate financial turnover and staffing of the organization. A British court decides how “adequate”

[41] UK Criminal Finances Act 2017 https://offshore.su/blog/offshore_news/criminal-finances-act-2017.html
[42] Golovanova N. A. Confiscation as a reaction to a selfish crime http://отрасли-права.рф/article/1071
[43] https://www.legislation.gov.uk/ukpga/2010/23/contents

are such procedures guided by the general principle of “reasonableness” - a very broad base for freedom of judicial discretion (which is fraught with possible abuses).

A reformed version of British jurisdiction is provided for corporate crime: if there is a general rule for other delicts - A British court can take into consideration any case on any delicts or disputes that took place in any part of the planet, if the appealing party proves that a qualified and impartial trial is not guaranteed at the place of due process (legacy of the imperial colonial past); then, in relation to a corporate fiscal offense (primarily to the laundering of criminal assets), such proof of the impossibility to ensure qualified and impartial legal proceedings at the place of due process of the case is not necessary; The interested party (mainly the prosecutor’s office or fiscal authorities) simply appeals to a British court, and a British court simply accepts the case for its proceedings and examines it.

The principle of "double criminalization» is activated in this case - the act in question is recognized as a crime, both under the laws of Great Britain and under the laws of the state of the place of the tort. It is worth mentioning that formally there is a reservation: British jurisdiction depends on the presence of “interest” of the UK; or the company is registered in Britain, or does business in Britain, or makes payments through British banks, or its counterparties are British companies, etc.; In general, if desired, such interest can be established in almost any case. Naturally, the beneficiary is the UK budget in the case of confiscation of criminal assets (the situation is very doubtful from the moral point of view).

The concept of “Unexplained Wealth Order”[44] (UWO) was introduced into the legal circulation, which is a legal presumption of a refutable type. In accordance with the analyzed regulatory legal act, this concept is addressed not only to “politically exposed persons” (PEP), that is already quite common in the European space, but also to each subject involved in a corporate crime. Each owner of the assets that have been the subject of a fiscal audit has the right to refute such a presumption by providing the controlling body with comprehensive evidence on the legitimacy of the sources of origin of its assets. If such a presumption is not refuted, assets with an “inexplicable order (source)” of origin are subject to confiscation in a judicial proceeding. In addition, the defendant is charged with the costs of conducting verification activities, preliminary investigations and court proceedings (every hanged person must pay for his own rope).

Suspicion in an unexplained wealth order is brought by the national anti-crime agency to the court, which initiates a simplified procedure for the trial and confiscation (UWO). Such a simplified mechanism does not exclude the traditional way of confiscating criminal proceeds in the process of implementing the classic criminal prosecution of a person who committed a crime; but it is somewhat different: on the one hand, it is assumed that the assets held by the person are of criminal origin, on the other hand, no one proves the fact of the fact of the crime and the causal link between it and the appearance of the assets of interest in the subject, it's kind of presumed and left out of the trial. Let the relevant law enforcement and judicial authorities identify and investigate specific crimes. The fact that the commission of a particular crime has not been proven has no legal value. The torture

[44] Despite a certain consonance, this is not an analogue of the well-known domestic civilists concept of unjust enrichment.

turns from the predicate into an autonomous (a kind of legal fiction). The judicial procedure for foreclosure of assets of unexplained origin is carried out in a simplified order of procedure according to the rules of civil justice, in connection with which the minimum standards of criminal justice (with the full range of guarantees of human rights and freedoms) are not subject to realization; the solution of the criminal law problem was transferred to a civil legal field. To implement the seizure of UWO, the following conditions apply:

- The value of confiscated assets must exceed 50,000 pounds sterling (British fiscal authorities are not exchanging small stuff), while taking into account the value determined through expert evaluation, the contractual or discount price is actually ignored, if the competent authority concludes that the assets are intentionally "split up" in order to evade the specified threshold value, then several assets can be accumulated in the assessment (is a very small amount for domestic oligarchs , withdrawing their assets to Britain).
- There are compelling grounds for suspicion that the official (legal) sources of income (one of the signs of the legality of income is that all taxes were properly paid from it) of a particular person is not enough to acquire an asset that is subject to legal proceedings.
- The owner of the confiscated asset is a politically exposed person (PEP) or is connected to the commission of crimes in any way.

The UWO confiscation procedure involves the burden of proof of the following circumstances:

- the source of the asset;
- paying taxes on the income for which the asset was acquired;
- asset value;
- asset acquisition procedure;
- previous owner of the asset;
- the cost of the acquisition and subsequent maintenance of the asset;
- if the owner of the asset is a legal entity, then proper accounting of the asset and its reflection in the tax reporting;
- if the owner is a legal entity, information about the founders and affiliates;
- the court, at its discretion, has the right to demand the provision of other additional information, and the proof of additional circumstances.

If the defendant alone cannot provide the required proof, but reliably knows where and from whom it is located, he can applicate to the court to seek such evidence; wherein the court is not obliged, but only has the right to grant such a petition. If the subject has previously been subjected to such responsibility, the court may come to the conclusion (in the order of the interim decision) that he is accustomed to / the usual offender and further simplify the process of proving in this case. Any evidence presented by the court in this process is of legal (evidentiary) value in this process; it cannot be used as evidence in criminal proceedings that may be initiated against the defendant in the future (the truncated nature of the prejudicial value of this judicial act). The following may well happen: the asset will be confiscated as having a criminal origin in one process, and a person wiil be acquit-

ted on charges of committing a crime, the proceeds of which were already confiscated assets in another process (quite acceptable conflict). In this case, there is a kind of guarantee of the human right not to testify against himself (no one can force a person to testify against himself or his loved ones).

The court's assessment of the evidence is also quite remarkable. If the court finds the evidence unsatisfactory, or the evidence was submitted with a violation of the deadline set by the court, the investigated asset is confiscated (a confiscation order is issued). If a person presents false evidence to the court, he will be held criminally liable for falsifying evidence in a criminal trial, although the process is essentially civil.

Considered a regulatory legal act reformed "The Law on Crimes and Courts" in 2013. regarding the extension to the corporate crimes of the institute “DPA” - an Deferred Prosecution Agreement, by virtue of which, in this category of cases, the statute of limitations for prosecution was actually nullified. Thus, the confiscation of criminal assets, the origin of which is involved in a corporate crime, is possible even after a long period of time after their acquisition (and even from heirs and other beneficiaries).

The reforms, enshrined in the studied regulatory legal act, touched upon the 2002 Law “On Counteracting the Legalization of Incomes Derived from Criminal Activities” (POCA)

The concept of a “suspicious financial transaction” (SAR) (the content of which more corresponds to the concept of a transaction) has been slightly modified, the essential features of which include the absence of obvious economic benefits, the unreasonable difficulty of concluding the transaction, its execution or settlement on it, which does not correspond to the established business practices ... (obvious impact of the FATF recommendations). If such a transaction is identified, any credit organization should immediately inform the NCA - the National Crime Agency and out-of-court suspend all operations under such a transaction (moratorium for 31 days with the possibility of extension up to six times). In the future, a judicial procedure of simplified fiscal confiscation is initiated - everything that is received by each side of a suspicious transaction is subject to confiscation to the UK budget.

The Criminal Finance Act, which was approved by the Queen on April 27, 2017, entered into force in the UK, on January 1, 2018,which is actually a new edition of the 2002 law of the same name. The adoption of this law is the only possible rational measure to correct the situation in the country due to a number of circumstances. This measure is due to one simple reason - economic interest. According to official data british real estate registered in offshore is in the amount of about £ 170 billion. If the owners of the real estate would be known, then it could be levied, for example, on the inheritance tax, which is more than 40% of the value of the real estate. However, property owners are unknown. Also the number of requests for real estate increases annually.

The UK-based investment visa program aimed at increasing the amount of money entering the country is not able to stabilize the economic situation. Investment visas give the right to reside in Britain in exchange for investment in its economy and guarantee a simplified procedure for obtaining a residence permit and citizenship. Depending on the amount of investment, a residence permit can be obtained in 3 years, and citizenship in 5 years. Against the backdrop of a series of high-profile international scandals related to offshore

companies and the release of a documentary film on money laundering in London, the public asked the authorities to take concrete actions to resolve this urgently emerging issue. As a result, a bill was submitted to the Parliament, obliging wealthy foreigners to submit full information about their sources of income to the authorities.

Britain has long been the main place of storage of financial savings for officials and businessmen, most often through the acquisition of ancient castles and mansions there. Now the law suggests two ways for their further actions: to fully disclose the source of the origin of wealth, or to withdraw funds from this country. The text of the document introduces the concept of “unexplained wealth ”, which is subject to seizure in favor of the state treasury. The list of property to be confiscated includes bank accounts, real estate and precious jewelery.

The Criminal Finance Act provides for a substantial tightening of legislation in the sphere of combating tax evasion, money laundering, corruption, and the financing of terrorism. Its rules provide powers to law enforcement agencies to seize real estate objects that raise suspicions of their legitimacy, if the owner (beneficiary) can not explain the source of funds for their purchase. Real estate may be withdrawn from politically exposed persons, or from individuals who are involved or are associated with serious criminal offenses. It provides for the possibility of extending the terms of investigation of suspicious transactions by the authorized bodies. Also, the changes concern companies that have problems with paying taxes, both in the UK and abroad. The law aims to overcome the existing difficulties associated with the distribution of criminal responsibility between enterprises that have unscrupulous employees, agents, contractors or subsidiaries, called related or "associated persons".

Many lawyers consider the new edition of the Criminal Finance Act[45] which entered into force on January 1, 2018. in the UK, as a significant development of confiscatory potential in countering acquisitive crimes and, above all, corruption.

The revolutionary factors in this legal reform are the following factors:

1. The institute of “judicial inquiry of the state of unknown property” (unexplained wealth orders, UWO) was introduced into legal circulation.
2. The authority of the British courts is enshrined to send such a binding request to foreign institutions and organizations, both state and non-state.
3. If the addressee ignores such a request, the British court has the right to assess this circumstance as confirmation of the criminal origin of the asset that is the subject of this legal proceeding.
4. The concept of a politically exposed person (politically exposed person, PEP) has been filled with new content, it has received an expansive interpretation; This category can now be attributed not only to public authorities, but also to municipal authori-

[45] Criminal Finances Act 2017. URL: http://www.redlionchambers.co.uk/wp-content/uploads/2017/01/Criminal-Finances-Update-2018.pdf Government guidance for the corporate offences of failure to prevent the criminal facilitation of tax evasion, 1st September 2017. URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/642714/Tackling-tax-evasion-corporate-offences.pdf

ties, public figures and representatives of big business. In this case, there is an implementation of the provisions of international law. In accordance with the EU Council and Parliament Directive 2015/849 of 20 May 2015, aimed at countering the laundering of criminally obtained incomes and the financing of terrorism, a person who has performed or is performing public functions, as well as currently, they include the family members of the above-mentioned persons, as well as their close assistants or other persons associated with them.

5. Legal entities may also be equated with politically exposed persons when submitting such a request.
6. The political importance of a person is determined not only by his present status, but also by past activities.
7. Citizenship and place of residence of such a politically significant person has no legal significance.
8. Various kinds of immunities of politically significant persons have no legal value in case of sending such a request.
9. The request shall be made if there is a reasonable ground to suspect such a person of involvement in the commission of specific crimes or, in general, in the conduct of the criminal way of life by himself or his relatives.
10. The threshold value of the assets studied in the confiscation perspective has been maintained at £ 50,000 (although the option of raising the threshold to £ 100,000 has been considered in Parliament (House of Lords) during the discussion of the bill. But they took into account the fact that in Ireland and Scotland the value of real estate is significantly lower than in England, and kept the old value.

The power to initiate the proceedings belongs to:

a) the National Crime Agency,
b) Her Majesty's Revenue and Customs,
c) the Financial Conduct Authority,
d) the Director of the Serious Fraud Office, or
e) the Director of Public Prosecutions (in relation to England and Wales) or the Director of Public Prosecutions for Northern Ireland (in relation to Northern Ireland).

Any individual or organization that has information about the presence of someone or movement of any assets that have a dubious origin is entitled to apply to the listed institutions. Some organizations or individuals are required to report such assets to the competent authorities:

a) lawyers
b) an attorney
c) notaries
d) to brokers
e) auditors
f) banks,
g) organizations conducting auctions and public tenders,
h) financial and commodity exchanges,
i) to jewelers,

j) organizations specializing in operations with precious stones, precious metals and jewelery,
k) organizations specializing in real estate transactions.

All of them must identify their client (the so— called KYC-know your client rule) or counterparty and verify, as far as possible, the legality of the source of funds for the supervised transaction with the asset. Compliance with this duty is monitored by a whole system of competent state bodies; for example, he body regulating activities of lawyers and solicitors in England and Wales (Solicitors Regulation Authority) specialize in monitoring the activities of lawyers and attorneys.

Anonymous applications are allowed.

The competent authorities that received such an application are obliged to initiate an inspection, within which they are obliged to identify the person indicated in the application as politically significant (PEP) for which they operate not only with their own databases, but also apply to specialized analytical agencies, apply to foreign institutions, use as open, so and secret databases. Next, quantitative and qualitative, legal and economic information of assets of interest is collected.

Having formed a file on the asset and its owner, the competent authority appeals to the High Court of London. The court, having accepted the appeal, initiates legal proceedings and sends a request for assets of unclear (dubious) origin. The request is addressed both to the owner of the asset and to competent organizations specializing in registration and accounting of various types of assets: depositories of joint stock companies, patent offices, institutions registering real estate transactions and transfer of rights to real estate, banks, self-regulating organizations of bankrupt managers, etc.

In the period between sending such a request and receiving answers to it, the competent authority already has the right to initiate proceedings for the recovery of a “doubtful” asset.

In response to a request, the respondent is obliged not only to indicate the source of the asset and the source of funds spent on the acquisition of the asset, but also information about the circumstances of the acquisition and the previous owner of the asset, information about the nature and degree of his interest in the asset being sought (it is possible that is abandoned, ownerless, alienated, etc.). If the defendant ignores the request or the court finds his argument unconvincing or insufficient, the asset must be confiscated to the kingdom’s budget.

As a rule, fiscal delicts are also identified in parallel in the process of identifying assets that have criminal origin: it is common for criminals not to declare their criminal incomes and pay taxes on them. In this case, the fiscal authority involved in the process charges arrears in unpaid taxes and late payment fees, which are levied in the same process, increasing the mass of confiscated goods. At the same time, criminal prosecution is initiated for evading a person from taxation (and in this case he faces imprisonment of up to six years); at the same time, persons who by their actions intentionally or negligently assisted the main debtor in tax evasion (including the persons listed above who did not fulfill their obligation to notify the competent authorities about the operation with doubtful assets (dubious transaction) that has become known to them may also be held liable); they could face a sen-

tence of up to two years in prison. If the defendant is a legal entity (and in some cases this applies to sanctions in the form of fines, revocation of licenses and other special permits, prohibition to engage in a certain type of activity, various kinds of disqualifications; a ban on participation in government procurement and orders, publication in the press of information about misbehavior, etc. If the court comes to the conclusion (for example, in the case of repeated relapse of such behavior on the part of the organization) that it is impossible to ensure the lawful activities of this legal entity, it is even possible to use it to be liquidated through “criminal bankruptcy”.

We believe that it is of interest not only the analysis of foreign regulatory legal acts, but also the analysis of the practice of their application.[46]

The new law began to act on January 1, 2018, and already on February 28, 2018., the National Crime Agency (NCA) of the United Kingdom published information on the receipt of two court orders (unexplained wealth orders, UWOs) according to which a citizen of the Republic of Kazakhstan who owns prestigious real estate in the United Kingdom for a total of 23,000,000 pounds, was obliged to declare the source of these assets. In parallel, the NCA, in order to take interim measures, obtained an additional order (interim freezing orders, IFOs) about the seizure of all the defendant’s assets under UK jurisdiction (freezing of assets - bank accounts, bank vaults, securities, real estate, transport, including sea); moreover, the sum of the seized assets substantially exceeded the size of the planned confiscated property. It is not known how the respondent reported and reported at all, but in May of the same year the arrest of his assets was lifted in connection with the execution of a court order for the confiscation of real estate objects that were the subject of legal proceedings.

Translation by Alena Tschigak

[46] https://news.mail.ru/politics/32806382/?frommail=1