

BRIEF FOR THE STUDY:

§§ CIVIL FORFEITURE OF UNJUSTIFIED ASSETS THROUGH THE PRISM OF PROPERTY RIGHTS PROTECTION

Civil forfeiture is recognized worldwide as an effective mechanism to combat the acquisition and use of illegal and unjustified assets.

The analysis of the model of civil forfeiture of unjustified assets without a court conviction, introduced into Ukrainian legislation, showed that **Ukrainian legislation generally complies with international standards and best existing practices by providing broad procedural rights to the defendant and third parties.**

The experience of foreign countries that have introduced such instruments has demonstrated that their effectiveness directly depends on the practice in the application of these provisions by both law enforcement agencies and courts.

To ensure a fair and impartial implementation of the institution of civil forfeiture of unjustified assets, to ensure the principle of legal certainty, as well as to prevent further rulings of the European Court of Human Rights on human rights violations by Ukraine, we provide the following recommendations to the Parliament.

1. The Parliament needs to adopt amendments to the current legislation on the sale of seized assets by **empowering ARMA with the authority to store property, limiting the possibility of selling seized assets in disputes on declaration the assets as unjustified until the case is resolved on the merits.** In addition, ensuring the procedural rights of the owner is associated with the preservation of the value of the asset, which is problematic without a qualitative improvement in the operational work of the Agency as a whole.
2. The Parliament needs **to amend part 3 of Article 292 of the Civil Procedure Code of Ukraine**, which should provide for the possibility of applying extended confiscation only to the assets of an official, but not to third parties.

At the moment, the law establishes that in the case of destruction/alienation or decrease in the value of the disputed property, compensation for the lost value occurs at the expense of other property of the defendant, which can be either the official or the third parties – nominal owners. In order **to strengthen the protection of the rights of third parties and given that the main element for the confiscation of an asset from a nominal owner is the connection of the disputed asset with an official, a third party who does not actually dispose of the disputed assets should not be held liable with its property for the actions of the official.**

3. The Parliament **needs to clearly define in the legislation at what stage, by what criteria and in which form the court determines the sufficiency of the evidence presented by law enforcement agencies that the acquired assets are unjustified** to shift the burden of proving the legality of the sources of the assets to the defendant. An additional settlement is required by **the issue of admissibility of evidence, in particular, whether the evidence collected in the framework of criminal proceedings can be used, and to what extent, what evidence can be used if the criminal proceeding was not previously opened.**

Realizing the need to provide the court with reasonable discretion, the lack of legal certainty on the above issues can prevent the owners of the disputed property, law enforcement agencies and the courts themselves from acting within the law and exercising their rights to the fullest extent.

4. The Parliament should adopt amendments to the current legislation, which will clearly define – **1) whether a person is obliged to prove the legality of the sources of his or her income received before his or her assumption of office; 2) how “deeply” the owner should prove the origin of his or her wealth, necessary for the acquisition of the disputed assets.** Actually, according to Art 291 of the Code of Civil Procedure, the court must establish the legality of the income necessary for the acquisition of the disputed assets, but the law doesn't specify the time limits within which such income could be obtained.



Kyiv, 2020

