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**PROPERTY FORFEITURE IN CRIMINAL LEGISLATION:  
NATIONAL AND INTERNATIONAL ASPECTS**

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*Abstract*

The article aims to analyze the issues of punishment system improvement. Property forfeiture is a punitive measure aimed to struggle against corruption crimes. The international and Russian anti-corruption legislation is analyzed. Property forfeiture as a punitive measure is provided for by criminal laws of different European and Asian countries with different political, economic, social and legal systems. The article argues that property forfeiture as an auxiliary anti-corruption punitive measure is crucial for ensuring just punishment and preventing lucrative crimes. Property forfeiture involves seizure of property from convicted criminals. The concept of property forfeiture as a punitive measure is analyzed in the Russian legislation and foreign criminal laws. As an auxiliary measure, property forfeiture is used to seize property derived from the commission of a crime (e.g., bribe) or used in the commission of a crime (e.g., funding of terrorism). The authors conclude that property forfeiture as an auxiliary measure is a criminal procedure measure rather than a criminal legal one. In this capacity, property forfeiture is not efficient and does not achieve punishment purposes. The article proposes amendments to the criminal laws which involve application of property forfeiture as an auxiliary punitive measure for grave and especially grave corruption and lucrative crimes.

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**Keywords:** Punishment system; property forfeiture; corruption; crimes.



## 1. Introduction

Legal research argues that corruption as a negative social phenomenon is determined by different factors (social economic, social political, legal, management, ethical, etc.) (Tatarnikov, 2015).

When analyzing penalties for corruption, it is necessary to take into account the following aspects. First, despite the fact that no country managed and will manage to root out corruption in the near future, it is reasonable to establish tight control over corruption distribution channels and reduce its life cycle rather than eliminate corruption as a phenomenon. Second, it is necessary to use all available anti-corruption tools and methods (legal and preventive ones). It is important to use all possibilities of the criminal legislation to prevent corruption (Pobegailo, 2004).

According to the Strasbourg Convention on Corruption ratified by the Russian Federation in 2006, corruption endangers the supremacy of law, democracy and human rights, public government, stability of democratic institutes, erodes the principles of equality and social justice, moral principles, hinders competition and economic development.

## 2. Problem Statement

The struggle against lucrative and corruption crimes involves application of efficient punitive measures which aim to punish a criminal and seize his/her property. The National Anti-Corruption Plan approved by the Executive Order of the President of RF No 226 of 11 April 2014 aims to develop legal acts for improving anti-corruption measures. The Executive Order emphasizes that it is necessary to develop a system of property liability for corruption crimes. Turkova, Archipova, and Kitaev (2017) believe that it is necessary to adopt a special legislative act on anti-corruption. Besides, we need a special independent public agency which would ensure execution of that act. It is necessary to eliminate corruption in the government, create conditions for citizens excluding bribe-giving for services which are free for them by law, eliminate causes when people are forced to find illegal financial sources, etc.

## 3. Research Questions

Russian criminal laws adopted in the Soviet period and the original Criminal Code of Russia (1996) included property forfeiture in the list of punitive measures which was crucial for ensuring just punishment for corruption-related (e.g., bribery) and other lucrative (e.g., embezzlement) crimes. According to Article 52 of the original Criminal Code of the RF, property forfeiture was defined as compulsory non-repayable deprivation of entire or part of the property owned by a convicted criminal and conversion it into the ownership of the State. The punishment was imposed for grave and especially grave lucrative crimes, including bribery, embezzlement on a large scale.

According to the Russian Criminal Code (Article 43), restoring of social justice, correction of convicted persons and prevention of the commission of new crimes are key purposes of punishment. To achieve these purposes, it is necessary to choose a type and amount of penalty, impose additional penalty. The choice depends on the gravity of offences, personality of criminals, mitigating and aggravating circumstances, etc.

A bribetaker should be afraid of seizure of both material values derived from the commission of a crime and other material values (expensive cars, land plots, houses, yachts, etc.) which were purchased legally. Property forfeiture as an additional punitive measure serves this purpose. The criminal legislation of some foreign countries is based on this principle. This principle was a basis for the Russian criminal legislation which existed until 2003.

The situation changed in 2003 when Federal Law No 162-FZ of 8 December 2003 was adopted. Property forfeiture was excluded from the list of punitive measures. Pobegailo (2004) referred to this step as an order of Russian corrupted officials and economic criminal communities. Sheltering themselves behind care of families of convicted criminals, lawmakers created opportunities for money laundering despite criticism of the criminological community, against common sense and international anti-corruption practice. It is a scandal in the history of the modern Russian criminal legislation and the third State Duma. (Boskholov, 2013).

Three years later, as a result of just criticism of the criminological community, Chapter 15-1 "Property forfeiture" was included in the Criminal Code. However rules of this chapter are not efficient, particularly in relation to lucrative and corruption crimes.

According to Chapter 15-1 of the current version of the Criminal Code of the Russian Federation, property forfeiture is not a punitive measure. It is an additional criminal measure involving deprivation of the property derived from the commission of crimes (e.g., embezzlement, bribery) or used for the commission of crimes (e.g., funding of terrorism). The analysis of the Russian judicial practice also proves the inefficiency of modern property forfeiture rules. In 2014, property forfeiture as a punitive measure was not imposed on any out of 27 public officials convicted for bribe-taking (Part 4 Article 290 of the Criminal Code of the RF). In the same year, property forfeiture was imposed on 17 (3,9%) convicted for bribe-taking crimes under aggravated circumstances, including bribe-taking crimes on a large scale (Parts 2, 5, 6 Article 290 of the Criminal Code of the RF). In 2015, property forfeiture was imposed on 88 out of 1702 criminals convicted for bribe-taking (5%). In 2016, property forfeiture was imposed on 67 out of 1334 criminals convicted for bribe-taking (5%) (Golovnenkov, Ponyatovskaya, 2015; Fishbein, 2001; Henry, 2001).

Having served the sentence for corruption crimes, a convicted person can live as a bigwig using expensive houses, yachts, cars, etc. However, according to the UN Convention against Transnational Organized Crime of 15 November 2000 (ratified by Russian Federal Law No 26-FZ of June 25, 2004). States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings. However, the Russian legislation presumes the lawful nature of any property of a bribe-taker, including luxury articles whose cost exceeds legal revenues of the criminal.

One of the popular arguments against property forfeiture is disagreement of the measure with international acts signed by Russia. However, exclusion of property forfeiture rather than its inclusion in the list of punitive measures is contrary to international acts. (Tatarnikov, 2015).

For example, according to Article 31 of the UN Convention against Corruption signed in New York on October 31, 2003, confiscation is one of the legal anti-corruption tools. Moreover, according to the Convention, Member states may consider the possibility of requiring that an offender demonstrate the

lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings. The similar provision is included in the UN Convention against Transnational Organized Crime of 15 November 2000.

Property forfeiture cannot be imposed on thievish Russian bureaucrats and economic criminal communities. According to Article 20 of the UN Convention Against Corruption, illicit enrichment is a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income. Unfortunately, Russia has not ratified this Article (Boskholov, 2014).

Property forfeiture as a punitive measure exists in many countries with different legal, social, political and economic systems. For example, it is included in the list of punitive measures of Latvia and Belorussia. According to Article 36 of the Criminal Code of the Republic of Latvia, along with primary punishment, auxiliary punitive measures, including property forfeiture, can be imposed on convicted criminals. According to Article 42 of the Criminal Code, property forfeiture means forced gratuitous withdrawal and conversion into the ownership of the State of all or part of the property owned by a convicted criminal.

The Criminal Code of the Republic of Belarus contains the same provision (Article 61): property forfeiture is imposed for the commission of grave and especially grave lucrative crimes by a court order. For example, according to Article 430 of the Criminal Code of the Republic of Belarus, bribe-taking, i.e. taking material values or material benefits if such actions (inaction) form part of the public official's powers or if the latter, by virtue of his/her official position, may further such actions (inaction), and also for overall patronage or connivance in the civil service, is punishable with restriction of liberty for a 3-5 term accompanied with disqualification from holding specified offices or engaging in specified activities. Punishment for the commission of grave and especially grave corruption-related crimes is based on the same principles.

Property forfeiture is provided for by criminal laws of other Eastern European countries as well. For example, according to Article 44 of the Criminal Code of Bulgaria, property forfeiture means forced gratuitous withdrawal and conversion into the ownership of the State of entire or part of the property owned by a convicted criminal.

Property forfeiture rules are included in criminal codes of some Western European countries. For example, according to § 76 of the Criminal Code of Denmark, partial confiscation of property owned by a convicted criminal can be imposed if 1) the commission of the crime can lead to significant benefits; 2) the crime is punishable with the six-year minimum term imprisonment.

Property forfeiture is included in the list of punitive measures in Asian countries. For example, according to Article 59 of the Criminal Code of China, property forfeiture means withdrawal of all or part of the property owned by the convicted individual. If all property is withdrawn, family members of the convicted criminal get a share of the property required for their living. In the Special Part of the Criminal Code of China, the measure is imposed for corruption-related and lucrative crimes. Depending on the gravity of crimes, property forfeiture can be a compulsory or optional auxiliary punitive measure.

For example, according to Article 383 of the Criminal Code of China, depending on its gravity, individual bribe-taking in the amount of more than 100 thousand yuans is punishable with deprivation of

freedom for a term of more than 10 years; life imprisonment accompanied by confiscation of the property; or death penalty accompanied by confiscation of the property.

#### **4. Purpose of the Study**

The article aims to analyze the role of property forfeiture as a punitive measure in the Russian Federation and foreign countries, its differences from a cognominal criminal legal measure and suggest ideas for improving the Russian criminal legislation on criminal liability for corruption crimes.

#### **5. Research Methods**

The article used general research methods (simulation, analysis, synthesis, etc.); theoretical methods (comparison, generalization, classification, concretization, induction, deduction, idealization, analogy, etc.). All these methods were applied as specific cognitive tools. Russian laws adopted in the Soviet period and modern criminal laws were compared. Characteristics of property forfeiture as a punitive measure imposed for the commission of corruption-related crimes in Russia and foreign countries were compared as well. When analyzing judicial reports on corruption crimes, statistical methods were used.

#### **6. Findings**

The following conclusions can be drawn from the present study:

1. property forfeiture as a punitive measure is found to conform to international agreements signed by the Russian Federation. As a sovereign state, Russia establishes and promotes effective practices aimed to prevent corruption, establishes grounds and limits of application of property forfeiture;
2. property forfeiture as a punitive measure is provided for by legislations of different countries with different legal, economic, political and social systems;
3. property forfeiture is imposed for the commission of grave crimes (e.g., lucrative and corruption related offences);
4. it is impossible to implement the principle of just punishment without property forfeiture.

Inconsistency of Russian criminal rules setting forth property forfeiture is due to the lack of a clear legislative view of the role of this legal institute. Researchers of law argue that the issues of legislative adoption and practical application of property forfeiture provisions can be solved if the role of this punitive measure is clear. Political will is required (Fishbein, 2001; Henry, 1996; Golovnenkov, 2015). However, Russian lawmakers lack this quality.

#### **7. Conclusion**

To ensure social justice, prevent lucrative and corruption-related crimes, property forfeiture as a punitive measure imposed for the commission of lucrative, corruption-related crimes, terrorism, and crimes against public security should be included in the list of punitive measures of the Criminal Code of the Russian Federation (Tatarnikov & Boskholov, 2014). Along with these amendments, the State Duma has to ratify Article 20 of the UN Convention against Corruption as soon as possible. Otherwise, it can injure international reputation and image of the Russian Federation.

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