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Freezing orders and asset recovery: between effectiveness and fairness



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What is the legal framework in criminal asset recovery in Greece?

Criminal asset recovery in Greece is mainly regulated by provisions found in the Greek Criminal Code and the Code of Criminal Procedure, as well as Law no. 4557/2018 on money laundering. It should be noted that, from 1995 until 2019, anti-money laundering legislation was the key legislation on asset recovery and has been extensively used by the competent authorities to detect and prosecute corruption practices, large-scale fraud, and tax evasion since 1995. The relevant legal framework has been reinforced by the new codes, ie the Code of Criminal Procedure (CCP) and Criminal Code, which entered into force on 1 July 2019 and govern the asset recovery procedures. The new codes regulate the lifting of bank secrecy, the conduct of financial investigations aimed at discovering tainted assets, the freezing of such assets and, in case of a guilty verdict, their confiscation or disposal to compensate victims of financial or related crimes.

What type of assets can be subject to freezing and confiscation measures in criminal proceedings?

The abovementioned framework is in line with the recent EU developments in the field of asset recovery. Following the transposition of EU Directive 2014/42 on the freezing and confiscation of instrumentalities and

proceeds of crime, any type of property that is considered direct or indirect proceeds of criminal activity (or corresponds to the value thereof) or an instrumentality used (or intended to be used) to commit a criminal offence can be subject to asset recovery measures such as freezing and confiscation.

Which authorities have the power to issue freezing orders in Greece?

Freezing can be ordered by the prosecuting and/or judicial authorities during the pretrial stages of the criminal procedure. Moreover, even before a criminal investigation is initiated, the head of the Financial Intelligence Unit (FIU) has the power to order in urgent cases the freezing of any asset if it is likely that it originates from a predicate or a money laundering offence. After the opening of a criminal investigation, it is the prosecuting and/or judicial authorities who have the power to issue freezing decisions as they bear sole responsibility for the investigation of all aspects of the case entrusted to them, including the evaluation of the evidence and assessing the likelihood of the illegal origin of assets.

More recently, a legal dispute arose on whether the FIU has concurrent competence to order the freezing of assets even in cases where a criminal investigation has already been initiated. Areios Pagos (Greece's Court of Cassation) answered this question in the affirmative by its decision

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no. 1/2022 relying on the 'administrative' nature of FIU's orders amidst heavy criticism by legal scholars and practitioners. Critics point out that this decision allows a non-judicial authority to interfere with pending criminal investigations and freeze assets, which may have already been deemed 'clean' by the prosecuting or judicial investigating authorities.

What are the requirements for property to be frozen in the course of criminal proceedings?

Property can be subject to freezing measures during the pretrial stage to secure its subsequent confiscation in case of a guilty verdict. Therefore, such measures require indications that the assets in question are connected to the criminal acts under investigation. The investigating authorities are under a duty to conduct a thorough investigation on the origin of the assets before issuing a freezing order. However, unreflected freezing orders are not uncommon in practice, even before the opening of criminal proceedings, and blindly extend to the entirety of the assets of suspects and/or third parties including non-suspicious bank accounts or other non-questionable property. This overly aggressive practice unfairly shifts the burden of proof forcing affected individuals or

entities to collect and present all available evidence to prove the lawful origin of the assets before the competent judicial authorities in support of their appeals against evasive freezing orders. Moreover, until a decision on the appeal is issued, which can take many weeks or several months, all assets remain frozen, while affected parties and their families may suffer grave consequences being unable to satisfy their basic needs.

Though there are emergency situations which demand immediate action to secure questionable property and prevent its dissipation, a swift procedure to review the property's seizure and release all obviously 'clean' assets is equally important.

Are there sufficient safeguards in place?

Several procedural safeguards are in place with a view to ensuring that freezing orders do not disproportionately affect individuals or entities whose assets are frozen. According to the CCP and Law no. 4557/2018, assets can remain frozen for a maximum period of five years pending a judgment of a first instance court on the merits of the case. In other words, if no such judgment is issued within five years from the issuance of the freezing order, the seized assets must be released. Moreover, during the criminal proceedings certain

assets can be exempted from freezing measures to cover basic living needs of affected persons and their families as well as costs for their legal representation and the management of frozen property. Affected parties have a right to request at any time they deem appropriate the judicial review of freezing measures and introduce new evidence in support of their request.

Does Greece recognise and execute foreign freezing and confiscation orders?

In relation to EU member states Regulation 2018/1805 is in force since 19.12.2020, which establishes the 'free movement' of freezing and confiscation orders based on the principle of mutual recognition in the common EU judicial area. This is the first EU Regulation on mutual recognition in criminal matters and is directly and uniformly applicable in all member states. Greece has already enforced a significant number of such decisions issued in other jurisdictions. In relation to third states, Greece proceeds with the recognition and execution of asset recovery decisions on the basis of bilateral or multilateral treaties. ■



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