



Procedures of Persuasive Evidence Management During Preliminary Investigation

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Abstract:

The investigative phase is crucial for gathering evidence and assets that constitute the corpus delicti. The aim is to prove involvement via a preliminary investigation by the judicial police officer. These pieces of evidence and assets are placed inside sealed packages labelled with details such as the name of the accused, the seizure code, and signature from judicial police officer; after that, they are filed to the Public Prosecutor. Proper handling of the seized assets is vital for the robustness of verdicts and judicial decisions. Such robustness is achieved by preserving the financial value of the seized assets and legally guaranteeing the rights of litigants. Consequently, evidence management during preliminary investigation includes transparency when it comes to role of the judicial police officer in collecting said evidence, as well as seizure-related details such as the monetary value of the seized assets.

Keywords: Civil Asset Seizure; Persuasive Evidence; Disposition; Restitution Reports; Seized Assets.

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I. INTRODUCTION

Evidence management, from a practical standpoint, is of high importance to the judicial authorities. Through this process, proof of offence can be established, and details pertaining to the severity of the crime can be accessed. For instance, cold weapons use in cases of assault and intentional injury.

The Criminal Procedure Code, along with supplementary laws and decrees, has regulated the persuasive evidence management—seized assets—in a way that is sometimes ambiguous. This ambiguity leaves room for ministerial memoranda and circulars to determine how to manage and dispose of them at any stage of the public prosecution process. Be it during preliminary investigation, judicial investigation, trial, or verdict. Each judicial authority, whether a court or council, possesses a seized assets department managed by a court clerk under the supervision of a public prosecutor.

Management involves not only keeping asset records in the register but also registering them in the judicial review while maintaining restitution, destruction, and handover reports. In the case of an appeal, the seized assets are sent to the judicial council via the judicial review. Additionally, the register of seized assets, published by the judicial review, must be printed every three months, endorsed, and archived in the records of the court.

Persuasive evidence and seized assets refer to objects, movables, and documents taken during the investigation phase of a crime. These can be classified into several categories: Crime objects, objects found at the crime scene, objects obtained in relation to the crime, corpus delicti objects, illegal materials, unlicensed items and tools (Zagai, 2017, pp. 319-320).

Management of persuasive evidence involves methods of collecting, preserving, documenting, and directing in accordance with the nature of each piece of evidence. It is not strictly governed by legal texts but rather by the nature of each crime and the methods proving it (Zagai, 2017, p. 321). Proper judicial handling of seized assets leads to proper verdict passing and sound judicial decisions. This handling includes preserving the value of the seizures and the rights of litigants.

Based on the above, we ask the following: How are seized assets managed during preliminary investigation and how are they disposed?

To answer that, we rely on descriptive and analytical methods when examining legal texts related to the topic. Accordingly, in this paper, we will address the management of seized assets during preliminary investigation. In the first section, we will define the role of the judicial police officer in collecting persuasive evidence. In the second section, we tackle the subject of precious metals and their financial evaluation.

1. The Role of Judicial Police Officers in Persuasive Evidence Seizure:

According to Article 12 of the Criminal Procedure Code (Ordinance 66-155, June 8, 1966), judicial police officers are responsible for investigating crimes as defined by the Penal Code and the Special Penal Laws. Their duties include gathering evidence and identifying perpetrators, for as long as proper judicial investigation has not commenced. This work is carried out under the direction of the Public Prosecutor and the supervision of the Attorney General. Once their investigations (in cases of felonies and misdemeanors) are completed, judicial police officers must immediately forward the original reports they have prepared to the Public Prosecutor. These reports must be accompanied by certified copies of all related documents, and evidence, including any seized assets, as specified in Article 18 of the Criminal Procedure Code.

In cases of flagrante delicto involving a felony, Article 42 of the Criminal Procedure Code requires the judicial police officer to preserve any evidence that might be at risk of being destroyed, and to seize anything that could be of assistance to the case. This is crucial for protecting persuasive evidence, given its importance in preliminary investigations (Zgai, 31/12/2017, p. 323). The officer must also present the seized assets to the suspects for identification. If any evidence is tampered with, Article 43 of the Criminal Procedure Code stipulates a penalty of imprisonment from 3 months to 3 years and a fine ranging from 1,000 to 10,000 DZD for the offenders.

Searches, conducted according to the conditions and procedures outlined in Articles 44 and 45 of the Criminal Procedure Code, may uncover items that aid the investigation and reveal details about the case. Seized assets and documents are placed in sealed packages. If sealing them is not feasible, they are placed in a container or bag, which the judicial police officer seals with a strip of paper bearing their seal. An inventory report of the seized items and documents is then prepared.

In other words, the investigation process involves gathering evidence and seizing assets and documents by the judicial police officer. These assets are presented to the Public Prosecutor in sealed packages, detailing their specifications, the name of the accused, the seizure number, and the signature of the judicial police officer. They are submitted along with the case file. The Public Prosecutor handles them as follows:

1.1. Motions for Return:

Unless possession is prohibited on a legal basis, or seizure is necessary for case advancement, or ownership is disputed, the Public Prosecutor is responsible for returning seized assets. There are two ways this can be handled:

1.1.1 Return by the Public Prosecutor's Own Initiative:

The Public Prosecutor can, after reviewing the inventory report, decide that the assets do not contribute to the case. In such cases, the items can be returned to their owners. This process involves a report signed by the Public Prosecutor, a court clerk, and the owner, with a copy of the report attached to the case file.

1.1.2 Return Upon Request:

The owner of the seized assets can submit a request to the Public Prosecutor for their return, as outlined in Article 36 of the Criminal Procedure Code. If the case is closed for any reason, such as due to lack of evidence or mediation, the Public Prosecutor can return the items on their own initiative or based on the owner's request, provided their possession is not legally prohibited. This also applies if the investigating judge orders the dismissal of the case without deciding on the seized assets.

If no request is made within six months from the date the concerned party is informed of the case closure, ownership of the seized items transfers to the state, while always protecting the rights of third parties acting in good faith, as established by Article 36. Similarly, if assets are not claimed within three months of notification, ownership also transfers to the state.

1.2. Seizure of Corroborating Evidence:

The Public Prosecutor seizes assets related to the case, necessary for the investigation, or constitute the material element of a crime. A seizure and disposition report are prepared, signed in triplicate, with one copy kept in the prosecutor's office, another attached to the case file, and the third handed over to the chief court clerk along with the seized assets. These items are then recorded in the Register of Corroborating Evidence (Executive Decree No. 08/409, December 24, 2008), and include the following details: serial number, date of deposit, depositing authority, report number and date, name and surname of the accused, the charge and nature of the proceedings, list of deposited items, and remarks. The information also goes into judicial review system, and the handling of the seized assets at this stage depends on their nature:

1.2.1. Firearms and Ammunition:

Firearms and ammunition are temporarily handed over to the National Gendarmerie with a report, as stipulated by the Ministerial Memorandum 96/504, in exchange for a receipt (Hassanawi, Bleil, Nouiri, Belhaji, and Soltani, undated, p. 5).

1.2.2. Non-Storable due to Size or Quantity Assets:

Such items are placed under the custody of the concerned party, who is prohibited from disposing of them until a judicial ruling is issued regarding their status.

1.2.3. Vehicles:

Vehicles are placed in a municipal impound lot based on a warrant signed by the Public Prosecutor. Other types of seized assets are stored in the court's evidence department, overseen by the Chief Clerk or the designated staff member.

1.2.4. Cash:

For the national currency, a deposit report is created, and the money is placed in the court's treasury account under the name of the Chief Clerk. Foreign currency is deposited in a separate court account in the Central Bank of Algeria. Counterfeit currency is also handed over to the Central Bank for destruction.

1.2.5. Checks:

To prevent loss, checks must be handed over to the Chief Clerk or the employee in charge of the evidence department, with a delivery and receipt report. A certified copy of each check must be made, signed by the Chief Clerk or the evidence department manager. These checks can be made available to the court or investigative body upon request, following the same procedure. In the event of an appeal, the checks must be delivered to the Chief Clerk of the appellate court or the evidence department manager, with a delivery and receipt report, and recorded in a special register tracking these checks. If there is an appeal to the Supreme Court, the original check is retained by the Chief Clerk or the evidence department until the case file returns from the Supreme Court for the final resolution. They are stored in a secure, designated safe.

It should be noted that if the judicial police need to seize a vehicle or equipment of any kind during a preliminary investigation or while a crime is being committed, they must immediately notify the Public Prosecutor with an informational report justifying this action. If the Public Prosecutor agrees, he or she must produce an impoundment order, retain a copy of both it and the informational report to create a tracking file for the disposition of these vehicles or items.

1.2.6. Seized Assets and Customs Offenses:

When dealing with customs-related offenses, seized assets are promptly handed over to the relevant regional customs authority for temporary safekeeping until the case is definitively resolved.

1.2.7. Cold Weapons and Drugs:

In line with Ministerial Memorandum 97/09, drugs seized are promptly destroyed within 24 hours at the latest, as specified by a disposal order signed by the Public Prosecutor or the Investigating Judge, depending on the circumstances. The Public Prosecutor oversees the disposal process, conducted at designated sites, and ensures the presence of the judicial police officer and the head of administrative custody. Following the disposal, a detailed report is prepared, documenting the entire procedure, and kept in a dedicated register. The confiscated assets are tracked on the basis of their nature and the progress of the case, with a sample retained for investigative purposes.

2. Seizure and Monetary Evaluation of Precious Metals:

2.1. Seizure of Precious Metals:

Precious metals primarily encompass gold, silver, and platinum, in various forms like alloys, coins, or emblems. Gemstones such as diamonds, emeralds, and sapphires, commonly used in jewelry, are also included.

Article 358 of the Indirect Tax Law mandates that unmarked manufactured items, even if purchased for personal use by artisans or traders, must be presented for inspection within 24 hours or face confiscation.

a. Confiscated items made of gold, silver, or platinum, as outlined in paragraphs a and b of Article 354, are regarded as tangible assets subject to seizure, pending further decision without immediate forfeiture. Any such cases are referred to the appropriate judicial bodies for the final verdict on confiscation.

b. Seized assets crafted from gold, silver, or platinum lacking the specified markings in paragraphs c and d of Article 354 are deemed tangible assets subject to immediate forfeiture. The Regional Tax Director decides on forfeiture upon receipt of a request for return from the offender, accompanied by proof of tax and fine payment. Seized items are returned after being stamped. If subsequent tests reveal these items are below the legal minimum standards, they are returned after being broken without reimbursing the fees and fines paid.

For repeated offenses within 5 years of the initial violation, the matter is brought before the appropriate judicial authorities to address the same issue stated in the initial paragraph of this article, ultimately resulting in a final confiscation decision.

c. Each provisional seizure of precious metals in the custody of the Tax Administration, left unclaimed by their rightful owners or their heirs for a period of 4 years from the date of seizure report, and upon notification to the concerned party or their heirs, leads to the assets being reclaimed by the state due to absentee ownership. The funds are allocated to the Legal Reserve for Solidarity. However, as a transitional measure, items held in stock for over 4 years starting from January 1, 2024, are considered ownerless after a year of notification to the concerned party, their heirs, or beneficiaries.

Article 366 of the same legislation grants the authority to seize gold, silver, or platinum items lacking accompanying invoices or certificates. Additionally, it applies to

items and assets whose markings appear forged or have not been declared according to Article 365 of the Indirect Tax Law, specifically concerning itinerant or mobile traders. These items are then handed over to the tax administration. The municipal authorities proceed to examine the marking of these items, ensuring their authenticity through the expertise of qualified individuals.

d. Concerning valuable assets, items, and currency, they are deposited either into the Public Treasury or one of the banks based on a delivery report signed by the Public Prosecutor, the Chief of Record Keepers, and a representative from the receiving entity. These items undergo assessment by the Assurance Department or another relevant department to confirm their nature, source, and actual weight before a seizure report is prepared and handed over to the authority responsible for their safekeeping.

The management and safekeeping of evidence records, ensuring they are cataloged in a manner conducive to monitoring their type, nature, quantity, and disposition, fall under the personal oversight of the Prosecutor.

When reviewing initial investigation reports submitted by judicial police officers or received via mail, Public Prosecutors must meticulously examine the seized items or evidence delivered to them or deposited elsewhere to ensure that their characteristics, type, quantity, and weight correspond with the investigation report and the seizure document. Subsequently, they draft a seizure report, co-signed by the Chief of Record Keepers, and submit it to the designated officer responsible for evidence management. The accurate preparation of seizure reports by Public Prosecutors facilitates the job of investigative or judicial authorities when it comes to identifying persuasive evidence in the case file. Based on the provisions of Articles 163, paragraph 3, 316, paragraphs 372-377 of the Criminal Procedure Code, they can determine the fate of the evidence, either returning it to its owners or confiscating it for the benefit of the public treasury.

2.2. Crimes involving Precious Metals:

Crimes involving precious metals encompass several significant offenses:

2.2.1. Counterfeiting Offenses Involving Precious Metals and Gemstones:

Article 2 of Decree 96-22, as amended and supplemented by Decree 03-10, addresses the criminalization aspect and focuses on the offense of importing or exporting gold alloys in violation of the applicable regulations. It eliminated the requirement for prior complaints. Hence, their importation and exportation are subject to banking localization, in addition to obtaining prior approval from the Minister of Finance, and legal subscription to the specific Register pertaining to the matter, in accordance with the provisions of Executive Decree No. 04-190. This approval is only granted to holders of a commercial agreement for importing manufactured or unmanufactured gold and silver or engaging in the recovery and qualification of precious metals. Any violation of these procedures constitutes the material element of a counterfeiting crime. The prosecution is tasked with proving the moral element, i.e., the offender's malicious intent. Decree 10-03 exempts the illegal buying and selling of precious metals from counterfeiting crimes, as indicated in Article 02, where it addresses the export and import of gold alloys and gold coins. Consequently, they are subject to the Indirect Tax Law, but the decree does not specify how their value is calculated, leaving this to the accredited specialized institutions.

2.2.2. Other Crimes:

2.2.2.1. Offenses outlined in Article 354 of the Indirect Tax Law:

a. Possession or sale of precious metals bearing counterfeit stamps or those with altered, engraved, or copied markings (Article 354, Paragraph 1, Decree No. 76/104, December 9, 1976).

b. Possession or sale of gold, silver, and platinum items manufactured abroad or with an unknown origin lacking state stamping (Article 354, Paragraph 2, Indirect Tax Law).

c. Possession or sale of domestically produced gold, silver, and platinum items without the required state stamping (Article 354, Paragraph 3, Indirect Tax Law).

d. Possession or sale of any gold, silver, or platinum item that is complete and finished but lacks the official state stamping (Article 354, Paragraph 4, Indirect Tax Law).

The final paragraph of Article 354 in the Indirect Tax Law mandates the seizure of such items, regardless of their purity.

2.2.2.2 .Offenses specified in Article 524 of the Indirect Tax Law:

a. Penalties for infractions listed in Article 523 of the same law involve a fine equivalent to the unpaid tax or the fee suspected due to failure to adhere to legal or regulatory procedures, with a minimum fine of 30,000 DZD.

b. In cases involving fraudulent practices, regardless of the amount of the rights subject to fraud or those outlined in Article 530, Paragraph 2 of the same law, the fine specified in Paragraph A-1 is doubled, but no less than 70,000 DZD.

c. The fine mentioned in Paragraph A-1, determined as four times the evaded rights, applies without falling below 100,000 DZD in the following cases:

c-1: Possession or sale of imported gold, silver, or platinum items by manufacturers, merchants, or importers in violation of the provisions of Articles 359 and 378 of this law.

c-2: Violation of the provisions of Article 354 of this law.

2.2.2.3. Offenses outlined in Article 530 of the Indirect Tax Law:

Article 530 stipulates that the following violations carry a penalty of imprisonment ranging from 6 days to 6 months:

Paragraph 8: Possessing or selling platinum, gold, or silver items by a manufacturer marked with either a forged old stamp, old or current stamps that are altered, engraved, or reversed, or decorative stamps mimicking old or current stamps.

Paragraph 13: Possessing or selling imported platinum, gold, or silver items by a manufacturer, seller, or importer in contravention of the regulations outlined in Articles 359 and 378 of this law.

Paragraph 14: Committing a violation due to the absence of a mark under the conditions specified in Paragraph 2-B of Article 358 of this law.

The monetary evaluation of seized precious metals is outlined in Article 359 of the Indirect Tax Law, Paragraph 3. According to this provision, the evaluation process

relies on the prevailing market prices in the local market. These prices are determined based on established rules laid out in the directive issued by the Director-General of Taxes.

Responsibility for overseeing the evaluation, stamping, and fee collection lies with the head of the Assurance Department at the Tax Authority, as mandated by Article 387. Moreover, a specialized unit within the Tax Authority, known as the Gold and Precious Metals Department, is tasked with managing the evaluation, stamping, and fee collection, in accordance with Article 386 of the Indirect Tax Law.

Regarding the procedure for seizing precious metals, including jewelry, gold or silver alloys, or other valuable metals, as well as ornaments or gemstones, the amended and supplemented Law of Civil and Administrative Procedures addresses this matter. Article 665 specifies that in cases where a precautionary seizure is imposed on movable assets under the debtor's possession, a judicial record detailing the seizure and inventory is prepared. A copy of this record is provided to the debtor, who is appointed as the custodian. If the seizure concerns items such as jewelry, gold or silver alloys, or other precious metals, as well as ornaments or gemstones, the judicial record must include specifics such as the type of metal, its actual weight, any additional features, and its estimated value. This estimation is carried out by an expert appointed either by court order or by the administration responsible for stamping precious metals, in the presence of the debtor or their legal representative, or after verifying their authorization to attend. The expert's evaluation report, along with details on weight, is then attached to the seizure record, and the confiscated items are securely stored in sealed custody, as recorded in the seizure record. These items are deposited into the court register with a receipt.

Conclusion:

The management of seized assets at the judicial level is of utmost importance due to the practical challenges involved in preserving them from damage, deterioration, and depreciation. This issue also extends to the potential injustice of depriving parties of their right to utilize and benefit from these assets without sufficient legal justification. However, returning these assets to their rightful owners should not hinder the progress of public prosecution. Therefore, it is essential to avoid excessive use of seizure measures, except for items subject to confiscation.

Furthermore, the proper documentation of seizure records by public prosecutors enables them to alert investigative authorities or the judiciary to the presence of compelling evidence in case files. In accordance with Articles 163(3), 316(4), 372-377 of the Criminal Procedure Code, this documentation facilitates decisions regarding the fate of seized assets, whether they are returned to their owners or confiscated for the benefit of the public treasury.

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