

***The disposal of seized property in criminal matters
between legislative texts and practical issues***

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Abstract:

This study deals with the subject of seizures of a penal nature, the issue of their recovery and the resulting legal and practical issues, as it goes without saying that seizures may be judged to be recovered by the judiciary, , as well as the original analytical approach as well as the descriptive approach when discussing how to proceed with the disposal of seizures and the In this study, we followed the analytical method in the original and the descriptive method when talking about how to proceed with the disposal of seizures and the obstacles that arise around them, and we reached a number of results, most notably that there is a scattering of legislative texts regulating the process, in addition to the existence of obstacles of a practical rather than legal nature.

Keywords: *Seizures, recovery, jurisdiction, privacy, practical obstacles.*

1. Introduction

The criminal judge's conviction is based on the existence and extent of the methods that prove the principle of the criminal judge's subjective conviction, and the evidence is numerous and varied, the most important of which is related to the objects used in the crime, which are subject to the judicial seizure system.

The status of objects used as the object of the criminal act is a complex process that has several dimensions, depending on the type of object subject to confiscation, whether it relates to prohibited objects that were one of its means or in connection with it, and the execution system extends to money of various types, all while the legislator allocates his penal philosophy to balance between two interests, the interest of the state in extending its

authority and the interest of the convicted person without harming his acquired rights in light of the inadmissibility of seizing any money as long as it is legitimate and enters into the humanization of the penal code.

The nature of the offense and its perpetrator, and consequently the type of criminal sanction, whether it is a penalty or a precautionary measure, determines the system of judicial seizure and the subsequent procedures, whether by way of restitution, confiscation, or other measures (Adou, 2010).

the pillar of the executive and direct implementation of the criminal sanction to determine the legal and practical frameworks in which objects are seized and confiscated, whether at the level of the investigative authorities or the judicial bodies.

In light of the successive amendments to the Penal Code and the Code of Criminal Procedure, as well as the practical realities of the judicial authorities, we pose a key question on this issue: How does the Algerian legislature regulate the disposal of seized objects from the judicial point of view?

Under this central question, there are a number of sub-questions, including the following:

- What is the scope of seizures in the penal code?
- are these seizures legally recovered?
- To what extent are there practical and legislative obstacles?
- What are the means to operationalize the legal and judicial protection of seizures? What are the means to activate legal and judicial protection for seizures?

We will follow the most prominent legal sciences approach, which is analytical, in order to analyze the legislative texts related to the legal system of seizures, in addition to using the descriptive approach, which is mainly represented in how the judiciary control the procedures and provisions for the recovery of seizures (Jarwa, 2006, p. 231).

Based on this central issue, we propose addressing this topic in three main axes, as follows:

- Distinguishing between administrative seizure and judicial seizure
- Legal mechanisms for disposing of seized items
- Provisions for disposing of seized items

1. Distinguishing between administrative and judicial seizure:

The distinction between administrative and judicial seizure requires clarifying their content and defining their legal nature:

Administrative seizure is defined as: " A set of administrative decisions and orders issued by the administrative authority for the purpose of seizing and selling the debtor's property in order to fulfill its rights that the law compels it to require by this optional method instead of the judicial method." (Wafa, 2014, p. 989),

As defined by some jurists as: " The aim of the administrative seizure system is to enable the administration to fulfill the rights of the public treasury from citizens, as the law grants the government or public legal persons the authority to seize the debtor's funds and expropriate them in order to fulfill their rights. to seize and expropriate the debtor's property, in order to facilitate the financial rights of the government or public legal persons through expeditious procedures under the pretext of preventing these rights from being lost, and taking into account the interest of the administration. This seizure is an exception to the general principle of law, which is a privilege granted to the administration, in favor of its interest over the interest of the debtor against whom it is enforced (Wali, 1980, p. 399).

Hence, it is clear that the administrative seizure is distinguished from other seizures - especially judicial ones - by the fact that it is optional:

- It is an optional method taken by the administrative authority when it deems.
- seizure is carried out without an executive deed, but by an administrative decision issued by the competent administrative authority.
- The administrative seizure procedure is governed by the Civil and Administrative Procedures Law, unlike the judicial seizure in the penal article.

A judicial seizure is defined as: " The seizure of money legally placed at the disposal of the judiciary in preparation for its sale and the recovery of the creditor's debt from its price, and the seizure is of two types: a precautionary measure that leads to the seizure of the money by placing it in the hands of the judiciary, which is a precautionary measure that is not intended to sell the

seized money but to pressure the debtor to fulfill his obligation to freeze these funds and prevent the debtor from disposing of them in a manner that would harm his right, and an executive seizure whose purpose is to offer the seized money for sale (Dowidar, 2008, p. 272).

Hence, the characteristics of the judicial seizure appear as follows:

- It is issued by the competent judicial authorities qualitatively, territorially and functionally.
- As a general rule, it is issued by an executive document with full legal elements, represented in the judicial ruling.
- Judicial seizure is subject to the judiciary due to its legal nature as a judicial act.

2. Legal mechanisms for disposing of seized items:

The Algerian legislator has addressed a set of legal procedures to which seized items are subject once the judicial authority has decided on the public case, so that it must deal with the seized items, we distinguish between three systems, so to speak, on this issue and the practical hypotheses put forward, namely: Restitution, confiscation or destruction, as follows:

2.1. Restitution and recovery:

The procedures for disposing of seized items, which are legally and factually governed by several articles, including Articles 36 bis, 86, 195 and 316 of the Criminal Code, are subject to the following provisions:

- The accused, the civil plaintiff and any other person claiming to be entitled to something under judicial authority may request its recovery from the investigating judge, Article 86 F01 of the Criminal Code.

The investigating judge also decides in accordance with Article 163 F03 of the Criminal Code on the return of seized objects.

- If the investigating judge issues an order to refer the case to the competent court, the disposal of the seized items becomes the jurisdiction of that court.
- If no competent judicial authority is designated to decide, or if the investigating judge issues an order not to prosecute and does not decide on the request to return the objects, the public prosecutor has the authority to decide according to Article 36 bis of the Code of

Criminal Procedure, but the legislator has linked the two procedures with certain restrictions, including:

- There must be no serious dispute about the seized items.
- A period of six months must be respected to request restitution or recovery, otherwise it becomes the private property of the state to be placed at its disposal, or a period of three months if the owner is notified and does not request restitution within this period.
- The jurisdiction to return seized items is transferred to the indictment chamber when the investigating judge acts in the case by referring it to the judiciary or the indictment chamber when the indictment chamber is competent to return the seized items when it decides on the matter by dismissing the case in accordance with Article 195 of the Criminal Code.

2.2. Confiscation:

There are two types of confiscation in the Penal Code: Confiscation as a supplementary punishment and confiscation as a security measure.

The difference between the two types lies in the fact that confiscation as a supplementary punishment applies to things that were originally legally possessed, namely things that were used or were to be used in the execution of the crime, or obtained from it, as well as gifts or other benefits that were used to reward the perpetrator of the crime, according to Article 15 bis 1 of the GC, and because these things are legally possessed, their confiscation is prohibited, if a good-faith third party owns and possesses them legally (Bouskiaa, 2019).

Article 15 bis 2 of the Code of Civil and Administrative Procedure also contains controls or limits on confiscation, meaning things that cannot be confiscated, due to humanitarian and public order considerations stipulated in the Code of Civil and Administrative Procedure.

As for confiscation as a security measure, it applies to objects whose possession is illegal, whether for the convicted person or a third party, namely objects whose manufacture, use, carrying, possession or sale is a crime, and also includes objects that are considered dangerous.

In practice, the question arises about the application of the previous article to a bona fide third party, whether it applies to him in the case of confiscation as a security measure as well as in the case of confiscation as a punishment, or whether he has no advantage by applying the literal application of the previous article, or is it a matter of legislative deficiency?

3. Provisions for the disposal of seized items:

Here, we distinguish between the disposal of seized items at the level of the investigative authorities and the disposal of seized items at the level of the judicial authorities:

3.1. Disposition of seized items at the level of the investigating authorities:

In the case of seizures at the level of the investigating authorities, a distinction must be made between tangible movables (01) and official documents and records (02):

- **For tangible movables:** Such as money, metals, goods, means of transportation, and every tangible physical means of metal, wood, or separate fruits, including weapons of all kinds, dangerous equipment, plastic, stone, or vegetable, and automatic and electronic devices, and this type of evidence is subject to disposal according to its seriousness, quantity, or size.

In the case of weapons, dangerous equipment, explosives and ammunition, this type is governed by the rule of security and public order due to its danger, and must therefore be deposited with the security services and the National Gendarmerie for safekeeping, as these centers are guarded by a security guard until the case is adjudicated, and the routing process is carried out under a seizure report.

In the case of vehicles, the judicial police officer passes the seizure report describing the vehicle and all documents related to it to the judicial authority competent for prosecution.

- **For official documents and public records:** Articles 553 et seq. of the ICC Code of Criminal Procedure give this type of document the utmost importance.

that contains this document or record and seize it, except in the case of extreme urgency and necessity, he can instruct the judicial police officer to transfer this document and order it to be deposited at the special interest of the seizure office.

To transfer a public document. He may also instruct the judicial police officer to prepare a written order to deposit the document with the Reservations Department, and after reviewing it, he may prepare a report on it and order the preparation of a copy for the investigation.

However, if the seizure would jeopardize the progress of the investigation proceedings because it relates to a professional secret, the investigating judge must refrain from seizing it and may issue an order prohibiting copying by third parties.

3.2. Provisions for the disposal of seized items at the level of judicial authorities:

After the trial judge is in contact with the criminal file containing the material persuasive evidence, there are three hypotheses:

First hypothesis: The judge restores the seized items in accordance with the provisions of the Code of Criminal Procedure, which grants the defendant, the civil plaintiff, the civil administrator and any person claiming to have a right to the seized items to request their return, and the court takes all precautionary measures to return those items.

Hypothesis two: The court may rule otherwise and order the confiscation of the seized items, after which the seized items will be categorized and disposed of according to their category:

- If the seized items are dangerous or illegal to deal in, they will be destroyed, according to a report after taking a sample of them before proceeding with the execution of the judgment.
- If they are valuables, they will be handed over to the public treasury or a bank under the terms of a handover report.
- If they are valuables, they are handed over to the State Property Directorate for sale by public auction, also under a report.

Third hypothesis: It may happen that the judicial authorities fail to decide on the seized items even though they have decided on the public case,

so the public prosecutor must reschedule the cases and request a decision, either on his own initiative or at the request of an interested party.

4. CONCLUSION

Based on this research paper on the issues raised by the disposal of seized items in criminal matters, we note that legal and practical issues still exist, including:

- There is a legal vacuum with regard to seized items that are placed and judgments are issued against them.
- Lack of coordination between the various official bodies regarding the follow-up of seizure recovery cases.
- Lack of a portal or digital mechanism that identifies the exact path of seizure recovery, from deposit to judgment to disposition.
- The large number of appeals related to seizure recovery rulings by the public prosecution services, which constitutes an obstacle to the judiciary to dismiss them, and to wait for the concerned parties until the cassation appeal is decided.

Based on the above findings, we suggest a set of suggestions, as follows:

- The status of foreign currency seizures should be clarified by legislative texts or through ministerial decisions involving both the Ministry of Justice and the Ministry of Finance.
- The methods of disposing should be clarified.
- A legal and practical solution should be found for the seized funds in the accounts of the seizure secretariats that have not been collected by their owners.
- A legal framework, such as legislative or regulatory texts, should be developed.
- A specialized judiciary should be created for seizures as a stand-alone judicial system.

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