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REGULATION OF SPECIAL AND EXTENDED CONFISCATION IN THE CRIMINAL LEGISLATION OF THE REPUBLIC OF MOLDOVA

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Abstract

The developed article constitutes a multidimensional analysis of the institutions of special confiscation (Art. 106 CC) and extended confiscation (Art. 106¹ CC) within the criminal legislation of the Republic of Moldova, evaluating their degree of alignment with European standards. The author highlights the transition from a paradigm focused on punishing the individual toward one centered on the recovery of criminal proceeds, which is considered a strategic tool of criminal policy.

The comparative analysis emphasizes the fundamental distinctions between these two security measures: while special confiscation targets assets with a direct link to the offense (in rem), extended confiscation relies on the presumption of the illicit nature of wealth that is disproportionate to licit income, covering assets acquired within the last 5 years. A central role is attributed to the Criminal Assets Recovery Agency (CARA) in conducting parallel financial investigations using the "follow the money" method to identify beneficial owners and assets hidden through intermediaries.

The study identifies critical barriers in judicial practice, such as the inconsistent interpretation of the standard of proof, the low solvency of convicted individuals, and the courts' reluctance to apply the "partial reversal" of the burden of proof. Finally, lex ferenda proposals are formulated, including the introduction of civil forfeiture (non-conviction based), the specialization of judicial panels, and the expansion of the list of predicate offenses, partially inspired by the American RICO model.

Keywords: special confiscation, extended confiscation, CARA (Criminal Assets Recovery Agency), parallel financial investigation, security measures, licit income, asset disproportion, confiscation by equivalent, intermediaries.

REGLEMENTAREA CONFISCĂRII SPECIALE ȘI EXTINSE ÎN LEGISLAȚIA PENALĂ A REPUBLICII MOLDOVA

Abstract

Articolul elaborat constituie o analiză multidimensională a instituțiilor confiscării speciale (art. 106 CP) și confiscării extinse (art. 1061 CP) în legislația penală a Republicii Moldova, evaluând gradul de aliniere a acestora la standardele europene. Autorul evidențiază tranziția de la o paradigmă axată pe pedepsirea persoanei către una centrată pe recuperarea profitului infracțional, considerată un instrument strategic de politică penală.

Analiza comparativă subliniază distincțiile fundamentale dintre cele două măsuri de siguranță: în timp ce confiscarea specială vizează bunurile cu o legătură directă cu infracțiunea (in rem), confiscarea extinsă se bazează pe prezumția caracterului ilicit al averii disproporționate față de veniturile licite, acoperind activele dobândite în ultimii 5 ani. Un rol central este atribuit Agenției de Recuperare a Bunurilor Infracționale (ARBI) în desfășurarea investigațiilor financiare paralele prin metoda „follow the money" pentru a identifica beneficiarii reali și activele ascunse prin interpuși.

Studiul identifică bariere critice în practica judiciară, precum interpretarea neunitară a standardului de probațiune, solvabilitatea scăzută a condamnaților și reticența instanțelor de a aplica „inversarea parțială"

a sarcinii probei. În final, sunt formulate propuneri de lex ferenda, printre care introducerea confiscării civile (fără condamnare), specializarea completelor de judecată și extinderea listei infracțiunilor predicat, inspirate parțial din modelul american RICO.

Cuvinte-cheie*: *confiscare specială, confiscare extinsă, ARBI (Agenția de Recuperare a Bunurilor Infracționale), investigație financiară paralelă, măsuri de siguranță, venit licit, disproporție patrimonială, confiscare prin echivalent, interpuși.

Introduction. In the modern architecture of criminal law, the sanctioning paradigm has undergone a significant shift from punishing the individual toward "punishing" criminal profit. In a state governed by the rule of law that aspires to the integrity standards of the European Union, such as the Republic of Moldova, the efficiency of the repressive system is no longer measured solely by the number of prison sentences, but by the state's capacity to strip the offender of the proceeds of crime.

The recovery of assets derived from offenses represents today not only a measure to restore social equity, but also a strategic tool of criminal policy. In the Republic of Moldova, the evolution of the legislative framework has been marked by the need to align with international standards, particularly after the signing of the EU Association Agreement.

The institutions of special confiscation and extended confiscation, regulated by Articles 106 and 106^1 of the Criminal Code of the Republic of Moldova [1], represent the fundamental levers through which the restoration of social equity and the deterrence of corruption and organized crime are pursued.

However, the gap between the letter of the law and the reality of enforcement remains considerable, marked by methodological challenges, evidentiary difficulties, and an occasionally non-uniform jurisprudence. The mere existence of norms in the Criminal Code (Articles 106 and 106^1) does not guarantee success if the application mechanisms are deficient.

The purpose of this article lies in the multidimensional analysis of special and extended confiscation mechanisms in the Republic of Moldova, evaluating the degree of compatibility of national legislation with the new European standards (Directive 2024/1260/EU) [2] and identifying the procedural barriers that prevent a high recovery rate of criminal assets in current judicial practice.

Research Objectives. To achieve the proposed goal, the following derived objectives were established:

- Conceptual delimitation of special confiscation from extended confiscation, highlighting their legal nature as security measures;
- Analysis of the conditions for applying extended confiscation through the prism of proving the disproportion between licit income and the wealth acquired by the convicted person;
- Evaluation of the role of the Criminal Assets Recovery Agency (CARA) in the process of identifying, tracking, and freezing assets under the control of intermediaries;
- Examination of recent national jurisprudence to detect recurrent reasons for rejecting confiscation motions and non-uniform interpretations by the courts;
- Formulation of *lex ferenda* proposals aimed at optimizing the confiscation process, including by analyzing the opportunity of introducing the civil forfeiture model (non-conviction based).

Research Strategy (Methodology). The research is based on a diversified methodological approach, designed to ensure the objectivity and rigor of the findings:

- **Logical and Analytical Method**: Used for interpreting the legal norms of the

Criminal Code and the Criminal Procedure Code, as well as for deconstructing the concepts of "licit income" and "assets resulting from criminal activity".

- **Comparative-Legal Method**: Applied by comparing the legislation of the Republic of Moldova with successful models from other jurisdictions, highlighting the strengths and gaps of the national system.
- **Method of Jurisprudential Observation**: Consists of the empirical study of rulings by the Supreme Court of Justice and courts of appeal from the 2023-2026 period to extract practical trends in applying confiscation.
- **Statistical Method**: Analysis of quantitative data provided by criminal investigation bodies (NAC, CARA) to evaluate the ratio between seized assets and those effectively confiscated through definitive sentences.
- **Prospective Method**: Used to foreshadow the evolution of the institution of confiscation in the context of the digitalization of the economy (virtual/crypto assets) and European integration.

Discussions and results obtained. I. Comparative Analysis: Special Confiscation (Art. 106 CC) vs. Extended Confiscation (Art. 106^1 CC).

1.1. Historical Evolution of the Analyzed Institutions. The evolution of confiscation institutions within the criminal legislation of the Republic of Moldova reflects the transition from a system focused strictly on the instruments of crime to a modern one, adapted to European standards for combating organized crime and corruption.

Special confiscation has been present since the adoption of the current Criminal Code (Law No.985/2002), which entered into force on June 12, 2003. In the original 2002 version of the Code, special confiscation was provided under Article 106. It was defined as a security measure consisting of the forced and free-of-charge transfer into state ownership of assets used in or resulting from the commission of offenses. Regarding the object of confiscation, emphasis was initially placed on: assets resulting from the commission of the offense, instruments used to commit the act, and assets that served to reward the offender.

Unlike special confiscation, ***extended confiscation*** is a much more recent institution, introduced to allow the state to recover assets that exceed a person's licit income, even if a direct link cannot be demonstrated between those assets and a specific offense. This was introduced by Law No. 326 of December 23, 2013, which entered into force on February 25, 2014. Through this reform, a new article was introduced into the Criminal Code — Art. 106^1 (Extended Confiscation), and its introduction was driven by the necessity of harmonizing national legislation with European Union norms (specifically Directive 2014/42/EU) and providing law enforcement bodies with more effective tools against the illicit accumulation of wealth.

Over time, both institutions have undergone modifications to clarify the application procedure. While the purpose of special confiscation is to eliminate profits obtained from a specific offense, including the means of the offense, the purpose of extended confiscation is to combat illicit enrichment and organized crime. In the first case, the state must prove the direct link to the proven offense and the criminal origin of what is subject to confiscation; in the second case, the link consists of the discrepancy between licit income and the actual wealth held by the subject, with the state having to demonstrate this disproportion so that the court is convinced that the assets derive from illicit activities.

Recently, the legal framework [3; 4] was adjusted to facilitate the application of these measures even in the absence of a conviction sentence under certain conditions (civil forfeiture or forfeiture based on reasonable suspicion evidence within the criminal process), consolidating the role of the Criminal Assets Recovery Agency (CARA).

In conclusion, while special confiscation is a “traditional” institution of the 2002 Criminal Code, extended confiscation emerged as a modern legislative response over a decade later to cover gaps in recovering illicit wealth that could not be strictly tied to a single demonstrated criminal act.

1.2. Essence and Legal Nature. The criminal law defines the concept of ***special confiscation*** in Article 106 para. (1) CC, establishing that ***special confiscation*** consists of the forced and free-of-charge transfer into state ownership of the assets indicated in para. (2), according to this paragraph, the following are subject to special confiscation assets (including currency values): a) used or intended for the commission of an offense; b) resulting from offenses, as well as any income or benefits derived from such assets; c) given to induce the commission of an offense or to reward the offender; d) held contrary to legal provisions; e) converted or transformed, partially or entirely, from assets resulting from offenses and from income or benefits obtained from these assets; f) which constitute the object of money laundering or terrorist financing offenses.

In case these assets no longer exist, cannot be found, cannot be recovered, or their confiscation is impossible for any other reason, another asset of equivalent value is confiscated as a priority, and in its absence, its monetary value is confiscated.

If the assets indicated in para. (2) have been intermingled with legally acquired assets, the part of the assets or their counter-value corresponding to the value of the assets resulting from offenses and the income or benefits obtained from those assets shall be confiscated (para. (3) Art. 106 CC).

Special confiscation applies even if the suspect, accused, defendant, or convicted person is released from criminal liability or criminal punishment, or if amnesty was applied or their death occurred. Special confiscation does not apply in case of release from criminal liability due to the expiration of the statute of limitations, except for minor, less serious, or serious offenses, and if the term expired after the initiation of the criminal proceedings (para. (4) Art. 106 CC) [1].

Conclusion. According to this last cited provision, the state loses the possibility of applying special confiscation if the statute of limitations expired prior to the initiation of criminal proceedings (definitively)!

If, however, the statute of limitations expired but *after* the initiation of criminal proceedings, the state will not prosecute the person criminally but will apply special confiscation, yet another condition is imposed — the committed offenses must be minor, less serious, or serious. Therefore, offenders will not be punished, but the illicit wealth or assets will still be confiscated (many perpetrators intentionally delayed the criminal process to remain in possession of certain assets).

Para. (5) Art. 106 CC stipulates that special confiscation does not apply to offenses committed through a press organ or any other mass media outlet.

Conclusion. The provision in para. (5) aligns with Article 10 of the ECHR [5] (freedom of expression); thus, the state will not apply special confiscation to the “instruments of crime” (machinery or other equipment of a press organ, TV station, etc., with the help of which certain offenses were committed). If it proceeded otherwise, there is a risk that the state could use confiscation to limit or even suppress freedom of expression (Article 10 presumes that state interference with freedom of expression must be minimal and strictly necessary).

In turn, Art. 106[1] CC does not explicitly define the concept of extended confiscation; however, following the legislator’s logic, the term “confiscation” has the same meaning, except that the area of confiscated assets/values is larger (according to the dictionary [6], the term “extended” means grown, broadened, enlarged, increased), the law mentions that assets other than those indicated in Art. 106 are also subject to extended confiscation. Nevertheless, analysis of the cited provisions allows us to conclude that assets subject to extended confiscation are those acquired by the suspect, accused, defendant, or convicted person within the last 5 years before and, if applicable, after the moment the offense was committed, up to the date the act of referral to the court is issued, the value of which exceeds by more than 20 forecasted average monthly salaries per economy, established by Government decision, the licit income acquired by them.

To order extended confiscation, a series of conditions expressly provided by law must also be met, namely: the court forms its conviction that the respective assets may derive from criminal activities. The court’s conviction may be based, inter alia, on the difference between licit income and the value of assets acquired in the same period, on the fact that there is no plausible licit source for the assets, or that the suspect, accused, defendant, or convicted person has ties to organized crime; and the offenses indicated in para. (1) Art. 106^1 CC have been committed, for which the law provides a maximum penalty of imprisonment for a term of at least 4 years.

When applying the provisions of para. (2), the value of assets held both by the suspect, accused, defendant, or convicted person and by the third-party natural or legal persons mentioned in Art. 106^2 CC shall be taken into account.

When establishing the difference between licit income and the value of acquired assets, the value of the assets at the date of their acquisition and the expenses incurred by the suspect, accused, defendant, or convicted person and their family members shall be taken into account, including those of third-party natural or legal persons mentioned in Art. 106^2 (para. (4) Art. 106^1).

If, upon the adoption of the decision by the court, the assets subject to extended confiscation no longer exist, cannot be found, or have been intermingled with legally acquired assets and cannot be separated from them, or if their confiscation is impossible for any other reason, money and other assets covering their value shall be confiscated instead (para. (5) Art. 106^1).

Para. (6) provides that assets and money obtained from the exploitation or use of assets subject to confiscation shall also be confiscated, including assets into which criminal assets have been transformed or converted, as well as income or benefits obtained from these assets.

According to para. (7) Art. 106^1 CC, if the suspect, accused, defendant, or convicted person holds money, it shall be confiscated as a priority. If the money held is insufficient, other assets shall be confiscated [1].

Although both measures involve the forced and free-of-charge transfer of assets into state ownership, their legal nature is defined by their preventive, rather than punitive, purpose, with both institutions being categorized as security measures [7, p.342].

Special Confiscation has an eminently objective character (*in rem*). It targets the *instrumentum sceleris* (tools of crime) and *productum sceleris* (direct product). The state intervenes to neutralize the state of danger created by holding assets that served to commit an act provided for by criminal law.

Extended Confiscation introduces a subjective and presumption-based dimension. It is not limited to assets resulting from the specific offense for which the person is convicted, but extends “the arm of the law” over the entire patrimony acquired within a determined period (as a rule, 5 years before committing the act and, if applicable, after the moment of committing the offense, up to the date of issuing the act of referral to the court), if there is evidence that its value considerably exceeds licit income (exceeding by more than 20 forecasted average monthly salaries per economy, established by Government decision). It targets assets that exceed the licit income of a person convicted of certain categories of serious offenses [8, p.89].

1.3. Similarities between the Two Institutions:

- **Legal Nature**: Both are security measures (Art. 98 CC RM) aiming to remove a danger and prevent the commission of new acts.
- **Public Law Character**: The transfer of assets is forced and free of charge in favor of the state.
- **Subject of Application**: Both can only be ordered by a court of law through a conviction sentence (with the exceptions provided by law for special confiscation in case of termination of criminal proceedings.
- **Rights of Third Parties**: Both measures provide for the protection of *bona fide* third parties (persons who did not know and could not have known about the illicit origin of the assets).

1.4. Fundamental Differences.

1. **Link to the Offense**: In the case of special confiscation, a direct link must be demonstrated (the asset was used in or resulted from act X); in contrast, extended confiscation is based on an indirect link (patrimonial disproportion suggests general criminal activity).
2. **Standard of Proof**: In special confiscation, there is certain proof regarding the origin or destination of the asset, opposite to extended confiscation where there is only a rebuttable presumption of an illicit character based on the impossibility of justification through licit income.
3. **Burden of Proof**: Art. 106 CC – rests exclusively with the prosecution; Art. 106^1 CC – rests with the prosecution (to demonstrate the disproportion), but a "partial reversal" occurs (the defendant must justify the difference).
4. **Scope of Application**: Special confiscation applies to any offense provided for by the Criminal Code, whereas extended confiscation applies only to a limited list of serious and exceptionally serious offenses ("Assets other than those indicated in Art. 106 are subject to extended confiscation in case the person is suspected, accused, under trial, or convicted for committing the offenses provided in Art. 140^1–142, 144, 158, Art. 164 para. (2) lit. f), Art. 165–168, Art. 171 para. (2) lit. a) and para. (3) lit. a), Art. 172 para. (2) lit. a) and para. (3) lit. a), Art. 173 para. (2), Art. 174–175^1, 181^1–181^3, 186–191, 206, 208–208^5, 214^1, 217–217^4, 218–220^1, 223–233, 236–246^1, Art. 247 para. (2), Art. 248–253, 257, 259–260^6, 260^8, 275, 278–280, 282–286, 289–290, 292, 295–295^2, 302, 324–329, 330^2, 332–335^1, 342, 343, 361, and 362^1, if the act is natured to generate an economic benefit (para. (1) Art. 106^1)").
5. **Moment of Asset Acquisition**: The asset must exist at the moment of committing the act or immediately after in the case of special confiscation; extended confiscation targets assets acquired "within the last 5 years before and, if applicable, after the moment the offense was committed, up to the date of issuing the act of referral to the court".
6. **Value of Assets**: In special confiscation, the value of the assets subject to confiscation does not matter; in extended confiscation, one of the conditions for ordering it is that the value of the assets acquired "exceeds by more than 20 forecasted average monthly salaries per economy, established by Government decision, the licit income acquired".

A frequent problem in Moldovan courts is the confusion between these two institutions:

Special confiscation (Art. 106 CC) has the character of an "object punishment" (*in rem*). It targets assets used or intended for the commission of the offense. *Example from practice*: In cases of smuggling (Art. 248 CC), Moldovan courts constantly apply special confiscation to vehicles modified for hiding goods [9].

Extended confiscation (Art. 106^1 CC) is much more complex because it targets assets exceeding the person's licit income, even if a direct link cannot be proven to a specific offense for which the person is accused, being deduced instead from general criminal activity.

A critical distinction resides in the ***standard of proof***. In special confiscation, the prosecution must demonstrate the direct asset-offense link. In extended confiscation, a partial reversal of the burden of proof applies: once the prosecutor demonstrates the disproportion between wealth and income, the possessor must justify the licit origin of the assets [10].

In connection with this, problems regarding the "reversal of the burden of proof" frequently appear in Moldovan jurisprudence [11] practice shows that prosecutors encounter difficulties in demonstrating the disproportion between wealth and income, and courts tend to be extremely cautious not to violate Article 46 of the Constitution (the right to property). Courts in the Republic of Moldova often remain absolutely faithful to the principle of *actori incumbit probatio*. For example, in illicit enrichment cases (Art. 330^2 CC), the defense frequently argues that the assets belong to relatives (parents, in-laws) who worked abroad, or that assets were acquired from donations at festive events, etc.

In the absence of strict monitoring of financial flows by CARA from the initial phase, Moldovan courts often refuse extended confiscation, considering that *in dubio pro reo* (doubt favors the accused) also applies to the origin of money. Even in extended confiscation, judges sometimes demand that prosecutors indicate exactly from which illicit activity the sum for every single brick of a house originates, which defeats the very essence of the "extended" concept. This approach is contrary to the spirit of ECHR jurisprudence (*Gogitidze v. Georgia*), which accepts that the state can presume the illicit nature of disproportionate wealth if the person has already been convicted of a profit-generating offense. Here, we note that in cases handled in Chișinău, a frequent problem is how the judge interprets Art. 106^1 para. (2). While in special confiscation the prosecutor must say "this car was used to commit smuggling", in extended confiscation, he says "this defendant has 3 properties, though his cumulative salary over 5 years does not cover even half the value of one".

II. Procedural and Substantive Aspects Regarding the Evaluation and Substitution of Criminal Assets. Another important issue in applying extended confiscation is the evaluation and substitution of assets (the standard of evaluation).

Paragraph (4) of Article 106^1 CC stipulates that "when establishing the difference between licit income and the value of acquired assets, the value of the assets at the date of their acquisition and the expenses incurred by the suspect, accused, defendant, or convicted person and their family members shall be taken into account, including those of third-party natural or legal persons mentioned in Art. 106^2", keeping in mind the condition stipulated in para. (2) lit. a) that: "the value of assets acquired... exceeds by more than 20 forecasted average monthly salaries per economy... the licit income acquired". This legislative specification is fundamental to respecting the principles of legality and predictability, but raises major challenges in practice:

- **The Problem of Inflation and Market Volatility**: In the Republic of Moldova, the real estate market and that of mobile assets (cars, luxury items) have experienced major fluctuations over the last decade. Evaluating an asset at its value from 5 years ago requires complex expertise.

- **Parallel Financial Investigation (The Role of CARA)**: Determining the value at the moment of acquisition is not done simply by consulting the price indicated in the contract (which is often undervalued to avoid taxes or hide the origin of money), but through comparative market analyses. In these cases, the court must rely on evaluation reports by CARA specialists, who use indirect methods to estimate real value rather than just relying on legal acts of property transfer.
- **Transformed Assets:** If a defendant bought land with illicit money and subsequently built a villa on it, para. (4) obliges a clear distinction between the value of the initial expenditure/investment and the surplus value added later, a process that complicates the burden of proof for the prosecutor.

Paragraphs (5) and (6) of Art.106¹ CC institute the so-called mechanism of a "safety net" or **confiscation by equivalent**. Thus, "if, upon the adoption of the decision by the court, the assets subject to extended confiscation no longer exist, cannot be found, or have been intermingled with legally acquired assets and cannot be separated from them, or if their confiscation is impossible for any other reason, money and other assets covering their value shall be confiscated instead. Assets and money obtained from the exploitation or use of assets subject to confiscation shall also be confiscated, including assets into which criminal assets have been transformed or converted, as well as income or benefits obtained from these assets".

Therefore, confiscation by equivalent intervenes when assets that should have been confiscated in-kind can no longer be found, have been consumed, alienated, or mixed with legally acquired assets. The legal essence of this institution lies in the fact that it no longer targets the specific asset (*in rem*), but targets its patrimonial value. The state transforms its claim over a specific object into a general monetary claim over the patrimony of the convicted person.

The criminal law provides that if the suspect, accused, defendant, or convicted person holds money, it shall be confiscated as a priority. If the money held is insufficient, other assets shall be confiscated (para. (7) Art. 106¹ CC).

In the practice of applying extended confiscation, difficulties in executing the measure can appear:

- **Alienation to *Bona Fide* Third Parties**: If the defendant sold a car bought with bribe money to a person who did not know the origin of the funds, the state cannot take the car from the new owner. In this case, the court will oblige the defendant to pay a sum of money equivalent to the sale price.
- **Fungible Assets (Money)**: If sums of money derived from the offense were spent on vacations, services, or perishable goods, the confiscation of an equivalent sum from present or future licit income is ordered.
- **Capital Intermingling**: If corruption money was used to pay the mortgage for an apartment partially paid from salary, a share of the apartment or the counter-value of the illicit sum injected into that asset will be confiscated.

A major problem in Moldova is the solvency of convicted individuals at the moment of the definitive sentence. Frequently, even though the confiscation by equivalent of colossal sums is ordered, judicial executors find that the defendant "owns no property".

In this context, we recommend establishing the necessity of applying a **precautionary seizure** on any licit asset of the defendant right from the start of the criminal investigation, precisely to guarantee the possibility of confiscation by equivalent at the end of the trial.

III. The Role of CARA in Recovering Criminal Assets. The regulatory framework governing ARBI's activity is constituted by Law No.48 of 30.03.2017 on the Criminal Assets Recovery Agency (CARA) [12] and other internal acts of the NAC (National Anti-Corruption Center). The purpose of the law is to create the normative framework necessary for recovering criminal assets, identical to the purpose for which CARA was established. As for the process of recovering criminal assets, it is regulated by the Criminal Procedure Code of the Republic of Moldova (Chapter III) [13].

In the Republic of Moldova, the Criminal Assets Recovery Agency (CARA), an autonomous subdivision within the National Anti-Corruption Center (NAC), is the central actor without which Art. 106^1 CC would remain a dead letter.

3.1. CARA's Competences in the Recovery Process. The Criminal Procedure Code expressly lists the stages of this process in Art. 229^1, according to which the recovery process of criminal assets unfolds in the following stages:

1. **Tracing and identifying criminal assets**, accumulating evidence (utilizing national and international databases through CARIN or INTERPOL networks to find hidden assets);
2. **Freezing and managing criminal assets** (rapid application of precautionary measures to "freeze" assets, including managing seized assets; for example, the early sale of cars that lose value through non-use, an important legislative novelty in RM);
3. **Confiscation of criminal assets and reparation of damages**;
4. **Effective execution of the decision regarding the recovery of criminal assets** (including cooperation with foreign authorities to return funds to the state budget of Moldova).

To fulfill its mission, ARBI has the following duties:

a) tracing and identifying criminal assets and accumulating evidence by conducting parallel financial investigations and drafting reports on their results, as well as freezing criminal assets under the conditions of the Criminal Procedure Code;

a^1) Conducting financial investigations in the sense of Art. 91;

b) Evaluating, managing, and capitalizing on frozen criminal assets;

c) Keeping records regarding frozen criminal assets, including based on requests from competent foreign authorities;

c^1) Managing the national information system for records of seized criminal assets, seizure orders, confiscation orders, as well as decisions subsequently adopted regarding these assets;

d) Participating in negotiations regarding the repatriation of confiscated criminal assets;

e) International cooperation and information exchange with competent foreign authorities, including specialized bodies and agencies of the European Union;

f) Collecting and analyzing statistical data relating to the offenses provided by this law;

g) Representing the interests of the state and public legal entities in criminal and civil proceedings for asset recovery and reparation of damages caused by violating the legislation of the Republic of Moldova and other states;

h) Cooperating with public authorities that exercise relevant functions for CARA's activity;

i) Supporting judicial bodies, under the law, to use best practices in identifying and managing assets that may be subject to freezing and confiscation measures within the criminal process [12].

3.2. The Concept of Parallel Financial Investigation. The aforementioned law establishes that the Criminal Assets Recovery Agency conducts parallel financial investigations under the Criminal Procedure Code (CPC) in connection with the commission of one or more offenses, at least one of which is provided in Art. 2 para. (2) of this law (Art. 90), financial investigations are the totality of activities consisting of accumulating information, analyzing, and verifying all financial, economic, and other relations related to tracing and identifying assets that do not have a legal origin or are/can be the object of freezing and/or confiscation measures (Art. 9[1]). The Criminal Procedure Code establishes that the criminal investigation body conducts parallel financial investigations and instructs CARA, by delegation, to trace and identify criminal assets, as well as accumulate evidence regarding them, under Art. 258 of CPC.

Unlike the classic criminal investigation, which focuses on proving the person's guilt (the act, the author, culpability), the parallel financial investigation run by CARA focuses exclusively on "the trail of money" (*follow the money*). In such cases, certain principles/rules must be respected, such as: 1. **Simultaneity**: The essence of success lies in launching the financial investigation at the same time as the criminal investigation. If CARA intervenes only at the trial stage, assets are usually already "laundered" or transferred to inaccessible jurisdictions and **2. Profile of the Beneficial Owner**: CARA has the capacity to look beyond the legal screen. In Moldova, a major barrier in extended confiscation is the use of intermediaries (relatives, friends, or offshore companies). CARA utilizes operational analysis techniques to demonstrate that although a villa is registered under a pensioner's name, the real beneficial owner who pays the bills and lives there is the defendant.

However, the imperfection of the legislation in force or even the lack of normative acts regulating certain key issues regarding asset recovery creates certain impediments to the effective recovery of assets. For example, according to the CARA report for 2021, the agency stated: "Following the evaluation of assets, cash in national currency and freely convertible foreign currency in a total sum of 15,474,135.10 lei was taken into administration and subsequently deposited into treasury accounts managed by CARA" [14]. During 2025, the Criminal Assets Recovery Agency seized assets worth nearly 710 million lei [15].

In cases where precautionary measures are lifted, large sums of money are returned, among the reasons for restitution presented by the agency are: "dismissal of the criminal case and removal of the person from prosecution; acquittal of the person of charges of committing the offense (155,726.95 lei); payment of the counter-value of confiscated sums and/or fines" [14].

In addition, Moldovan courts hesitate to apply confiscation if there is no definitive conviction sentence for the main offense, even if the asset disproportion is obvious.

As methodological barriers, we can invoke: ***justification through "prior savings"*** (defendants frequently claim that financial resources or assets were obtained from licit activities, such as performance bonuses for sports, etc.) and the ***use of intermediaries*** (a portion of assets are identified as being under the control of relatives who lack personal income to justify the purchases).

In this context, CARA expressly points out the lack of provisions that would allow the successful performance of its asset recovery missions [14].

At the same time, following the conducted analysis, it is found that although the normative framework of the Republic of Moldova was substantially modernized in the 2024–2025 period, the effective asset recovery rate remains disproportionate to the damages caused. To overcome this impasse, the following interventions are required:

- **Standardization of Proving "Licit Income"**: It is imperative for the Supreme Court of Justice to develop a Methodological Guide clarifying income evaluation criteria.

In Moldova, invoking "wedding donations" or "unconfirmed remittances" is a common practice to justify wealth. We propose that the burden of proof be considered fulfilled by the prosecution once the discrepancy is demonstrated, leaving the burden of presenting irrefutable evidence (banking documents, customs declarations) to the defendant to overturn the presumption of an illicit character.

- **Introduction of Civil Forfeiture (Non-Conviction Based Forfeiture)**: Moldova should examine adopting a mechanism through which assets can be confiscated within a civil procedure, independently of a criminal conviction sentence. This would allow asset recovery in cases where the defendant dies, flees the country, or benefits from the statute of limitations on criminal liability but cannot justify their wealth.
- **Specialization of Judicial Panels**: Given the complexity of CARA investigations and the technical nature of asset evaluation (crypto-assets, bearer shares, layering schemes), it is recommended to create specialized panels for economic crime and grand corruption within courts of first instance and appeal.
- **Early Sale of Seized Assets:** Extending the practical application of the mechanism for capitalizing on assets before the final sentence to avoid their depreciation (especially for vehicle fleets and technological equipment) and to ensure the liquidity of the recovery fund.

IV. Comparative Law Analysis: Between the American "RICO ACT" Model and Procedural Realities in the Republic of Moldova. Evaluating the efficiency of confiscation mechanisms in the Republic of Moldova cannot be done in isolation; it requires benchmarking against pioneering international standards, particularly the RICO Act (Racketeer Influenced and Corrupt Organizations Act) adopted by the US in 1970 [16]. Although grounded in different legal systems (Common Law vs. Civil Law), both regulations pursue the same strategic objective: annihilating the financial infrastructure of organized crime. RICO served as a global source of inspiration for what we call today "extended confiscation".

In essence, RICO was created to strike at the "brains" of criminal organizations (the Mafia), not just the "hands" executing the offenses, emphasizing the confiscation of the assets of the entire criminal enterprise. Both RICO and Moldova's legislation (Art. 106^1 CC) share the same premise: organized crime cannot be defeated solely by sentencing leaders or members of organized criminal groups to prison, but by bankrupting them.

4.1. Similarities We can identify certain similarities between the content and essence of the compared legal provisions. First, it concerns **targeting indirect profit:** both systems admit that a criminal leader is rarely caught "red-handed". Therefore, both allow the confiscation of assets that cannot be tied to a single specific offense, but are the result of a "racketeering activity" (in the US) or a "general criminal activity" (in Moldova).

Secondly, just like in the Republic of Moldova, where CARA (Criminal Assets Recovery Agency) tracks assets transferred to relatives, RICO allows for "criminal forfeiture," targeting any illicitly acquired interest, property, or contractual right, even if held through intermediaries or shell companies (**third-party confiscation** – *When applying the provisions of paragraph (2), the value of assets held by both the suspect, accused, defendant, or convicted person, as well as by the third-party natural or legal persons mentioned in Article* 106^2), paragraph (3) of Article 106^1 of the Criminal Code, *shall be taken into account*)".

Third, it concerns the **evidentiary standard:** although RICO is a criminal law, it introduced the concept of "preponderance of the evidence" for the forfeiture part in the US, an idea reflected in the spirit of extended confiscation in Moldova (where asset disproportion creates a presumption that must be rebutted).

4.2. Major Flaws and Differences (Moldova vs. USA). Although the goal is similar, the mechanisms in the Republic of Moldova present certain structural weaknesses or differences compared to the American model:

4.2.1. From "Criminal Enterprise" to "Predicate Offense". The main difference lies in the object of confiscation. While the legislation of the Republic of Moldova (Art. 106[1] CC) conditions extended confiscation on the existence of a specific **predicate offense** (the serious act for which the conviction was obtained), the RICO Act introduces the concept of a **"criminal enterprise"**. In the American model, once membership in a racketeering-type organization is proven, the state can confiscate any interest or property that circulated through that organization, without needing to tie every single asset to a specific individual criminal act.

In the Republic of Moldova, the major flaw lies in the fragmented approach. If a criminal leader is convicted of an offense that is not found on the restrictive list of Art. 106[1] CC, his manifestly disproportionate wealth often remains untouched, even if there are reasonable indications that it derives from unsanctioned illicit activities. This "list barrier" drastically limits CARA's capacity to act proactively.

4.2.2. Civil Forfeiture vs. Dependency on a Criminal Sentence. A fundamental lesson offered by the RICO model is the use of civil forfeiture (*in rem*). This allows the state to act directly against the asset under the "preponderance of the evidence" standard of proof, without requiring a prior criminal conviction of the possessor.

In contrast, the system in the Republic of Moldova remains dependent on a **definitive criminal conviction**. This dependency transforms the recovery process into an arduous journey, vulnerable to delay tactics or the death/flight of the suspect. National jurisprudence demonstrates that applied seizures often "melt away" during the judicial stage because courts hesitate to apply the presumption of an illicit character in the absence of proof "beyond a reasonable doubt" — a standard much more rigid than that applied in RICO-type jurisdictions or in ECHR jurisprudence (*Gogitidze v. Georgia*).

4.2.3. The Burden of Proof. RICO is extremely aggressive. Once racketeering activity is demonstrated, the presumption that all profit is illicit is very hard to combat. In Moldova, courts are much more protective of property rights. Moldovan judges often demand additional proof tying the asset "almost directly" to the illicit activity, thereby diluting the force of the "extension" of confiscation.

In conclusion, adopting elements from the "spirit of RICO" in Moldova would require a paradigm shift. We propose expanding the scope of Art. 106[1] CC to include any profit-generating offense and validating judicial presumptions so that the burden of proof is effectively shifted onto the possessor of disproportionate wealth. Only thus will confiscation transition from a "complementary penalty" status to that of a national economic security tool.

This would mean:

- **Partial Decoupling from the Criminal Conviction**: Introducing a civil procedure for confiscating unjustified wealth (similar to civil forfeiture in the US), moving focus from criminal guilt to the lack of a licit origin of funds.
- **Expanding the List of Offenses**: RICO covers a vast range of activities (from gambling to mail fraud). Moldova could extend the list under Art. 106[1] CC to include any offense generating significant financial profit.
- **Utilizing "Judicial Presumptions"**: Encouraging judges to use logical deductions (if an official has a salary of 10,000 lei but drives a 100,000 euro car, the presumption of illicitness must be the starting point, not the exception).

Unlike the rigors of the RICO Act, which allows the financial dismantling of the entire organized structure, legislation in the Republic of Moldova remains dependent on individual conviction, leaving escape hatches for assets controlled through complex layering schemes.

The conducted study highlights a major discrepancy between the modern legislative framework of the Republic of Moldova and the low efficiency of asset recovery in practice. Although the institutions of special and extended confiscation are regulated, their application is hampered by rigid standards of proof and procedural barriers.

V. Conclusions and recommendations. As a result of our intervention in the matter of special and extended confiscation, we have identified the following conclusions:

- **Excessive Dependency on the Criminal Sentence:** Unlike international models (such as RICO in the US), confiscation in the Republic of Moldova remains tethered to a definitive criminal conviction. This leaves the process vulnerable to delay tactics, or the death or flight of the suspect.
- **Fragmented Approach to Offenses:** Extended confiscation is limited to a strict list of predicate offenses. If a criminal leader is convicted of an act outside the list, his disproportionate wealth remains untouched.
- **Non-Uniform Standard of Proof:** Although the law allows for a "partial reversal" of the burden of proof (the defendant must justify the wealth gap), courts tend to apply highly rigid standards. Judges often demand proof linking the asset "almost directly" to the illicit activity, neutralizing the essence of the "extended" concept.
- **The Problem of Solvency and Intermediaries:** A major barrier is the use of relatives or offshore companies to hide assets. Often, at the end of the trial, even if confiscation by equivalent is ordered, it is found that the defendant officially owns no assets.

Concrete Proposals for Optimizing the Legal Framework (*Lex Ferenda*).

1. Procedural and Institutional Reform:

- ***Introduction of Civil Forfeiture (Non-Conviction Based)***: Adopting a mechanism independent of the criminal process that allows the confiscation of assets when the accused flees the country, dies, or when the statute of limitations expires.
- ***Specialization of Magistrates***: Creating specialized judicial panels for economic crime and grand corruption to handle the complexity of financial investigations (such as crypto-assets or layering schemes).
- ***Standardization of Proving "Licit Income"***: Development of a Methodological Guide by the Supreme Court of Justice to clarify income evaluation and limit unfounded justifications (e.g., "wedding donations" or unconfirmed remittances).

2. Streamlining Recovery and Administration:

- ***Mandatory Precautionary Seizure***: Instituting the obligatoriness of applying a seizure on any licit asset of the defendant right from the beginning of the criminal investigation to guarantee confiscation by equivalent.
- ***Early Capitalization***: Expanding the practical use of selling assets before the final sentence (especially for cars or equipment) to avoid their depreciation and ensure the liquidity of the recovery fund.

3. Legislative Adjustments (Criminal Code):

- ***Elimination of the "List Barrier":*** Expanding the application of Art. 106^1 CC to any offense that generates significant financial profit, inspired by the broad spectrum of the RICO Act.
- ***Validation of Judicial Presumptions:*** Encouraging the use of logical deductions in the judicial process; a manifest discrepancy between an official's salary and held assets must be the starting point for a presumption of illicitness.

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