Protection of Rights Without Borders NGO

Democracy Development Foundation

OVERVIEW OF COURT MONITORING RESULTS IN CASES ON CIVIL FORFEITURE OF ILLICIT ASSETS IN ARMENIA

SUMMARY

Since the late 1980s, the recovery of assets and property of illicit origin has been a political priority at the international level. This priority is also reflected in several international instruments that the Republic of Armenia (hereinafter "Armenia") has joined.

In Armenia, the recovery of illicit assets became one of the crucial declared objectives of the government formed after the change of power in 2018. Rather than relying on the existing conviction-based confiscation mechanism within criminal proceedings, the government chose to establish a non-conviction-based forfeiture system.

Accordingly, the Republic of Armenia's Anti-Corruption Strategy for 2019–2023 highlighted, among other priorities, the importance of introducing such a mechanism. The Strategy proposed several measures, including the establishment of specialized bodies or departments, the introduction of a procedure for forfeiture of property of illicit origin, and the development of relevant legislation.

In 2020, the Law "On the Forfeiture of Assets of Illicit Origin" (hereinafter "the Law") was adopted. Since 2021, the Prosecutor General's Office, through prosecutors of the newly established Department for the Forfeiture of Assets of Illicit Origin, has filed lawsuits seeking forfeiture of illicit assets. Initially, these claims were submitted to the Yerevan City Court of First Instance of General Jurisdiction. However, since August 2022, when the Anti-Corruption Court (hereinafter "the Court") became operational, such claims have been filed with the Court.

The non-governmental organization "Protection of Rights Without Borders" (hereinafter "PRWB" or "the Organization") has conducted a study on the practice of forfeiture of illicit assets in Armenia. The aim of the study is to assess the extent to which Armenia's non-conviction-based forfeiture of assets complies with relevant international standards by trial monitoring and legal analysis. The assessment is based on the analysis of Anti-Corruption Court monitoring data, judicial decisions, and the applicable legal framework and international against regional standards.

Specifically, from 15 November 2023 to 31 May 2024, PRWB trial monitors observed 99 hearings across 26 cases. In addition, the Organization conducted a comparative analysis of domestic legislation, relevant international conventions, case law of the European Court of Human Rights (hereinafter "ECtHR" or "the European Court"), advisory opinions from the European Commission for Democracy through Law (hereinafter "the Venice Commission" or "the Commission"), and the legislation of other countries.

The analysis also included a review of publicly available judicial acts of the Anti-Corruption Court, decisions of the Court of Appeal issued prior to 30 April 2025, and the Constitutional Court's ruling of 16 April 2025 on the constitutionality of the Law "On the Forfeiture of Assets of Illicit Origin".

Furthermore, PRWB conducted expert interviews with judges and attorneys. The Prosecutor General's Office twice declined to participate in these interviews, citing unavailability.

INTERNATIONAL STANDARDS

Several key international actors, including the United Nations (UN)[1], the Council of Europe (CoE)[2], and the European Union (EU)[3], have adopted conventions touching upon the confiscation and, where applicable, the forfeiture of assets obtained through crime or corruption.

These instruments primarily address the confiscation of proceeds derived from criminal offences, including property whose value corresponds to the value of such proceeds, as well as property, tools, or other instrumentalities used in, or intended for use in, criminal activity, particularly in the context of combating corruption and organized crime, through criminal justice.

Importantly, these conventions allow reversing the burden of proof to the property owner regarding the lawful origin of the alleged assets of crime, provided this is consistent with national law. Some conventions also explicitly permit non-conviction-based forfeiture when a criminal conviction is not possible, subject to conditions defined in the respective legal frameworks.

The ECtHR has emphasized that states are afforded a wider margin of appreciation in determining the mechanisms they employ to balance the protection of the right to property and public interests in fighting corruption and organized crime. However, any interference with the right to property must be lawful[4], pursue a legitimate aim, namely, the protection of the public interest[5], and be proportionate to that aim[6]. The fight against crime and corruption is recognized as a legitimate public interest that can justify restrictions on property rights.[7] Nonetheless, a fair balance must be struck between the general interest and the individual's rights.[8]

According to the ECtHR, in light of the presumption of unlawful origin of the assets, states must ensure the availability of effective remedies and procedural safeguards, including adherence to the

---

[1] United Nations, United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 19 December 1988, https://www.refworld.org/legal/agreements/un/1988/en/67546, UN General Assembly, United Nations Convention against Transnational Organized Crime : resolution / adopted by the General Assembly, A/RES/55/25, 8 January 2001, https://www.refworld.org/legal/resolution/unga/2001/en/39663; UN General Assembly, United Nations Convention Against Corruption, A/58/422, 31 October 2003, https://www.refworld.org/legal/agreements/unga/2003/en/21418

[2] Council of Europe (COE), Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 16 May 2005, https://www.refworld.org/legal/agreements/coe/2005/en/61244

[3] Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, https://eurlex.europa.eu/eli/dec_framw/2005/212/oj/eng, Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, https://eur-lex.europa.eu/eli/dir/2014/42/oj/eng, Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, https://eur-lex.europa.eu/eli/dir/2024/1260/oj/eng

[4] Iatridis v. Greece [GC], Judgment, 25 March 1999, § 58; Todorov and Others v Bulgaria, § 183.

[5] Raimondo v. Italy, Judgment, 22 February 1994, § 30.

[6] JGK Statyba Ltd and Guselnikovas v. Lithuania, 5 November 2013, §§ 118 and 144; Pendov v. Bulgaria, 26 March 2020, §§ 42 and 50; Todorov and Others v. Bulgaria, 2021, §§ 187 and 215.

[7] Denisova and Moiseyeva v. Russia, Judgment, 1 April 2010, § 58, Raimondo v Italy, 22 February 1994, § 30, Silickienė v. Lithuania, 10 April 2012, § 65.

[8] G.I.E.M. S.R.L. and Others v. Italy [GC], Judgment, 28 June 2018; B.K.M. Lojistik Tasimacilik Ticaret Limited Sirketi v. Slovenia, Judgment, 17 January 2017, §§ 47 and 52.

principle of equality of arms.[9] Moreover, there should be a link between the subject to forfeiture and criminal activity.

The Venice Commission has also addressed issues related to confiscation and forfeiture in several of its opinions. It has acknowledged that such measures are permissible not only within the scope of criminal proceedings but also in civil proceedings, including non-conviction-based confiscation.[10] The Commission considers the presumption of the illegal origin of property acceptable in civil proceedings. However, this tool should be applied within reasonable limits and be accompanied by effective procedural guarantees. As long as the owner of the property has a real chance to refute the presumption, and may forward the "inaccessible evidence" or bona fide ownership defence, the solution appears proportionate.[11]

Regarding the applicable standard of proof, the Venice Commission has indicated that the "balance of probabilities" standard, commonly used in civil cases, is appropriate for such proceedings, rather than the "beyond a reasonable doubt" standard required in criminal cases.[12]

Similar principles are reflected in various documents adopted by the EU.[13] While these are not legally binding for Armenia, they offer valuable insight into the legal frameworks and procedural models in place across EU Member States. These include systems for extended confiscation and non-conviction-based asset forfeiture. Importantly, these instruments require that, for such forfeiture to occur, there must be a demonstrated (and judicially confirmed) connection between the assets and criminal activity, and that confiscation within the context of a criminal trial is not feasible.

DOMESTIC LEGAL FRAMEWORK

Armenia has ratified the aforementioned UN and CoE conventions. Both the former and current Criminal and Criminal Procedure Codes provide for conviction-based confiscation of property obtained through criminal means or used as instruments of crime. Additionally, in cases where the damage caused to the state by a criminal act is not recovered through criminal proceedings, including when prosecution is terminated, the Prosecutor's Office has the authority to initiate civil claims to protect state interests.

---

[9] G.I.E.M. S.R.L. and Others v. Italy [GC], Judgment, 28 June 2018, §§ 290 and 301-302, Shorazova v. Malta, 3 March 2022, § 105.

[10] Venice Commission, CDL-AD(2010)010, Interim Opinion on the draft Act on forfeiture in favour of the State of illegally acquired assets of Bulgaria, 16.03.2010, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)010-e

[11] Venice Commission, CDL-AD(2022)048, Amicus curiae brief for the Constitutional Court of Armenia on certain questions relating to the law on the forfeiture of assets of illicit origin, 19.12.2022 թ., § 61, https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)048-e

[12] Amicus curiae brief for the Constitutional Court of Armenia on certain questions relating to the law on the forfeiture of assets of illicit origin, 19.12.2022, § 26

[13] Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, https://eurlex.europa.eu/eli/dec_framw/2005/212/oj/eng; Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, https://eur-lex.europa.eu/eli/dir/2014/42/oj/eng; Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, https://eur-lex.europa.eu/eli/dir/2024/1260/oj/eng

However, for such civil claims to succeed, the following elements must be proven cumulatively: (1) unlawful conduct (action or inaction), (2) existence of the person who caused the harm, (3) existence of the damage, (4) fault of the person responsible, and (5) a causal link between the unlawful conduct and the resulting damage.[14] These claims are subject to general statutes of limitation, and the standard principles of burden of proof apply.

In the explanatory note to the draft law on "On the Forfeiture of Property of Illicit Origin" the existing mechanisms were assessed as inefficient, and the need for a non-conviction-based forfeiture was emphasized. Hence, a new mechanism – non-conviction-based forfeiture was introduced.

While the introduction of the non-conviction-based forfeiture mechanism was aimed to strengthen the effectiveness of the asset, however, various stakeholders raised concerns over both the chosen model and its compatibility with the domestic legislation.

THE ARMENIAN MODEL OF ASSET FORFEITURE

The Law "On the Forfeiture of Property of Illicit Origin" empowers the Prosecutor General's Office — specifically the Department for the Forfeiture of Property of Illicit Origin formed following adoption of the Law — to initiate investigations into an individual's assets on the grounds provided by law when certain criteria are met.

The objective of such investigations is to collect information about the existence of a property of illicit origin, its volume and interested parties with a view to file a claim with the Anti-Corruption Court. If there are grounds to believe that the property in question is of illicit origin, and its value exceeds 50 mln Armenian drams, the prosecutor shall initiate proceedings in the court seeking its forfeiture.

- *Legal Grounds for Initiating Investigations*

Article 5 of the Law *"On the Forfeiture of Property of Illicit Origin"* identifies six grounds for initiating an investigation in addition to the existence of suspicion about property being of illicit origin. Four of these are directly linked to a person's procedural status in the context of specific criminal offences listed in the Law:

1. Being convicted,
2. Being charged as an accused,
3. Impossibility of pursuing criminal prosecution (due to amnesty, death, age and other grounds of waiving prosecution as defined in the Criminal Code),
4. Suspension of criminal prosecution on the grounds provided by law.

The remaining two grounds are specifically referring to public officials and permit investigations in cases where:

- Intelligence suggests that an official or a person affiliated with them may possess property of illicit origin, or

[14] See Decision No. ԵԱՆԴ/0789/02/11 of the Court of Cassation, dated 5 April 2013.

- Information obtained in the context of another investigation into assets and income that an official or a person affiliated with them may possess property of illicit origin.

Notably, the Law allows forfeiture proceedings to begin not only in relation to the subject under investigation, but also in regard to property held by persons affiliated with them (e.g., family members, affiliates).

As indicated above, international conventions to which Armenia is a party permit non-conviction-based forfeiture rather in exceptional circumstances, such as when the accused cannot be brought to justice due to death, escape, or the expiration of the statute of limitations. These instruments assume that, where criminal prosecution is feasible, criminal proceedings and conviction-based confiscation mechanisms should be applied.

In contrast, the Armenian law departs from this approach. Only two of the six grounds in Article 5 pertain to situations where prosecution is not possible. Moreover, one of the most frequently invoked grounds, namely being an "accused" in criminal proceedings (Article 5(1)(2)), does not require the state to demonstrate that criminal prosecution or conviction-based confiscation is infeasible.

According to data provided by the Prosecutor General's Office, from the date the Law entered into force until 31 May 2024, a total of 476 investigations were initiated under the Law. The grounds cited for initiating these investigations break down as follows:

- Accused in criminal proceedings (Article 5(1)(2)): 358 cases (75%),
- Intelligence data (Article 5(5)): 68 cases (14%),
- Data discovered during another investigation (Article 5(6)): 13 cases (3%),
- Suspension of criminal prosecution (Article 5(4)): 7 cases (1.5%),
- Impossibility of prosecution (Article 5(3)): 6 cases (1.2%). This ground was invoked only in 2020,
- Conviction (Article 5(1)): 1 case (0.2%).[15]

In all cases reviewed as part of the monitoring process, the investigations were launched solely on the ground that the individual had the status of "accused" in a criminal case. In none of them in court, the Court addressed the issue of feasibility to pursue confiscation of illicit property in the framework of criminal proceedings.

- *Property eligible for forfeiture*

According to Article 3 of the Law, property of illicit origin refers to property, including one unit of property, several units of property or share of one unit of property, the acquisition of which is not justified by legitimate income in the manner prescribed by the Law, irrespective of whether it was acquired before or after the entry into force of the Law, as well as the proceeds obtained from the use of such property (fruits, products, incomes).

Several prerequisites must be met for property to be subject to confiscation:

[15] Letter 31/8/132/24 dated 13.06.2024; Letter 31/8/113/24 dated 21.05.2024.

- The value of the property must exceed 50 million drams,
- The person's legal income at the time of acquisition was insufficient to purchase the property,
- The property must have been acquired after 21 September 1991.

The Law was enacted with the goal of adopting the standards recommended by international treaties and advisory documents of international organizations focused on combating the flow of assets of crime. This rationale is also reflected in documents issued by the Prosecutor General's Office of the Republic of Armenia.

However, the definitions and mechanisms established in the Law, unlike the stated justification for its adoption, lack the same clarity and precision. The definition of property of illegal origin emphasizes the property being unjustified by legal income but not being acquired through criminal activity. Despite the declared goals and justifications, the Law does not require proof of a direct or indirect link between the acquisition of property and criminal activity or corruption.

This approach is inconsistent with the requirements of international conventions ratified by Armenia, and with principles established in the case law of the ECtHR concerning the lawfulness of the forfeiture of the property allegedly acquired through crime.

While in all cases monitored, investigations were initiated on the basis of the person's involvement in criminal proceedings as an accused, in court, the plaintiff – the Prosecutor General's Office – maintained a firm position that the property under investigation and subsequently subject to forfeiture under the Law does not necessarily have to be linked to the crime with which the person is charged. According to their position, the underlying criminal proceedings serve merely as a trigger for the investigation and do not limit the authority to investigate only property directly or indirectly related to the alleged crime. This interpretation was reiterated by the Prosecutor General's Office in correspondence addressed to the PRWB as well.[16]

The respondent parties have argued in various cases that the property subject to forfeiture must have some connection to the alleged crime. To support their position, they referenced ECtHR rulings, including cases against Bulgaria, which underscore the need for a connection between the property and the crime, regardless of the domestic legal requirements.

In its published judgments and decisions, the Court initially classified forfeiture proceedings in Armenia as *in rem* (against the property). In subsequent decisions, it characterized Armenia's model as one based on the forfeiture of *unexplained* or *unjustified* wealth. However, this interpretation was largely based on a brief reference to descriptions of models in an EU document indicating that discrepancies between legitimate income and assets may justify forfeiture. The Court did not address other defining elements typically associated with such mechanisms.

Moreover, the Court explicitly stated that

[16] Letter 31/8/132/24 dated 13.06.2024.

> "*Establishing the existence of a direct or indirect link between unlawful conduct and the acquisition of property is outside the scope of the issues subject to prove in a civil case and is not included in the logic of the Law and objectives pursued by the legislator*."[17]

The Court cited the rationale underlying the adoption of the Armenian Law and noted that *"the justification of the Law directly indicates the absence of the need to establish an indirect link between criminal activity and the illegal origin of assets.* To support its position, the Court further observed that not all grounds for confiscation under the Law require a connection with a crime. It concluded that "*In this case, establishing an indirect connection with a criminal act is not a mandatory condition, and assets are forfeited if the existence of legal sources to obtain the property is not proven.*"[18]

Similarly, the Court of Appeal held that the grounds enumerated in Article 5 of the Law serve merely as a basis for the Competent Authority to initiate an investigation. According to the Court of Appeal:

> *"The Competent Authority does not establish the existence of illegal income resulting from a crime specified by this Law, but rather determines the discrepancy between assets and legal income; where such discrepancy exists, the income is considered illegal."*[19]

In its decision, the Anti-Corruption Court of Appeal agreed with the assessment of the Anti-Corruption Court and further elaborated it referring to the same EU models previously cited by the lower court:

> *"The fourth model of confiscation of property of illegal origin has been introduced in Armenia, which is based on revealing significant discrepancies between declared legal income and actual wealth, and [...] the state is not required to prove that the assets are linked to any crime."*[20]

However, it is note-worthy that both EU legal instruments and the national frameworks of the EU Member States that employ unexplained wealth forfeiture include other prerequisites as well. These extend beyond mere discrepancies between lawful income and the value of property. Such nuances are absent from the brief model description on which both the Anti-Corruption Court and the Court of Appeal rely.

In the context of confiscation as a measure to fight crime and corruption, both international conventions and the ECtHR require that, in all cases, there should be a link between the property and the criminal or corrupt activity. Although the standard of proof need not meet the "beyond reasonable doubt" threshold typical of criminal proceedings, it must satisfy the "balance of probabilities" standard used in civil proceedings. Under this standard, the burden is on the owner to show that it is more likely than not that the property has a legitimate origin in circumstances where a presumption of illicit origin applies.

Specifically, in the Yordanov and Others v. Bulgaria case, the ECtHR held that:

---

[17] ՀԿԴ/0201/02/23, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040814418
[18] Ibid.
[19] ՀԿԴ/0025/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811545
[20] ՀԿԴ/0025/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811545

> "…*the national courts ordering the forfeiture had to provide some particulars as to the criminal conduct in which the assets to be forfeited were alleged to have originated, and show in a reasoned manner that those assets could have been the proceeds of that conduct*."[21]

It is notable that similarly to the current Armenian law, the Bulgarian Law applicable in the Yordanov case, did not require proving such a link between property and crime. However, the ECtHR emphasized that this requirement is a vital safeguard to ensure a fair balance between the interests of the state and the property rights of individuals.

The ECtHR has held that the principle of a fair balance between the interests of the state and the property rights of individuals is violated when property is forfeited solely on the basis that the person failed to prove they had the necessary legal means to acquire the property, without any examination or discussion of:

- The existence of relevant criminal activity or an administrative offence,
- A demonstrated link between such criminal activity and the acquisition of the property.[22]

Regarding the ECtHR's rulings in cases against Bulgaria, the Armenian Anti-Corruption Court emphasized that the necessity for a link between asset acquisition and criminal conduct was assessed in light of the specific Bulgarian domestic legal framework and the interpretation of that framework by Bulgarian authorities. Therefore, the Court concluded, they are not applicable to the Armenian context.

Specifically, the Court stated that "*the 2012 Bulgarian Act aims to combat corruption and crime, and the Court's assessment and interpretations are applicable exclusively within the context of Bulgarian domestic legislation and its interpretation given by local bodies*."[23]

The Armenian Anti-Corruption Court of Appeal concurred with this view, recognizing that the ECtHR's findings in the cited Bulgarian cases cannot be directly applied to Armenian law due to differences in the domestic legal contexts.

To sum up, the analysis of judicial decisions reveals that the Court has largely accepted the plaintiff's view that being accused of a crime or even convicted by a final judgment is merely a trigger to initiate an investigation, provided other conditions for investigation are met. Once an investigation is initiated, criminal and civil (confiscation) proceedings proceed in parallel and do not predetermine each other's outcomes. A final judicial ruling in criminal proceedings may have prejudicial significance in civil confiscation cases only in accordance with the general provisions of the Criminal Procedure Code, meaning that the facts established in the criminal case do not need to be re-proven in the forfeiture proceedings.

- *The position of the Constitutional Court*

[21] Yordanov and Others v. Bulgaria, § 122
[22] Venice Commission, CDL-AD(2024)024, § 29
[23] ՀԿԴ/0201/02/23, https://datalex.am/?app=AppCaseSearch&case_id=47850746040814418:

The Constitutional Court in its ruling on the constitutionality affirmed that the objectives of the Law, that is fight against corruption, and the fight against crime, are lawful grounds for the interference in the right to property.[24]

The Constitutional Court highlighted that the ECtHR considers the existence of a link between the property subject to forfeiture and the underlying crime as an important element of the proportionality requirement when restricting property rights. Therefore, the Constitutional Court concluded that given the minimum threshold set by the ECtHR, for the interference with property rights under the Law aimed at combating crime to be proportionate, Article 5, Part 1, Paragraphs 1-4 of the Law, in conjunction with Article 24, Part 1, must be interpreted as requiring substantiation of such a link between the property and the relevant crime that includes the possibility that the crime attributed to the person generated an economic benefit for them.[25]

Regarding property subject to forfeiture from officials (Article 5, Part 1, Paragraphs 5 and 6), the Court acknowledged that the Law's goal of combating corruption in the public service allows for revealing and forfeiture of property acquired only after assuming office (including after the term ends) if it is not justified by lawful income.

The Constitutional Court made it clear that forfeiture of property acquired before assuming official powers exceeds the scope of combating corruption in public service and is not compatible with the principle of proportionality.[26]

Monitoring results demonstrate that in practice, the Prosecutor General's Office and courts have not followed this logic. They often included property acquired before the official's term and before the alleged crime in forfeiture claims. Furthermore, due to a lack of clear criteria, income and possible savings before the period under review have been evaluated discretionarily, sometimes leading to rejection of forfeiture claims by the Court due to inaccurate calculations of existing income.

No requirement to demonstrate a link between property and the alleged crime or corruption has also resulted in broad prosecutorial discretion regarding the period of assessment preceding the period of review. The prosecutors were not bound by the date of the alleged crime or assuming the office in case of public officials when defining the period of the review and hence, the dates of property being acquired. Moreover, it was acceptable to claim for forfeiture the property acquired prior to those timeframes.

- *Discretion in defining the period under the review*

The Law permits retroactive application, allowing forfeiture of property acquired in the past, prior to the Law's entry into force. To determine the lawfulness of the acquisition of the property, the Law generally limits the period under review to up to 10 years before the investigation launch date. In exceptional cases, if relevant evidence exists, the period may be extended back to September 21, 1991.[27]

[24] See SDO-1776, paragraph 101
[25] Ibid., para. 160
[26] Ibid., para. 147
[27] Law on Forfeiture of Illicit Assets, Article 7.

In practice, in all cases monitored, the investigation period was always extended far beyond the standard 10 years. The monitored cases showed an extension to up to 30 years, with the average period of retrospective investigation being 23 years – far beyond the ten-year period established by law. The earliest start date of the period under review was 1992. In 14 out of 26 cases (54%), investigations included property acquired as early as the 1990s. It appears that the definition of the investigation period is not clearly regulated, lacks foreseeability and is left largely to the prosecutor's discretion, resulting in inconsistent and non-uniform approaches.

The Prosecutor's Office routinely used the clause to extend the investigation period not as an exception, but as a norm.

Analysis of the cases demonstrates that at times, when no sufficient evidence of illegal property acquisition (or of required value) was found within the initial period defined for the review (e.g., starting from the alleged crime date or term of office), the period was extended backward to cover earlier times, even before the crime or office term began.

- *Discretion in assessment of property and income status for the period preceding the period under review*

Some cases included assessment of respondent's property status and financial data from well before the period under review defined for the purposes of investigation. For example, for one person, the examination period was initially set from October 2010 but then extended back to March 1996, and income/expense analysis began from 1991. However, no clear rules exist in this regard as well leading to discretionary application and resulting in inaccurate assessment of the financial status of the respondent by the start of the designated period of investigation.

Analysis of the Court's position in this regard suggests that the Court not only accepts the assessment prior to the determined period for the review but even expects the General Prosecutor's Office to conduct it.

According to the Court, starting investigations at a "zero" point (ignoring previous income and savings) worsens the position of the person under investigation, as it excludes assets acquired earlier, while it could have a decisive role in the assessment and hence, the scope of property deemed illegal. Such assessment shall aim to reveal and demonstrate the entire assets by the start if the investigation period. Only if a negative difference between income and expenses is shown could calculations start at zero.[28]

In this context, the Venice Commission has also looked into this issue. The Commission expressed concerns about the retroactive application of the Law extending the period back to 1991 without clear justification at prosecutorial discretion and hence, varying from case to case.[29] In addition, the

[28] ՀԿԴ/0201/02/23, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040814418

[29] Venice Commission, CDL-AD(2022)048, Amicus curiae brief for the Constitutional Court of Armenia on certain questions relating to the law on the forfeiture of assets of illicit origin, 19.12.2022 թ., https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2022)048-e, para.54

Commission noted that the Law lacks clear deadlines for initiating civil forfeiture proceedings after the conviction, undermining legal certainty.[30]

The Commission emphasized that to comply with existing standards, the period under review must be reasonable and clearly defined. According to the Commission, the duty to give explanations about the origins of the property should remain reasonable. Furthermore, the timeframe for the forfeiture of property should be reasonable and it should be applied equally to all cases, and not left to the discretion of the authorities.[31]

- *Constitutional Court on the Period Under Review*

The Constitutional Court recognized that reviewing the period before the official assumed office is not inherently problematic, if it serves to verify the person's property status before assuming office, to assess whether they had sufficient legal income to acquire property after assuming office, or other circumstances aligned with the Law's objectives.

However, the Constitutional Court emphasized that only property acquired after assuming office can be subject to forfeiture in corruption-related cases. Forfeiting property acquired before office goes beyond the goal of combating corruption in public service and is not compatible with the principle of proportionality.[32]

Regarding investigations initiated in the context of combating crime, while the Constitutional Court did not explicitly address reviewing periods before the investigation, it stressed that forfeiture requires demonstrating with reasonable probability that the property could have been generated through criminal conduct.[33] Data collected from before the period under review must have a legitimate purpose, such as determining if the property was acquired legally or through crime.

The broad discretion given to prosecutors in choosing the review period, especially without a requirement to show a link to a crime, undermines safeguards aimed to balance the state's advantage.

When it is not required to prove such a link to a crime, the long retroactive application, particularly without available evidence for the defendant, places a disproportionate burden on individuals. Such retroactivity and broad discretion can lead to disproportionate interference with property rights, lacking a legitimate aim of combating corruption or crime.

Challenging the constitutionality of the law

In the context of the adoption of the Law and its aftermath, critics of the Law expressed concerns that without proper safeguards, the Law could be not in line with the Armenian Constitution and misused for political motives or property redistribution. The constitutionality concerns include such issues as

[30] Venice Commission, CDL-AD(2022)048, para. 55
[31] Ibid., para.62
[32] Constitutional Court Decision, SDO-1776, paras. 147–148.
[33] Ibid., para. 161.

retroactive application of the Law, interference with property rights, prosecutorial powers to file forfeiture claims, as well as lack of clear procedural guarantees, among others.

In 2022, a group of members of the National Assembly requested the Constitutional Court to assess the Law's constitutionality. The review process took over three years, during which the Law's application was not suspended.

Against this background, respondents lodged several motions related to the constitutionality of the provisions of the Law also before the Anti-Corruption Court. In three cases, the respondents requested from the Court to suspend the proceedings and apply to the Constitutional Court. Regardless of the ground of the motion the Court rejected all such motions.

In the first case, the respondent argued that the wording in the law "*became known*" lack legal certainty. In this case, the criminal prosecution against the respondent was terminated before the Law came in full effect. Weeks after it was quashed by the Prosecutor General and the criminal case was re-activated. Based on that, an investigation into the assets was also launched days after. The respondent argued that these circumstances could not fall under "became known" clause as the prosecutor's office knew of the case before, did not learn anew. The Court ruled that the entire law's constitutionality is examined by the Constitutional Court. On top of that, according to the Court, the issue raised rather refers to the evidence admissibility issue that could be dealt with at a later stage.[34]

In another case, the respondent argued that impossibility to bring a counter claim against the Prosecutor's Office violate their right. The Court dismissed the motion stating that the constitutionality of the entire Law is being assessed by the Constitutional Court, hence there is no point in applying with a niche issue.

During a court hearing in the third case, the third party's representative requested to separate the case into different proceedings. He argued that the term "*joining the cases pending before it*" should allow joining a case before the Anti-Corruption Court with a case before a general jurisdiction court. If separation was denied, he asked the Court to apply to the Constitutional Court, claiming that a narrow interpretation would violate the right to effective remedy. The court rejected the motion for separation, holding that according to the Civil Procedure Code, cases may only be joined if they are pending before the same court and judge. Only the Prosecutor's Office can file claims to the Anti-Corruption Court; allowing others to do so would blur the distinction between the Anti-Corruption Court and civil courts. The court found the current legislative regulation clear and thus saw no reason to refer the matter to the Constitutional Court.

Prosecutor General's Office as a legitimate plaintiff?

A central issue raised by many respondents was whether the Prosecutor General's Office had proper competence to file forfeiture claims. All such motions were rejected by the Court.

In one case, the respondents argued that under Article 176 of the Constitution, the Prosecutor's Office could only file claims protecting state interests, while forfeiture claims were pursuing public interests. They contended the Civil Procedure Code provides for a closed list of grounds establishing rights and

[34] ՀԿԴ/0203/02/23, http://www.datalex.am/?app=AppCaseSearch&case_id=47850746040814434

obligations. Law "On Forfeiture of Property of Illicit Origin" creates procedural rules but does not create substantive rights or obligations that justify such claims by the Prosecutor's Office.

The Court held that Article 29(1)(4) of the Law "On the Prosecutor's Office" explicitly authorizes the Prosecutor's Office to file claims for forfeiture based on the relevant law. Such claims are listed as the ones brought under the protection of state interest by law. Therefore, the Prosecutor's Office acts within the limits of its powers when initiating these claims.

Another issue raised in the framework of monitored cases is the competence of the specialized department within the General Prosecutor's Office to be designated as the Competent Body. The respondent argued that the case should be dismissed as the Department it is not a standalone legal entity to be considered a 'body'. It was created by an unpublished internal act by the Prosecutor General, revising the internal structure of the office, hence such an act could not give rise to rights. The Court dismissed the motion and found that this was within the Prosecutor General's authority.

- *Constitutional Court's Position on Prosecutor's Office Jurisdiction*

The jurisdictional issue was also addressed in the Constitutional Court review of the Law. The applicant challenged the Prosecutor's Office authority to file forfeiture claims, arguing that the Constitution (Article 176) only allows filing claims to protect state interests, not public interests.

The Constitutional Court concluded that the authority stems from Article 176 (3) of the Constitution and is further defined in Article 20 of the Law. The Court noted this was an exceptional power granted by the legislator, the legislator exercised its discretion to list this type of function as part of the protection of state interests and found it consistent with the Constitution.

The Constitutional Court clarified that the fight against corruption and crime is a public interest, which can also be recognized as a state interest. Since Armenia is the material beneficiary of claims filed in forfeiture proceedings, such claims are considered as protecting state interests under Article 176 of the Constitution. This interpretation affirms the Prosecutor General's Office's standing to initiate forfeiture proceedings as protecting the state's interest.[35]

Proper Court Jurisdiction — Issues with Foreign Citizens and Property Location

No general issues concerning the establishment of the Anti-Corruption Court and challenging its jurisdiction in this regard were raised in the context of monitored cases.

In one case, the respondent (a foreign citizen at the time of property acquisition) argued that the property acquisition should be treated as an investment, subject to respective jurisdiction and legal framework.

The Court dismissed the motion and ruled that the citizenship or residency of the actual beneficiary of the property or the owner is irrelevant for the purposes of forfeiture of illicit assets if the property is located in the territory of the Republic of Armenia. Jurisdiction is based on the rules established in Article 1277 of the Civil Code. The regulations apply even if some elements involve foreign jurisdiction, e.g., the owner resides abroad or is a foreign national but the property is in Armenia or

[35] see Constitutional Court Decision No. 1776, para. 369-371.

the property is abroad and the owner is Armenian national. In the case, the Court explicitly stated that the forfeiture proceedings are in rem (against the property itself), not against the person.

Motions to Suspend the Case in the Court Due to Pending Criminal Proceedings

In two monitored cases, respondents asked to suspend civil proceedings pending final judgment in a respective criminal case as this might have a decisive impact on the civil proceedings. This included confirmation or rejection of factual circumstances referred to in the claim. The court rejected these motions stating that these two proceedings go in parallel. The forfeiture proceedings have a specific procedural framework distinct from criminal proceedings, and the fact that the two proceedings relate to similar facts is not sufficient to suspend the civil proceedings. Evidence presented in civil proceedings can confirm or refute ownership and illegal origin without needing a final criminal ruling. The outcome of the criminal case may only have prejudicial effect on issues related to the person and criminal act but does not bar continuing civil proceedings.[36]

In the second case, the Court also noted that at that stage of the civil proceedings, prior to the distribution of burden of proof, it was not clear yet to what extent the findings in the criminal case might be of particular relevance to the civil case. Hence, at that stage, the court was not in a position to judge to establish a causal link between the two proceedings. The court dismissed the motion.[37]

Beneficial Owner and Affiliated Person

The term "beneficial owner" refers to the primary respondent considered the real owner of the property, even if legal title rests with related parties. Courts did not consistently place the burden of proving beneficial ownership or relationships on the plaintiff at all or not in relation to all co-respondents involved.

In one of the cases monitored, the respondents argued that plaintiffs must specify claims and explicitly request to recognize the respondent as the beneficial owner or challenge the deal. Another respondent argued that in such a case, the plaintiff should have requested to recognize this deal as fictitious and void if they attribute the property to the alleged beneficial owner. If seizing a third party's property on the basis of a relationship to a beneficial owner, claims regarding the invalidity of transactions should be made per the Civil Procedure Code as no other legal ground is in place. The Court rejected these arguments, reasoning that the claim for forfeiture was "in rem". And expected end result is that a property of illicit origin would be forfeited in favour of the state, also an "in rem" claim. Recognition of beneficial ownership is a factual question to be clarified during the examination of the property's origin, not an independent claim.[38]

Access to bank data and affiliation

In the context of investigation, the Prosecutor's Office has an opportunity to seek and obtain judicial authorization to access bank data of persons of interests. As it appeared, not all of those whose bank data is sought eventually became co-respondents or get any other procedural status.

[36] ՀԿԴ/0010/02/23, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811927
[37] ՀԿԴ/0212/02/23, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040814453
[38] ՀԿԴ/0062/02/23, hearing on 15.12.2023.

One of the monitored cases addressed the issue of accessing banking secrecy in situations where the individual concerned is neither related to the primary respondent nor involved in the civil case. According to the plaintiff, the law does not restrict access to banking secrecy solely to affiliated persons. Being affiliated has no direct bearing on the right to access such information. Data constituting banking secrecy, as defined by law, can only be obtained if the competent authority can sufficiently substantiate the legitimacy and necessity of the request for investigating the case before the court. And then it is for the court to grant such a request or not.[39]

Motions to Amend the Basis and Subject Matter of Claims

In 18 out of 26 monitored cases (69%), the plaintiff filed motions to amend the basis and/or subject matter of the claim. As of 31 May 2024, a total of 24 motions were filed in the cases monitored, although decisions for some remain unpublished in the database. Except for one case, all motions were granted.

These motions were submitted both shortly after the claim was admitted and several months later, even after the burden of proof had been distributed.

An analysis of publicly available decisions and hearings shows that plaintiffs primarily cited the following reasons for amending the basis and subject matter of their claims:

- Emergence of new evidence (including data obtained from criminal proceedings or requested before filing the claim but received afterward) requiring recalculation.

- Respondent's position necessitating recalculation.
- Involvement of additional respondents, requiring redistribution or recalculation of claims among co-respondents.
- Need to submit a revised claim due to cascade changes.
- Correction of errors or omissions.
- Failure to consider evidence obtained before filing the claim.

Respondents raised several objections, including:

- Lack of authority of the plaintiff to amend the claim's basis and subject matter, except when withdrawing or reducing the claim.
- Change to the legally protected interest originally invoked in case of the change of subject matter.

- Change to the legally protected interest originally invoked in case of increasing the claim.
- Change in the legally protected interest when increasing the amount claimed.
- Ambiguous or vague demands. (Inadmissibility of filing claims with a wording "for seizure of property or value when seizure is impossible").
- The argument that amendments should be treated as new claims subject to statutes of limitations.
- Violation of the presumption of innocence when using data from criminal proceedings to amend the claim.

[39] ՀԿԴ/0010/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811530

- Inadmissibility of introducing arguments not included in the original claim during the amendment process.

In all granted motions, regardless of the grounds pointed by the plaintiff or objections from the respondent, the court determined that the plaintiff was exercising their administrative rights. When granting the motions, the court referenced provisions of the Armenian Civil Procedure Code and the Law "On the Prosecutor's Office," concluding that when a motion to amend the subject or basis of a claim is submitted in accordance with the formal requirements prescribed by law, and no grounds exist to reject the motion under Article 170(5), Article 152(8) of the Civil Procedure Code, or other legal grounds, the motion shall be granted.

Regardless of the reasons stated or whether the claim increased or decreased in value, the court found that changes to the basis and/or subject of the claim continues to be a claim for forfeiture of property of illegal origin filed to protect state property interests. This means that even if amended, the protected right would not change as the legally protected interest remains the same as initially filed, and the claim remains within the court's jurisdiction.

In only one case did the court reject a motion to amend the claim's basis and/or subject because it was filed after the burden of proof had been determined, and the plaintiff failed to justify the delay.[40]

The most frequent objection contested the jurisdiction of the Prosecutor General's Office, as plaintiff, to amend the basis and/or subject of the claim.

Some respondents argued that the law limits the plaintiff's administrative rights in this regard, since claims can only be initiated based on conclusions drawn from investigations, which must be conducted within three years. In some cases, they considered such motions to amend as abuse of rights.

In one of the cases, in response to objections regarding the plaintiff's entitlement to obtain new data after the investigation's conclusion, court held that actions taken by the competent authority after filing the claim do not constitute a continuation of the investigation. According to the court, investigations under the Law "On Forfeiture of Property of Illicit Origin" establish grounds for filing a lawsuit but do not limit the plaintiff's procedural, administrative, or other rights after filing.

The Constitutional Court also affirmed that in civil cases initiated under the Law of Forfeiture, the Prosecutor's Office acts as plaintiff on general grounds.[41]

Respondents Not Included in the Investigation (Involvement of New Respondents)

In four cases (15%) under review, the plaintiff requested the involvement of new respondents.[42] In two of these cases, such requests were made twice. According to the plaintiff, these requests arose in situations such as:

---

[40] ՀԿԴ/0197/02/23, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040814404, hearing on 17.04.2024

[41] See Constitutional Court Decision, SDO-1776, para. 247

[42] ՀԿԴ/0110/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811890, ՀԿԴ/0014/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811534; ՀԿԴ/0010/02/22,

- The primary respondent was discovered to be the beneficial owner of property belonging to the new respondent (in one case).
- The claim was initially addressed to the title owner rather than the beneficial owner (in one case).
- The new respondent was the spouse of another respondent involved in the case and a co-owner of the claimed property (in three cases).
- The new respondent was a close relative of the primary respondent (in one case).

The latest such a motion was filed was nine months after the decision to admit the claim for proceedings.[43]

The respondents objected, arguing that the Competent Authority can file a lawsuit only based on the conclusions drawn from investigation results. Since no investigation was conducted regarding the new respondents and their right to be heard was not ensured, there was no legal basis for filing a lawsuit against them.[44]

However, the court granted all such motions regardless of whether the plaintiff obtained information about the new respondents during the court hearings or whether such information was already available during the investigation.

The court emphasized that both the amendment of the basis and/or subject of the claim and the involvement of new respondents reflect the principle of procedural administration as enshrined in Article 12 of the Civil Procedure Code. The court assessed the submitted motions—including those combined with motions to amend the claim—solely on whether they met the formal legal requirements, even in cases where no preliminary investigation had been conducted regarding the new respondents.

However, in none of the cases, the court addressed the issue of why the Prosecutor General's Office had not previously included close relatives of the primary respondent (such as spouses or siblings) in the investigation, especially when information about these connections was available.

Recusal of Judges

The cases under review were heard by four judges:

- Judge Karapet Badalyan presided over 11 cases (42%)
- Judge Lili Drmeyan presided over 7 cases (27%)
- Judge Narine Avagyan presided over 6 cases (23%)
- Judge Rudolf Avagyan presided over 2 cases (8%).[45]

According to interviews with the judges, case distribution is carried out by an automated system without distinguishing between cases involving forfeiture of illegally acquired property and claims

http://www.datalex.am/?app=AppCaseSearch&case_id=47850746040811530; ՀԿԴ/0105/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811888

[43] ՀԿԴ/0010/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=4785074604081153

[44] ՀԿԴ/0105/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811888

[45] There are five judges in the Anti-Corruption civil court, one of them was on maternity leave, https://court.am/hy/courts/141

protecting state interests, regardless of case complexity. This has resulted in a disproportionate distribution of cases and uneven workloads among judges.

No judge recused themselves in the monitored proceedings. However, one judge reportedly recused themselves during the case admission stage.

Motions to recuse judges were filed in six cases (23%), with two cases involving repeated motions. Of these, one motion was filed by the plaintiff's representative (the prosecutor), and the remaining motions were filed by respondents' representatives.

Five of these motions were directed at Judge Karapet Badalyan, and one at Judge Narine Avagyan. Judge Badalyan was challenged in 5 of his 11 cases (45%).

All motions to recuse were based on allegations of judicial bias and were dismissed by the court. In one instance, the court rejected a motion to recuse as an abuse of rights.

Distribution of the Burden of Proof

Out of the 26 cases reviewed, the court addressed the issue of burden of proof in only six cases (23%).

Notably, in one case, the respondent's representative argued that the plaintiff must prove, among other things, that the specific property might have an indirect link to any alleged criminal act committed by the person under investigation.[46]

However, in none of the decisions on burden of proof allocation the court required the plaintiff to establish a connection between the property and the alleged crime.

In the cases reviewed, judges generally adopted a similar approach to allocating the burden of proof. Accordingly, the plaintiff was required to establish the following:

- The property in question belongs to the respondent(s) by right of ownership (in 6 cases),
- The property is not justified by lawful income and has an illegal origin (in 6 cases),
- The property was either transferred to a bona fide purchaser, cannot be identified, or cannot be separated or forfeited (in 6 cases),
- The market value of the property at the time the claim was filed (in 5 cases),
- Affiliation of some co-respondents to the primary respondent (in 5 cases),
- The primary respondent is the beneficial owner of the property, even if it is registered in the names of other individuals (in 4 cases),
- It is impossible to forfeit the property (in 4 cases),
- The property is jointly owned by co-respondents (in 3 cases),
- The proceeds are the result of the conversion as a result of the use or sale of illegally acquired property (in 3 cases),
- Other respondents were not bona fide owners (in 3 cases),
- The total market value at the time of filing the claim exceeds 50 million AMD (in 2 cases).

[46] ՀԿԴ/0024/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811544

Respondents' representatives argued that claims of beneficial ownership must also be substantiated by the plaintiff with respect to each property and each action taken. This applies equally to not bona fide acquirers. Only in four cases did the Court place the burden on the plaintiff to prove that the primary respondent was the beneficial owner.

Not all cases required proof of affiliation among respondents. Notably, one case involved four respondents, but the court only requested the plaintiff demonstrates affiliation of the spouse of the primary respondent to him, not the other co-respondents.

The Court imposed the burden on respondents to prove that the properties at stake were acquired with lawful income. This burden was applied to all respondents according to each individual property.

Standard of Proof

The law does not establish a specific standard of proof but presumes the illegal origin of the property. According to the relevant international conventions, reversal of the burden of proof onto the property owner is acceptable if it aligns with domestic legislation.

In Armenia, in the absence of explicit regulation, the general rules of evidence under the Civil Procedure Code apply. Based on publicly available judgments, it appears that courts relied on the "balance of probabilities" standard, which is common in some jurisdictions, and is referenced by the ECtHR and the Venice Commission.

The Venice Commission has noted that illegal acquisition of property should not be proven by the "beyond a reasonable doubt" standard applicable in criminal proceedings, but rather by the "balance of probabilities" standard applicable in civil cases. The Commission has also observed that Armenia's domestic legislation lacks sufficient clarity regarding burden of proof criteria, highlighting a need for further clarification.

The ECtHR has explicitly accepted the 'balance of probabilities' standard in civil proceedings.[47] It did not consider the shifting of the burden of proof inherently disproportionate but assessed it in light of difficulties in obtaining or preserving evidence caused by excessively long timeframes.[48]

In one case, the respondent argued that the burden of proof should not be assigned based on the balance of probabilities principle, contending that it served as a tool for the respondent, not the plaintiff, to present reasonable arguments to the Court.[49]

The Court stated in one of the published judgments that the model for non-conviction-based forfeiture of property implies lowering of the evidentiary threshold. Therefore, in proceedings involving the forfeiture of property of illegal origin, the balance of probabilities (preponderance of evidence) standard applies. This means that one party must present evidence that is at least slightly more convincing than that of the other party, but not necessarily absolutely convincing. In other words, the Court bases its judgment on whether it is "more likely than not" that a fact is true.[50]

---

[47] Gogitidze and others v Georgia, §107.
[48] Todorov and Others v Bulgaria, § 205.
[49] ՀԿԴ/0024/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811544
[50] ՀԿԴ/0201/02/23, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040814418

The Court of Appeal, when addressing the burden of proof standard, endorsed the position expressed by the lower court, noting that the court correctly interpreted the essence of the evidentiary principle of the "balance of probabilities."[51]

The Constitutional Court in its decision of April 16, 2025, also addressed this issue. The Constitutional Court discussed the burden of proof standard not in abstract terms, but in connection with the crime attributed to the respondent. The Court specifically noted that the evidentiary threshold applied in criminal proceedings for property confiscation was not applicable to forfeiture under the procedures established by the relevant law. To conclude that the respondent's property is of illegal origin, it is sufficient to show, with a reasonable degree of certainty, that the property subject to forfeiture may have been formed as a result of criminal conduct (see SDO-1776, para. 161).

Presumption of Illicit Origin of Property

As previously mentioned, Article 22 of the Law establishes a presumption of illicit orgin of the property. The Venice Commission has found that Armenia's domestic law, in its purpose, as such does not contradict international best practices and established standards. However, it also emphasized the necessity of ensuring that the law provides sufficient procedural and substantive safeguards to maintain a fair balance between public interest and individual rights.

The Commission noted that the adopted civil forfeiture mechanism is based on the presumption of illicit origin. Under this presumption, the burden of proof is divided between the parties: the competent authority must demonstrate that the property may be of illegal origin, and the respondent must rebut this presumption by providing evidence supporting lawful acquisition. The court may rule in favor of the respondent even if direct evidence confirming legal origin is absent, provided a convincing explanation for the lack of evidence is given.

In one case, the Court has highlighted that the legislature explicitly requires court decisions to be based on evidence presented by the plaintiff proving that the property was not derived from legal income sources. Thus, the plaintiff must substantiate the fact of illegal origin following due legal procedures. This means that the presumption established by the Law "On Forfeiture of Property of Illicit Origin" differs substantially from a "classical" presumption, as it does not exempt the plaintiff from the burden of proof.

The Constitutional Court clearly stated that, based on Article 22 of the Law, the competent body must first prove that the respondent's property is not supported by evidence of legal income sources. In such a case, a presumption of illicit origin is formed. If not rebutted, it allows the court to order forfeiture. The respondent has the right to rebut this presumption by submitting evidence of lawful acquisition. Furthermore, if the facts must be proven by specific evidence per law or other normative acts and such evidence is destroyed or lost without the respondent's fault, the respondent shall not bear negative consequences for the fact remained disputed (see SDO-1776, para. 234).

During the monitoring period, no judgments was issued. Moreover, final rulings issued afterward are mostly unavailable in full in the Datalex system, as some hearings were conducted *in camera*. Therefore, the analysis of the case-law is based on a limited number of accessible judgments.

[51] ՀԿԴ/0025/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811545

Given that courts evaluate evidence in final rulings, the data collected during monitoring remain limited. Nonetheless, observations during hearings revealed that plaintiffs often presented annual financial statements for certain periods, comparing available funds with the estimated value of acquired property. When discrepancies arose, plaintiffs concluded illegal origin without demonstrating any link to criminal activity. Respondents frequently relied on witness testimony and notarized statements, as other types of evidence were not preserved. Courts assessed the evidence and circumstances on a balance of probabilities.

In one case, the claim was entirely dismissed because the court found the respondent's arguments more probable than the plaintiff's allegations.

Proportionality of the Burden of Proof and Accessibility of Evidence

The Venice Commission has emphasized that it is essential to protect the suspect's rights and ensure the opportunity to respond in a fair adversarial setting. Even if the suspect cannot produce direct evidence proving legal origin, the court may rule in their favor if a convincing explanation for the absence of such evidence is provided. This guarantee is also recognized by the ECtHR. The European Court found the approaches of ensuring the defense of inaccessible evidence provided in law acceptable

Such safeguards are established under Article 22, Part 4 of the Law, which stipulates that if facts must be proven by certain evidence and this evidence was destroyed or lost without the person's fault, the person shall not bear adverse consequences for the disputed fact remaining unresolved.

In some cases, respondents' representatives argued that the possibility or impossibility of forfeituring property should not be included in the burden of proof because it was not indicated in the factual basis of the claim and should not relate to the amended subject matter of the claim. The court did not comment explicitly on this argument but included all claimed property in the facts subject to proof.

Additional Burden of Proof Regarding Transfers from Third Parties

In the monitored cases, the issue of whether the person under investigation should bear the additional burden of proving the legality of amounts actually transferred to them by other persons was raised. The respondent argued that if such amounts exist, the burden to prove their illegality should rest with the plaintiff, not the respondent.

In one case, the respondent requested to amend the wording of the claim, proposing that the plaintiff be required to prove that a fictitious transaction was concluded between the parties in order to substantiate the claim that the respondent is the real beneficiary.[52]

The ECtHR has recognized that excessively long retroactive periods—such as 25 years—make it particularly difficult for respondents to provide evidence confirming the legality of their income or property origin. The ECtHR noted that such a burden becomes even greater when significant economic changes were underway at the time, including rising inflation, challenges in maintaining tax and social payment records, and other systemic difficulties, which create uncertainty. Under these

[52] ՀԿԴ/0013/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811533

circumstances, coupled with other factors, placing the burden on the respondent to prove the legal origin of the property was considered disproportionate.

In this context, the court's position in one of the cases stands out: when the competent authority includes in the investigation a period extending beyond ten years prior to the investigation, it must demonstrate a higher degree of due diligence in collecting evidence. This is especially important when investigations concern periods as far back as 30 years or more, during which documentation of employment or income-generating activities may be incomplete, destroyed, or otherwise unavailable due to inadequate record-keeping by state bodies.

Access to and Credibility of Evidence

The issue of access to and credibility of evidence was frequently raised, particularly with respect to facts from the 1990s. Respondents often pointed to the lack of preserved written evidence—either because such evidence was never compiled as it was not required, was destroyed, or was kept by state bodies but lost. To support their defense, respondents submitted witness testimonies, notarized statements, and sworn affidavits, which courts assessed in conjunction with other evidence.

Analysis of published court rulings shows that witness credibility was often problematic, with contradictory or inconsistent information.

For example, in one case, the court found contradictions in witness testimony about events from approximately 15 years ago, and deemed the testimonies unreliable when compared with other evidence.[53]

In another case, although notarized statements and testimonies contained differing details about the same fact, the court did not consider these contradictions decisive. The court recognized that income earned 30 to 35 years ago was subject to uncertainty, and it was not possible to reveal exact amount of income, especially when relevant documents were destroyed by competent state bodies. Under such circumstances, the court ruled that the respondent should not bear the negative consequences of failing to prove the relevant facts.[54]

The Constitutional Court also addressed proportionality, emphasizing that the presumption of illegality established by law does not violate the right to a fair trial as such, as it allows the respondent to rebut the presumption in civil proceedings, provided constitutional guarantees of a fair trial are upheld (see SDO-1776, para. 239).

Statute of Limitations

As of 31 May 2024, the statute of limitations was raised in 9 out of 26 cases (35%). In some instances, motions to apply the statute of limitations were filed multiple times within the same case—up to five

[53] ՀԿԴ/0025/02/22, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040811545
[54] ՀԿԴ/0201/02/23, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040814418

times—sometimes by the same respondent's representative and sometimes by different representatives.

In all cases, the parties were given the opportunity to present their position or objections regarding the statute of limitations claims.

Plaintiffs consistently argued that the general civil statute of limitations does not apply to forfeiture cases involving property of illegal origin. Instead, a special statute of limitations, established by Article 8 of the Law "On Forfeiture of Property of Illicit Origin" with a particular method of calculation, applies.

The courts rejected all motions to apply the statute of limitations. The interviewed judges indicated that they harmonized their approach to the issue of the statute of limitations to the position indicated by the Anti-Corruption Court of Appeal. The Court of Appeal ruled that general statute of limitation rules do not apply, and that the special procedure governs forfeiture cases.

The courts emphasized that in such cases Article 8, Part 2, establishes a time limit different from that in Article 332 of the Civil Code of the Republic of Armenia, is an exception and the statute of limitations is assessed in the context of the investigation's start date. The courts also noted that Article 8 not only sets the statute of limitations but also prescribes a special method of calculating it. According to the courts, the statute of limitations for forfeiture cases is directly linked to the duration of the investigation. It runs from the day after the investigation begins, and a claim filed during the investigation period—typically three years (or two years if the previous version applies)—is deemed timely.

The respondents' motions typically argued the following issues:

- Applicability of the statute of limitations under the Civil Code,
- Applicability of the law and its version in light of constitutional guarantees on retroactivity,
- Calculation of the limitation period: whether it begins the same day or the day after the investigation starts,
- Relationship between the limitation period for investigation and for filing claims,
- Effect of changes in the basis or subject of the claim (e.g., is a change in claim subject considered a continuation of the investigation?)
- Applicability of limitations when a new respondent is added after the claim is filed.

Some arguments were raised repeatedly by different respondents in the same case. In some cases, the arguments were adjusted citing previous court positions.

In the context of the applicability of the civil statute of limitations, respondents argued that there was a need to submit claims such as invalidation of fictitious transactions or similar should be governed by the civil statute of limitations, in the context of recognizing the primary respondent as the real beneficiary. The court rejected these arguments, stating that even if the plaintiff filed additional claims to invalidate transactions alongside forfeiture claims, under Part 3 of Article 20 of the Law, the civil statute of limitations does not apply, hence the applicable statute of limitations has not run out.

In subsequent similar motions, the court reiterated that the special procedure under the Law "On Forfeiture of Property of Illicit Origin" governs the limitation period, rather than general civil law rules.

In one of the cases, the Court noted that several decisions of the Constitutional and Cassation Courts concerning the statute of limitations under the Civil Code do not apply to these cases. This is because the statute of limitations for claims related to the forfeiture of property of illegal origin—and the procedure for calculating it—are governed exclusively by Article 8 of the Law "On the Forfeiture of Property of Illicit Origin," which the Constitutional and Cassation Courts' decisions do not address.[55]

Issue of the Filing Period: Two or Three Years?

A recurring issue in the monitored cases was the applicable filing period, which can be either two or three years, depending on the version of Article 8 of the Law in force. A significant number of these cases were still under investigation when the amendment to Article 8 extending the investigation period to three years came into force in July 2022.

The transitional provisions of this amendment explicitly provided that the new version applies to investigations that had already begun but were still ongoing at the time the amendment entered into force.

Respondents objected, arguing that the new three-year investigation period worsens their legal position and therefore should not apply retroactively.

In all cases, the Court took a firm stance that, given the clear transitional provision, the amended period applies to ongoing investigations. The Court further clarified that Law No. HO-270-N regulates ongoing legal relations without retroactive effect. Applying the amendment does not violate Part 1 of Article 73 of the Armenian Constitution and its application does not worsen the situation of the respondent because the investigation's purpose is only to establish whether grounds for filing a lawsuit exist. Hence, the investigation itself does not restrict or violate respondents' rights.

Any interference with rights during investigation can only occur based on a Court order requiring evidence or applying preliminary measures. Procedural guarantees, including the right to appeal such Court orders, sufficiently protect respondents' rights and interests from arbitrary interference.
Therefore, the Court concluded that the amendment is procedural, does not worsen the situation of the respondent, imposes no new obligations, restrictions, or liabilities on respondents. The amendment does not affect respondents' ability to fully exercise the right to request application of the statute of limitations.

Changes in Basis and Subject of Claims and Their Impact on the Statute of Limitations

In many cases, respondents requested the application of the statute of limitations due to changes in the basis or subject of the claim.

[55] ՀԿԴ/0062/02/23, https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040812577

Respondents, especially when additional claims were made, argued that these changes represented new substantive claims, effectively constituting new lawsuits, thus triggering the statute of limitations.

The Court clarified that the filing date of the initial claim is considered the official start of the claim. A motion to change the basis or subject of the claim may raise statute of limitations issues only for the added or increased claims. For these added claims, the timing of the investigation start date and the motion to change the claim are critical.

In one of the cases, referring to the interruption of the limitation period, the Court noted that the general rules of the Civil Code apply here. According to these rules, the moment of "initiating a claim in accordance with the established procedure" interrupts the limitation period. The Court observed that when a motion to change the claim's basis or subject results in increased claim amounts or new claims, this interrupts the limitation period only for the new claims. Although the legal interest protected did not change, and the case stayed within the original court's jurisdiction, submitting new claims within the same legal relationship of forfeiture constitutes the institution of new legal relations, equivalent to filing a new claim.

The Court emphasized that the initial claim interrupts the limitation period only for that claim. For new claims, the limitation period begins from the moment the motion to change the basis and subject was filed. Since the plaintiff filed such a motion within the three-year limitation period established by Article 8 of the Law, the statute of limitations period was preserved.

In general, while reviewing the motions, the Court found they were filed within the three-year statute of limitations and deemed the respondents' objections unfounded.

However, the Court was clear that if changes to the basis and subject of the claim or the involvement of a new respondent occur after the three-year statute of limitations has expired, such claims must be dismissed.

GENERAL OVERVIEW OF THE MONITORED CASE

In the cases monitored, the primary respondents were typically former high-ranking officials or their family members. These included former Presidents, Prime Minister, Minister, Member of Parliament, Chairman of the Constitutional Court, Prosecutor General, Governors, and Mayors. The vast majority of these individuals no longer hold public office, with the exception of three: two current Members of the National Assembly (both from an opposition faction) and one sitting judge of the Constitutional Court.

The number of respondents per case ranged from one to 17, with two respondents involved in 30% of the cases. In all cases, the primary (first-named) respondent was male. Where a second respondent was involved, the co-respondent was always female. The secondary respondents were typically family members or close relatives of the primary respondent. In a few cases, co-respondents included affiliated legal entities or individuals with other types of affiliation to the primary respondent.

The position of the plaintiff – the Prosecutor General's office was that the primary respondent is the beneficial owner of the property formally owned by the co-respondents. The plaintiff argued that the co-respondent knew or should have known that the property is of unlawful origin.

More than half of the monitored cases involved between one and 29 third parties (with no claim of their own).

Out of 99 court sessions observed, hearings on the merits were conducted in only 68 (68%) of them. Of these, eight were held in camera. In 22 instances, the sessions were adjourned immediately after opening, and 10 scheduled sessions were not held at all. The main reasons for adjournment included the absence of parties, judges' health issues or other obligations, changes in legal representation, or failure to duly notify participants. In some cases, ongoing renovation work in the courthouse and construction noise also disrupted proceedings.

In 81% of the monitored sessions, hearings took place at their originally scheduled locations. When hearings were relocated, the most common reason was the unavailability of the assigned courtroom due to another ongoing hearing. The judges interviewed emphasized the shortage of the courtrooms in the Anti-Corruption court and noted the negative impact on their ability to conduct proceedings efficiently. At one point, five civil court judges were sharing just two courtrooms and had the courtroom booked for them only on specific days. It was only toward the end of 2024 that they were allocated an additional courtroom.

Six of the observed hearings (6%) were held *in camera*, primarily to examine evidence containing banking secrets or other legally protected data. In two cases, motions submitted by the respondent's representatives requesting *in camera* hearings were denied. However, as the decisions were not published on datalex.am portal, the grounds for the motions and the Court's rationale for denial remain unknown.

Media representatives were present at 19 hearings (28%). In approximately half of these, the respondent's representatives objected to filming. The Court responded based on the positions of the parties: in some instances, filming, including live broadcasting, was permitted; in others, partial permissions were granted, such as allowing photography but not video, or prohibiting filming of the respondent.

Monitors noted that several hearings were marked by tension between the parties. Plaintiffs, and occasionally the judge, alleged that the respondents were deliberately attempting to delay the proceedings, while respondents accused the plaintiffs of unlawful or improper conduct. In some instances, the Court interpreted multiple motions filed by the respondents as an abuse of procedural rights intended to delay the proceedings.

At the start of the monitoring period, public access to information regarding the Anti-Corruption Court's activities was limited. Due to technical issues, these cases were not initially included in the official online judicial portal, datalex.am. Instead, limited information was published on the Judiciary's official website (court.am) and posted weekly at the Court building. These postings, however, contained minimal details.

Monitors documented discrepancies between the information available on court.am, datalex.am, and the physical postings at the Court. This included different dates, time or courtroom for the hearing.

A significant challenge observed was the lack of a uniform approach among judges regarding the publication of their rulings on datalex.am. In some cases, judges would post decisions on motions,

while in others—including motions of a similar nature—no postings would be made. Some judges refrained from posting decisions altogether or shared only brief annotations.

Furthermore, under Armenian law, if any part of a hearing is conducted *in camera*, the full judgment is not made publicly available. Given the nature of forfeiture proceedings, most such cases involve at least one *in camera* hearing. Consequently, full texts of final judgments are frequently inaccessible. This lack of transparency is particularly concerning, as many key legal issues are resolved only in the final judicial act. The absence of full published judgments hinders comprehensive legal analysis of the Court's reasoning on critical matters. Given the sensitivity of the issue, personal and other types of protected data involved, there should be a fair balance between protection of data and access of the public to information, to contribute to trust towards the Court.

CONCLUSIONS

Analysis of domestic legal regulations reveals that certain provisions defined in the Law and their practical application are not aligned with international conventions regulating the sector and the positions expressed by the ECtHR. This may lead to a disproportionate interference with the right to property.

One of the most problematic issues is the definition of property of illicit origin and the submission of a forfeiture claim solely based on the discrepancy between a person's lawful income and the value of their property, without a connection to an alleged crime or holding public office. In all monitored cases, both the Prosecutor's Office and the Court have unequivocally stated that it is not necessary to substantiate such a connection.

In light of the Constitutional Court's decision of April 16, 2025, it will be necessary to revise both submitted and future claims to ensure they reflect the Court's interpretation, specifically, the requirement to substantiate a connection to a crime or that the property was acquired during a period of holding public office.

In addition, in the reviewed cases, the prosecutorial discretion in determination of the study period was problematic. As a result, instead of the 10-year period stipulated by law, investigations covered the period of on average 23 years, and in some cases up to 30 years, excluding the investigation period itself. To remind, in other European countries it varies between 5 to 10 years. In applying such a prolonged retroactive period, there were instances where the Prosecutor's Office failed to take into account the individual's pre-existing income and potential savings prior to the start of the reviewed period.

Moreover, prosecutorial discretion was also evident in determining the timeframe for data examination preceding the reviewed period, leading to inconsistent approaches and the omission of circumstances essential to the case.

In the context of applying such a long retroactive period, serious issues arose regarding access to evidence and the Prosecutor's due diligence in obtaining and including evidence favorable to the

respondent in the calculations. In such cases, the respondent was often forced to rely on witness testimonies and declarations, which were frequently contradictory, partly due to the passage of time.

Due to the dichotomy between the Law and civil legislation, whereby the Prosecutor's Office is, in some cases, regarded as a special plaintiff and in other cases as a regular plaintiff, numerous legal issues have emerged, particularly concerning the application of the statute of limitations and the exercise of the plaintiff's procedural rights.

It is noteworthy that although the Prosecutor's Office is granted a three-year period to conduct investigations, which is significantly longer than in other European countries, in a substantial number of observed cases, the Prosecutor's Office repeatedly changed the basis and subject of the claim after filing and involved new respondents, whose information had already been available before the claim was filed. While in some instances this was due to objective reasons, in other cases it resulted from negligence. Nevertheless, in all reviewed cases, such motions were granted, citing the plaintiff's procedural right to manage the claim.

Another issue has been balancing the requirement to adjudicate cases within a reasonable time against the exercise of rights prescribed by law, which has often led to accusations of intentional case delay and abuse of rights.

In light of the above, it can be concluded that the current legislative framework does not adequately regulate cases involving the forfeiture of illicit property given their peculiarities, and it is necessary to align the applicable rules with the nature of such cases, either through the positions of higher judicial instances or, if necessary, through legislative amendments.

Furthermore, the non-publication of judicial acts, especially those with precedential value, poses a significant obstacle to the study and development of legal practice. Therefore, it is essential to develop a new solution for the publication of final judicial decisions, ensuring a fair balance with the protection of legally safeguarded data.

RECOMMENDATIONS

Legislative Changes:

- Review the regulations of the Armenian Civil Procedure Code to tackle issues identified in judicial practice regarding claims for forfeiture of property of illegal origin, in accordance with international standards.
- Clarify in the law the requirement of a link between the property subject to forfeiture and the crime attributed to the person, or the period of public service, in line with the decision of the Constitutional Court.
- Clearly define, through legislation, the applicable rules for the distribution of the burden of proof in cases involving the forfeiture of property of illegal origin.

- Establish reasonable time limits for the period under investigation in the law, eliminating the possibility of arbitrary retroactive extensions at the discretion of the prosecutor, in accordance with the position of the Constitutional Court and international standards.
- Clarify the rules for reviewing, analyzing, and using information obtained prior to the start of the investigative period, to avoid discretion by the prosecutor.
- Introduce appropriate legislative changes to ensure the full publication of judicial decisions in cases involving the forfeiture of property of illegal origin, while simultaneously guaranteeing the confidentiality of data protected by law.

Judiciary:

- Ensure a unified practice for the publication of interim judicial decisions in Datalex.
- Improve the material conditions of the Anti-Corruption Court by ensuring the availability of a sufficient number of courtrooms.
- Review and increase the remuneration of judicial staff.