Eötvös Loránd University
Faculty of Law
Doctoral School of Law

dr. Ádám Péceli[1]

Criticism of the Hungarian asset recovery system

Regulatory and practical shortcomings of securing, managing and confiscating the proceeds of crime

PhD dissertation theses

Supervisors:
Prof. Dr. Ervin Belovics[2]
Prof. Dr. Péter Hack[3]

Budapest

2025

[1] Head of Division, Prosecutor General's Office, Department of Terrorism, Money Laundering and Military Affairs, Economic Crimes Division
[2] Professor and Head of Department [Pázmány Péter Faculty of Law and Political Sciences, Department of Criminal Law, Criminal Procedure Law and Penalty Enforcement Law]
[3] Professor and Head of Department [Eötvös Loránd University, Faculty of Law, Department of Criminal Procedure Law]

I. Summary of the research project – the objective of the research

Asset recovery is an old-new concept, which, in the most general sense and in an extremely simplified way, means the definitive withdrawal of proceeds derived from a crime – or more precisely, from a punishable act – for the benefit of the state or in order to compensate the victim. The concept is old, because the history and development of some of its institutions, such as seizure, freezing or confiscation of property, dates back to the period after the Second World War or even before that. In the meantime, this term is also new, because asset recovery as the official activity of authorities in course of the criminal proceedings has only appeared in Hungarian substantive law in the last two decades,[4] and it has only been in the forefront of legislation and law enforcement for a little more than ten years.[5] In the past decade, two comprehensive works have been published on the subject; on the one hand, Miklós Hollán's monograph on confiscation of property, and[6] on the other hand, a book on the forensic aspects of asset recovery, edited by Szabolcs Mátyás, published by the Hungarian Association of Police Science.[7]

1. Although I consider both the above mentioned works to be fundamental and of decisive importance in the field of asset recovery, there is still no book or other study that deals comprehensively with the entire activity of asset recovery. My primary goal is obvious; to prepare a dissertation that examines the entire system of asset recovery, from the imposition of coercive measures to the discussion of certain issues concerning confiscation. Due to time and space constraints, also to avoid overlaps, I was forced to correct this objective on two points. On the one hand, I do not deal with the problems of asset tracing, partially because they are raising issues that are mainly not legal, but rather investigative and forensic in nature, and moreover, as one of the works already referred to focuses on these questions. On the other hand, due to the length, I was forced to refrain from examining the toolkit of international cooperation, which would have unjustifiably doubled the scope of the thesis.

2. The other objective was to create a work that simultaneously processes and synthesizes the theoretical and practical experience gained in the field of asset recovery, from the point of view of jurisprudence and law enforcement, "law in action" and "law in books".[8] Based on the research conducted from two perspectives, the other goal of the dissertation was also twofold:

a.) From the point of view of jurisprudence, to process and integrate the scientific-theoretical findings and results of the field into a coherent system, i.e. to scientifically establish the experience gained from the application of the law. At the same time, this means to create a system of asset recovery based on jurisprudence, which may one day – perhaps only in decades – grow into an independent area of law, and perhaps a discipline.

b.) From the point of view of legal practice, the creation of a knowledge base that can serve as a handbook and guide for professionals working in the field of law, and on the other hand, in

---

[4] the first Hungarian expression of the term asset recovery can be linked to the UN Merida Convention, which was promulgated by Act CXXXIV of 2005 on 1 January 2007

[5] see Chapter XXVIII/B of the previous Act on Criminal Proceedings, which was inserted into the Code by Act CCXXIII of 2012 under the title "asset recovery procedure", with effect from 1 July 2013

[6] Miklós Hollán: Confiscation of Property - Withdrawal of Property Arising from Crime, Orac Kiadó Kft., 2008., Budapest

[7] Forensic and Legal Aspects of Asset Recovery, Budapest, Hungarian Law Enforcement Society, (2023) edited by Szabolcs Mátyás

[8] Roscoe Pound, Law in Books and Law in Action, 44 AM. L. REv. 12 (1910).

addition to scientific grounding, it also shows the errors and deficiencies of the current asset recovery system based on experience in the application of the law, and also uses solutions presented from foreign law in the course of proposals for their adjustment.

II. Methodology of the research, description of examinations and analyses carried out

I adapted my research methods to the dual nature of the goal. On the one hand, I collected and processed the source works dealing with legal institutions that can be included in the scope of asset recovery, and on the other hand, I analysed the Hungarian legal practice. In the course of the former, I paid special attention to those works that described foreign legal solutions that could even be adopted by Hungarian legislation.

I compared the seizure and freezing of proceeds primarily with historical and taxonomic methods, from five different perspectives, in order to prove that the simultaneous maintenance of the two legal institutions is unnecessary. In order to examine the jurisprudence in detail, I processed the decisions of the investigating judges operating in the capital on the assessment of freezing motions, which I digitized and then compiled their basic data into charts. I prepared my own statistical statements from the data of the case turnover between 2006 and 2010 for seven years, and I processed the most notable cases in detail in the form of a legal case analysis.

In the course of the analysis of asset management activities and the general rules of asset confiscation, I relied on surveys carried out by the prosecution service in addition to the use of source works. After reviewing the history and current regulation of legal instruments, I again illustrated the shortcomings and anomalies of the current asset recovery system through examples obtained from legal practice. I have collected and tabulated the court decisions that can be found among the anonymous decisions in which extended confiscation of property was applied. I examined the statistical data and practice of the legal institution and, relying on the source works and certain legal cases, I pointed out the regulatory deficiencies of the legal institution. In the same way, I used case studies to illustrate the problems that certain types of crime pose to the application of the law that need to be solved and that are left unanswered by legal dogmatics.

Based on domestic sources, I briefly reviewed the legal development of some continental and common law countries, touching on a solution that can be transferred to the domestic legal environment. I have supplemented the description of foreign rights with the laws of two countries [the Commonwealth of Australia and the Netherlands] that have not yet been processed and some foreign sources.

III. Brief summary of scientific results and possibilities of employment

I summarized my own findings in each chapter separately, yet also resumed the results of my research at the end of the dissertation, according to the individual stages of the asset recovery process. The conclusion of the essay is that the current Hungarian regulation of asset recovery is burdened with taxonomic and dogmatic problems and contradictions, and on the other hand, it proves to be incapable of solving countless legal practical problems. Therefore, the toolkit of asset recovery – in terms of both substantive law and procedural law – is ripe for a comprehensive reform, which could provide a good opportunity to introduce and implement some solutions known from foreign law. Without going into details, the most important findings are as follows.

Instead of seizure and freezing, it would be justified to create a single new legal instrument that also explicitly reflects the purpose of compensating the victim. The law in force cannot deal with the practical problems arising from the mixing of the property of several victims and the joint enrichment of multiple perpetrators, and it is also not capable of repairing the damage caused to the property rights entered into a register. The procedure of redemption and sale is cumbersome, inflexible and slow, and in addition, some issues are either unsettled or appear at an unreasonably low level in the regulation.

It would be appropriate to establish the provisions on confiscation of instrumentalities and confiscation of proceeds together, also within a framework of a single legal instrument, while extended confiscation should be separated from the general cases of confiscation. In the extended case, the possibility of confiscation of surrogates and confiscation from third parties should be created, and in criminal cases for drug trafficking, the provisions on confiscation of proceeds should be reviewed, because Criminal Law Uniformity Decision 1/2008 has led to the development of case law potentially violating the prohibition of double deprivation. In order to increase efficiency and serve the needs of legal practitioners - also taking into account foreign legal examples - it seems expedient to consider the introduction of joint and several obligations, estimation and default judgement.

I hope that the dissertation can be used in at least three directions. On the one hand, some of the problems that I have identified and need to be solved may even be the subject of further research. For example, it would be worth knowing why the extended confiscation of assets has not lived up to the hopes attached to it so far, but it could also be the subject of further examination to find cases that violate the prohibition of double deprivation in the prosecutor's application of law or in case law. On the other hand, some of the cases and issues dealt with in the dissertation can also be used in the everyday work of legal practice; It may be worth knowing why only freezing can be ordered for the real estate property, what happens after the seizure of a car that had been rebuilt using stolen parts, in the case of the mixing the victims' money and the joint enrichment of several defendants, or even what kind of response the criminal law provides to the criminal acquisition of a trademark right. Finally, it is not a secret goal of my article – as the title already reflects – to give the legislator possible directions and ideas in the course of a possible future transformation and reform of the asset recovery system.

IV. List of publications on the topic of the dissertation

1. Seizure vs. freezing - the dilemma of demarcating the coercive measures intended to ensure confiscation of property. Prosecutor's Review, 2022 (Volume 7), Issue 3, pp. 6-39.

2. Some practical aspects of asset recovery: from the point of view of securing and confiscating the proceeds of crime, in the light of exemplary foreign solutions. In: Forensic and Legal Aspects of Asset Recovery, ed.: Szabolcs Mátyás, Budapest, Hungarian Association of Police Sciences, (2023) pp. 67-93.

3. Recent changes in the area of anti-money laundering justice: Practical problems and results to be addressed. In: Criminal Law Aspects of the Protection of the Financial Interests of the European Union with Special Regard to National Regulations on Tax Evasion, Corruption, Money Laundering and Criminal Compliance, as well as Cybercrime. Eds.: Á. Farkas-G. Dannecker - J. Jacsó, Wolters Kluwer Kft., 2019 Budapest, pp. 318-335.

4. The legal framework and the difficulties of combating money laundering: Evolution of the criminal offence, issues and solutions from practice. Criminological Studies, 2022, Volume 59, (Special Issue 1), pp 220-243.

5. Hungary's experiences in combating money laundering: The evolution of national criminalisation and practice. Criminological Studies, 2022, Volume 59, (Special Issue 1), pp. 244-263.