



THE AIRE CENTRE
Advice on Individual Rights in Europe



**REGIONAL
ANTI-CORRUPTION
INITIATIVE**

Case study

Albania

1. - Third-party confiscation-

The case relates to implementation of Law No.10192, of 03.12.2009, "On prevention and combating organized crime, trafficking and corruption through preventive measures against property", amended by Law No.70/2017, or known by the name of "Anti-mafia law", which is the law with the greatest power in the fight against organized crime, not in criminal but in property related aspect.

Property related investigations have been initiated by Serious Crimes Prosecution Office in accordance with a reference of the Prosecution Office of the Judicial District of Vlora that pertained to recording of criminal proceeding related to the criminal offense of "Laundry of proceeds of criminal offense", provided by Article 287 of the Criminal Code, in the name of citizen E.B.

The investigations carried out by the Prosecution Office of the Judicial District of Vlora found that citizen S.B., father of citizens I. K. (deceased) and E. B., was provided with legalization permit related to a building with a surface of construction land of 2500 m², total construction surface of 3199 m², 5 (five) floors above the ground, a building of considerable monetary value.

Due to the fact that citizens I.K. (deceased) and E. B. have been subject to investigations for drugs trafficking, they were subject to preventive law, called anti-mafia, and so were their properties.

Following preliminary investigation, the Serious Crimes Prosecution Office found that property of considerable value was registered in the name of the citizen S. B. (the father). It was in disproportion to his income, since he was not involved in any profitable lawful activity. The Prosecution Office, with the purpose of protecting the property from conveyance to a third party, requested from the Court of Serious Crimes to carry out its seizure.

The Serious Crimes Court, which was the only competent court to implement the anti-mafia law and property investigations relating to it, accepted this request and imposed a preventive measure of seizure of the property of S.B., thus deciding to carry out the seizure of the property, land with asset number and construction parcel with the surface of 2500 m², owned by S.B., as well as a building comprised of 5 (five) floors with the total surface of 3089 m², registered in the name of citizen S.B.

The request was reviewed in the presence of the prosecutor and the acts collected during investigation of the Serious Crimes Prosecution Office and judicial police.

After being notified about the decision on seizure, the citizen S.B. challenged it by appealing to the first instance Court of Serious Crimes. The Court of Appeal of Serious Crimes left into force the decision on asset seizure reasoning that this is a preliminary measure and is used in order to guarantee its freezing as an asset suspected of being gained from criminal activity of trafficking of narcotic substances in the EU countries by Albanian citizens I.K. (deceased) and E. B.

After seizing the property, the Serious Crimes Prosecution Office conducted thorough investigation related to property by collecting the entire penal and property related documentation of persons under investigation, I.K (deceased) and E. B., and of the person related to them, their father S.B., in whose name the property was registered.

Following completion of investigations regarding property related proceedings, the Prosecution Office submitted to the first instance Court of Serious Crimes in Tirana a request for forfeiture of the property of the respondent S. B.

In the first instance trial, respondent's legal representative claimed that respondent S. B. had received a considerable amount of loans from third parties, an income that was used to build the building that was subject to forfeiture. Citizens A.M, A.G, H. M. and B. M. were called to the trial in capacity of third parties.

Upon the completion of the trial, the first instance Court of Serious Crimes decided to accept the claim of the Prosecution Office submitted to the Court of Serious Crimes Tirana, by carrying out the forfeiture of immovable property land, parcel of land, with a surface of construction land 2500 m² and the building 5 floors with a total surface of 3089m² in the name of S. B., and transfer it to the ownership of the state.

An appeal was filed to the Court of Appeal of Serious Crimes against the decision of the first instance Court of Serious Crimes-Tirana. Following the review of the appeal, the Court of Appeal of Serious Crimes decided to return the case to the first instance Court of Serious Crimes for a retrial by another panel, because the joint judgment was not correctly established.

In retrial, the Prosecution Office of Serious Crimes, as plaintiff, claimed that referring to the acts administered by Italian justice authorities, there is evidence of existence of criminal procedures and judicial proceedings conducted against citizens E.B. and I.K. (deceased) in relation to criminal offenses of “Holding and transporting narcotic substances” in association, “Participation in international organizations for transporting of narcotic substances, holding and transporting of narcotic substances”, in association.

The entire property subject to forfeiture is suspected of being gained from proceeds realized as a result of criminal activity carried out abroad by the investigated person E. B. and his brother I.K. (deceased), both sons of S.B.

In relation to seized assets, the prosecutor claimed that in line with Articles 22 and 24 of the Law no. 10192 of 03.12.2009 “On prevention and combating organized crime, trafficking and corruption through preventive measures against property”, there are conditions for their forfeiture, because first they have been gained following the involvement of investigated persons E.B. and his brother I. K. (deceased) in criminal activities. Second, the property in question does not correspond to the level of income of the suspects and their family members. Third, properties are in direct possession of investigated persons. Despite the fact that documents are registered in their father’s name, from statements of the latter it results that the constructed building is fruit of investment of his sons E.B. and I.K. (deceased).

The representative of the respondent claimed that the building, subject to forfeiture by the Prosecution Office of Serious Crimes, is constructed by income generated by family members of S.B. family in Albania and other family members that have been residing in Italy for many years. This property is registered in the name of respondent S.B. simply because he is the head of the family and with the purpose of preserving the family unity and harmony. Great deal of this construction was realized through loans obtained from other entities that have been invited to the trial as third parties. Members of the family, such as citizens B.B., G.B., A. B., L.B., claimed that they had worked in Italy and thus had generated income of considerable value.

Apart from documentary and witness provided evidence that were requested by litigation parties, the court also appointed experts to evaluate immovable properties.

The court also appointed an expert of accounting to calculate lawful income of citizen S.B. and his family members and the difference between the income

and expenditures. According to financial experts, there was lack of liquidity in the amount of 17, 818, 531 lekë.

Following review of all evidence, the court accepted the request for forfeiture after being legally verified that the property in the name of citizen S.B. was not gained with lawful income, possessed by him, but was result of investment of the money gained through criminal activity by his sons.

The Court of Appeals of Serious Crimes Tirana upheld the decision of the first instance Court of Serious Crimes, Tirana.