



THE AIRE CENTRE
Advice on Individual Rights in Europe



**REGIONAL
ANTI-CORRUPTION
INITIATIVE**

Case study

Montenegro

- Third – party confiscation-

- Confiscation of property from a third party transferred to him by a public official convicted by a final decision for the crime of abuse of office under Article 416 of the Criminal Code of Montenegro;

- In 2012, the convict's wife bought a house, 259 m² in area, with a 541 m² yard. She did not have any lawful income and could not have had the money to pay the price of the house. She said that her son had given her the money he got from selling his land;

- In 2015, the convict's wife sold the house for €1.5 million to the individual from whom it was confiscated;

- The individual who bought the house for €1.5 million said he had borrowed the money for it from a friend;

- The friend named by the buyer of the house confirmed that he had lent the money to the latter to buy the house and that he had borrowed the money from a good friend of his;

- At the court hearing, the individual who originally lent the money confirmed that he had lent the money to his friend and that they had not drawn up any loan contract and that he had not issued him an IOU. He claimed that he had earned the money from renting offices in the Republic of Serbia and that he and his employees transferred the money to Montenegro in batches under €10,000 on a number of occasions;

- The Court established that the contract the convict's wife concluded with the seller of the house and her and the convict's son's contract with the buyer of the land had been concluded on the same day and at the same time and that both contracts stated that the money had been paid beforehand. The convict's wife said that she did not know when her son had sold the land and for how much, but that he had given her the money in cash. The Court thought it illogical that the convict's wife was unaware when her son had sold the land since he had concluded the contract on the sale of the land on the same day and at the same time she had concluded the contract on the purchase of the house and in the office of the same notary public. The Court deemed it particularly relevant that the amount the son got from sale of the land as specified in the contract

was much lower than the amount of money the convict's wife paid for the house;

- The court had no doubt that property, both legal and illegal, acquired in marriage is community property;

- In order to decide on the confiscation of the property, the Court examined the character of the house sale contract between the convict's wife and the buyer of the house under Article 40(4) of the Law on the Confiscation of Proceeds of Crime. This provision regulates situations when the property at issue has been transferred to a third party without compensation or for compensation not corresponding to its real value with a view to precluding confiscation;

- During its examination of facts of relevance to its decision, the Court first noted that the convict's wife and buyer did not disagree on how ownership of the real estate at issue was transferred; whether or not the buyer had €1.5 million for the purchase of the house was the key issue for determining whether an actual or fictitious sale;

- The Court qualified as illogical and non-credible the assertions of the buyer and witnesses about the borrowing of the money;

- The Court qualified as illogical and non-credible the individual's assertion that he had earned the income from renting offices in the Republic of Serbia in RSD and then unnecessarily transferred the money in chunks under €10,000 to Montenegro over a period of 6-7 years, and then borrowed €1.5 million without any written documents on the loan or on the handover of the money;

- The Court considered it indicative that the individual, who had lent the money to the buyer, had drawn up an IOU on the loan that was not certified by a notary public, and that the date of the loan on the IOU - 15 October 2014 – was crossed out and replaced by 15 October 2015;

- The Court noted, in particular, that the authorities launched the evidentiary actions in the case, where the investigation initiated subsequently resulted in the indictment and conviction, in September 2015, i.e. immediately before the conclusion of the contract under which the convict's wife sold the house in October 2015;

- Finally, the Court found beyond doubt that a fictitious legal transaction had been at issue and that the buyer had not paid €1.5 million for the house; rather, it concluded that the transfer had been fictitious and aimed at precluding the confiscation of the house.