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CHALLENGES IN PROVING THE ORIGIN OF ASSETS OF PERSONS SUBJECT TO ANTI-CORRUPTION LAWS AND IMPROVING THE MECHANISM FOR CIVIL FORFEITURE OF UNJUSTIFIED ASSETS

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The current anti-corruption system in Ukraine is gradually shifting from purely declarative financial oversight to determining the actual property status of individuals subject to anti-corruption legislation. This approach stems from the fact that the formal registration of property in a specific person's name does not always reflect the source of funds used to acquire it, the actual user, or the person who exercises control over it. Cases become particularly complex when an asset is registered in the name of a family member, relative, or other related person who is not formally the direct recipient of the relevant financial benefit.

Pursuant to Article 51-3 of the Law of Ukraine "On Preventing Corruption," a comprehensive review of a declaration includes, in particular, verifying the accuracy of the declared information, the accuracy of asset valuations, the presence of conflicts of interest, signs of illicit enrichment, and the lack of a legitimate source for the assets [1]. The legislature has already laid the groundwork for a shift from verifying the formal content of declarations to determining the economic substance of property transactions. At the same time, the effectiveness of such a mechanism depends to a large extent on the ability to establish the origin of funds, the circumstances surrounding the acquisition of an asset, and its actual connection to the relevant subject of anti-corruption legislation.

Accordingly, financial oversight effectively serves as the initial stage in establishing the evidentiary basis for the subsequent use of judicial mechanisms to recover unjustified assets.

Ukrainian legislation already provides for a special judicial mechanism to address the acquisition of unjustified assets. Pursuant to Article 290 of the Civil Procedure Code of Ukraine, the statement of claim must specify factual circumstances confirming the connection between the assets and a person authorized to perform the functions of the state or local self-government, as well as the unjustified nature of such assets. Article 291 of this Code defines the legal criteria for determining the unjustified nature of assets, and Article 292 sets forth the legal consequences of a court's determination that such assets are unjustly acquired [2]. Thus, the Ukrainian model does not automatically place the entire burden of proof on the person against whom proceedings are being conducted, but rather establishes a sequential evidentiary model: first, the state must establish a sufficient evidentiary basis, after which the defendant bears the procedural obligation to rebut the conclusion that the asset is unjustified.

Of particular importance in this context is determining exactly what must be proven. Clearly, merely identifying the nominal owner of the asset is not always sufficient. The evidence must cover the source of funding, the ratio of the value of the acquired property to lawful income, the time and circumstances of the acquisition, financial relationships between related parties, the actual use of the asset, the incurrence of maintenance costs, and other circumstances that, taken together, may indicate an actual property link between the relevant asset and the subject of anti-corruption legislation.

That is why, in the author's view, the main problem with the current mechanism is not the lack of a legal basis for the forfeiture of unjustified assets, but rather ensuring the proper allocation of the burden of proof in cases where the formal owner of an asset and the person who actually derives financial benefit from its acquisition or use are not the same. Assets registered in the names of family members, relatives, or other related persons of a subject

of anti-corruption legislation require special attention. However, the mere fact of a family or other connection cannot be considered sufficient grounds for deeming an asset unjustified, as this would contradict the need for an individual assessment of the evidence and the guarantees of property rights. At the same time, such a connection, when combined with other established circumstances, may have significant evidentiary weight.

If a sufficient set of circumstances is established indicating an actual financial connection between the asset and the subject of anti-corruption legislation, the burden of proof should not be limited to identifying the formal owner. The subject of further evaluation should include the source of funds for the acquisition of the asset, the financial capacity of the formal acquirer, the correspondence of the asset's value to the acquirer's lawful income, the timing and method of acquisition, the nature of the financial relationship with the subject of anti-corruption legislation, the actual use of the property, the incurrence of expenses for its acquisition and maintenance, as well as the ability to dispose of it. It is the totality of these circumstances–rather than any single formal or family connection–that should form the basis for determining the actual holder of the property interest.

Consequently, once the state has established a sufficient body of relevant and admissible evidence demonstrating that the asset is of unjustified origin and that it is in fact linked to a person subject to anti-corruption legislation, the burden of proof to rebut such circumstances must be borne by the person who owns the relevant asset or by another appropriate defendant in the proceedings provided for by law. In this context, the subject of such rebuttal should not be the absence of guilt in committing a criminal offense, but rather the legality of the source of funds, the reality and independent nature of the acquisition of the asset, as well as the absence of actual control over it by the subject of anti-corruption legislation. This model allows for a distinction between the criminal law presumption of innocence and the civil mechanism for establishing the lack of legitimate basis for a specific asset. Accordingly, a court's determination that an asset is unjustified and its subsequent forfeiture to the state does not constitute a finding of guilt regarding the commission of a criminal offense, does not amount to an admission of such guilt by the individual, and should not, in and of itself, be considered evidence of the individual's criminal liability.

A telling example in this context is the ruling of the Civil Cassation Court within the Supreme Court dated October 4, 2023, in Case No. 991/2396/22. In this case, the courts established a connection between the disputed assets and the defendants, the lack of evidence that funds were actually provided under the loan agreement–which formally served as the basis for acquiring the property–as well as circumstances indicating that the declarant could, directly or indirectly, take actions with respect to the assets that were equivalent to

exercising the right of disposal. The Supreme Court agreed with the conclusions regarding the unjustified nature of the assets, while amending the operative part of the court decisions, noting that in the absence of legal grounds for joint and several liability, the value of unjustified assets acquired by several persons is subject to recovery in specified shares [3]. Thus, establishing that an asset is unjustified does not require proving that its formal owner committed a criminal offense; the subject of proof is, first and foremost, the legality of its acquisition and the actual property link to the relevant entity.

This approach is confirmed by the ruling of the Appeals Chamber of the High Anti-Corruption Court dated January 28, 2026, in Case No. 991/940/25. Notably, the court concluded that the termination of a person's public office does not, in and of itself, sever the established factual connection to the assets, and evidence obtained after the termination of office may be considered as part of a single body of evidence if it confirms the consistency of the person's conduct and the genuine nature of their relationship with the disputed property. The court also noted that determining the proper defendant in such cases cannot depend solely on the existence of a property right to the asset at the time the case was filed, since the circumstances of its acquisition, use, disposal, and actual control are what matter. This approach underscores the need to assess not merely an individual's formal connection to an asset, but rather the totality of objective circumstances that allow for establishing the individual's actual property-related connection to a subject of anti-corruption legislation and the economic substance of the relevant legal relationship [4].

In light of the foregoing, it should be noted that the approach proposed by the author for establishing the actual property connection between assets and subjects of anti-corruption legislation is already finding confirmation in established judicial practice. This indicates the validity of the proposed model of proof and its alignment with current trends in the development of anti-corruption response mechanisms. At the same time, further refinement of this mechanism requires greater standardization of the criteria for evaluating evidence of a factual property link, which will promote consistency in judicial practice and the effectiveness of the forfeiture of unjustified assets, particularly in light of the continued proliferation of intangible assets and property rights.

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ПРОТИДІЯ НАСИЛЬНИЦЬКІЙ ЗЛОЧИННОСТІ В КРАЇНАХ ЄВРОПЕЙСЬКОГО СОЮЗУ: ТЕНДЕНЦІЇ, ПРАВОВІ МЕХАНІЗМИ ТА ЗАПОБІГАННЯ

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Актуальність та євроінтеграційний контекст. Насильницька злочинність залишається однією з найгостріших проблем сучасного суспільства. Країни Європейського Союзу напрацювали значний досвід у сфері протидії цьому явищу, який може бути корисним для України в контексті євроінтеграційних процесів.

Трансформація насильницької злочинності в країнах Європейського Союзу супроводжується появою нових латентних форм, гібридних проявів агресії та використанням цифрових технологій.

Гармонізація українського законодавства із європейськими стандартизаційними підходами вимагає детального аналізу превентивних інструментів, що застосовуються на рівні інституцій ЄС (Європол, Євроюст).

Європейські стандарти кримінально-правової протидії насильству

Мета – проаналізувати основні підходи країн ЄС до протидії насильницькій злочинності та визначити можливості їх адаптації в Україні.

Основні напрями протидії насильницькій злочинності в ЄС:

1. Нормативно-правове регулювання. Країни ЄС мають розгалужену систему законодавчих актів, спрямованих на боротьбу з насильницькими злочинами, зокрема Директиву 2012/29/ЄС про встановлення мінімальних стандартів щодо прав, підтримки та захисту жертв злочинів [1]. Важлива також імплементація норм міжнародного