



A Comparative Study of Extended Civil Sources in the Legal System of England, Ireland and Iran

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Abstract

Globalization led to the elimination of borders; After that, new forms of crimes came to the fore; On the other hand, new tools to deal with it were also established in the legal systems, including these institutions, which are often used to deal with organized crimes such as money laundering, is extended confiscation. Transnational organized crime, insisting on this type of expropriation, has expanded in the politicization of countries. Proving the relationship between property and crime and convicting the criminal is a basic condition in traditional confiscation in criminal proceedings. But in practice, it was very difficult to obtain sufficient evidence in this case; As a result, "extensive confiscation" emerged Thus, if a suspect commits certain crimes for financial gain, it is assumed that there are more properties whose origin is criminal. Therefore, extended confiscation extends to properties other than those that are directly related to the crime; One of the types of this type of confiscation is extended civil confiscation; Extended civil confiscation in the legal system of England and Ireland are among the leading legal systems in this field; The 2002 UK Proceeds of Crime Act is elaborated in twelve sections; In this law, there are four types of recovery of proceeds from crime. Regarding extended civil confiscation, the fifth section of the UK Criminal Proceeds Act has compiled two regimes for the recovery of civil property and cash under extended confiscation without criminal conviction; Recovery of civil property can be implemented regarding any property or any person wherever they are. The process of handling property recovery is independent from the handling of crime and criminal conviction. Because the standard of proof in criminal proceedings is "evidence beyond a reasonable doubt", while in the proceedings of extended civil confiscation, the standard of proof is "balance of probabilities". Proceedings regarding property recovery can be applied against any person suspected by the competent authority. Recoverable property is property acquired through illegal conduct The cash recovery regime prescribes confiscation where the cash is or is intended to be used in criminal activity. Proceedings of this type of recovery are done in the peace court. The burden of proof is initially on the claimant (for example, the National Crime Agency) and the standard of proof is the balance of probabilities. The components of extended confiscation in the Irish legal



system are explained in two laws: 1) Proceeds of Crime Act 1996, which was amended in 2005 and 2016; 2) Criminal Assets Administration Act 1996.

The extensive confiscation system in the two legal systems of England and Ireland includes several components: 1) the component of existence of suspicious behavior and conditions; that what is important is the criminal behavior (circumstances indicating the criminal acquisition of property) and not the criminal title, which can be the introduction of the other two components of extended civil confiscation. This method of proof also originates from the independence of money laundering and replacing the criminal behavior in the original crime. 2) the component of reducing the value of proof evidence; In such a way that in order to be convicted as a criminal, it is necessary that the reason "beyond reasonable doubt" be established against the principle of innocence in such a way that only with the balance of probabilities, the court will be able to make a definitive determination to find the accused guilty; 3) the revolution component of the dispute; After the Emirates and the circumstances governing the accused's behavior indicate the illegal origin of the person's property, the burden of proof is reversed. In fact, in the normal process, the principle is on the legitimacy of the property; However, in extended civil confiscation, the defendant must prove the legitimacy of the origin of his property based on the balance of probabilities.

From an executive point of view, there is a special institution to follow up on extended civil confiscation; In England, the National Crime Agency has been established alongside the Public Prosecutor's Office, and in Ireland, the Civil Assets Department has been established; Also, it is possible for the law enforcers to provide sufficient evidence based on the balance of probabilities to the court even within 2 to 7 years by formulating special provision orders such as temporary order orders, unjustified (unknown) wealth orders.

In Iran's legal system, the "law on dealing with the property of ministers and employees approved in 1337", "the law amending the anti-money laundering law approved in 1397" and the "law on adding articles to the law on the implementation of the forty-ninth (49) principle" approved in 1399 are the closest. The confiscation system is similar to the expanded civil confiscation system; In this study, with the aim of pathology and optimization of the legal system governing the confiscation of property related to crime in the Islamic Republic of Iran, with a comparative view, the components of the extended civil confiscation system in the legal systems of England and Ireland are described and based on the resulting approach, the legal system of Iran is assessed and analyzed. It is decided that through this channel, effective proposals will be presented for the purpose of amending the laws governing the field of property related to crime;

In the comparative approach, "criminal behavior", "reduction of the value of evidence" and "litigation revolution" are considered three components of extended civil confiscation; Ambiguity in the "Equality of Arms Standard" in the matter of the method of proof, ambiguity in "reduction of proof evidence" and lack of "necessary preliminary agreements" to optimize the implementation of extended civil confiscation can be counted among the damages of the legal system governing extended civil confiscation in Iran's legal system; With regard to the expanded civil confiscation system in the



English legal system, it is suggested to formulate the unjustifiable (unknown) wealth in the law amending the anti-money laundering law approved in 2017 and its executive regulations; to provide the possibility of implementing extended civil confiscation for law enforcers as the executive arms of the criminal justice system; The criterion for reducing the value of proof of litigation in the extended confiscation stated in the law amending the anti-money laundering law approved in 2017 causes the law to become subjective and self-interpreting; Because the concepts used are ambiguous and have multiple interpretations; In the legal system of England and Ireland, "balance of probabilities" is recognized as an evidentiary rule. In Iran's legal system, the confiscation of property subject to extensive civil confiscation during the investigation phase is limited to only 24 hours or 48 hours, while considering the purpose of extensive civil confiscation in the fight against property resulting from organized crimes, it is necessary to give enough time to the law enforcers; The executive powers and components of extended civil confiscation explained in the executive regulation of article 14 of money laundering approved in 2018, should not be exclusive to the National Financial Information Center; Applying the general amendment of "its legal dimensions as an independent crime" in Article 146 of the executive regulation of Article 14, cannot express the effects of the independence of the crime of money laundering in the set of criminal laws; The independence of the money laundering crime is the last term of extended civil confiscation. In this regard, it is necessary to explain the components of this type of confiscation. It should be noted that this research was conducted with a descriptive-analytical method and it uses the library method in collecting sources.

Keywords: components of extended civil confiscation, England, Ireland, Iran.

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