ASSET CONFISCATION AS A SOURCE OF FINANCING VICTIM ASSISTANCE AND COMBATTING HUMAN TRAFFICKING IN UKRAINE
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INTRODUCTION

To provide for protection of human rights and freedoms the world community pays special attention to the protection of rights of the victims, particularly victims whose life and health has been endangered by violent crimes.

Ukrainian membership in the Council of Europe obligates the Government of Ukraine to implement a number of requirements propounded by European organizations regarding the protection of basic human rights and freedoms in different spheres of public life. The issue of compensating victims of violent crimes is addressed by the European Convention on the Compensation of Victims of Violent Crimes (1983), signed by the government of Ukraine in the year 2005. This document is based on the recognition of the necessity to compensate the damage of intentional violent crimes that lead to physical injury or death, to be provided by the state governing the territory in which the crime was committed.

Ukrainian society raises a just question about the guarantees of the protection of constitutional rights of the defendant or the individual convicted of the crime. Much has been achieved to guarantee the constitutional rights of the accused. However, few are speaking about the violation of the rights of victims of such crimes. Nevertheless, the most acute and pervasive problem in this field lies within the issue of protection of victims’ rights. Legal writers and practitioners repeatedly come to the conclusion that the provisions of the current Criminal Procedural Code of Ukraine (CPC) protect the rights of the suspect and defendant to a much a higher degree than those of persons who became the victims of criminal violation or who have suffered in any other way from the crime.

The priority that the state and society gives to the protection of rights of the offender in lieu of the victim is certainly abnormal. This increases the negative consequences caused by the crime itself. It is necessary to improve the legal status of the victim of crime without limiting the scope of rights of the defendant. This can be achieved through practical and legislative ensuring of full compensation for damage caused by such crimes.
Damages to a person may have different forms, depending on the nature of the crime and the methods through which the crime was committed. Thus, damages may be the damage caused to the health of the person (either physical or psychological), the moral damage that is expressed in pain and suffering, direct material damage such as deprivation of property or of a right to property, or an indirect damage such as unforeseen and unreasonable expenses.

Compensating the victim for losses he/she has suffered in result of the criminal actions of others should be one of the priorities of the system of criminal justice in a democratic state. Numerous scientific examinations show that Ukraine has not created an effective mechanism of compensation for the victims of crimes. Different reasons can explain this:

a) ineffectiveness of the State Execution Service which executes judgments in approximately 50% of civil claims in criminal cases;
b) procedural complexity of the compensation mechanism, through which confiscated costs go first to the state, and only afterward to the victim;
c) psychological attitudes of victims who are afraid of perpetrators;
d) absence of costs imposed on perpetrators, and the ability to transact and officially register them on the accounts of other individuals;
e) absence of effective mechanisms of seizure and confiscation of costs related first of all to inefficiency and underdevelopment of practice in revelation of bank secrecy for the needs of criminal justice.

Human trafficking is a unique crime as its victims may suffer on the same level any combination of physical, moral and material damages. Even though in the past few years Ukraine has made some achievements to counter human trafficking, it still fails to meet a number of progress-indicating benchmarks. As a result, in the 2007 Trafficking in Persons Report Ukraine was once again placed on the Tier 2 Watch List for failure to demonstrate significant progress in the fight against human trafficking. Ukraine is a source, transit, and destination country for men, women and children trafficked internationally for the purposes of commercial sexual exploitation and forced labor. In addition,

internal trafficking occurs often in Ukraine. Men and women are trafficked within the country for the purposes of labor exploitation in the agriculture, service, and forced begging sectors, as well as for commercial sexual exploitation. Ukrainian children are trafficked both internally and trans-nationally for commercial sexual exploitation, forced begging, and involuntary servitude in the agriculture industry.²

One of the main drawbacks in the area of combating human trafficking is a poor functioning court system. During the year of June 2006 to June 2007 many of the traffickers convicted through Article 149 of the Criminal Code «Trafficking in persons or other illegal agreements as to the persons» received only probation. The government should take significant steps, to ensure that convicted traffickers are prosecuted and serve jail sentences.

In 2004, of 67 persons prosecuted through Article 49 of the Criminal Code, which provides the possibility of confiscation as additional punishment, confiscation was utilized in only 11 cases.³ Analysis of the criminal cases on human trafficking which were reviewed by the courts from 2004-2005 indicated that the victims, as a rule, were recognized as victims and filed claim for recovery of damages, both material, as well as moral. By 2006, the highest amount of damages delivered to victims of human trafficking was 10000 hryvnas (UAH) (slightly less than 2000 USD).⁴ At the same time, there has been a significant number of denials of civil claims due to violations of procedural law, which is caused by the complexity of the mechanism of recovery of damage in itself. In 2007 the law enforcement agencies of Ukraine completed investigations on 101 criminal cases, as a result of which 66 persons have been charged. In 2006, the government obtained verdicts against 111 traffickers, 86 of whom did not appeal their conviction. Nonetheless, of these 86 cases, 47 traffickers received probation rather than jail sentences. Most of the others received sentences of two to eight years’ imprisonment, and the assets of 18 were confiscated.⁵

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² The 2007 Trafficking in Persons Report, US Department of State, June 2007
³ Strekalov Y., Lysenko I., Horbunova O., Materials for Practical Application by the Law Enforcement Agencies and the Courts — Kiev, 2006, page 41
⁴ Strekalov Y., Lysenko I., Horbunova O., Materials for Practical Application by the Law Enforcement Agencies and the Courts — Kiev, 2006, page 41
⁵ The 2007 Trafficking in Persons Report, US Department of State, June 2007
According to the 2007 Trafficking In Persons Report of the US State Department, Ukraine did not demonstrate increased efforts to protect victims of trafficking over the reporting period, but continues to cooperate with internationally funded NGOs to provide protection services. The government does not directly finance shelters, medical or psychological care, or repatriations for victims, but provided a few shelters with subsidized facilities and in-kind logistical support.

Thus, despite some of the measures taken by Ukraine in the area of preventing and combating human trafficking, a number of challenges remain, and the government is to take a number of measures aimed first at protection of victims. In particular, the government should improve its efforts to protect victims of trafficking by increasing funding to NGOs providing victims with comprehensive protection and rehabilitation services. Furthermore, the government should encourage victim assistance in investigations by providing them with protection, by ensuring their rights are protected in court, and by providing guidance to courts on procedures for handling trafficking cases.6

There is no doubt that the aforementioned factors have a negative impact on the effectiveness of state action to counter human trafficking. However, the main reason for government’s incapacity to effectively fight this crime rests in the limited financial resources. One way to solve the problems of victim compensation, victim social assistance, and financing counter trafficking programs is to create a Fund for the Assistance of Victims of Human Trafficking-Related Crimes. This publication focuses on the possibility of creating such a Fund, taking into account international experience, current legislation of Ukraine, and the current situation in the criminal justice system of Ukraine.

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6 The 2007 Trafficking in Persons Report, US Department of State, June 2007
PART I

INTERNATIONAL STANDARDS AND UKRAINIAN LEGISLATION ON ASSISTANCE AND COMPENSATION FOR VICTIMS OF HUMAN TRAFFICKING-RELATED CRIMES, AND USE OF ASSET CONFISCATION AS A SOURCE OF FINANCING COMPENSATION AND COUNTER HUMAN TRAFFICKING ACTIVITIES

1.1. INTERNATIONAL STANDARDS ON ASSISTANCE AND COMPENSATION TO VICTIMS OF HUMAN TRAFFICKING-RELATED CRIMES, AND THE USE OF ASSET CONFISCATION AS A SOURCE OF FINANCING COMPENSATION AND COUNTER HUMAN TRAFFICKING ACTIVITIES

The purpose of this part of the publication is to highlight the issue of assistance and compensation to the victims of human trafficking-related crimes recommended by international and regional conventions, as well as to expose the spectrum of confiscation measures developed by international global and regional institutions and employed by leading countries in countering the crime of human trafficking.

1.1.1. Definition of Terms

The following terms are commonly used in international legal documents on the issues under review:

Compensation\(^7\) is money or something else given to a person to compensate for the losses sustained due to a crime committed to her/him. Compensation can be awarded for material losses (such as wages, medical expenses) or non-material losses (such as for pain and suffering, trauma).

Victims of crime may seek compensation through three main methods:
1. Civil compensation;

2. Criminal compensation;
3. Administrative compensation from a state compensation fund.

The right to fair compensation derives from the notion of a «right to an effective remedy», set out in the Universal Declaration of Human Rights.\(^8\) Since it was enacted, however, the concept has broadened and almost sixty years later remedies refer to the «equal and effective access to justice, adequate, effective and prompt reparation for harm suffered and access to relevant information concerning violations and reparation mechanisms».\(^9\) An understanding compensation in the context of criminal and civil justice systems is derived from the recognition that the trafficked person is a victim both of a human rights violation and of a violent crime.

As victims of human rights violations and a serious crime, trafficked persons are entitled to be compensated for the losses they have suffered. Compensation should cover material losses sustained by the person — including unpaid wages, overtime, health and medical costs and the cost of bringing the case to trial. Ideally, compensation should also be awarded for non-material loss, such as pain and suffering, although this will depend on the particular justice system.

Compensation has symbolic value — both at a societal level, in recognizing trafficking as a crime, and at a personal level, in acknowledging that a wrong has indeed been committed and that justice has been done. But it also has a great practical value, as it helps trafficked persons to rebuild their lives once they have been returned to their home countries. Finally, compensation, if paid by the perpetrators, can serve as another form of condemnation or punishment, and as a message to deter other traffickers.

**Compensation Fund** is a fund created by the state for compensating victims for damages from various crimes, or from one crime, such as trafficking in human beings. Such funds usually exist in countries with common law systems, where compensation is not provided through the criminal process. The value of such a fund lies within the fact that the victim of the crime does not have to go through the full court proceeding, which makes the whole process

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\(^8\) Universal Declaration on Human Rights, UN General Assembly Resolution 217 A (III) of 10 December 1948, Article 8
\(^9\) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. UN General Assembly Resolution 60/147 of 16 December 2005, Article VII
to be shorter and less traumatic for the victim, and ensures that the person can receive compensation regardless of whether the accused was convicted or not. The drawback of such a fund lies within the fact that it is dependent upon the availability of the state funds for such compensation.

**Confiscation** is a legal seizure by a government or other public authority of private property for public use without compensation. Confiscation is the process by which:

- the proceeds of a crime are forfeited to the state;
- property purchased with proceeds of crime are forfeited to the state;
- the property that is used to commit a crime is seized and forfeited;
- the offender is required to pay back to the state the monetary value of the benefit that he or she has received as a result of committing the crime.

1.1.2. *International legal standards on assistance and compensation to trafficking victims*

International legal standards play a key role in the fight against human trafficking by providing for a multi-dimensional and innovative approach to this complex issue. Anti-trafficking legislation binds participating states to political commitments that confirm their primary responsibility of addressing the crime of human trafficking. The ratification of international treaties gives a clear indication to the international community, as well as to the domestic public, that a country is committed to the pursuit of certain goals and to the implementation of certain policies.

The key international document on counter human trafficking is the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime (the Palermo Protocol) \(^{10}\) and provides the first international definition of the human trafficking crime. The Palermo Protocol requires countries that have ratified it to establish comprehensive policies, programs and other measures to prevent traffick-

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ing, protect and assist victims, criminalize trafficking and also to build global cooperation to combat trafficking.

The 2000 UN Convention against Transnational Organised Crime and the Palermo Protocol address the responsibility of states with regard to offender and state compensation for victims of trafficking. However, state compensation is set forth as an ‘optional’ undertaking: given the legally binding status of the Convention and Protocol on its signatories, and the worldwide application of the UN instruments, its drafters did not wish to limit the participation of the world’s poorer countries by obligating them to unreasonable claims upon limited state funds.

Among the other international legal instruments developed at the UN level there are the instruments of the International Labor Organization (ILO), which focus on human trafficking for labor exploitation and contribute to the common goal of tackling the problem of human trafficking. The ILO Forced Labor Convention, 1930 (No. 29), the Abolition of Forced Labor Convention, 1957 (No. 105) and the Worst Forms of Child Labor Convention, 1999 (No. 182) are the most relevant to trafficking of human beings.

Looking specifically at compensation for victims of violent crime, most international legal instruments that address victims’ rights indicate the desirability of, first, offender-based compensation, and, second, state compensation. Three key international victim-centred instruments provide for victim compensation from both the offender and the state:

1. The 1983 European Convention on the Compensation of Victims of Violent Crimes;\(^\text{11}\)
2. The 2001 Council of the European Union Framework Decision on the Standing of Victims in Criminal Proceedings;\(^\text{12}\)
3. The 2005 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law;\(^\text{13}\)


\(^{13}\) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. UN General Assembly resolution 60/147 of 16 December 2005
Of these three international instruments, only the 2001 Council of the EU Framework Decision includes state compensation as an ‘optional’ undertaking for governments. This reflects the other two instruments’ status as «soft law», that is, they are not legally binding upon signatories. As a consequence, it is relatively easy for the other two instruments to set forth what states should undertake to do for crime victims with respect to offender and state compensation. In comparison, the 2001 Council of the EU Framework Decision on the Standing of Victims, as a legally binding instrument, is more cautious in its interpretation of state compensation for victims.

Offender based compensation is prioritised in most jurisdictions over state compensation, principally for the financial burden that state compensation schemes place on the governments that foot the mainstay of funding. The 1983 Council of Europe Convention on Compensation also makes it clear that the offender, rather than the state, has the primary responsibility to compensate victims.

States agree that offenders should pay compensation to victims because this does not generally incur vast expenditure on the part of the state. The state can incur expenses if it pays victim compensation up front, and then pursues reimbursement of this payment from the offender; and if it is actively obliged to ensure that offenders pay compensation ordered to the victim. In comparison, most states, at least in the developing world, are not in an economic position to offer extensive and comprehensive state-funded compensation to victims of violent crime. In recognition of this, international legally binding instruments and national legislation tends to steer clear of state compensation as a victim ‘right’. Instead, state compensation is usually referred to as a ‘good practice’, an ideal that states can adopt.

While Council of Europe Conventions represent ‘soft law’, the Council’s human rights agenda has been influential in shaping legally binding instruments at the level of the European Community. In this regard, the 1983 Council of Europe Convention resurfaced in the 1998 Action Plan14 of the Council of the European Union and the European Commission with regard

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14 Action Plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam in the area of freedom, security and justice. Adopted by the Justice and Home Affairs Council of 3 December 1998 (1999/ C 19/01)
to implementation of provisions under the Treaty of Amsterdam on an Area of Freedom, Security and Justice in the EU, particularly point 51 of the Action Plan, which refers to state compensation.

State compensation is now promoted as part of victim-centred justice in the EU. However, the nature and extent of victim-centred justice, including state compensation, differs across the EU and reflects the place of victims in each jurisdiction. In general, there is an evident problem of compensation for victims of violent crime who are not legally resident in the EU, namely, illegal immigrants and victims of human trafficking. It is illustrated by a pending issue of claims of trafficking victims who are transported to work in the EU and, as a consequence, often suffer violent and sexual abuse in transit and at their final destination. The EU compensation system unfortunately does not fully respond to the needs of non-citizens, both legal and illegal, who are victims of violent crime in the EU.

1.1.3. International legal standards on application of asset confiscation in human trafficking-related crimes

The legal instruments on application of asset confiscation in human trafficking-related crimes are characterized by progressive approach to tackling the crime of human trafficking.

The criminal offence of trafficking in human beings falls within the scope of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime adopted in 1990.\textsuperscript{15} According to the Convention, each member-state should take the measures necessary to ensure that in addition to ordinary constraining measures such as search and seizure, adequate investigation powers and techniques are available to ensure that offences are investigated and prosecuted effectively, in compliance with the rights of the defence and privacy of the persons subject to those measures.

The Council of Europe Convention on Action against Trafficking in Human Beings\textsuperscript{16} adopted in 2005 is another key document on the issue. Article

\textsuperscript{15} Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime. Council of Europe Strasbourg, November 8, 1990

\textsuperscript{16} Convention on Action against Trafficking in Human Beings. Council of Europe, Warsaw, 16 May, 2005
15 (4) calls for the member-states to adopt legislative and other measures to guarantee compensation for victims in accordance with the conditions under their internal law, for instance through the establishment of a fund for victim compensation or measures or programs aimed at social assistance and social integration of victims, which could be funded by the assets. The Explanatory Report to the Convention states that it can be possible to confiscate items which are direct proceeds of the offence or other property of the offender which, though not directly acquired through the offence, is equivalent in value to its direct proceeds.

The OSCE Task Force on Trafficking in Human Beings, which is a division of the Stability Pact for South-Eastern Europe and serves a clearinghouse function, gathering the expertise of different institutions and experts dealing with trafficking in human beings, as well as the OSCE Action Plan to Combat Trafficking in Human Beings\(^\text{17}\) indicate that confiscation of the instruments and proceeds of trafficking and related offences should be used for the benefit of victims of trafficking and suggest considering the establishment of a compensation fund for victims of trafficking, as well as the use of the confiscated assets to help finance such a fund.

The US Department of State, through its Trafficking in Persons Report\(^\text{18}\), recommends the creation of confiscation funds to support anti-trafficking programs, using Germany as an example, where the state of Baden-Wuerttemberg uses funds confiscated from trafficking operations to finance future investigations of human trafficking crimes.

The G8 states have long recognized the importance of provisions in national law for the speedy and effective freezing of criminal assets with a view to their later confiscation in the fight against international organized crime. In the year 2003, the Ministers for Justice and Home Affairs from the G8 states and the European Commission adopted 29 best practice principles on tracing, freezing, and confiscation of crime-related assets.\(^\text{19}\)


\(^{19}\) G8 Best practices for the Administration of Seized Assets, G8 Lyon/Roma Group/Criminal Legal Affairs Subgroup, April 27, 2005
Important elements in the system for administration of seized assets in G8 Member States include (1) the express designation of a competent national authority responsible for all aspects of the custody and management of seized assets, (2) the use of asset managers in particularly complex situations, and (3) the establishment of a dedicated fund for the deposit of seized and confiscated/forfeited assets.

Some G8 Member States have chosen to designate responsibility for the administration of seized assets to a particular government agency or body with authority to take custody of, manage, maintain, and dispose of seized assets. The designated authority can also assist in seizure operations. Where necessary, the authority utilizes third-party contractors to support its mission. In certain types of cases, some G8 Member States utilize a court appointed independent manager as a trustee or receiver to take possession of assets and to manage them as directed by the court.

Some G8 Member States have established a dedicated fund into which seized and confiscated/forfeited assets, after liquidation, are deposited. Such a fund facilitates the effective disbursement of assets after they have been confiscated or forfeited, and has additional advantages related to the administration of seized assets. Liquidated assets are deposited into an interest-bearing account pending the outcome of the confiscation/forfeiture proceedings. Such a procedure is particularly useful for the administration of seized currency, which would not otherwise earn interest or would incur unnecessary storage risks or costs. Proceeds of pre-judgment sales also are deposited into such an account. Establishment of a dedicated fund allows the asset confiscation/forfeiture program to be self-sustaining. The often considerable costs involved in the administration and maintenance of seized assets can be paid out of the dedicated fund, reducing the need for reliance on appropriated or other government funds. Where different judicial authorities have ordered the seizure of large amounts of assets in multiple cases, establishment of a dedicated fund is one way to facilitate the accountability and transparency of asset administration.

The regional initiatives on combating trafficking in human beings at the CIS level reflect a general tendency on maximization of the use of financial
investigation and confiscation laws. The Second Annual Law Enforcement Conference «International Perspectives on Law Enforcement Cooperation in Combating Trafficking in Human Beings» held in 2004 in Kyiv, Ukraine on the initiative of the International Organization for Migration developed best practices recommendations.\textsuperscript{20} The Recommendations state (Clause 15) that confiscated criminal assets of traffickers should be placed in a central fund. This fund should be used to provide compensation to trafficked victims, to fund direct assistance to trafficked victims and to finance the costs of trafficking investigations, such as witness protection measures.

\textbf{1.2. UKRAINIAN LEGISLATION ON ASSISTANCE AND COMPENSATION TO THE VICTIMS OF HUMAN TRAFFICKING-RELATED CRIMES AND APPLICATION OF ASSET CONFISCATION AS A SOURCE OF FINANCING COMPENSATION AND COUNTER HUMAN TRAFFICKING ACTIVITIES}

\textit{1.2.1. Procedural status of a victim and his/her rights on compensation of damages caused by a crime}

Article 49 of the Criminal Procedural Code of Ukraine (hereinafter CPC) defines a victim as a person who suffered moral, physical or material damages as a result of a crime. In Ukrainian Criminal Procedural Law, «victim» is a special legal status of a person, with attendant rights and obligations. This status is granted by a special written resolution issued by an investigator or other person (person who conducts inquiry or judge) upon recognition of person as a victim of crime. Such a resolution should be based on evidence proving that particular person suffered from a crime in particular way. This resolution can be issued only after the criminal case is officially filed, which means that it can be done some time after the crime was committed and reported to the law enforcement agency. If as result of crime a person died, the status of victim with

\textsuperscript{20} Kyiv Recommendations for international operational and judicial cooperation in combating trafficking in human beings. Second Annual Law Enforcement Conference «International Perspectives on Law Enforcement Cooperation in Combating Trafficking in Human Beings». 20 May, 2004, Kyiv, Ukraine
all attendant rights can be granted to close relatives of the person who died as a result of crime.

According to Article 28 of the CPC a victim or other person who has suffered material damages from a crime has right to submit a request of compensation of such damages from a suspect (convict or defendant), or a person who is responsible for acts committed by a suspect (such as the parents of a juvenile) by filing a civil lawsuit in criminal trial. If a person failed to file a civil claim within the criminal trial he/she has a right to do it within a civil trial, though it might take more time and cost more money. After a victim or other person has submitted a request on compensation, the investigator should issue a special resolution granting the victim or other person the status of civil claimant. Typically, in human trafficking cases victims file requests and receive both statuses — of a victim of crime and of civil claimant.

There are also other mechanisms of protection of the rights of a victim in a criminal trial. Article 56 of the Constitution of Ukraine declares that each person has right to compensation of material and moral damages caused by illegal decisions, by activity or passivity of bodies of power, or by civil servants on the line of duty, from the state or local governments. In other words, victims of human trafficking have right to file a case in court when they have grounds to believe that the criminal case is not being investigated, or is being investigated too slowly, and they can prove passivity of the investigative body.

Additionally, Article 117 of the Civil Code of Ukraine estimates that material damage caused to property of natural person as the result of a crime should be compensated by the state if the person who committed the crime is not identified or does not have money to compensate the damage. It’s stressed in the article that the conditions and procedure of such compensation of material damage are identified by special law, but no such law has been enacted to date in Ukraine.

According to Article 64 of the Criminal Procedure Code of Ukraine the following circumstances must be proved in the criminal matter during the pre-trial investigation, inquest and court investigation:

1) occurrence of crime (time, place, method and other circumstances of crime);
2) guilt of accused in the commission of a crime and motives of crime;
3) circumstances that influence the gravity of the offence, that characterize the personality of the accused, or that attenuate or aggravate the punishment;
4) character and amount of damage caused by the crime, as well as the amount of expenditure by health institutions on in-patient treatment of the victim of the crime.

These circumstances are commonly known to any practitioner, while legal authors define them as facts to be proved. The importance of facts to be proved is illustrated when the prosecutor cannot agree with the decision made at the pre-trial stage, or make it himself within his competence if the requirements of Article 64 of the CPC are not fulfilled. The limits of proof determine the depth of investigation of circumstances that have to be defined in the criminal matter (i.e. of the fact to be proved), the range and extent of sources of proof and their admissibility, and in some cases procedural actions necessary for examination of circumstances that should be proved.

To draw a conclusion to the interaction of the concepts mentioned above is to say:

First, the character and extent of the damage caused by a crime, as well as the amount of expenditure by health institutions for in-patient treatment of a victim of a crime, is a circumstance that should be proved by the prosecution (and its absence by the defense) in every criminal matter, which means that it is part of the facts to be proved.

Second, although we may be inclined to think that in any case, and under any circumstances, a person subject to damage caused by a crime is a victim, this is not the case. The legal concept of a «victim» is actually more narrowly defined. Part 2 of Article 49 of the CPC regulates eligibility for the procedural status of victim in the following way: «To recognize a citizen as a victim or to deny such recognition, a person carrying investigation, criminal investigator and judge issue a decree and the court passes a resolution».

Such an approach to the recognition of a person as a victim, and definition of his procedural status in a criminal matter as a «victim» or «an injured
party», enables some legal authors who propose to give to «victims» and «injured parties» a different procedural status that at first glance seems absurd.

According to Part 3 of Article 49 of the CPC of Ukraine, only a citizen, recognized as a victim in a procedure defined by law (under Part 2, Article 49 of the CPC) has special procedural rights, such as to give evidence in criminal matter. Part 3 of Article 49 also states that a victim and his representative have the following rights: to give evidence; to present petitions; to study all the case papers after the end of the pre-trial investigation, or after submitting the matter for court examination when there has been no pre-trial investigation; to take part in court examination; to enter recusation; to submit complaints on the actions of a person carrying out the investigation, of a criminal investigator, of a prosecutor and the court; as well as to submit complaints on the court decisions, regulations, and decisions of the people’s judge, as well as when necessary for provision of security.

The rights of the victim in court examination are defined by Part 4, Article 49 of the CPC of Ukraine, in particular in cases defined in Article 27 of the CPC, a victim has a right personally or through his representative to support accusation. In any case, a victim has the right to take part in court debates.

The information above illustrates circumstances in which a victim in criminal cases relates to human trafficking issues. Illustrative in the CPC of Ukraine as to proving the damages at the pre-trial and court investigation is Article 72 «Evidence of the victim»:

— Victim is obliged to appear on a call of a person performing the investigation, the criminal investigator, the prosecutor and the court.

— The victim can be interrogated on the circumstances to be defined in the case, including the facts that characterize the personality of the accused or suspect and his relations with them. Data of an unknown source submitted by the victim cannot be considered as a proof.

If a victim fails to appear without justifiable reason, the agency of inquiry, criminal investigator, prosecutor or court uses a warrant compelling the appearance in a procedure defined by Articles 135 and 136 of the CPC For malicious evasion of appearance in court, or before agencies of pre-trial investigation or inquiry, a victim carries responsibility set forth in Part 1, Article 185 (3)
or 185 (4) of the Code of Administrative Offences of Ukraine, and for perjury under Article 384 of the Criminal Code of Ukraine.

1.2.2. Definition of Confiscation in Criminal Material and Procedural Law of Ukraine

The term «confiscation» has several different meanings when used in criminal proceedings. First, according to Article 59 of the Criminal Code of Ukraine asset confiscation is defined as a «punishment that consists of forceful unpaid seizure to possession of the state of all or part of property that is in possession of a convicted offender.» Asset confiscation is applied for serious crimes or felonies and can be realized only in cases precisely defined in the Special Part of the Criminal Code of Ukraine. Such confiscation is called «general» in legal doctrine.

Moreover, there are more than 20 other articles of the Special Part of the Criminal Code of Ukraine that do not have relative regulations in the General Part. These articles address a so called «special» confiscation, meaning confiscation of the targets and instruments of a crime (Articles 201, 209, 244, 305, 306, etc.). In addition, Article 81 of the CPC of Ukraine also addresses confiscation labeled «special» confiscation. It suggests that confiscation can be used as material evidence in cases. According to this article, the issue of material evidence is defined by court decision, regulation or decree of a court, or decree of an agency of inquiry, a criminal investigator, and a prosecutor upon closure of the matter.

The practicability of the existence of «general» confiscation as a type of punishment is being challenged by many legal authors and practitioners. It is thought that this type of punishment, which used to be quite effective in Soviet times, does not function any more under the conditions of social and political change in the country. Under the conditions of a market economy, a person can have quite large earnings by legal means. Therefore, the mere fact of their existence does not mean they have been unlawfully obtained and should therefore be confiscated. Existence of «general» confiscation as a type of punishment contradicts the main principles of criminal law, in particular,
principles of justice and equality of citizens before the law.\textsuperscript{21} It is also considered that 1) this punishment is inherent only to feudal law and the law of totalitarian states, while civilized law does not know such a type of punishment; 2) asset confiscation has evident fiscal character; and 3) it unreasonably affects the right to private property and considerably affects material and personal rights of the family members of convicted offender, causing them to suffer without guilt in such cases.\textsuperscript{22}

Taking these tendencies into consideration, drafters of the concept of the state policy in the field of criminal justice and provision of legal order in Ukraine, in the frameworks of which essential amendments to the CC of Ukraine, propose to foresee in the General Part of the CC of Ukraine «special» confiscation as a type of punishment. The drafters consider that asset confiscation will consist of forceful unpaid seizure of possession by the state of the following objects that are in possession of a person at the moment of his conviction:

— objects found, made, adjusted or used as instruments of the commitment of criminal offence;
— objects given to a person with the aim to force him to the commission of criminal offence, or as a remuneration for its commission;
— objects of criminal offence connected to their illegal circulation;
— objects obtained as a result of the commission of criminal offence or to which a criminal offence was directed.

Such confiscation is available to be used also in cases when it is provided for in the sanctions set forth in the article in the Special Part of the Criminal Code of Ukraine.

At the same time, it is difficult to disagree with the position of scientists claiming that «application» of «special» confiscation cannot provide for the achievement of the objective of punishment, in particular, its punitive and curative part. Objects obtained as the result of a crime, or the objects at which the crime was directed are not and never were in legal possession of the per-

\textsuperscript{21} Gutorova N., Problems of criminal legal protection of the state finances of Ukraine, Overview of the PhD Dissertation in Law, Kharkiv, 2002

\textsuperscript{22} Criminal Law of Ukraine. General Part: Manual for the students of the Specialized Legal Higher Education Institutions/Baghanov M., Baulin Y., Borisov V., and others, Kharkiv 2001, page 175
son who committed a crime, therefore their confiscation is not a limitation of rights and liberties of the convicted, and thus is not a type of punishment. Additionally, it is unclear what happens to the objects that should be subject to confiscation in case of release of a person from criminal liability.

In our point of view, «special» confiscation should be examined as a method of criminal and procedural coercion, and receive due detailed regulation in the Criminal Procedure Code of Ukraine.

The discussion above shows the existence of a tendency to transform asset confiscation as a type of punishment, to «special» confiscation of objects that were used as instruments of crime, objects of crime or objects obtained in a criminal way. The aim of this practice remains debatable; it can be either a type of punishment or a method of procedural coercion.

«General» confiscation is provided as punishment by sanctions in Parts 2 and 3 of Article 149 of the Criminal Code of Ukraine, which addresses criminal liability for trafficking in human beings only in cases when crime was: committed in respect to a minor (up to 18 years of age), or a child (up to 14 years of age), or perpetrated upon two or more persons, or repeatedly, or by a group of persons with prior conspiracy, or by an official through the abuse of authority, or by a person upon whom the victim was dependent materially or otherwise, or committed in with violence or in with threats of such violence, or by an organized group, or if causing grave consequences.

Taking into consideration the extraordinarily large number of cases of release of persons found guilty in human trafficking crimes from completion of their sentence with probation, the question of application of additional optional punishment of asset confiscation arises. Criminal legislation does not give an unambiguous answer to this question, but an analysis of the Articles 75-77 Criminal Code of Ukraine reveals that in such situations other additional punishments provided in Article 77 of the CC should be applied. The Decree of the Plenum of the Supreme Court of Ukraine of 24 October, 2003 # 7, as well as the Letter of the Supreme Court Ukraine of 30 January, 2007 # 9-12 stress that asset confiscation as additional punishment should not be applied in release of a person from completion of sentence with probation. It is highlighted as well in the Summarization of the status of fulfillment of
requirements of the General Prosecutor’s Office as to the control on legality and relevancy of court decisions in application of requirements of Article 75 of the Criminal Code of Ukraine.

Considering the perspectives on reformation of the practice of confiscation, one must note that «special» confiscation is relevant to such groups of crimes as trafficking in persons. This includes confiscation of monetary funds transferred by one criminal agent to another for the victims sold, confiscation of means of transport used for transportation of victims abroad, etc. At the same time it is necessary to recognize the priority of application of asset confiscation that has material value for ensuring the civil suit of the victim in the legal rule that will regulate the issue of «special» confiscation.

1.2.3. Ensuring civil suit, and possible confiscation of criminal assets of the suspect and of the accused at the pretrial stage in Ukraine

The problem of compensation to the victims of crime is one of the most painful problems of our society. The amount of damages caused is constantly increasing despite the decrease in the crime rate.

Thus, the amount of damages caused in the criminal cases closed by the detective police in the year 2005 was evaluated in 420 million hryvnas (UAH), of which UAH280 million (66.7 %) is actually compensated. In 2006, of damages totaling UAH449 million only UAH316 million (70.4 %) was compensated. In the four first months of the year 2007 the damages caused are more than UAH110 million, of which UAH75 million (68.4%) has been compensated. But these are only statistics for the criminal cases in which guilty persons were found, the investigation was closed, and the cases were sent to the court. Taking in consideration that only two of three crimes are solved and more than a million and a half cases were left unsolved in the past years, the amount of uncompensated damages is actually much greater.

The actions taken by the state on this direction are ineffective and remain only declarative. Article 1177 of the Civil Code of Ukraine provides that the material damage caused to a person as a consequence of a crime is compen-
sated by the state if the personality of offender is not defined or the offender is insolvent.

According to Part 2, Article 1177 of the Civil Code of Ukraine, the conditions and procedure of compensation of material damage caused to the property of a person that is suffered due to a crime is defined by law. However, such a law has not yet been adopted. Furthermore, with the adoption of such law there will be even more problems with its implementation, particularly as to proving the damage caused and avoiding the fraud of victims.

However, even when guilty persons are identified, problems with compensation, such as ensuring the civil suit or asset confiscation at the pretrial stage appear in practical reality. They are explained by reviewing the defects of the legislation in force.

Article 41 of the Constitution of Ukraine states that nobody can be unlawfully deprived of the right to property. The right to property is indefeasible. This Article states that confiscation of property can be applied exclusively in the court decision in the cases, amount and procedure defined by law.

Article 56 of the Constitution states that everybody has a right to compensation of material and moral damage caused by unlawful decisions, actions or inactivity of authorities and their officials when performing their duties on account of the state or self-governing authorities. Inactivity by law-enforcement agencies falls under the scope of this constitutional clause, but only in some cases. There are no other provisions in the Constitution of Ukraine that touch upon compensation to the victim of crime including the application of civil suit.

These provisions are defined more precisely in the Criminal Procedure Code of Ukraine where one general rule — Article 29 «Ensuring compensation of damages caused by the crime and execution of judgment in the part of asset confiscation» — is dedicated to the issue of civil suit, and by two particular rules — Article 125 «Obligation to ensure civil suit and possible asset confiscation defined by law» and Article 126 «Procedure of securing civil suit and possible asset confiscation». According to the titles of these rules of law all queries connected to the ensuring of the civil suit and possible asset confiscation should be settled.
However, we shall see theory does not correspond with in reality.

Article 29 of the Criminal Procedure Code (CPC) of Ukraine charges agencies of inquiry, criminal investigators, prosecutors and the court with the obligation to take measures to ensure civil suit when having sufficient data that the crime caused damage or expenses to a health institution. The agency of inquiry, criminal investigator and prosecutor are charged with the obligation to secure possible asset confiscation.

Article 125 of the CPC of Ukraine charges only the criminal investigator with the obligation to take measures upon the solicitation of civil plaintiff, or on his own initiative, to ensure submitted or possible future civil suits by way of issuing a decree. A similar obligation is put on the criminal investigator of cases in which asset confiscation is provided by criminal law, in which case he should issue a decree with the aim to ensure execution of judgment by way of asset confiscation. The CPC neither defines what this decree is, or the procedure of its execution, or the list of persons who should ensure it.

Article 126 of the CPC of Ukraine according to its title has to define the whole procedure of ensuring civil suit and confiscation. It provides that ensuring a civil suit and asset confiscation be realized by seizure of bank deposits, valuables, and other property of defendant or suspect or the persons who bear material liability for his actions according to the law, as well as by way of confiscation of seized assets.

Seized assets are subject to inventory and can be submitted for preservation to representatives of enterprises or members of the defendant’s family or other persons. Persons to whom the asset is submitted are notified of the criminal liability for its non-preservation. Certain intermediaries used by the person whose property is seized and his family members are not subject to inventory. The list of these intermediaries is defined in the Attachment to the Criminal Code of Ukraine.

Seizure of property and its transfer for preservation is processed into a record signed by a person carrying inventory, attesting witnesses and a person receiving the property for conservation. An inventory list of property subject to preservation is attached to the protocol. To define the value of the seized
A specialist is invited, if necessary, who signs the protocol and inventory list with his assessment. Seizure of asset is annulled by a decree of criminal investigator when the application of this measure becomes unnecessary.

Based on the wording of this article, and other legal rules, several questions arise. Why is the participation of a specialist provided only in «necessary» cases, although in any inventory of property it is necessary to make the value assessment, and participation of such a specialist should be obligatory.

Inventory of property often requires entry into the premises where it is kept, which most cases is private property. According to Article 30 of the Constitution of Ukraine inviolability of residence is guaranteed to everybody, and penetration into the residence is permitted only on proper court decision, besides urgent cases. Inventory of property is not an urgent case, and current criminal procedure legislation does not recognize permission of court as a basis to penetrate a premises to make inventory of property. As a consequence, in case of refusal of the owner of the premise, the criminal investigator is deprived of the legal ability to take this action.

The legislation in force does not address the need to take seized property for preservation, other than recognizing an obligation to notify the person to whom the property is entrusted for preservation of the criminal liability for its non-preservation. In practice a criminal investigator, when receiving a refusal of defendant’s relatives or the directors of the enterprise to accept property for preservation, does not have any mechanisms to ensure preservation of property. There is no list of enterprises that may be compelled to accept property for preservation. The property not subject to inventory is defined in the Attachment to the Criminal Code of Ukraine that was in force until September 1, 2001, but this list is rather outdated and does not correspond to reality.

These and other problems in practice lead to the situation when criminal investigators, without having a legally defined procedure to fulfill the obligation to ensure the execution of civil suit or possible asset confiscation, instead of taking such measures issue decrees on seizure of property and fill formal protocols on the absence of property subject to confiscation.

It is necessary to review as well on the procedure of seizure of bank deposits in effort to ensure possible civil suit or asset confiscation. Before address-
ing the court about the necessity to seize the deposits, a criminal investigator has to identify the existence of such deposits. With the complex nature of a single bank’s network, the great number of banks, as well as ability to make deposits in regions other than the place of residence, the criminal investigator in reality is deprived of the ability to identify all the deposits of the offender in the limited time for pretrial investigation. Additionally, the legal and security services of some banks ask for the legal basis of the investigator’s requests, which causes delays in obtaining the bank deposit information. As a consequence, in absence of trustworthy information on the existence of deposits in clearly specified banks, criminal investigators limit themselves to sending requests only to some banks that do not contribute in any way to compensation of damage.

Current legislation needs to be amended to ensure submitted and future civil suits and confiscation in such situations described above.

One way to solve this problem could be by making amendments to Article 125 of the Criminal Procedure Code of Ukraine, according to which a criminal investigator, after issuing a decree on seizure of assets, must send it for execution to the authorities of the State Execution Service, whose task according to the law is timely, complete and unbiased forceful execution of decisions provided for by law, and that is now executing similar court decisions on seizure in order to ensure the suit.
PART II
RIGHTS OF THE VICTIMS OF HUMAN TRAFFICKING-
RELATED CRIMES FOR COMPENSATION
AND TO PROTECTION
(MATERIALS OF THE COURT PRACTICE)

Statistical information: in 2006 material damages from crimes amounted to UAH 1,257,416,739.
Of convicted persons, 141,272 persons at the time of the committal of the crime were those who were not working and were not receiving education; 20,194 persons — were officially unemployed.

2.1. PROTECTION OF THE PARTICIPANTS OF THE CRIMINAL PROCEEDINGS

The Law of Ukraine On Witness Protection of the Persons which Participate in the Criminal Proceedings, December 23\textsuperscript{rd} of 1993\textsuperscript{23}, stipulated that the right to protection through measures provided by Law, upon demonstration of required conditions, belongs to the following persons:

a) the person which reported the crime to the law enforcement agency, or which in some other way took part or assisted in detection, prevention, stopping and solving the crime;
b) the victim and his representative in the criminal case;
c) the suspect, the accused, the defense attorney and legal representatives;
d) the civil claimant, or civil party pursuing a claim, and their representatives in cases on recovery of damages from the crime;
e) witnesses;

f) experts, specialists, translators and testifying witnesses;
g) members of the family and close relatives of the persons listed in the points from (a) to (f) of this Article, if attempts are made to influence the parties to the criminal proceedings through threats or other illegal activities aimed against these persons (Article 2).

The decisions on the application of protection measures are taken by the body of the inquiry, the investigator, the prosecutor, and the court responsible for the criminal proceedings in regards to the crime in investigation or court hearing of which the persons listed in the Article 2 are involved. In addition, the body (unit) which carries out operative and investigative activities as to the persons which participated or assisted in detecting, preventing, stopping and solving the crimes.

Depending on the jurisdiction, the implementation of the measures of protection is vested within the agency of the Security Service of Ukraine or the agencies of the Internal Affairs, which have special units created within their structure. Safety of persons which are under protection in the course of the criminal cases going through the proceeding within the prosecutor’s office or the court is ensured following the decision of these institutions respectively by the bodies of the Security Service, bodies of the Internal Affairs, or by the institutions of the execution of the judgments (Article 3).

Article 7 of the Law provides for the following types of protection:
1) Personal protection, protection of the dwelling and property;
2) Handing out special means for individual protection and notification of danger;
3) Use of technical devices of control and wire-tapping the telephone and other types of communications, video surveillance;
4) Change of the place of work or study;
5) Transfer to another place of living;
6) Placement in the pre-school educational facility or facility of the bodies of the social protection of the population;
7) Ensuring of the confidentiality of information about a person;
8) A closed court hearing.
In cases when a need for safety of the persons which are placed under protection call for such actions, following the proper decision of the court, a closed court hearing may take place.

To provide for protection of the witness of the victim, the court, on its initiative or upon the request from the prosecutor or other participant of the court proceedings, or from the witness or victims which are to be interrogated, issues a proper decision on conduct of the interrogation of these persons without the presence of the defendant. Under the same circumstances there is the possibility for interrogation of the defendant without the presence of others. Upon the return of the defendant into the court room the court must familiarize him with the testimony which was provided in the time of his absence, and provide him with an opportunity to explain the circumstances of the testimony in question.

The court in exceptional cases may allow the victims and witnesses which are placed under protection not to show up to the court hearing if there is a written confirmation of the testimony provided earlier by them.

The Criminal Procedure Code of Ukraine, in Article 20, provides for open court hearings on the cases in all courts, with the exception of when such type of hearing contradicts the interests of the state or other secret protected by law.

Closed court hearing may also be admissible upon the proper decision of the court in cases of crimes committed by persons under the age of sixteen, on sexual crimes, and also in other cases for purpose to prevent dissemination of information on intimate sides of life of the persons which are parties to the case, and in cases when it is necessary due to requirements of the safety of the persons placed under protection. Closed court hearings are carried out in adherence to all rules of justice. Court decisions in all cases are publicly announced. Unfortunately, cases on human trafficking are most often reviewed in the open hearings.

In addition, Article 6 of the Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (November 15th 2000) stipulates that «in appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and
identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.»

Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

— appropriate housing;
— counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
— medical, psychological and material assistance; employment, educational and training opportunities.

Each State Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory (paragraph 5 of Article 6).

But as the court practice shows, measures of protection are not always timely applied. The untimely application of the protection measures may lead to refusal from civil claim (which takes place in 75% of cases), to the statements in the court room that they no longer consider themselves the victims, and the refusal to testify about criminal activities of the defendants. In addition, the persons who committed human trafficking have an opportunity to commit further crimes «provoked» by the initiation of the criminal case, such as threats of murder, murder, physical damage of various types of severity, and extortion, all of which prevents justice from being reached in the case and a full, objective review of the circumstances of the case being conducted.

2.2. COMPENSATION (JUST SATISFACTION)

Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered (Paragraph 6, Article 6).
Article 2 of the European Convention on Compensation to Victims of Violent Crimes from 1983 provides for the following: when compensation is not fully available from other sources the State shall contribute to compensate to the following categories of persons:

a) those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;

b) the dependants of persons who have died as a result of such crime.

In addition, the compensation shall be awarded even if the offender cannot be prosecuted or punished.

An Interagency Working Group of the Ministry of Justice of Ukraine developed a draft Law On Compensation of Damages to the Victims of Crime, which defines the basis and procedure for the compensation of the sustained damage to life and health of the victims of crime for the state funds. The main idea of the draft is facilitation in providing assistance to the citizens which suffered from the crime. Even though the criminal remains the main object of the recovery of the damages, the state according to this draft will take upon itself temporary intermediary functions in regards to compensation of the damages to the victim.

The person who suffered from threats against his/her life, health, dignity as well as his/her property requires social protections, and material and moral support. The Constitution of Ukraine provides for the obligation of the state to protect the person, to provide for and enforce his/her rights and freedoms.

In the Criminal Code of Ukraine the victim of the crime is repeatedly mentioned. The term «victim is used more than 70 times, even more often the specific types of the victims are identified»24. However, in the current legislation of Ukraine the main attention is not given to the protection of the rights and interests of the victim, but to those of the suspect, the accused and the defendant, which can receive punishment for the committed crime.

Such a treatment of the person which suffered from the crime is manifested in different ways. First of all, the body of inquiry or pre-trail investigation, or the prosecutors’ office which carry out criminal proceedings, when

initiating a criminal case in connection to the sustained damage to the person, moves that person to the back, giving the person a passive role of the observer of their actions, forgetting that the entire mechanism of the criminal justice system in this particular case is set forth specifically for the restoration of the rights which have been violated by the crime\textsuperscript{25}. Recognition of the person as a victim of crime at the earliest stages of justice opens up unlimited opportunities for his/her use of the procedural rights.

Provision for the rights of the persons who have suffered damage from the crime is stipulated for in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the General Assembly on 29 November 1985.

If we take international standards, provision of the rights of the crimes in the course of the investigation is connected to the following factors:

1) provision to the person of the information about a role and the scope of his/her rights, the terms and results of their enforcement;
2) creation for the person of the opportunities to prepare statements, claims at various stages in accordance with current legislation;
3) provision to the person of the necessary assistance, provision of the person’s safety, and the safety of his family members;
4) prevention of unnecessary delays in the course of the investigation;
5) creation of possibilities for just restitution to the victim.

In the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (adopted by the General Assembly on 29 November 1985), which indicates a collective will of the world community, the problem of restoration of balance between the rights of the suspect, the accused, the defendant, on the one hand, and the interests of the victims, on the other hand, is raised. This international document is based on the principles of recognition of dignity of the victims of crime. It identifies those directions in which countries should be working to provide for adequate treatment of the above-mentioned persons, and it identifies basic standards, in adherence to which the legislation and the practice of its application should be evaluated.

\textsuperscript{25} Shadrin V., Provision of the rights of the person in the course of investigation of the crime, page 245
Analysis of the criminal cases and of court practice of Ukraine in regards to their adherence to these standards shows that there is a necessity for increase of the protection of the rights and interests of the victims of crimes.

According to the statistical data, the number of persons which suffered from crimes and the amounts of the physical, property and moral damage sustained is growing each year. From criminal activities the cases on which have been reviewed by the courts in 2003 154,5 thousand persons have been victims, of which 70,7 thousand are women. The number of victims has grown as compared to that from 2002 by 7084 persons, comparatively by 4.8 %. Within those — the dead constitute 444 persons, or 8.4 %, and the persons whose health was damaged constitute 909 persons (4.5 %). In the same period the amount of sustained physical and moral damage by the individuals and legal entities has grown from UAH443 million to UAH771,4 million, a leap of 74 %.

The main task of the state in the event of the crimes being committed is the restoration of the legal rights and interests of the citizens. However, a large number of crimes are left unsolved by the law enforcement agencies. According to the data of the Ministry of Interior of Ukraine, in 2003 there was no restoration of the rights of the victims from 1,3 million crimes in the past years, which remain unresolved and the cases on which have been closed out due to the fact that the persons who committed these crimes have not been identified or found. Among such crimes we have 6,5 thousand murders, 15,4 thousand of severe physical damages with intent (4,7 thousand of which have resulted in death), 1,8 thousand rapes, 12,2 thousand muggings, 112,9 thousand thefts, 279 thousand apartment burglaries, 11,8 thousand of car thefts. Through analysis of the provided statistics on the unsolved crimes, it is clear that many citizens have basis for dissatisfaction with the absence of the guarantees from the state on enforcement of their rights.

Article 28 of the Criminal Procedure Code of Ukraine provides for the possibility of the person who sustained material damage from a crime to file a civil claim in the course of the criminal proceedings against a defendant or the persons who carry material responsibility for the actions of the defendant, which is to be reviewed by the court in parallel to the criminal case.
Civil claim may be filed during the course of the pre-trial investigation and inquiry, as well as during the court proceeding, but before the beginning of the trial investigation.

Sometimes, in the court rulings we find a refusal to the civil claim for recovery of the moral and material damage on the basis that «the victims wrote a claim to Department of Combating Organized Crime on proposal of the personnel of the Department of Combating Organized Crime out of fear of being criminally liable, about which the victims have testified in the court. The court considers it necessary to deny the satisfaction of the civil claim of the victim. She willingly left for work in the Czech Republic without any pressure. She knew about the essence of her labor. She agreed to the distribution of the income from her activities between her and the defendant, and never filed any material or other types of claim against the defendant before her appearance to the bodies of the Department of Combating Organized Crime.» (ruling from 26th of August 2004).

A logical question arises — what victims of human trafficking, who were under financial dependency from the criminals whose guilt was proven in the court, could have voiced disagreement with the division of the income? Night clubs «Ketlleberg» and «Napoleon» were closed facilities which were situated at the suburbs of the village near the forest (on the border between the Czech Republic and Germany). For any type of misbehavior the victims were fined from 50 to 500 German Marks depending on the type of the misbehavior, and the money was taken out of the salary. Criminals in case of misunderstandings «held talks with the victims in a closed room», and were beating the victims for refusal to provide sexual services, or for refusal to clean the facilities afterwards. In the cases when there were clients (mostly Germans) the live stock was sold for the prices between 5,000 to 10,000 thousand dollars.

And there are grounds to argue that the financial dependency, impossibility to return home, forcing to provide sexual services, diminishing and physical sufferings constitute the grounds for restitution of the damage. The moral damage is considered to include sufferings sustained by the citizen as a result of the physical or psychological pressure, which lead to the decrease or impossibility for exercise of his/her habits and desires, worsening of his/her
relations with those surrounding the person, and other negative results of the moral character 26.

Article 15 «Compensation and legal redress» of the Council of Europe Convention on Action against Trafficking in Human Beings (May 16, 2005) stipulates that each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand. Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law. Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators. Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programs aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23 (Sanctions and Measures).

Article 3 of the Protocol To Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime (November 15th 2000) in paragraph (a) stipulates that «trafficking in persons» shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. In the paragraph (b) there is an explanation that «the consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a)». But the courts, even when referring in their rulings to the international documents, specifically Article 3 of the Protocol when identifying moral damage, make a «note» on willingness

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26 Law Of Ukraine On introducing of changes into some legislative acts of Ukraine (as to the strengthening of the legal protection of the persons and provision for the mechanisms of exercise of constitutional rights of the citizens for entrepreneurial activities, personal safety, respect to the dignity of the person, legal aid and overall protection) from 12.01.2005//Digest of the Verhovna Rada of Ukraine 2005, #10, page 187
of the victim to become the subject of the crime. Thus, the court of the City of Kharkiv, when making its ruling, on page 10 of the ruling cites Article 3 of the Protocol and on page 11 of the ruling states that «the civil claim of the victim V the court shall satisfy in parts. The court believes that the joint actions of the defendants have caused the victim moral damage in regards to her sale for sexual exploitation. At the same time, the victim voluntarily agreed to be engaged in prostitution when moving to the city of Moscow, thus, placing herself in a position of the subject of the sale» (ruling from November 10th of 2004).

Thus, it is important not to just make automatic references to the normative acts as mere benchmarks for the law, but also to understand their legal meaning, and to evaluate the social results of their application and to take human rights protection to the heart of the decision.

As a result of the unification of the court practice, the amount of the moral damage is very often paid in smaller sums than the one identified in the claim, or without sufficient explanations, without review of the level of the psychological sufferings of each of the victim, when in the case all of the victims receive the same amount of compensation.

Analysis of current legislation allows us to state that the court can not deny a person which sustained material or moral damage from the committed crime the civil claim just because it was presented in the course of the court investigation (Resolution of the Collegiums of the Criminal Chamber of the Supreme Court of Ukraine from October 12th of 2004).

Thus, Zhovtnevy rayon court of Kryvy Rig of Dnirpropetrovsk oblast has convicted V, I, M, and P through issuance of the ruling from May 5th of 2003 and has satisfied the civil claim in parts: it was ruled to obtain a moral damage payment from the convicted but the recovery of the damage to the victims was denied.

In the cassation order the prosecutor without arguing the proof of guilt of the defendants and correction of the qualification of their actions, asked to change the ruling, taking out from the resolution and argumentative part the decision to deny the civil claim for restitution of moral damage to the victim, as such a decision prevented the victim to sue in the civil court. The Supreme Court of Ukraine ruled that such cassation claim is to be satisfied.
Denying a victim in the civil claim satisfaction in the part of restitution of the moral damages, the court has ruled that the victim did not adhere to the requirements of the criminal procedural legislation and has filed a claim in the course of the court investigation and not prior to it, as it is stipulated in Part 3 of the Article 28 of the Criminal Procedure Code of Ukraine.

But such a decision of the court contradicts Part 4 of the same article, according to which the person which did not file a civil claim in the criminal case can do so in the civil proceedings. When denying a person the satisfaction of the claim, the court denies a person’s right to make a claim in the civil proceedings, which breeched the rights of that person. For the victim to retain such a right, the claim should be left without review.

Taking into account all that is stated above, the Collegiums of the Criminal Chamber of the Supreme Court of Ukraine has satisfied the cassation claim of the prosecutor and has overruled the decision of the rayon court of Kryvij Rig from May 5th of 2003 in the part of the denial of civil claim of the victim on restitution of the moral damages.\textsuperscript{27}

The person who did not file a civil claim in the criminal case, and also a person whose claim was not reviewed, have a right to sue as part of the civil procedure.

In the criminal case on the crime for which the confiscation is applied as additional punishment, the body of the inquiry, the investigator, and the prosecutor are all obliged to take measures to provide for the confiscation of the property of the accused (Article 29 of the Criminal Procedure Code of Ukraine).

According to the Resolution of the Plenum of the Supreme Court of Ukraine «On practice of application by courts of Ukraine of the legislation on recovery of the material damage as a result of crime, and seizure of the unexplained property from March 31\textsuperscript{st} of 1989, #3 (with changes introduced by Resolutions from December 25\textsuperscript{th} of 1992, #13 and from December 3\textsuperscript{rd} of 1997 #12)\textsuperscript{28}, in each case of a crime with material damage, the court when issuing a

\textsuperscript{27} Decision on criminal cases//Digest of the Supreme Court of Ukraine, #1 (53), 2005, page 24  
\textsuperscript{28} Resolution of the Plenum of the Supreme Court of Ukraine «On practice of application by courts of Ukraine of the legislation on recovery of the material damage as a result of crime, and seizure of the unexplained property from March 31\textsuperscript{st} of 1989, #3 (with changes introduced by Resolutions from December 25\textsuperscript{th} of 1992, #13 and from December 3\textsuperscript{rd} of 1997 #12)//Resolutions of the Plenum of the Supreme Court of Ukraine, 1972-2002, Kyiv, 2003, pages 481- 489
ruling is to decide on the civil claim, and when it was not filed as required by parts 2, 3 of the Article 29 of the CPC of Ukraine — the court is to do so on its own initiative if it is required by the need to provide for public or state safety, and in other cases prescribed in the law.

According to Articles 291 and 328 of the CPC of Ukraine, the civil claim in the course of issuance of the ruling may be left without review only if the person was acquitted or in the case of a failure to attend by the claiming party or his/her representative in the court.

The court of the first instance has no right to transfer the decision of the issue on the size of the civil claim for the civil proceedings, as the Criminal Procedural Law of Ukraine does not allow it.

The civil claim can not be left without review based on absence of the necessity for its settlement evidence, and as according to the Part 4 of the Article 64 of the CPC of Ukraine, the type and the scope of the damage caused by the criminal act is to be defined in the course of the criminal proceedings.

When the accused is put before the court, it is necessary to identify if the measures on restitution of damages of the crime have been applied and if the civil claim was filed. If the person who conducts an inquiry or the investigator did not apply all necessary measures, the judge or the court makes a decision to arrest the property of the accused and it is done by the court executioner. When such measures can not be enforced directly through the court, according to the Article 247 of the CPC of Ukraine, the court may rule for the respective agencies to provide for such measures.

If the civil claim is not filed and requirements of Part 2 of the Article 122 of the CPC were not adhered to by the investigator, the judge or the court have to explain to the citizen which sustained damages his/her rights to file a civil claim against the accused or the person responsible for the actions of the accused.

In the course of the consideration of cases by the courts it is important to define whether the property of the guilty person was obtained as the proceeds of crime, which should be supported by evidence studied in the court hearing.
If the court ruling identifies that the property is obtained as the proceeds of crime, the seizure for recovery of damages according to the Civil Procedural Code may be taken against such property depending on the type of its ownership, if it is in the joint ownership of the family or with other persons it should be considered.

According to the Civil Code of Ukraine, the person has the right of recovery of moral damage caused by violation of his/her rights. **Moral damage is:**

1) **Physical pain and sufferings which were caused to the person in the case of injury or worsening of health;**

2) **Mental sufferings which are caused by the illegal behavior towards him/her or his/her members of the family or close relatives;**

3) **Mental sufferings which are sustained as a result of the destruction or damage to his/her property;**

4) **When the dignity of the person or business reputation of the person or that of a legal entity has suffered.**

Moral damage is recovered by money, by other property or in other ways. The size of the monetary restitution is defined by the court depending on the character of the crime, the extent of physical damages and mental sufferings, from decrease of the abilities of the victim, the level of guilt of the person who applied moral damage, and other factors. When defining the size of the damage the requirements of reason and justice are applied.

Moral damage is recovered regardless of material damage which is to be recovered and is not connected to its amount. Moral damage is recovered once if otherwise not defined in the agreement or law (Article 23 of the Civil Code of Ukraine).

Decree of the President of Ukraine from December 28 of 2004 adopted the Concept on provision of protection of legal rights and interests of the victims of crime. The problem of the protection of the rights and interests of the persons who are victims of crime, and of the effective recovery of timely compensation, as the analysis of the legislation and practice shows, remains a difficult issue.

According to the statistical data, in 2003, some 352 thousand persons have suffered from crimes. The amount of damages sustained is around UAH100
million. Even though the victims in many cases can receive restitution upon the decision of the courts, it is rarely applied to the full extent in practice, and in cases when the person who committed a crime is not identified or is in hiding or is incapable of paying — such measures are not enforced at all.

With the goal of effective protection of the rights and interests of the victim it is necessary to introduce basic principles which are applied in the world practice, more specifically:

- just treatment of the victims — respect to their dignity, expression of compassion to them, neutralization of the negative results of the crime, and raising of the level of safety of the person, of the society, of the state;
- information availability — all of the victims have a right to receive information as to the review of the case and the decision taken. In the process of the investigation the victim should be exercising their rights to study the materials of the case. Upon the issuance of the ruling the victims should be informed of all measures which are applied to the convicted (amnesty, pardon) and have a right to express their position in this regard;
- provision of the recovery of damages — the victims are to have the right to restitution of the material and moral damage. The person who committed a crime is to recover the damages even if he was freed from criminal liability;
- provision of the free legal aid to the victims — first of all — the victims of the severe crimes and those in a vulnerable material situation, and those which are unable to exercise their rights and interests on their own;
- provision of the social assistance to the victims — the victims shall have an access to special systems of support (medical, social, psychological assistance).

The main directions of the provision for the legal rights and interests of the victims are the following:
1.) Implementation of the international principles of the protection of the legal rights and interests of the victims, as defined in the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and European Convention on the Compensation of Victims of Violent Crimes;

2.) Introduction into the new CPC of Ukraine of the norms which will provide for a wider circle of the procedural rights of the victims, as according to the Recommendation of the Committee of Ministers of the Council of Europe as to the state of the victim in the framework of the criminal law and procedure;

3.) Development of the mechanism of enforcement of the right of the victim for recovery of damage from the crime;

4.) Identification of the necessary budgetary funds in the main fund of the state budget;

5.) Development and legislative basis for the conditions and procedure to claim compensation support from various forms of obligatory and voluntarily insurances;

6.) Implementation of the active work as to the prevention of the victim behavior of the population.

A stage by stage implementation of the Concept is foreseen. At the first stage (2004-2006) the world experience is to be studied on issues of protection of the legal rights and interests of the victims; Development of new and changes to current legislation on the issues of protection of the legal rights and interests of the victims; Development of the mechanism of enforcement of the rights of the victims; Development of the methodological guidelines on issues of organization of provision of assistance to the victims; Implementation of the practical measures aimed at raising of knowledge among the population on victimology.

At stage two (from 2006) there will be implementation of the mechanism of recovery of damages to the victims from crimes; creation of the favorable conditions for the work of the non-governmental organizations and charity funds in the sphere of assistance to the victims; identification of the scope of the budgetary provisions; and participation of Ukraine in the measures
on implementation of the international principles of protection of victims in the framework of the UN initiatives, and those of Council of Europe and European Union.

The Cabinet of Ministers of Ukraine through its Resolution from April 20th of 2005 #110-p adopted an Action Plan on implementation of the Concept to provide for lawful rights and interests of the persons who suffered from crimes for 2005-2006. In the framework of this Plan it is planned to review the experience of the European states as to the ratification of the European Convention on the Compensation of Victims of Violent Crimes (paragraph 2), to conduct analysis of the legislation of the foreign states on these issues, and to submit the proposals on improvement of the legislation to the Cabinet of Ministers of Ukraine for review (paragraph 3 of the Plan).
PART III

ORGANIZATIONAL AND FINANCIAL SUPPORT OF THE FUND FOR ASSISTANCE TO VICTIMS OF HUMAN TRAFFICKING-RELATED CRIMES

Provision of assistance from third parties, specifically from the State, non-governmental organizations, charitable funds, etc., is one of the problems in the field of social, moral and psychological rehabilitation of victims of human trafficking-related crimes. Creation of the Fund for Assistance to Victims of Human Trafficking-Related Crimes could facilitate solving some of the problems with which the victims are faced.

There are two models of establishment and financial support of the Fund:

1. Creation of the Fund for Assistance to Victims of Human Trafficking-Related Crimes as a state institution;
2. Creation of the Fund for the Assistance to the Victims of Human Trafficking-Related Crimes as a charitable organization.

3.1. CREATION OF THE STATE FUND FOR ASSISTANCE TO VICTIMS OF HUMAN TRAFFICKING-RELATED CRIMES

According to Article 3 of the Constitution of Ukraine, the human being, his or her life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the essence and orientation of the activity of the State.

Thus, Article 87 of the Budget Code of Ukraine stipulates that social security and social protection expenditures funded from the State Budget of Ukraine are reimbursement of losses incurred by citizens; national programs and activities with respect to children, youth, women, and families; State support to non-for-profit youth organizations as an implementation of national programs and activities with respect to children, youth, women, family; other programs of exclusively nationwide importance. Therefore, if the Fund is cre-
ated not as a charitable organization, but as a governmental organization the issue of funding can be solved through financing the activities implemented by this Fund.

The Budget Code of Ukraine provides for the possibility to create a specialized budget fund, which includes:

- all budget appropriations for expenditures funded at the cost of specifically earmarked revenue sources;
- grants or donations (in value) received by spending units for a specific purpose.
- since parts 2 and 3 of Article 149 «Trafficking in human beings and other illegal transfer deals in respect to a human being» of the Criminal Code of Ukraine stipulate that forfeiture of property of the convicted person can be invoked as an additional punishment. Thus money received from a sale of forfeited property can become part of the revenue of the State Budget and can be used to finance assistance to the victims.

Consequently, the State has to create the Fund through the issuance of the regulative paper, specifically the Cabinet of Ministers’ Decree, and adopt a relevant Regulation. Functions of the Fund and the powers and activities which will be exercised by it shall be defined by the Law, which will provide for elimination of the human trafficking and assistance to victims of human trafficking-related crimes. The Fund shall be funded through the state budget, specifically allocations from forfeited property, grants and gifts received for the respective purpose.

3.2. CREATION OF THE CHARITABLE FUND FOR ASSISTANCE TO VICTIMS OF HUMAN TRAFFICKING-RELATED CRIMES

There is completely different procedure of financing of the Fund if it is created as a charitable organization. The state and local authority bodies, as well as state and municipal enterprises, institutions and organizations of Ukraine which are financed from the state budget, cannot be founders of the charitable organization. (Article 5 of the Law of Ukraine On Charity and
Charitable Organizations). Therefore, the State’s participation in creation of such a Fund is questionable in terms of legislative provisions.

According to the Article 5 of the Law of Ukraine on Charity and Charitable Organizations, the founder of the charitable organization decides on establishment of the charitable organization, approves the statute (regulation), establishes the management of the organization, approves reports of supervisory council on appropriated use of money and property of the charitable organization, and decides on other issues within competencies of the charitable organization rendered by this Law and statute (regulation).

Charitable organizations can be established and operate under following legal organizational forms:

- membership charitable organization;
- charitable fund;
- charitable institution;
- other charitable organizations (foundations, missions, leagues etc).

Concrete legal organizational structure is decided by the founders (founder).

The Law of Ukraine on Charity and Charitable Organizations (the Law) stipulates that assets and cash of the charitable organizations are:

- donations of founders (founder) and other contributors;
- charitable contributions and endowments, which have targeted use (charitable grants), donated by physical persons and legal entities in cash or in kind;
- revenues from charitable campaigns aimed at collection of endowments, charitable events, charitable lotteries and auctions organized for sale of property and endowments provided by contributors;
- revenues from deposits and other bonds, contributions from enterprises and organizations owned by charitable organizations;
- other sources which are not prohibited by Ukrainian legislation.
Assets of charitable organization cannot be accumulated through the use of credits. Property and cash of the charitable organizations cannot be transferred as a mortgage. (Article 19 of the Law).

Charity assistance can be provided to claimants as:
- one-time financial, material or other assistance;
- regular financial, material or other assistance;
- financial assistance to concrete appropriated programs;
- assistance according to the agreements (contracts) on charitable activities;
- donation or permission of free (beneficial) use of property;
- permission to use title, emblem, symbols;
- assistance through personal work, services or donation of own art work;
- carry expenditures on free, full or partial maintenance of charitable objectives;
- other activities which are not prohibited by legislation.

Charitable organizations register at separate banking accounts funds for administrative and charitable activities in national and foreign currency. Thus legislative framework allows wide range of financing sources for charitable organizations.

Financial activities of charitable organizations have to be exercised in compliance with Ukrainian legislation. Financial activities aimed at charity are not considered as entrepreneurial or other commercial activities. Revenues received by the charitable organizations in the course of financial activities are used exclusive for charity and administration in amount and in accordance with the procedure stipulated by the Law. Charitable organizations exercise administrative activities aimed at fulfilling its goals and objectives defined in its by-laws.

A charitable organization is independent in its decisions on issues related to its administration, in its salary policies towards employees, and in the use of its own financial and material resources as required by the Law. (Article 20 of the Law).
Incentives for charitable activities are stipulated by Article 20 of the Charitable Organizations Law, which says that physical persons and legal entities which have donated partially their revenues, savings or assets for charitable activities have some tax benefits according to the Ukrainian legislation. Besides that charitable organizations which exist only on members’ contributions and endowments are exempted from taxes and other payments to the Budget and specialized funds.

Furthermore, Ukrainian legislation provides for opportunity to allocate budget money as financial support to non-governmental and other organizations which do not have status of budget institutions or if they are empowered by the state authority bodies to implement national appropriated programs and to render relevant services.

Therefore, the created Fund can receive budget money if it implements national appropriated programs aimed at victims’ assistance. Thus, notwithstanding the series of problems related to financial assistance to the Fund for assistance to the victims of human trafficking-related crimes, the assistance is still possible either through the state budget or through other sources that are not prohibited by Ukrainian legislation. Forms of financial assistance depend on the legal status of the Fund.
PART IV

INTERNATIONAL EXPERIENCE IN CREATION OF CRIME-SPECIFIC FUNDS AS ONE OF THE INSTRUMENTS TO COUNTER HUMAN TRAFFICKING-RELATED CRIMES

4.1. INTERNATIONAL EXPERIENCE IN CREATION OF CRIME-SPECIFIC CONFISCATION/FORFEITURE FUNDS AND MECHANISMS OF THEIR FUNCTIONING

4.1.1. Overview of Confiscation/Forfeiture Funds

A number of states have established Crime Specific Confiscation Funds for a number of different crimes, drug trafficking crimes being the most common ones (e.g. US, Australia, Ireland, Bulgaria, etc.).

The idea behind such a Fund is that the proceeds of sales of all property confiscated as the result of the operation of the specialized law enforcement agencies/departments should be deposited into a distinct fund. Thus, liquidated assets are deposited into an interest-bearing account pending the outcome of the confiscation/forfeiture proceedings. The practice of creation of such funds has been embraced by a wide variety of states as well as promoted by various international organizations.

It is important to note the various obvious benefits to creation of such funds, among which would be:

- ensuring that the value of assets, once seized, is preserved during the often lengthy and costly process to finally confiscate these assets;
- facilitation of the effective disbursement of assets after they have been confiscated or forfeited;
- ensuring administration of seized sums of money, which would not otherwise earn interest or would incur unnecessary storage risks or costs.

Establishment of a dedicated fund allows the asset confiscation/forfeiture program to be self-sustaining. The often considerable costs involved in the
administration and maintenance of seized assets can be paid out of the dedicated fund, reducing the need for reliance on appropriated or other government funds.

In cases where different judicial authorities have ordered the seizure of large amounts of assets in multiple cases, establishment of a dedicated fund is one way to facilitate the accountability and transparency of asset administration.

It would be fair to generally state that the use of criminal assets in this way provides a direct and substantial increase in funds available for law enforcement and rehabilitation/reintegration programs, depending on the selected model, while at the same time, the existence of such funds, and payments made out of them, do not affect the regular funding from the budget of the relevant bodies.

4.1.2. Models of Confiscation/Forfeiture Funds

Essentially, such Funds can be divided into three types according to the sources of appropriation of accumulated monies:

1. The first type being a model where the money from the Fund goes to support the efforts of the law enforcement agencies (U S examples29);
2. the model of the second type foresees that the use of money is split between support to law enforcement agencies and financing of the state programs to provide assistance to the victims (Australian, Albanian and the UK examples);
3. the third model provides for a mechanism where all the money from the Fund is to be used for victim assistance purposes (Azerbaijan and Georgia examples).

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29 It is important to note that the typology of this report refers only to those funds established in the framework of the US Justice Department Asset Forfeiture Program and the Treasury’s National Asset Forfeiture Program. While there is also a separate fund — the Crime Victims Fund established by the Victims of Crime Act of 1984 (VOCA), which is a major funding source for victim services throughout the country and which doesn’t represent a model of the first type, and thus, is not covered by this report.
Model of the first type

Thus, in some countries with the first model, the Funds serve to support the efforts of law enforcement agencies in areas of distinct crimes in a way that could not be achieved were such funds to be placed in consolidated revenue, which is the traditional destination of such funds.

In addition the existence of such a fund can act as a positive incentive to members of distinct law enforcement areas if the monies confiscated are sown into specific law enforcement areas and are applied specifically to finance further measures by law enforcement authorities in their fight against specific crimes. This means that not only will the criminals be denied their profits but those profits will be reinvested in the fight against this same type of crime.

Such funds have been in existence as part of the US Justice Department Asset Forfeiture Program (JDAFP) since 1990, as well as the Treasury Forfeiture Fund (TFF), managed by the Executive Office for Asset Forfeiture, which provides support to the Treasury’s National Asset Forfeiture Program in a manner that results in federal law enforcement's continued effective use of asset forfeiture as a law enforcement sanction to punish and deter criminal activity since 1992.

Model of the second type

Australia represents a model of the second type and it went even further with this same concept. However, the lengthy debate between the Australian policy makers on the wisdom or desirability of establishing such a fund was short circuited in the lead up to the 1990 federal election when the Prime Minister issued a press release in which he announced that a trust fund would be formed into which all funds confiscated under the POCA and the drug trafficking provisions of the Customs Act would be deposited.

He stated: «The Government has decided that the monies held in the trust fund will be distributed fifty per cent to law enforcement agencies and fifty per cent to programs for the rehabilitation of drug users. Thus, the proceeds obtained by drug traffickers will be directly applied to programs to assist those who have suffered as a result of drug usage.»

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30 POCA — Proceeds of Crime Act 1987
31 Australian Prime Minister’s media release of 20 March 1990
In December 1991, the **Confiscated Assets Trust Fund (CATF)** was established. Since then, all assets recovered under the Proceeds of Crime Act and under the narcotics related provisions of the Customs Act 1901 have been paid into the fund rather than of the Consolidated Revenue Fund.

Administrative responsibilities in relation to the CATF are essentially threefold:

1. administration of the legislation (Attorney-General’s Department),
2. administration of monies within the fund (Insolvency and Trustee Service Australia),
3. and administration of procedures for the selection of law enforcement projects for funding (Criminal Assets Liaison Group/HOCOLEA).

The Minister for Justice determines each financial year the amount available for distribution from the CATF Prescribed law enforcement agencies are invited to submit applications for funding of law enforcement projects from CATF monies. Then, half of the balance is to be paid to law enforcement projects selected by the Attorney-General. The other half is to be paid to drug rehabilitation and drug education projects chosen by the Minister for Health.

The United Kingdom of Great Britain being another example of the second model has replaced with the Recovered Assets Fund (from all forms of crime) its Confiscated Assets Fund (from drugs) in October 2001.

The Recovered Assets Fund is run by the Home Office and serves a number of different purposes. The Recovered Assets Fund finances specific projects, including those which support the Asset Recovery Strategy, the Anti Drugs Strategy, local crime and disorder reduction partnerships and community regeneration projects.³²

**Model of the third type**

The model of the third type was followed by a number of former Soviet Union Republics and represents the mechanism where the money from such funds is used solely to provide victims support and targeted assistance for repatriation and reintegration of victims, as well as recovery of the damage to the victims of specific crimes, such as trafficking in human beings.

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Namely, the Law of the Republic of Azerbaijan On Combating Human Trafficking, adopted in June 2005 stipulates that «All assets from trafficking in human beings (real estate, monetary assets, stocks, bonds and other assets) can be confiscated through the court decision in the order defined by law and shall be transferred to the Specially Created Fund of Assistance to Victims of Human Trafficking Crimes.»

The money accumulated within the Fund is to be used for:
(a) compensation to the victims of human trafficking;
(b) social rehabilitation;
(c) payments for medical and other expenses incurred by the victims of human trafficking crimes.

Similarly, the Republic of Georgia plans to create Special State Fund on Protection of and Assistance to the Victims of the Human Trafficking Crimes. According to the draft Law of Georgia On Prevention and Combating Human Trafficking, Protection of and Assistance to the Victims of Human Trafficking Crimes and their Rehabilitation, from July of 2006, the traffickers can be punished through confiscation of the proceeds from their crimes.

The money generated as a result of this crime will be accumulated in the Special State Fund on Protection of and Assistance to the Victims of the Human Trafficking Crimes created to administer the confiscated assets and will be used to recover damages to the victims of human trafficking, as well as to finance the measures on providing protection, assistance and rehabilitation to the victims.

There are various benefits from creation of the specialized funds, regardless of the selected model. Although it would be fair to generally state that the use of criminal assets in this way provides a direct and substantial increase in funds available for law enforcement and rehabilitation/reintegration programs, while at the same time the existence of the such funds, and payments made out of them, do not affect the regular funding from the budget of the relevant bodies.

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33 Law of the Republic of Azerbaijan On Combating Human Trafficking, Article 22 - Confiscation and Use of assets obtained from human trafficking

34 The damage to the person who is a victim of human trafficking crime is recovered from the confiscated assets of the trafficker in accordance with procedural legislation but if the value of the confiscated assets does not cover the damages, the recovery is to be made from the Fund with issuance of the court decision
4.2. MECHANISMS OF OPERATION OF CRIME-SPECIFIC CONFISCATION FUNDS. FORFEITURE IN THE UNITED STATES OF AMERICA

4.2.1. Introduction

The classic definition of «forfeiture» in the USA is as follows — forfeiture is a legal mechanism by which property derived from or used to further (support/advance) criminal activity can be forfeited to the government without compensation to the owner. The result of a forfeiture action is that title (ownership) of the property in question belongs to the state, not the individual.

There are a variety of forfeiture procedures in the USA. They include administrative, civil and criminal forfeiture procedures.

Criminal forfeiture is an action brought as a part of the criminal prosecution of a defendant. It is an \textit{in personam} (against the person) action and requires that the government indict (charge) the property used or derived from the crime along with the defendant. If the jury finds the property forfeitable, the court issues an order of forfeiture.

For forfeitures pursuant to the Controlled Substances Act (CSA), Racketeer Influenced and Corrupt Organizations (RICO), as well as money laundering and obscenity statutes, there is an ancillary hearing for third parties to assert their interest in the property. Once the interests of third parties are addressed, the court issues a final forfeiture order.

Civil judicial forfeiture is an \textit{in rem} (against the property) action brought in court against the property. The property is the defendant and no criminal charge against the owner is necessary.

Administrative forfeiture is an \textit{in rem} action that permits the federal seizing agency to forfeit the property without judicial involvement. The authority for a seizing agency to start an administrative forfeiture action is found in the Tariff Act of 1930, 19 U. S. C. § 1607. Property that can be administratively forfeited is: merchandise the importation of which is prohibited; a conveyance
used to import, transport, or store a controlled substance; a monetary instrument; or other property that does not exceed US$500,000 in value.\textsuperscript{35}

The primary purpose of forfeiture procedures in the USA is to make normally profitable illegal activity unprofitable. If the large sums of money generated by narcotics trafficking or other crimes (human trafficking, gambling, etc.) are can be seized by the government, there may be less incentive for individuals and criminal organizations to engage in such activities.

Many criminals are motivated by greed and the acquisition of material goods. Therefore, the ability of the government to forfeit property connected with criminal activity can be an effective law enforcement tool by reducing the incentive for illegal conduct. Asset forfeiture\textsuperscript{«} takes the profit out of crime\textsuperscript{»} by helping to eliminate the ability of the offender to command resources necessary to continue illegal activities.

The use of asset forfeiture in criminal investigations aims to undermine the economic infrastructure of the criminal enterprise. Criminal enterprises in many ways mirror legitimate businesses. They require employees, equipment, and cash flow to operate. Criminal enterprises also generate a profit from the sale of their «product» or «services.» The obvious difference is that the profit generated from criminal enterprises is derived from criminal activity. Asset forfeiture can remove the tools, equipment, cash flow, profit, and, sometimes, the product itself, from the criminals and the criminal organization, rendering the criminal organization powerless to operate.

In addition, the investigation and prosecution of large scale, sophisticated organized crime groups who most often control both narcotics and human trafficking, requires a commitment of expenses and time that law enforcement entities that might be beyond the capacity of many law enforcement entities. Consequently, a secondary rational for the forfeiture of property derived from or used in to further (support/advance) criminal activity is that the property can be used to support the extensive cost of the investigation and prosecution of these cases.

Finally, recognizing that many serious criminal activities have an adverse affect on the victims of serious crimes (i. e. persons who are trafficked and even

drug dependent users), American forfeiture regimes are now using a percentage of forfeited property to support victim services or prevention programs.

This part of the report intends to provide an overview of the Federal Forfeiture Mechanism of the United States by describing the functioning of the Department of Justice Asset Forfeiture Program and providing an explanation on the set up and work of Assets Forfeiture Fund and Seized Asset Deposit Fund. A separate subsection also describes New York State’s system (a civil forfeiture regime), which is used as an example to illustrate how forfeiture mechanisms are applied on an individual state level.

4.2.2. Department of Justice Asset Forfeiture Program

Federal Asset Forfeiture is done through the Department of Justice Asset Forfeiture Program. The primary mission of the Department of Justice (DOJ or the Department) Asset Forfeiture Program (AFP or the program) is to prevent and reduce crime by disrupting, damaging, and dismantling criminal organizations through the use of the forfeiture sanction. This is accomplished by means of depriving drug traffickers, racketeers, and other criminal syndicates of their ill-gotten proceeds and instrumentalities of their trade. Components responsible for the administration and financial management of the AFP are charged with lawfully, effectively and efficiently supporting law enforcement authorities in the application of specified forfeiture statutes. The Assets Forfeiture Fund (AFF or Fund) and Seized Asset Deposit Fund (SADF) together comprise a single financial reporting entity of the DOJ, which includes the specified funds, property seized for forfeiture, and the transactions and program activities of DOJ forfeiture program components and other participating agencies as described more fully herein.

There are three goals of the Department of Justice Asset Forfeiture Program: enforcing the law; improving law enforcement cooperation; and enhancing law enforcement through revenue. Asset forfeiture is a law enforcement success story.

The Justice Asset Forfeiture Program includes activity by DOJ components and several components outside the Department. Each component
plays an important role in the Program. The participants include the Asset Forfeiture and Money Laundering Section, Criminal Division (AFMLS); Asset Forfeiture Management Staff, Justice Management Division (AFMS); Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF); Drug Enforcement Administration (DEA); Bureau of Diplomatic Security, Department of State (DS); Executive Office for United States Attorneys (EOUSA); Federal Bureau of Investigation (FBI); Food and Drug Administration (FDA), United States Department of Agriculture (USDA); United States Marshals Service (USMS); and United States Postal Service (USPS). In 2006, ATF, DEA and FBI had custody of assets in addition to the USMS These agencies investigate or prosecute criminal activity under statutes, such as the Comprehensive Drug Abuse Prevention and Control Act of 1970, the Racketeer Influenced and Corrupt Organizations statute, the Controlled Substances Act, and the Money Laundering Control Act, or provide administrative support services to the program. Table 1 below displays the primary functional activities of the participating agencies in the AFP.

<table>
<thead>
<tr>
<th>Function</th>
<th>AFMLS</th>
<th>AFMS</th>
<th>ATF</th>
<th>DEA</th>
<th>DS</th>
<th>EOUSA</th>
<th>FBI</th>
<th>FDA</th>
<th>USDA</th>
<th>USMS</th>
<th>USPS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Investigation</td>
<td></td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Litigation</td>
<td>X</td>
<td></td>
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<td></td>
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<tr>
<td>Custody of Assets</td>
<td></td>
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<td></td>
<td>X</td>
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<td></td>
<td>X</td>
<td></td>
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<td></td>
<td>X</td>
</tr>
<tr>
<td>Management</td>
<td>X</td>
<td>X</td>
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</tbody>
</table>

The agencies which comprise Department of Justice Component have the following functions:

**Asset Forfeiture and Money Laundering Section of the Criminal Division (AFMLS)** holds the responsibility of coordination, direction, and general oversight of the Program. AFMLS handles civil and criminal litigation, provides legal support to the U. S. Attorneys’ Offices, establishes policy and procedure, coordinates multi-district asset seizures, administers equitable sharing

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of assets, acts on petitions for remission, coordinates international forfeiture and sharing and develops training seminars for all levels of government.

It also provides centralized management for the Department’s asset forfeiture program to ensure its integrity and maximize its law enforcement potential, while also providing managerial direction to the Department’s components in prosecuting money laundering.

The Section initiates, coordinates, and reviews legislative and policy proposals impacting on the asset forfeiture program and money laundering enforcement agencies.

The Section works with the entire spectrum of law enforcement and regulatory agencies using an interagency, interdisciplinary and international approach. The Section is mandated to: coordinate multi-district investigations and prosecutions; provide guidance, legal advice and assistance with respect to asset forfeiture and money laundering investigations and prosecutions; develop regulatory and legislative initiatives; ensure the uniform application of forfeiture and money laundering statutes; litigate complex, sensitive and multi-district cases; and provide litigation assistance to U.S. Attorneys’ Offices and Criminal Division components.

The Section oversees asset forfeiture and money laundering training and conducts seminars for federal prosecutors, investigating agents, and law enforcement personnel. It also produces legal publications and training materials to enhance its legal support functions.

The Section adjudicates all petitions for remission or mitigation of forfeited assets in judicial forfeiture cases, administers the Weed and Seed Program and the Equitable Sharing Program, and oversees the approval of the placement of forfeited property into official use by federal agencies.

Asset Forfeiture Management Staff, Justice Management Division (AFMS) has responsibility for management of the Assets Forfeiture Fund, the Consolidated Asset Tracking System (CATS), program-wide contracts, oversight of program internal controls and property management, interpretation of the Assets Forfeiture Fund statute, approval of unusual Fund uses, and legislative liaison on matters affecting the financial integrity of the Program. It is also responsible for Department-level administrative management mat-
ters affecting the asset forfeiture program, including financial management, audits, contracts, and automation.

**Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF)** enforces the federal laws and regulations relating to alcohol, tobacco, firearms, explosives and arson by working directly and in cooperation with other federal, state and local law enforcement agencies. ATF has the authority to seize and forfeit firearms, ammunition, explosives, alcohol, tobacco, currency, conveyances and certain real property involved in violation of law.

**Drug Enforcement Administration (DEA)** implements major investigative strategies against drug networks and cartels. Enforcement operations have resulted in significant seizure and forfeiture activity. A significant portion of DEA cases are adopted from state and local law enforcement agencies.

**Executive Office for United States Attorneys (EOUSA)** is responsible for the prosecution of both criminal and civil actions against property used or acquired during illegal activity.

**Federal Bureau of Investigation (FBI)** investigates a broad range of criminal violations, integrating the use of asset forfeiture into its overall strategy to eliminate targeted criminal enterprises. The FBI has successfully used asset forfeiture in White Collar Crime, Organized Crime, Drug, Violent Crime and Terrorism investigations. The FBI’s Asset Forfeiture/Victim Witness Unit combines two important missions. The Asset Forfeiture Program promotes the use of asset forfeiture as a tool to dismantle criminal organizations. On the other side, the Victim Witness Program exists to assist victims and witnesses in FBI cases who have suffered direct or threatened harm as a result of a crime.

To accomplish its goals, the Asset Forfeiture/Victim Unit provides training, resources, and operational assistance to Field Offices and entities in FBI Headquarters to ensure that asset forfeiture is incorporated into as many investigations as possible, where appropriate and allowed by law, to deter criminal activity and dismantle criminal enterprises. The Asset Forfeiture/Victim Witness Unit is the point of contact with the Department of Justice and other federal, state, and local law enforcement agencies pertaining to the use of asset forfeiture in FBI investigations.
United States Marshals Service (USMS) is the primary custodian of seized property for the Program. The Marshals Service administers the Program by managing and disposing of properties seized and forfeited by federal law enforcement agencies and U.S. attorneys nationwide. The role of the Marshals Service is to not only serve as custodian of seized and forfeited property but also to provide information and assist prosecutors in making informed decisions about property that is targeted for forfeiture. The Marshals Service manages and disposes of all assets seized for forfeiture by utilizing successful procedures employed by the private sector. The Marshals Service contracts with qualified vendors who minimize the amount of time an asset remains in inventory and maximize the net return to the government. The program has become a key part of the federal government’s efforts to combat major criminal activities.

There are several organizations outside the Department of Justice who participate in the DOJ Asset Forfeiture Program. This list may change as additional agencies and offices become part of the DOJ program. These agencies participate in Judicial forfeitures only:

Bureau of Diplomatic Security, Department of State (DS) investigates passport and visa fraud and integrates asset forfeiture into our strategy to target the profits made by vendors who provide fraudulent documentation or others who utilize fraudulent visas and/or passports to further their criminal enterprises.

Food and Drug Administration (FDA), United States Department of Agriculture (USDA) Office of Criminal Investigations has made seizures involving health care fraud schemes, counterfeit pharmaceuticals, illegal distribution of adulterated foods, and product tampering.

United States Postal Service (USPS) makes seizures under their authority to discourage profit-motivated crimes such as mail fraud, money laundering and drug trafficking using the mail.
4.2.3. Assets Forfeiture Fund and Seized Asset Deposit Fund

The Asset Forfeiture Program comprises two funds, which are under the management control of AFMS. The AFF is a special fund and the SADF is a deposit fund. The AFF and SADF were created to serve as repositories for funds seized by participating agencies and the sale proceeds from forfeited property. The proceeds deposited in the AFF are used to cover certain operating costs of the DOJ Asset Forfeiture Program (AFP). These include equitable sharing payments to state, local, and foreign governments; joint law enforcement operations; contract services in support of the program; and satisfaction of innocent third party claims. Operational expenses do not include the salaries and administrative expenses of AFP participants incurred while conducting investigations leading to seizure and forfeiture, and these expenses are not reported in the AFF/SADF financial statements.

Background

The AFF was created by the Comprehensive Crime Control Act of 1984 to be the repository of the proceeds of forfeitures under any law enforced and administered by the DOJ (28 U.S. C. 524 (c)). All amounts earned on investment of AFF and SADF balances are deposited into the AFF. The interest earned on the AFF balances is the property of the Government. Interest earned on SADF balances is deposited into the AFF pursuant to the statute cited above. SADF earnings are either returned to the owner with the underlying principal or become the property of the Government upon forfeiture of the principal.

Monies deposited in the AFF are used to cover operating costs of the program. These include, for example, asset management and disposition expenses; equitable sharing payments to participating state, local, and foreign governments; ADP equipment; contract service payments; and payments of innocent third party claims. All salaries and employment related expenses, liabilities, and imputed financing costs of DOJ AFP participants are reported in the financial statements of the participants’ reporting entities. Salaries and employment related costs of administrative personnel of the AFMS and
USMS are charged to the AFP as program operating costs. The AFP’s operating costs do not include the costs of any participant salaries incurred while conducting investigations leading to seizure and forfeiture.

While the AFF is the repository for forfeited currency and proceeds arising from the sale of forfeited property and also serves as the operating fund for specified program expenditures, the SADF serves as a repository for seized currency and specified deposits.

The SADF was created administratively by the DOJ to ensure control over monies seized by agencies participating in the DOJ’s AFP Public Law (P.L.) 102-140, dated October 28, 1991, provided authority for the investment of SADF balances pending adjudication. Generally, monies in the SADF are not the property of the Government. The SADF holds seized cash, the proceeds of any pre-forfeiture sale of seized property, and forfeited cash not yet transferred to the AFF Operating businesses under seizure also may be managed through the SADF. Because most funds held in the SADF are not Government property, monies in the SADF cannot be spent. SADF balances are transferred to the AFF upon the successful conclusion of a forfeiture action.

The Fund receives most of its revenue from the forfeiture of cash and other monetary assets and, secondly, from the sale of forfeited property. AFP participants may receive annual allocations by sub-allotment advice or reimbursement agreement. The Fund’s first priority is to cover the business or operational expenses of the AFP. After it is determined that there will be sufficient receipts, allocations may be made for investigative expenses, such as awards for information, purchase of evidence, and equipping of conveyances, and also discretionary expenses, such as storage, protection and destruction of controlled substances.

**Use of the Assets Forfeiture Fund**

The AFF is defined by statute. Authorities and limitations governing use of the AFF are specified in 28 U.S. C. 524 (c). In addition, use of the AFF is controlled by laws and regulations governing the use of public monies and appropriations (e.g., 31 U.S. C. 1341-1353 and 1501-1558, Office of Management and Budget (OMB) Circulars, and provisions of annual appropriation
acts). The AFF is further controlled by the *Attorney General’s Guidelines on Seized and Forfeited Property* (July 1990), policy memoranda, and statutory interpretations issued by appropriate authorities. Unless otherwise provided by law, restrictions on the use of AFF monies retain those limitations after any monies are made available to a recipient agency.

Table 2 below displays the example of what was financed under a permanent indefinite appropriation in Fiscal Year 2006 and Table 3 displays how Forfeiture Fund Resources were spent comparatively in 2005 and 2006.

Table 2. Fiscal Year 2006 appropriation

<table>
<thead>
<tr>
<th>Monies were available to finance the following:</th>
</tr>
</thead>
<tbody>
<tr>
<td>• The operational costs of the forfeiture program, including handling and disposal of seized and forfeited assets, and the execution of legal forfeiture proceedings to perfect the title of the United States in that property.</td>
</tr>
<tr>
<td>• The payment of innocent third party claims.</td>
</tr>
<tr>
<td>• The payment of equitable shares to participating foreign governments and state and local law enforcement agencies.</td>
</tr>
<tr>
<td>• The costs of ADP equipment and ADP support for the program.</td>
</tr>
<tr>
<td>• Contract services in support of the program.</td>
</tr>
<tr>
<td>• Training and printing associated with the program.</td>
</tr>
<tr>
<td>• Other management expenses of the program.</td>
</tr>
<tr>
<td>• Awards for information leading to forfeiture.</td>
</tr>
<tr>
<td>• Joint Federal, state, and local law enforcement operations.</td>
</tr>
<tr>
<td>• Investigative expenses leading to seizure.</td>
</tr>
</tbody>
</table>

Table 3. How Assets Forfeiture Fund Resources are spent

(Net of Earned Revenue) (US Dollars in Thousands)

<table>
<thead>
<tr>
<th>Strategic Goal (SG)</th>
<th>FY 2006</th>
<th>FY 2005</th>
<th>Change %</th>
</tr>
</thead>
<tbody>
<tr>
<td>SG 2. Enforce Federal Laws and Represent the Rights and Interests of the American People</td>
<td>606,496</td>
<td>276,599</td>
<td>119.3 %</td>
</tr>
<tr>
<td>SG 3. Assist State, Local, and Tribal Efforts to Prevent or Reduce Crime and Violence</td>
<td>367,659</td>
<td>317,752</td>
<td>15.7 %</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>974,155</td>
<td>594,351</td>
<td>63.9 %</td>
</tr>
</tbody>
</table>

Resources of the AFF are intended to cover the business expenses of the AFP, with any excess balances available for discretionary purposes, including

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investigative expenses subject to appropriations limitation (definite authority). Excess unobligated balances identified at the end of a fiscal year may be declared a «Super Surplus» balance. Super Surplus balances may be allocated at the discretion of the Attorney General for «any Federal law enforcement, litigative/prosecutive, and correctional activities or any other authorized purpose of the DOJ» pursuant to 28 U. S. C. 524 (c)(8)(E).

**Holding and Accounting for Seized and Forfeited Property**

The USMS has primary responsibility for holding and maintaining real and tangible personal property seized by participating agencies for disposition. Seized property either can be returned to the owner or forfeited to the Government. Forfeited property is subsequently sold, placed into official use, destroyed, or transferred to another agency. Seized and forfeited property is not considered inventory held for resale in the normal course of business.

### 4.2.4. Example of the New York State Forfeiture System

New York State’s comprehensive forfeiture statute, which became law on August 1, 1984, can be found in Article 13-A of the New York Civil Practice Law and Rules (CPLR). As the name of the volume where the law is found suggests, Article 13-A is a separate (from the criminal prosecution) civil action that allows the prosecutor (as the ‘claiming authority’) to institute a suit against either a «criminal defendant» or in certain cases against a «non-criminal» defendant.

This civil action is initiated by the prosecutor in the same way that other civil law suits between private citizens — by summons and complaint (as opposed to an indictment, which is the method of initiating a criminal case).

The New York State civil forfeiture action is characterized as *in personam* in nature, meaning that it is a suit against a particular individual not the property that is the subject of the forfeiture. Therefore in New York State, this action is more like a negligence lawsuit than other civil actions that are by nature *in rem* and which are directed against a particular piece of property to settle
the competing rights of individuals to that property. It should be noted that the federal (USA) civil forfeiture law takes an in rem approach.

Under Article 13-A of New York State’s CPLR, there are two (2) types of actions — «pre-conviction» actions and «post-conviction» actions.

To secure a «pre-conviction» forfeiture, a prosecutor must be able to demonstrate by «clear and convincing evidence» that the individual sued (the civil defendant) committed a felony-level drug offense. The New York State statute distinguishes between drug felony crimes and all other felony crimes in this section because of the particular destructive nature of drug crimes and New York State’s abhorrence of this type of crime.

In order to obtain a «post-conviction» forfeiture, a prosecutor must convict the defendant in a related criminal case of a felony crime. As a result of this requirement in New York State, civil forfeiture actions are commenced in conjunction (although as a separate cause of action) with the criminal case.

Both of the above types of forfeiture can be instituted against «criminal defendants» and «non-criminal defendants.» A criminal defendant is a person (individuals as well as legal persons such as corporations) who is ultimately convicted of a felony or a person who can be shown to have committed a felony drug crime by clear and convincing evidence.

A non-criminal defendant in the civil forfeiture action is a person who although can not be proven guilty of a felony crime has ownership of the subject property under circumstances where that person knows that it has been obtained from criminal activity (i.e. the spouse of a criminal defendant who is aware other spouse’s criminal behavior) or when that person knows that the criminal defendant is about to forfeit the property. Actions against non-criminal defendants are particularly useful in preventing criminal defendants from benefiting from transactions that seek to protect their illegal profits.

New York State’s civil forfeiture statute permits forfeiture of property which are the «proceeds of a crime» (the profits of the crime plus interest), the «substituted proceeds of a crime» (property bought with or exchanged for the proceeds) and the «instrumentalities of a crime» (property used directly in

38 This standard of proof is greater than the usual civil action standard of «preponderance of the evidence,» but considerably lower than the usual criminal standard of «beyond a reasonable doubt.»

39 Property is broadly defined in NYS and includes real and personal property, money, negotiable instruments, securities or anything of value or an interest in a thing of value.
the commission of the crime). Most importantly, New York State permits an action to forfeit «a money judgment in an amount equivalent in value» to the three items described previously.

Provisional Remedies

New York State’s civil forfeiture statute also permits the prosecutor to use a number of «provisional remedies» that previously existed in the CPLR and which are essential to the preservation of the defendant’s assets during the pendency of the forfeiture action. These provisional remedies permit a prosecutor to seize or encumber property so that the defendant can not dispose of the property before it can be forfeited. The provisional remedies include: attachment, injunction, receivership and notice of pendency (lis pendens).

Attachment is the most important of these provisional remedies. It is the act or process of taking property by virtue of a court order and brings the property within the control of the court, thus preventing the defendant from removing or using the property. It can be used for both personal (i.e. banks accounts, cash discovered during the execution of a search warrant, etc.) and real property (i.e. the filing of a lis pendens prevents a defendant from selling or transferring his real property).

These provisional remedies are available to a prosecutor in all actions for the recovery of property or a money judgment as permitted by the forfeiture statute.

In order to utilize the provisional remedies, the prosecutor must make three showings: (1) that there is a substantial probability that he will prevail on the issue of forfeiture, (2) that the failure by the court to issue an order for the provisional remedy may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture, and (3) that the need for the using the provisional remedy outweighs the hardship on any party against whom the remedy is sought.
Disposition of Properties Forfeited

In a post-conviction forfeiture action, if the defendant is convicted in the criminal case, the civil forfeiture action proceeds to determine whether the property will be forfeited or not. If the defendant is acquitted of criminal charges, the civil forfeiture case is dismissed and any restraints on the defendant’s assets (via provisional remedies) are removed.

Only after a final civil forfeiture judgment is rendered can the prosecutor forfeit the property of the defendant and distribute the property according to statute. The distribution of property is strictly regulated by statute as follows:

1. vehicle instrumentalities may be retained by the police (or the prosecutor, if the police waive their rights)
2. non-vehicle instrumentalities (i.e., computers) must be sold at auction
3. forfeited money and the proceeds of instrumentality auctions are distributed as follows:
   a. reimbursement for law enforcement expenses as part of the investigation (i.e., narcotics buy money),
   b. payouts to lien holders and mortgagees,
   c. restitution to the victims of the predicate crime, and
   d. the balance to:
      • the police — 41%
      • the prosecutor — 27%
      • a New York State substance abuse fund — 32%.

4.2.5. Conclusions

The primary purpose of the Fund is to deter crime by providing a stable source of resources to cover the costs of an effective Asset Forfeiture Program. Prior to the creation of the Fund in 1984, costs of activities had to be diverted from agency operational funds. The more effective an agency was in seizing property, the greater the drain on its appropriated funds. A secondary benefit of an aggressive and well-managed forfeiture program is the production of surplus revenues to assist in financing important law enforcement programs. The

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40 In NYS, the defendant in the civil forfeiture case has a right to trial by jury.
Fund’s authority to incur program operation expenses is limited only by the level of receipts deposited into the Fund.

An ancillary purpose of the Asset Forfeit Program is to enhance cooperation among federal, state, and local law enforcement agencies through the equitable sharing of federal forfeiture proceeds. Pursuant to 21 U.S. C Sec. 881 (e)(1) and 19 U.S. C Sec. 1616a, as made applicable by 21 U.S. C Sec. 881 (d) and other statutes, the Attorney General has the authority to equitably transfer forfeited property and cash to state and local agencies that directly participate in the law enforcement effort leading to the seizure and forfeiture of property.

All property and cash transferred to state and local agencies and any income generated by this property and cash is to be used for law enforcement purposes. As a result, state and local law enforcement programs and capabilities have benefited significantly from their cooperative efforts with Federal law enforcement agencies. Among the following uses of equitable shares, priority is given to supporting community policing activities, training, and law enforcement operations calculated to result in further seizures and forfeitures:

- Activities intended to enhance future investigations (e.g., payment of overtime for officers and investigators; payment of the first year’s salaries for new law enforcement positions that supplement the workforce; payments for temporary or not-to-exceed-one-year appointments; payments to informants; «buy,» «flash,» or reward money; and the purchase of evidence).
- Law enforcement training (e.g., asset forfeiture in general (statutory requirements, policies, procedures, and case law); the Fourth Amendment (search and seizure, probable cause, drafting affidavits, and confidential informant reliability); ethics and the National Code of Professional Conduct for Asset Forfeiture; due process rights; protecting the rights of innocent third-parties (individuals and lienholders); and A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies, March 1994).
- Law enforcement equipment and operations (e.g., purchase of body armor, firearms, radios, cellular telephones, computer equipment,
software to be used in support of law enforcement purposes, vehicles (e. g., patrol and surveillance vehicles), electronic surveillance equipment, uniforms, travel, transportation, supplies, leasing of office or other space for task force and undercover operations, and leasing of other types of equipment that support law enforcement activities).

• Detention facilities (e. g., construction, expansion, improvement, or operation of detention facilities managed by recipient agency).

• Law enforcement facilities and equipment (e. g., basic and necessary facilities, government furniture, safes, file cabinets, and telecommunications equipment necessary to perform official law enforcement duties).

• Drug education and awareness programs (e. g., conducting drug education and awareness programs by law enforcement agencies).

• Pro rata funding (e. g., costs associated with supporting multi-agency items or facilities).

• Asset accounting and tracking (e. g., accounting, auditing, and tracking of expenditures for shared cash, proceeds, and tangible property).
CONCLUSIONS AND RECOMMENDATIONS

Drawing a conclusion, it is fair to say that the international legal instruments and best practices recommendations of leading institutions provide a policy goal and a framework of action for the states. Implementation of international standards constitutes a commitment by the state to take steps that will lead to the goal of eradicating human trafficking-related crimes. However, even if international standards are adopted, victims of crime face challenges in the practical realization of their right to assistance and compensation, as internationally guaranteed.

Since criminal liability for human trafficking was introduced, the number of detected crimes of this category has grown. This can mean both that the number of crimes has grown, and that the work on their detection has been increased. Overall, since the introduction of criminal liability 1916 crimes have been detected. In the past 6 months of this year, the law enforcement agencies of Ukraine have detected 252 crimes under Article 149 of the Criminal Code of Ukraine, which is 2.3% lower than the number for the previous similar period of time last year. Of the 252 crimes under Article 149, 81 fall within part 3 of Article 149. The number of victims of human trafficking that have been returned to Ukraine is 273, 45 of which were minors. There are 28 crimes which remain unsolved. In the year 2006, 59 crimes remained unsolved, a slight decrease from 61 unsolved crimes in 2005.

This year the investigatory bodies of Internal Affairs filed 44 court cases against 100 persons with indictments and closed down 2 cases. The courts handed down 39 convictions against 66 persons, 18 of which received imprisonment, 46 of which received probation or a soft punishment, which excludes application of confiscation.

As we see from the statistics stated above, far from all of the initiated criminal cases of this category are solved and filed with the court. A large number of them are stopped, the crimes remain unsolved, and the search for suspects continues for years. In those case which do get filed with a court, confiscation is rarely applied, especially due to the absence of the property of the convicted
which can be confiscated. All of these factors deprive the victim from the possibility to receive recovery of damage from the committed crime.

The question of distribution of assets confiscated in criminal proceedings was discussed many times in Ukraine, as well as abroad, and remains contentious to this day. In particular, most disputable is the problem of distribution of costs confiscated in the result of uncovering and investigating crimes among the divisions and services that actually uncovered and investigated these crimes. For example, in some jurisdictions a law enforcement agency or its division that uncovered or investigated a crime, in the result of which material assets were found, has a right to receive a certain percent of the confiscated sum. Such measures, on one hand, stimulate law enforcement agencies to more effective activity and qualitative work and, on the other, create additional sources of financing for law enforcement agencies. Such proposals make part, for example, of Recommendations of parliamentary hearings «On the condition of justice in Ukraine» that took place on May 23, 2007, and were ratified by the Postanova of Verkhovna Rada # 1245-V of 23 June 2007 that recommend to adopt a law «On legal fee» which previews that the costs of paying legal fee will be used to finance the courts.

Some attempts to modify the procedure of compensation to the victims of violent crime were taken in Ukraine in the early 90’s. On February 10, 1995 there was a Regulation of the President of Ukraine # 35 that ordered commencement of the work on the creation of a Fund for assistance to the victims of criminal acts. On December 28, 2004 Presidential Decree # 1560 approved the «Concept of protection of legal rights and interests of victims of crimes».

According to the provisions of this Concept, a system of measures should be implemented in Ukraine with the aim of provision of social assistance, consisting of access to special system of support (medical, social and psychological assistance), to victims. The Concept foresees:

— Development of a law on provision of compensation to the victims, which will specify conditions and procedures for provision of legal, medical, social and material assistance to the victims, as well as assistance to relatives and dependants, depending on the character and
consequences of crime, method of its commitment, material condition of the victim and other circumstances;
— Development of a mechanism of realization of a victim’s right to compensation of damage caused by crime;
— Designation of the amounts of budgetary funds of special purpose in the general budgetary funds;
— Development and legislative provision of conditions and procedures of compensatory support of the victims by different forms of obligatory and voluntary insurance;
— Facilitation of the creation of civil society and charitable funds to assist victims.

To execute the provisions of this Presidential Decree the Cabinet of Ministers of Ukraine adopted Resolution # 110-p of April 20th 2005 «On the adoption of Action Plan on the implementation of the Concept on protection of legal rights and interests of victims of crimes for the years 2005-2006». In paragraph 1 of this Action Plan relevant ministries are charged with preparation and presentation to the Cabinet of Ministers of the project of law «On the compensation to the victims of crimes». In addition, the same request was specified in paragraph 94 of the Action Plan on the implementation in the year 2005 of the Program of the Cabinet of Ministers «Toward the people», approved by the resolution of the Cabinet of Ministers of May 6, 2005 # 324.

As a result, with the aim of strengthening the guarantees of protection of victims of violent crimes, primarily as to providing them with state social assistance as compensation, the Ministry of Justice developed a Project of Law «On the compensation to the victims of violent crimes». According to the provisions of this law, it was proposed to create a Central Commission on Compensation under the Ministry of Labor and Social Policy, which will govern territorial commissions on compensation. The Commission consists of representatives of Ministry of Labor and Social Policy, Ministry of Justice and Ministry of Health. Creation of such Commission under Ministry of Labor and Social Policy was conditioned by the fact that compensation payments are
a kind of social protection of victims of crimes. The Commission has authority to take decision on compensation in every specific case.

**However, due to the political situation in Ukraine and the unsatisfactory economic situation these measures did not receive further development.**

Ukrainian legislation in force, and its practical implementation, demonstrates the existence of certain gaps and deficiencies in the field of compensation to the victims of human trafficking-related crimes, and in protection of their rights.

*From the issues mentioned above the following conclusions can be made:*

**First**, the person whose life, health, honor and dignity, as well as his/her property was threatened needs legal and social protection, including material and moral support. The Constitution of Ukraine provides for the obligation of the state as to the protection of the persons, establishment and enforcement of his/her rights and freedoms. Nevertheless, current legislation of Ukraine pays closer attention to the protection of the rights and interests of the suspect, the accused and the defendant, as opposed to those of the victim.

Such treatment of the person who has suffered from the crime is manifested in different ways. First of all, the body of inquiry, pre-trial investigator, or prosecutor’s office which carry out criminal proceedings, when initiating a criminal case in connection to the sustained damage to the person, move the victim to the background, giving the person a passive role of the observer of their actions, forgetting that the entire mechanism of criminal justice in such cases is meant to function specifically for the restoration of the rights which have been violated as a result of the crime.

The victim has a realistic opportunity to receive compensation for the material expense and moral sufferings upon the decision of the court, which means within at least six months from the time he/she reported to the law enforcement agencies the crime which was committed. Nevertheless, as a rule, victims of human trafficking crimes suffer moral and physical damage requir-
ing immediate assistance from doctors, psychologists and psychiatrists. There are also other routine daily issues which call for an immediate resolution.

**With the goal of effective protection of the rights and interests of the victim it is necessary to introduce basic principles applied in international practice, more specifically:**

A) **just treatment of the victims** — respect to their dignity, expression of compassion to them, neutralization of the negative results of the crime, raising of the level of safety of the person, of the society, of the state;

B) **information availability** — all of the victims have a right to receive information as to the review of the case and the decision taken. In the process of the investigation the victim should be exercising their rights to study the materials of the case. Upon the issuance of the ruling the victims should be informed of all measures which are applied to the convicted (amnesty, pardon) and have a right to express their position in this regard;

C) **provision of the recovery of damages** — the victims are to have the right to restitution of the material and moral damage. The person who committed a crime is to cover the damages even if he was freed from criminal liability;

D) **provision of the free legal aid to the victims** — first of all, the victims of severe crimes and those in vulnerable material situation, as well as those who are unable to exercise their rights and interests on their own;

E) **provision of the social assistance to the victims** — the victims shall have an access to special systems of support (medical, social, psychological assistance).

**Second,** asset confiscation as a criminal punishment and one of the methods to guarantee compensation to the victims does not function well enough. The main reason consists in the lack of detection of costs and assets subject to confiscation or that can be used for paying compensation to the victims in order to provide their seizure and confiscation. As the practice shows, the proceeds of crime, including crimes of trafficking in persons, in most cases do not legally belong to the suspect (accused, defendant), but are in property of
other persons who are not suspects. In such conditions there are no legal reasons for seizure and confiscation of assets that in reality are proceeds of crime or belong to the suspect.

Third, a general problem of the entire criminal justice system consists of the absence of due financing. One possible alternative source of finance for the entire system and for the provision of rights of victims of human trafficking-related crimes in particular can be a special fund for assistance of victims of human trafficking. At the same time we must recognize that creation of a confiscation fund is only one of many legal and organizational instruments of assistance to the victims of this type of crime.

With the aim of improving the legislation and the mechanism of compensation, and ensuring provision of execution of punishment in the form of asset confiscation take the following measures are necessary:

• To establish the Fund for the Assistance to the Victims of Human Trafficking-Related Crime through the issuance of the regulative documents, specifically the Cabinet of Ministers’ Decree, which will provide all necessary assistance to the victims in a timely manner, from the moment when the crime was detected and when such assistance is necessary and not with the passage of some time;

• The Fund should be financed through funds from asset confiscation, bail, grants, and contributions which are obtained by the Fund for specific purposes, as well as from the proper state budget funds.

• The powers and functions should be additionally prescribed in the draft complex Law On Combating Human Trafficking;

• To provide for financial support of the Fund, appropriate changes should be introduced into the state budget;

• Among the funding priorities of the Fund should be treatment of illnesses contracted as a result of the crime, psychological rehabilitation, legal aid and the provision of a minimum salary to ensure reintegration upon return to the motherland;

• It is necessary to establish a continued cooperation between the personnel of the fund and the Ministry of Interior of Ukraine, and if pos-
sible with participation of the representatives of the Ministry in the work of the organizational structures of the Fund. Such cooperation is necessary because the Ministry of Interior of Ukraine is vested with responsibility to detect and solve human trafficking crimes, to review reports of the citizens and statements in regards to these crimes, thus, they have the most current information on committal of such crimes and the whereabouts of victims. Timely obtaining such information by the personnel of the Fund will allow starting the work as soon as the crime was detected, avoiding the gap in time and providing assistance (psychological, medical, legal, etc.) when it is the most necessary to the victim. Creation of the functioning mechanism of cooperation with the Ministry of Interior of Ukraine with immediate information exchange is the first prerequisite for the most effective work of such a Fund. Ideally, information on victims of human trafficking cases should be received from each rayon department immediately.

- To introduce changes in the current legislation to ensure that the filed civil claim and potential confiscation are possible. More specifically, to introduce changes into the Article 125 of the Criminal Procedure Code of Ukraine, according to which the investigator which issued a sanction on arrest of the property to provide for satisfaction of the civil claim and potential confiscation will be able to send it for execution to the State Execution Service;

- To define in the legislation the list of third persons who have certain family, social or other strong and close relations with the suspect (accused, defendant) and the procedure of seizure and possible confiscation of assets that are of origin that these persons cannot explain and could not purchase them on their cost;

- As trafficking in persons is considered a crime that foregoes legalization of proceeds of crime it is to activate checking of the generalized materials of the State Committee of Financial Monitoring that are sent to the Ministry of Interior aimed at checking the criminal origin of revenues that were object of suspicious financial transaction on the subject of their connection to the crime of trafficking in persons;
• Finalize the work on the project of the law «On compensation to the victims of violent crimes» or alternative legal act that will define the mechanisms of compensation to the victims of human trafficking and other violent crimes;

• In the transitional period before adoption of the Law «On compensation to the victims of violent crimes» to use all the other possible measures previewed by acting legislation for the provision of effective protection of victims’ rights for compensation of losses. For example, in the Decision of Plenum of the Supreme Court of Ukraine # 7 of 24 October 2003 «On the practice of assignment of criminal punishments by courts» in paragraph 5 it is said that other than the circumstances enumerated in part 1 of Article 66 of the Criminal Code that commute the sentence, courts may recognize others as commuting circumstances, in particular partial compensation and compensation of moral damage. Therefore, it is to direct the attention of judges to the necessity of taking into consideration these circumstances when delivering judgments and giving sentences.

Therefore, assistance and compensation to the victims of human trafficking-related crimes should become an integrated part of the whole scheme of anti-trafficking measures and a priority of the victim-centred justice systems. Confiscation of criminal asset should be used for financing the state commitment to protect victims of human trafficking and fighting this reprehensible crime.
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ANNEXES


10. Law on Proceeds of Crime Forfeiture of the State of New Yor — Article 13 A of the New York State’s Consolidated Laws for Civil Practice Law and Rules.
1. DECLARATION OF BASIC PRINCIPLES OF JUSTICE FOR VICTIMS OF CRIME AND ABUSE OF POWER

General Assembly Resolution 40/34 of 29 November 1985

Extracts

(...)

A Victims of Crime

1. «Victims» means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.

2. A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim. The term «victim» also includes, where appropriate, the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

3. The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, color, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.
Access to justice and fair treatment

4. Victims should be treated with compassion and respect for their dignity. They are entitled to access to the mechanisms of justice and to prompt redress, as provided for by national legislation, for the harm that they have suffered.

5. Judicial and administrative mechanisms should be established and strengthened where necessary to enable victims to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Victims should be informed of their rights in seeking redress through such mechanisms.

6. The responsiveness of judicial and administrative processes to the needs of victims should be facilitated by:

(a) Informing victims of their role and the scope, timing and progress of the proceedings and of the disposition of their cases, especially where serious crimes are involved and where they have requested such information;

(b) Allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected, without prejudice to the accused and consistent with the relevant national criminal justice system;

(c) Providing proper assistance to victims throughout the legal process;

(d) Taking measures to minimize inconvenience to victims, protect their privacy, when necessary, and ensure their safety, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(e) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting awards to victims.
7. Informal mechanisms for the resolution of disputes, including mediation, arbitration and customary justice or indigenous practices, should be utilized where appropriate to facilitate conciliation and redress for victims.

**Restitution**

8. Offenders or third parties responsible for their behavior should, where appropriate, make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.

9. Governments should review their practices, regulations and laws to consider restitution as an available sentencing option in criminal cases, in addition to other criminal sanctions.

10. In cases of substantial harm to the environment, restitution, if ordered, should include, as far as possible, restoration of the environment, reconstruction of the infrastructure, replacement of community facilities and reimbursement of the expenses of relocation, whenever such harm results in the dislocation of a community.

11. Where public officials or other agents acting in an official or quasi-official capacity have violated national criminal laws, the victims should receive restitution from the State whose officials or agents were responsible for the harm inflicted. In cases where the Government under whose authority the victimizing act or omission occurred is no longer in existence, the State or Government successor in title should provide restitution to the victims.
Compensation

12. When compensation is not fully available from the offender or other sources, States should endeavour to provide financial compensation to:

(a) Victims who have sustained significant bodily injury or impairment of physical or mental health as a result of serious crimes;

(b) The family, in particular dependants of persons who have died or become physically or mentally incapacitated as a result of such victimization.

13. The establishment, strengthening and expansion of national funds for compensation to victims should be encouraged. Where appropriate, other funds may also be established for this purpose, including in those cases where the State of which the victim is a national is not in a position to compensate the victim for the harm.

Assistance

14. Victims should receive the necessary material, medical, psychological and social assistance through governmental, voluntary, community-based and indigenous means.

15. Victims should be informed of the availability of health and social services and other relevant assistance and be readily afforded access to them.

16. Police, justice, health, social service and other personnel concerned should receive training to sensitize them to the needs of victims, and guidelines to ensure proper and prompt aid.
17. In providing services and assistance to victims, attention should be given to those who have special needs because of the nature of the harm inflicted or because of factors such as those mentioned in paragraph 3 above.

2. UNIVERSAL DECLARATION OF HUMAN RIGHTS

General Assembly resolution 217 A (III) of 10 December 1948

Extract

(...) 

Article 8.

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

(...)
3. BASIC PRINCIPLES AND GUIDELINES ON THE RIGHT TO A REMEDY AND REPARATION FOR VICTIMS OF GROSS VIOLATIONS OF INTERNATIONAL HUMAN RIGHTS LAW AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW

General Assembly Resolution 60/147 of 16 December 2005

Extracts

(...)

V. Victims of gross violations of international human rights law and serious violations of international humanitarian law

8. For purposes of the present document, victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term «victim» also includes the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

9. A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.

VI. Treatment of victims

10. Victims should be treated with humanity and respect for their dignity and human rights, and appropriate measures should be taken to ensure their safety, physical and psychological well-being and privacy, as well as those of
their families. The State should ensure that its domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid his or her re-traumatization in the course of legal and administrative procedures designed to provide justice and reparation.

VII. Victims’ right to remedies

11. Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim’s right to the following as provided for under international law:

(a) Equal and effective access to justice;

(b) Adequate, effective and prompt reparation for harm suffered;

(c) Access to relevant information concerning violations and reparation mechanisms.

VIII. Access to justice

12. A victim of a gross violation of international human rights law or of a serious violation of international humanitarian law shall have equal access to an effective judicial remedy as provided for under international law. Other remedies available to the victim include access to administrative and other bodies, as well as mechanisms, modalities and proceedings conducted in accordance with domestic law. Obligations arising under international law to secure the right to access justice and fair and impartial proceedings shall be reflected in domestic laws. To that end, States should:

(a) Disseminate, through public and private mechanisms, information about all available remedies for gross violations of international human rights law and serious violations of international humanitarian law;
(b) Take measures to minimize the inconvenience to victims and their representatives, protect against unlawful interference with their privacy as appropriate and ensure their safety from intimidation and retaliation, as well as that of their families and witnesses, before, during and after judicial, administrative, or other proceedings that affect the interests of victims;

(c) Provide proper assistance to victims seeking access to justice;

(d) Make available all appropriate legal, diplomatic and consular means to ensure that victims can exercise their rights to remedy for gross violations of international human rights law or serious violations of international humanitarian law.

13. In addition to individual access to justice, States should endeavour to develop procedures to allow groups of victims to present claims for reparation and to receive reparation, as appropriate.

14. An adequate, effective and prompt remedy for gross violations of international human rights law or serious violations of international humanitarian law should include all available and appropriate international processes in which a person may have legal standing and should be without prejudice to any other domestic remedies.

IX. Reparation for harm suffered

15. Adequate, effective and prompt reparation is intended to promote justice by redressing gross violations of international human rights law or serious violations of international humanitarian law. Reparation should be proportional to the gravity of the violations and the harm suffered. In accordance with its domestic laws and international legal obligations, a State shall provide reparation to victims for acts or omissions which can be attributed to the State.
and constitute gross violations of international human rights law or serious violations of international humanitarian law. In cases where a person, a legal person, or other entity is found liable for reparation to a victim, such party should provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.

16. States should endeavour to establish national programs for reparation and other assistance to victims in the event that the parties liable for the harm suffered are unable or unwilling to meet their obligations.

17. States shall, with respect to claims by victims, enforce domestic judgments for reparation against individuals or entities liable for the harm suffered and endeavour to enforce valid foreign legal judgments for reparation in accordance with domestic law and international legal obligations. To that end, States should provide under their domestic laws effective mechanisms for the enforcement of reparation judgments.

18. In accordance with domestic law and international law, and taking account of individual circumstances, victims of gross violations of international human rights law and serious violations of international humanitarian law should, as appropriate and proportional to the gravity of the violation and the circumstances of each case, be provided with full and effective reparation, as laid out in principles 19 to 23, which include the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

19. Restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law or serious violations of international humanitarian law occurred. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one’s place of residence, restoration of employment and return of property.
20. Compensation should be provided for any economically assessable damage, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from gross violations of international human rights law and serious violations of international humanitarian law, such as:

(a) Physical or mental harm;

(b) Lost opportunities, including employment, education and social benefits;

(c) Material damages and loss of earnings, including loss of earning potential;

(d) Moral damage;

(e) Costs required for legal or expert assistance, medicine and medical services, and psychological and social services.

21. Rehabilitation should include medical and psychological care as well as legal and social services.

22. Satisfaction should include, where applicable, any or all of the following:

(a) Effective measures aimed at the cessation of continuing violations;

(b) Verification of the facts and full and public disclosure of the truth to the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim’s relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations;
(c) The search for the whereabouts of the disappeared, for the identities of the children abducted, and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities;

(d) An official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim;

(e) Public apology, including acknowledgement of the facts and acceptance of responsibility;

(f) Judicial and administrative sanctions against persons liable for the violations;

(g) Commemorations and tributes to the victims;

(h) Inclusion of an accurate account of the violations that occurred in international human rights law and international humanitarian law training and in educational material at all levels.

23. Guarantees of non-repetition should include, where applicable, any or all of the following measures, which will also contribute to prevention:

(a) Ensuring effective civilian control of military and security forces;

(b) Ensuring that all civilian and military proceedings abide by international standards of due process, fairness and impartiality;

(c) Strengthening the independence of the judiciary;
(d) Protecting persons in the legal, medical and health-care professions, the media and other related professions, and human rights defenders;

(e) Providing, on a priority and continued basis, human rights and international humanitarian law education to all sectors of society and training for law enforcement officials as well as military and security forces;

(f) Promoting the observance of codes of conduct and ethical norms, in particular international standards, by public servants, including law enforcement, correctional, media, medical, psychological, social service and military personnel, as well as by economic enterprises;

(g) Promoting mechanisms for preventing and monitoring social conflicts and their resolution;

(h) Reviewing and reforming laws contributing to or allowing gross violations of international human rights law and serious violations of international humanitarian law.

X. Access to relevant information concerning violations and reparation mechanisms

24. States should develop means of informing the general public and, in particular, victims of gross violations of international human rights law and serious violations of international humanitarian law of the rights and remedies addressed by these Basic Principles and Guidelines and of all available legal, medical, psychological, social, administrative and all other services to which victims may have a right of access. Moreover, victims and their representatives should be entitled to seek and obtain information on the causes leading to their victimization and on the causes and conditions pertaining to the gross violations of international human rights law and serious violations of international humanitarian law and to learn the truth in regard to these violations. (...
4. PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME


(Signed by Ukraine on November 15, 2001, ratified on February 4, 2004, entered into force for Ukraine on May 21, 2005)

Extracts

(...)

Article 3

Use of terms

For the purposes of this Protocol:

(a) «Trafficking in persons» shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;
(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered «trafficking in persons» even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) «Child» shall mean any person under eighteen years of age.

(...)

II. PROTECTION OF VICTIMS OF TRAFFICKING IN PERSONS

Article 6
Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:

   (a) Information on relevant court and administrative proceedings;

   (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defense.
3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;

(b) Counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;

(c) Medical, psychological and material assistance; and

(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

(…)

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5. EUROPEAN CONVENTION ON THE COMPENSATION OF VICTIMS OF VIOLENT CRIMES

Council of Europe, Strasbourg, November 24, 1983.

(Signed by Ukraine on April 7, 2005, not ratified)

PART I — BASIC PRINCIPLES

Article 1

The Parties undertake to take the necessary steps to give effect to the principles set out in Part I of this Convention.

Article 2

When compensation is not fully available from other sources the State shall contribute to compensate:

a) those who have sustained serious bodily injury or impairment of health directly attributable to an intentional crime of violence;

b) the dependants of persons who have died as a result of such crime.

Compensation shall be awarded in the above cases even if the offender cannot be prosecuted or punished.

Article 3

Compensation shall be paid by the State on whose territory the crime was committed:

a) to nationals of the States party to this Convention;

b) to nationals of all member States of the Council of Europe who are permanent residents in the State on whose territory the crime was committed.
**Article 4**

Compensation shall cover, according to the case under consideration, at least the following items: loss of earnings, medical and hospitalization expenses and funeral expenses, and, as regards dependants, loss of maintenance.

**Article 5**

The compensation scheme may, if necessary, set for any or all elements of compensation an upper limit above which and a minimum threshold below which such compensation shall not be granted.

**Article 6**

The compensation scheme may specify a period within which any application for compensation must be made.

**Article 7**

Compensation may be reduced or refused on account of the applicant’s financial situation.

**Article 8**

1. Compensation may be reduced or refused on account of the victim’s or the applicant’s conduct before, during or after the crime, or in relation to the injury or death.

2. Compensation may also be reduced or refused on account of the victim’s or the applicant’s involvement in organized crime or his membership of an organization which engages in crimes of violence.

3. Compensation may also be reduced or refused if an award or a full award would be contrary to a sense of justice or to public policy (order public).
Article 9

With a view to avoiding double compensation, the State or the competent authority may deduct from the compensation awarded or reclaim from the person compensated any amount of money received, in consequence of the injury or death, from the offender, social security or insurance, or coming from any other source.

Article 10

The State or the competent authority may be subrogated to the rights of the person compensated for the amount of the compensation paid.

Article 11

Each Party shall take appropriate steps to ensure that information about the scheme is available to potential applicants.

PART II — INTERNATIONAL CO-OPERATION

Article 12

Subject to the application of bilateral or multilateral agreements on mutual assistance concluded between Contracting States, the competent authorities of each Party shall, at the request of the appropriate authorities of any other Party, give the maximum possible assistance in connection with the matters covered by this Convention. To this end, each Contracting State shall designate a central authority to receive, and to take action on, requests for such assistance, and shall inform thereof the Secretary General of the Council of Europe when depositing its instrument of ratification, acceptance, approval or accession.
Article 13

1. The European Committee on Crime Problems (CDPC) of the Council of Europe shall be kept informed regarding the application of the Convention.

2. To this end, each Party shall transmit to the Secretary General of the Council of Europe any relevant information about its legislative or regulatory provisions concerning the matters covered by the Convention.

PART III — FINAL CLAUSES

Article 14

This Convention shall be open for signature by the member States of the Council of Europe. It is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

Article 15

1. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by the Convention in accordance with the provisions of

2. In respect of any member State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of the instrument of ratification, acceptance or approval.
Article 16

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any State not a member of the Council of Europe to accede to this Convention by a decision taken by the majority provided for in Article 20. d of the Statute of the Council of Europe and by the unanimous vote of the representatives of the Contracting States entitled to sit on the Committee.

2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 17

1. Any State may at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any State may at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration. In respect of such territory the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of such notification by the Secretary General.
Article 18

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more reservations.

2. Any Contracting State which has made a reservation under the preceding paragraph may wholly or partly withdraw it by means of a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall take effect on the date of receipt of such notification by the Secretary General.

3. A Party which has made a reservation in respect of a provision of this Convention may not claim the application of that provision by any other Party; it may, however, if its reservation is partial or conditional, claim the application of that provision in so far as it has itself accepted it.

Article 19

Any Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

Such a denunciation shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of the notification by the Secretary General.

Article 20

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention, of:

a) any signature;

b) the deposit of any instrument of ratification, acceptance, approval or accession;

c) any date of entry into force of this Convention in accordance with Articles 15, 16 and 17;
d) any other act, notification or communication relating to this Conven-
tion.

In witness whereof the undersigned, being duly authorized thereto, have
signed this Convention.

Done at Strasbourg, this 24th day of November 1983, in English and
French, both texts being equally authentic, in a single copy which shall be
deposited in the archives of the Council of Europe. The Secretary General of
the Council of Europe shall transmit certified copies to each member State of
the Council of Europe and to any State invited to accede to this Convention.
6. CONVENTION ON LAUNDERING, SEARCH, SEIZURE AND CONFISCATION OF THE PROCEEDS FROM CRIME

Council of Europe, Strasbourg, 8 November, 1990.

(Signed by Ukraine on May 29, 1997, ratified on December 17, 1997, entered into force for Ukraine on May 1, 1998)

Extracts

CHAPTER I — USE OF TERMS

Article 1 - Use of terms

For the purposes of this Convention:

a) «proceeds» means any economic advantage from criminal offences. It may consist of any property as defined in sub-paragraph b of this article;

b) «property» includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to, or interest in such property;

c) «instrumentalities» means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;

d) «confiscation» means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property;
e) «predicate offence» means any criminal offence as a result of which proceeds were generated that may become the subject of an offence as defined in Article 6 of this Convention.

CHAPTER II — MEASURES TO BE TAKEN AT NATIONAL LEVEL

Article 2 - Confiscation measures

1. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds.

2. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies only to offences or categories of offences specified in such declaration.

Article 3 - Investigative and provisional measures

Each Party shall adopt such legislative and other measures as may be necessary to enable it to identify and trace property which is liable to confiscation pursuant to Article 2, paragraph 1, and to prevent any dealing in, transfer or disposal of such property.

Article 4 - Special investigative powers and techniques

1. Each Party shall adopt such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in Articles 2 and 3. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy.

2. Each Party shall consider adopting such legislative and other measures as may be necessary to enable it to use special investigative techniques facili-
tating the identification and tracing of proceeds and the gathering of evidence related thereto. Such techniques may include monitoring orders, observation, interception of telecommunications, access to computer systems and orders to produce specific documents.

(...)

SECTION 1 — PRINCIPLES OF INTERNATIONAL CO-OPERATION

Article 7 - General principles and measures for international co-operation

1. The Parties shall co-operate with each other to the widest extent possible for the purposes of investigations and proceedings aiming at the confiscation of instrumentalities and proceeds.

2. Each Party shall adopt such legislative or other measures as may be necessary to enable it to comply, under the conditions provided for in this chapter, with requests:
   a) for confiscation of specific items of property representing proceeds or instrumentalities, as well as for confiscation of proceeds consisting in a requirement to pay a sum of money corresponding to the value of proceeds;
   b) for investigative assistance and provisional measures with a view to either form of confiscation referred to under a above.

SECTION 2 — INVESTIGATIVE ASSISTANCE

Article 8 - Obligation to assist

The Parties shall afford each other, upon request, the widest possible measure of assistance in the identification and tracing of instrumentalities, proceeds and other property liable to confiscation. Such assistance shall include any measure providing and securing evidence as to the existence, location or movement, nature, legal status or value of the aforementioned property. (...
SECTION 3 — PROVISIONAL MEASURES

Article 11 - Obligation to take provisional measures

1. At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall take the necessary provisional measures, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.

2. A Party which has received a request for confiscation pursuant to Article 13 shall, if so requested, take the measures mentioned in paragraph 1 of this article in respect of any property which is the subject of the request or which might be such as to satisfy the request.

(...) 

SECTION 4 — CONFISCATION

Article 13 - Obligation to confiscate

1. A Party, which has received a request made by another Party for confiscation concerning instrumentalities or proceeds, situated in its territory, shall:

   a) enforce a confiscation order made by a court of a requesting Party in relation to such instrumentalities or proceeds; or

   b) submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such order is granted, enforce it.

2. For the purposes of applying paragraph 1. b of this article, any Party shall whenever necessary have competence to institute confiscation proceedings under its own law.

3. The provisions of paragraph 1 of this article shall also apply to confiscation consisting in a requirement to pay a sum of money corresponding to the value of proceeds, if property on which the confiscation can be enforced is located in the requested Party. In such cases, when enforcing confiscation
pursuant to paragraph 1, the requested Party shall, if payment is not obtained, realise the claim on any property available for that purpose.

4. If a request for confiscation concerns a specific item of property, the Parties may agree that the requested Party may enforce the confiscation in the form of a requirement to pay a sum of money corresponding to the value of the property.

**Article 14 - Execution of confiscation**

1. The procedures for obtaining and enforcing the confiscation under Article 13 shall be governed by the law of the requested Party.

2. The requested Party shall be bound by the findings as to the facts in so far as they are stated in a conviction or judicial decision of the requesting Party or in so far as such conviction or judicial decision is implicitly based on them.

3. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 2 of this article applies only subject to its constitutional principles and the basic concepts of its legal system.

4. If the confiscation consists in the requirement to pay a sum of money, the competent authority of the requested Party shall convert the amount thereof into the currency of that Party at the rate of exchange ruling at the time when the decision to enforce the confiscation is taken.

5. In the case of Article 13, paragraph 1. a, the requesting Party alone shall have the right to decide on any application for review of the confiscation order.

**Article 15 - Confiscated property**

Any property confiscated by the requested Party shall be disposed of by that Party in accordance with its domestic law, unless otherwise agreed by the Parties concerned.
Article 16 - Right of enforcement and maximum amount of confiscation

1. A request for confiscation made under Article 13 does not affect the right of the requesting Party to enforce itself the confiscation order.

2. Nothing in this Convention shall be so interpreted as to permit the total value of the confiscation to exceed the amount of the sum of money specified in the confiscation order. If a Party finds that this might occur, the Parties concerned shall enter into consultations to avoid such an effect.

(...)
CHAPTER I — PURPOSES, SCOPE, NON-DISCRIMINATION PRINCIPLE AND DEFINITIONS

Article 1 - Purposes of the Convention

1. The purposes of this Convention are:
   a) to prevent and combat trafficking in human beings, while guaranteeing gender equality;
   b) to protect the human rights of the victims of trafficking, design a comprehensive framework for the protection and assistance of victims and witnesses, while guaranteeing gender equality, as well as to ensure effective investigation and prosecution;
   c) to promote international cooperation on action against trafficking in human beings.

2. In order to ensure effective implementation of its provisions by the Parties, this Convention sets up a specific monitoring mechanism.

Article 2 - Scope

This Convention shall apply to all forms of trafficking in human beings, whether national or transnational, whether or not connected with organized crime.
Article 3 - Non-discrimination principle

The implementation of the provisions of this Convention by Parties, in particular the enjoyment of measures to protect and promote the rights of victims, shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Article 4 - Definitions

For the purposes of this Convention:

a) «Trafficking in human beings» shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;

b) The consent of a victim of «trafficking in human beings» to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered «trafficking in human beings» even if this does not involve any of the means set forth in subparagraph (a) of this article;

d) «Child» shall mean any person under eighteen years of age;

e) «Victim» shall mean any natural person who is subject to trafficking in human beings as defined in this article.
CHAPTER II — PREVENTION, CO-OPERATION AND OTHER MEASURES

Article 5 - Prevention of trafficking in human beings

1. Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.

2. Each Party shall establish and/or strengthen effective policies and programs to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives and training programs, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.

3. Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programs referred to in paragraph 2.

4. Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.

5. Each Party shall take specific measures to reduce children’s vulnerability to trafficking, notably by creating a protective environment for them.

6. Measures established in accordance with this article shall involve, where appropriate, nongovernmental organizations, other relevant organizations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

Article 6 - Measures to discourage the demand

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall
adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

a) research on best practices, methods and strategies;
b) raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;
c) target information campaigns involving, as appropriate, inter alia, public authorities and policy makers;
d) preventive measures, including educational programs for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

**Article 7 - Border measures**

1. Without prejudice to international commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings.

2. Each Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with this Convention.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each Party shall take the necessary measures, in accordance with its internal law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.
5. Each Party shall adopt such legislative or other measures as may be necessary to permit, in accordance with its internal law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Convention.

6. Parties shall strengthen co-operation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

**Article 8 - Security and control of documents**

Each Party shall adopt such measures as may be necessary:

a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the Party and to prevent their unlawful creation and issuance.

**Article 9 - Legitimacy and validity of documents**

At the request of another Party, a Party shall, in accordance with its internal law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported to have been issued in its name and suspected of being used for trafficking in human beings.
CHAPTER III — MEASURES TO PROTECT AND PROMOTE THE RIGHTS OF VICTIMS, GUARANTEEING GENDER EQUALITY

Article 10 - Identification of the victims

1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organizations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.

2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organizations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.

3. When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.

4. As soon as an unaccompanied child is identified as a victim, each Party shall:
   a) provide for representation of the child by a legal guardian, organization or authority which shall act in the best interests of that child;
   b) take the necessary steps to establish his/her identity and nationality;
   c) make every effort to locate his/her family when this is in the best interests of the child.
Article 11 - Protection of private life

1. Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No.108).

2. Each Party shall adopt measures to ensure, in particular, that the identity, or details allowing the identification, of a child victim of trafficking are not made publicly known, through the media or by any other means, except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.

3. Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.

Article 12 - Assistance to victims

1. Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:

   a) standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;

   b) access to emergency medical treatment;

   c) translation and interpretation services, when appropriate;

   d) counseling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;

   e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;
f) access to education for children.

2. Each Party shall take due account of the victim’s safety and protection needs.

3. In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.

4. Each Party shall adopt the rules under which victims lawfully resident within its territory shall

be authorized to have access to the labor market, to vocational training and education.

5. Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to co-operate with non-governmental organizations, other relevant organizations or other elements of civil society engaged in assistance to victims.

6. Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.

7. For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.

**Article 13 - Recovery and reflection period**

1. Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by
the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorize the persons concerned to stay in their territory.

2. During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.

3. The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.

Article 14 - Residence permit

1. Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:

   a) the competent authority considers that their stay is necessary owing to their personal situation;

   b) the competent authority considers that their stay is necessary for the purpose of their co-operation with the competent authorities in investigation or criminal proceedings.

2. The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.

3. The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.

4. If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.
5. Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.

Article 15 - Compensation and legal redress

1. Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.

2. Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.

3. Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.

4. Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance through the establishment of a fund for victim compensation or measures or programs aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.

Article 16 - Repatriation and return of victims

1. The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.
2. When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.

3. At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.

4. In order to facilitate the return of a victim who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programs, involving relevant national or international institutions and non governmental organizations. These programs aim at avoiding re-victimization. Each Party should make its best effort to favor the reintegration of victims into the society of the State of return, including reintegration into the education system and the labor market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programs should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.

6. Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in co-operation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organizations, legal professions able to provide counseling and social welfare agencies.

7. Child victims shall not be returned to a State, if there is indication, following a risk and security assessment that such return would not be in the best interests of the child.
Article 17 - Gender equality

Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.

CHAPTER IV — SUBSTANTIVE CRIMINAL LAW

Article 18 - Criminalization of trafficking in human beings

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in article 4 of this Convention, when committed intentionally.

Article 19 - Criminalization of the use of services of a victim

Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.

Article 20 - Criminalization of acts relating to travel or identity documents

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings:

a) forging a travel or identity document;
b) procuring or providing such a document;
c) retaining, removing, concealing, damaging or destroying a travel or identity document of another person.
Article 21 - Attempt and aiding or abetting

1. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 18 and 20 of the present Convention.

2. Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, an attempt to commit the offences established in accordance with Articles 18 and 20, paragraph a, of this Convention.

Article 22 - Corporate liability

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
   a) a power of representation of the legal person;
   b) an authority to take decisions on behalf of the legal person;
   c) an authority to exercise control within the legal person.

2. Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.

3. Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.

4. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.
Article 23 - Sanctions and measures

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.

2. Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.

3. Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.

4. Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without prejudice to the rights of bona fide third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.

Article 24 - Aggravating circumstances

Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

a) the offence deliberately or by gross negligence endangered the life of the victim;

b) the offence was committed against a child;
c) the offence was committed by a public official in the performance of her/his duties;

d) the offence was committed within the framework of a criminal organization.

Article 25 - Previous convictions

Each Party shall adopt such legislative and other measures providing for the possibility to take into account final sentences passed by another Party in relation to offences established in accordance with this Convention when determining the penalty.

Article 26 - Non-punishment provision

Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.

CHAPTER V – INVESTIGATION, PROSECUTION AND PROCEDURAL LAW

Article 27 - Ex parte and ex officio applications

1. Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.

2. Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of the
Party in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the internal law of the Party in which the offence was committed.

3. Each Party shall ensure, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, to any group, foundation, association or nongovernmental organizations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence established in accordance with Article 18 of this Convention.

Article 28 - Protection of victims, witnesses and collaborators with the judicial authorities

1. Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:
   a) Victims;
   b) As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise co-operate with the investigating or prosecuting authorities;
   c) witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;
   d) when necessary, members of the family of persons referred to in sub-paragraphs a and c.

2. Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.

3. A child victim shall be afforded special protection measures taking into account the best interests of the child.
4. Each Party shall adopt such legislative or other measures as may be necessary to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organizations which carry out the activities set out in Article 27, paragraph 3.

5. Each Party shall consider entering into agreements or arrangements with other States for the implementation of this article.

**Article 29 - Specialized authorities and coordinating bodies**

1. Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialized in the fight against trafficking and the protection of victims. Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. Such persons or the staffs of such entities shall have adequate training and financial resources for their tasks.

2. Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of their governments’ departments and other public agencies against trafficking in human beings, where appropriate, through setting up coordinating bodies.

3. Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, focus on: methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers.

4. Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.
Article 30 - Court proceedings

In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:

a) the protection of victims’ private life and, where appropriate, identity;

b) victims’ safety and protection from intimidation, in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children’s needs and ensuring their right to special protection measures.

Article 31 - Jurisdiction

1. Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:

a) in its territory; or
b) on board a ship flying the flag of that Party; or

c) on board an aircraft registered under the laws of that Party; or

d) by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;

e) against one of its nationals.

2. Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 (d) and (e) of this article or any part thereof.
3. Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.

4. When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.

5. Without prejudice to the general norms of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with internal law.

CHAPTER VI–INTERNATIONAL CO-OPERATION AND CO-OPERATION WITH CIVIL SOCIETY

Article 32 - General principles and measures for international co-operation

The Parties shall co-operate with each other, in accordance with the provisions of this Convention, and through application of relevant applicable international and regional instruments, arrangements agreed on the basis of uniform or reciprocal legislation and internal laws, to the widest extent possible, for the purpose of:

— preventing and combating trafficking in human beings;
— protecting and providing assistance to victims;
— investigations or proceedings concerning criminal offences established in accordance with this Convention.

Article 33 - Measures relating to endangered or missing persons

1. When a Party, on the basis of the information at its disposal has reasonable grounds to believe that the life, the freedom or the physical integrity of a person referred to in Article 28, paragraph 1, is in immediate danger on the
territory of another Party, the Party that has the information shall, in such a case of emergency, transmit it without delay to the latter so as to take the appropriate protection measures.

2. The Parties to this Convention may consider reinforcing their co-operation in the search for missing people, in particular for missing children, if the information available leads them to believe that she/he is a victim of trafficking in human beings. To this end, the Parties may conclude bilateral or multilateral treaties with each other.

**Article 34 - Information**

1. The requested Party shall promptly inform the requesting Party of the final result of the action taken under this chapter. The requested Party shall also promptly inform the requesting Party of any circumstances which render impossible the carrying out of the action sought or are likely to delay it significantly.

2. A Party may, within the limits of its internal law, without prior request, forward to another Party information obtained within the framework of its own investigations when it considers that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings concerning criminal offences established in accordance with this Convention or might lead to a request for co-operation by that Party under this chapter.

3. Prior to providing such information, the providing Party may request that it be kept confidential or used subject to conditions. If the receiving Party cannot comply with such request, it shall notify the providing Party, which shall then determine whether the information should nevertheless be provided. If the receiving Party accepts the information subject to the conditions, it shall be bound by them.

4. All information requested concerning Articles 13, 14 and 16, necessary to provide the rights conferred by these Articles, shall be transmitted at the request of the Party concerned without delay with due respect to Article 11 of the present Convention.
Article 35 - Co-operation with civil society

Each Party shall encourage state authorities and public officials, to co-operate with nongovernmental organizations, other relevant organizations and members of civil society, in establishing strategic partnerships with the aim of achieving the purpose of this Convention.

CHAPTER VII — MONITORING MECHANISM

Article 36 - Group of experts on action against trafficking in human beings

1. The Group of experts on action against trafficking in human beings (hereinafter referred to as «GRETA»), shall monitor the implementation of this Convention by the Parties.

2. GRETA shall be composed of a minimum of 10 members and a maximum of 15 members, taking into account a gender and geographical balance, as well as a multidisciplinary expertise. They shall be elected by the Committee of the Parties for a term of office of 4 years, renewable once, chosen from amongst nationals of the States Parties to this Convention.

3. The election of the members of GRETA shall be based on the following principles:

   a) they shall be chosen from among persons of high moral character, known for their recognized competence in the fields of Human Rights, assistance and protection of victims and of action against trafficking in human beings or having professional experience in the areas covered by this Convention;

   b) they shall sit in their individual capacity and shall be independent and impartial in the exercise of their functions and shall be available to carry out their duties in an effective manner;

   c) no two members of GRETA may be nationals of the same State;

   d) they should represent the main legal systems.
4. The election procedure of the members of GRETA shall be determined by the Committee of Ministers, after consulting with and obtaining the unanimous consent of the Parties to the Convention, within a period of one year following the entry into force of this Convention. GRETA shall adopt its own rules of procedure.

**Article 37 - Committee of the Parties**

1. The Committee of the Parties shall be composed of the representatives on the Committee of Ministers of the Council of Europe of the member States Parties to the Convention and representatives of the Parties to the Convention, which are not members of the Council of Europe.

2. The Committee of the Parties shall be convened by the Secretary General of the Council of Europe. Its first meeting shall be held within a period of one year following the entry into force of this Convention in order to elect the members of GRETA. It shall subsequently meet whenever one-third of the Parties, the President of GRETA or the Secretary General so requests.

3. The Committee of the Parties shall adopt its own rules of procedure.

**Article 38 - Procedure**

1. The evaluation procedure shall concern the Parties to the Convention and be divided in rounds, the length of which is determined by GRETA. At the beginning of each round, GRETA shall select the specific provisions on which the evaluation procedure shall be based.

2. GRETA shall define the most appropriate means to carry out this evaluation. GRETA may in particular adopt a questionnaire for each evaluation round, which may serve as a basis for the evaluation of the implementation by the Parties of the present Convention. Such a questionnaire shall be addressed to all Parties. Parties shall respond to this questionnaire, as well as to any other request of information from GRETA.

3. GRETA may request information from civil society.
4. GRETA may subsidiarily organize, in cooperation with the national authorities and the «contact person» appointed by the latter, and, if necessary, with the assistance of independent national experts, country visits. During these visits, GRETA may be assisted by specialists in specific fields.

5. GRETA shall prepare a draft report containing its analysis concerning the implementation of the provisions on which the evaluation is based, as well as its suggestions and proposals concerning the way in which the Party concerned may deal with the problems which have been identified. The draft report shall be transmitted for comments to the Party which undergoes the evaluation. Its comments are taken into account by GRETA when establishing its report.

6. On this basis, GRETA shall adopt its report and conclusions concerning the measures taken by the Party concerned to implement the provisions of the present Convention. This report and conclusions shall be sent to the Party concerned and to the Committee of the Parties. The report and conclusions of GRETA shall be made public as from their adoption, together with eventual comments by the Party concerned.

7. Without prejudice to the procedure of paragraphs 1 to 6 of this article, the Committee of the Parties may adopt, on the basis of the report and conclusions of GRETA, recommendations addressed to this Party (a) concerning the measures to be taken to implement the conclusions of GRETA, if necessary setting a date for submitting information on their implementation, and (b) aiming at promoting co-operation with that Party for the proper implementation of the present Convention.
CHAPTER VIII — RELATIONSHIP WITH OTHER INTERNATIONAL INSTRUMENTS

Article 39 - Relationship with the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime

This Convention shall not affect the rights and obligations derived from the provisions of the Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention against transnational organized crime, and is intended to enhance the protection afforded by it and develop the standards contained therein.

Article 40 - Relationship with other international instruments

1. This Convention shall not affect the rights and obligations derived from other international instruments to which Parties to the present Convention are Parties or shall become Parties and which contain provisions on matters governed by this Convention and which ensure greater protection and assistance for victims of trafficking.

2. The Parties to the Convention may conclude bilateral or multilateral agreements with one another on the matters dealt with in this Convention, for purposes of supplementing or strengthening its provisions or facilitating the application of the principles embodied in it.

3. Without prejudice to the object and purpose of the present Convention and without prejudice to its full application with other Parties, Parties which are members of the European Union shall, in their mutual relations, apply Community and European Union rules in so far as there are Community or European Union rules governing the particular subject concerned and applicable to the specific case.

4. Nothing in this Convention shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in par-
ticular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

CHAPTER IX — AMENDMENTS TO THE CONVENTION

Article 41 - Amendments

1. Any proposal for an amendment to this Convention presented by a Party shall be communicated to the Secretary General of the Council of Europe and forwarded by him or her to the member States of the Council of Europe, any signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43.

2. Any amendment proposed by a Party shall be communicated to GRETA, which shall submit to the Committee of Ministers its opinion on that proposed amendment.

3. The Committee of Ministers shall consider the proposed amendment and the opinion submitted by GRETA and, following consultation of the Parties to this Convention and after obtaining their unanimous consent, may adopt the amendment.

4. The text of any amendment adopted by the Committee of Ministers in accordance with paragraph 3 of this article shall be forwarded to the Parties for acceptance.

5. Any amendment adopted in accordance with paragraph 3 of this article shall enter into force on the first day of the month following the expiration of a period of one month after the date on which all Parties have informed the Secretary General that they have accepted it.
CHAPTER X — FINAL CLAUSES

Article 42 - Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe, the non member States which have participated in its elaboration and the European Community.

2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

3. This Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date on which 10 Signatories, including at least 8 member States of the Council of Europe, have expressed their consent to be bound by the Convention in accordance with the provisions of the preceding paragraph.

4. In respect of any State mentioned in paragraph 1 or the European Community, which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of the deposit of its instrument of ratification, acceptance or approval.

Article 43 - Accession to the Convention

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may, after consultation of the Parties to this Convention and obtaining their unanimous consent, invite any non-member State of the Council of Europe, which has not participated in the elaboration of the Convention, to accede to this Convention by a decision taken by the majority provided for in Article 20 d. of the Statute of the Council of Europe, and by unanimous vote of the representatives of the Contracting States entitled to sit on the Committee of Ministers.

2. In respect of any acceding State, the Convention shall enter into force on the first day of the month following the expiration of a period of three
months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

**Article 44 - Territorial application**

1. Any State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any Party may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorized to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General of the Council of Europe. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

**Article 45 - Reservations**

No reservation may be made in respect of any provision of this Convention, with the exception of the reservation of Article 31, paragraph 2.

**Article 46 - Denunciation**

1. Any Party may, at any time, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of the notification by the Secretary General.

*Article 47 - Notification*

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any State signatory, any State Party, the European Community, to any State invited to sign this Convention in accordance with the provisions of Article 42 and to any State invited to accede to this Convention in accordance with the provisions of Article 43 of:

a) any signature;
b) the deposit of any instrument of ratification, acceptance, approval or accession;
c) any date of entry into force of this Convention in accordance with Articles 42 and 43;
d) any amendment adopted in accordance with Article 41 and the date on which such an amendment enters into force;
e) any denunciation made in pursuance of the provisions of Article 46;
f) any other act, notification or communication relating to this Convention
g) any reservation made under Article 45.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at Warsaw, this 16th day of May 2005, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention, to the European Community and to any State invited to accede to this Convention.
8. G8 BEST PRACTICES FOR THE ADMINISTRATION OF SEIZED ASSETS

G8 Lyon/Roma Group
Criminal Legal Affairs Subgroup

April 27, 2005.

Introduction

In the fight against international organized crime and terrorism, the G8 states have long recognized the importance of provisions in national law for the speedy and effective freezing of criminal assets with a view to their later confiscation. On May 5, 2003, the Ministers for Justice and Home Affairs from the G8 states and the European Commission met in Paris and adopted 29 best practice principles on tracing, freezing, and confiscation of crime-related assets. Further work in this important area and experience from criminal cases have identified the need to ensure that the value of such assets, once seized, is preserved during the often lengthy and costly process to finally confiscate those assets.

Accordingly, the G8 recommends the following basic principles of good practice regarding the administration of seized assets. These practices are intended in particular to help states preserve the value of seized assets during the pendency of confiscation proceedings.

A note about terminology: the term “seized” assets or property is used throughout these recommendations. This term is intended to be construed broadly to cover judicially authorized actions such as seizure, freezing, restraint, and any other provisional measures to prevent the dissipation of assets that may be liable to confiscation/forfeiture.

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G8 Best practices for the Administration of Seized Assets, G8 Lyon/Roma Group/ Criminal Legal Affairs Subgroup, April 27, 2005. / Asia/Pacific Group on Money Laundering Website:
http://apgml.org/issues/docs/15/G8%20Asset%20Management%20Best%20practices%20042705%20FINAL.doc
General Principles

- The law enforcement objective of taking the proceeds or instrumentalities of the crime should be paramount. Consequently, there will be cases in which the competent authority should seize criminal proceeds and instrumentalities even though it will be unable to recover the resulting asset administration expenses.

- While the main objective of confiscation/forfeiture is to strip criminals of their ill-gotten gains and the instrumentalities that make crimes possible, good fiscal decisions are also an important factor; assets, rather than liabilities, should be seized for confiscation/forfeiture.

- Pre-seizure planning is essential to anticipate resource expenditures and make informed decisions about what property is being targeted for seizure, how and when it will be seized, and most importantly whether or not the property should be seized in the first place.

- States should adopt mechanisms for the administration of seized assets which are as efficient and cost effective as possible. To that end, they should in particular consider the establishment of an Asset Confiscation/Forfeiture Fund.

- An important element in the administration of seized assets is the designation and powers of the body responsible under national law for such administration. The attached annex, based on the experience of some G8 States, identifies a number of elements which may be considered.

- States should ensure that strong controls with respect to the administration of seized assets are in place and that either there is a clear separation of duties to ensure that no single person has plenary authority over all aspects of asset administration or if any one person does have
authority over all aspects of asset administration they are fully accountable for their actions to a higher body.

- Seized assets should be administered with transparency. Such administration should be subject to an annual examination by independent auditors, similar experts or otherwise in accordance with national law. The examination may include the certification of financial records, and the findings should be made available to the public, where appropriate.

- No person officially responsible for the seizure of assets should receive a personal financial reward connected to the value of a seizure, nor should funds from any mechanism for the administration of seized assets be used for personal purposes.

- States should consider the use of information technology (IT) systems for the administration of seized property. Appropriate financial and property administration IT systems can, for example, be extremely useful for tracking and managing inventory or for meeting expenses associated with seized property as well as for maintaining a transparent and accountable system. States may also wish to use such IT systems for the administration of confiscated property.

- When an asset has been seized, unless authorized for a pre-judgment sale, it should be preserved in the same condition it was at the time of seizure. Use of seized assets, whether by a defendant or a third person, should be regulated under national law. In certain cases, use of particular assets would be incompatible with the purposes and goals of the seizure. Unless there is a compelling purpose, for example for evidentiary reasons, seized assets should not be used by law enforcement personnel during the pendency of the confiscation/forfeiture case.
• Legal proceedings should be possible to permit, under conditions laid down in national law, pre-judgment sale of assets pending the outcome of the confiscation/forfeiture proceeding for wasting assets that are perishable or rapidly declining in value, such as vessels, aircraft, cars, animals and farms with growing crops. States should further consider authorising pre-judgment sale of assets which are too burdensome to maintain. The resulting proceeds should be secured in accordance with national law (and the action notified to the court and other affected parties) pending a final determination of confiscation or forfeiture.

• In accordance with national law, when administering seized assets, the interests of the defendant should be taken into consideration.

• The payment of attorneys’ fees and living expenses for the defendant out of seized assets should be strictly controlled or prohibited in accordance with national law. For example, a defendant might be required to establish that no other assets or publicly funded counsel are available to the defendant and that such expenditures are reasonable.

• There should be means for those with a legal interest in seized property to apply to the court to modify a restraining order or to release the property subject to adequate controls. To that end, domestic law and policy should clearly set forth the rights of bona fide third parties in relation to property subject to a restraining order. This may include allowing a person to carry on a legitimate trade or business that would otherwise be subject to seizure or allowing tenants to continue to occupy commercial real estate. Consideration should also be given to establishing expedited procedures for bona fide third parties (i.e., banks, automobile financing companies, etc.) so that their interests will be acknowledged at an early stage of the confiscation/forfeiture proceedings.
• Seized property should be appraised to establish the market value of the asset at an appropriate time, such as the date of the forfeiture. States may wish to use qualified third parties for this purpose.

*Asset Administration Practices in Some G8 States*

Important elements in the system for administration of seized assets in some G8 Member States include (1) the express designation of a competent national authority responsible for all aspects of the custody and management of seized assets, (2) the use of asset managers in particularly complex situations, and (3) the establishment of a dedicated fund for the deposit of seized and confiscated/forfeited assets.

*Designated Competent National Authority for the Administration of Seized Assets*

• Some G8 Member States have chosen to designate responsibility for the administration of seized assets to a particular government agency or body with authority to take custody of, manage, maintain, and dispose of seized assets. The designated authority can also assist in seizure operations.

• The designated authority consists of personnel with expertise in complex business, commercial and residential real estate, and finance issues. Where necessary, the authority utilizes third-party contractors to support its mission. Such contractors include property managers, appraisers for real property, experts in particular types of personal property (e.g. jewelry, antiques), brokers, and storage facilities.

• Accountability is maintained through external audits and appropriate oversight of the designated authority and its third-party contractors.

*Asset Manager*

• In certain types of cases, some G8 Member States utilize a court appointed independent manager as a trustee or receiver to take possession
of assets and to manage them as directed by the court. Of course, not all seized property requires a manager (e. g., ordinary bank accounts). However, in complex cases, such as those involving seizure of an operating legitimate business, the use of an independent manager has been particularly useful.

- The manager has a fiduciary duty to ensure that seized assets are maintained so that their maximum value will be realized upon confiscation/forfeiture or return to the respondent.
- The court may grant the appointed manager authority to take any step required to manage the asset, including enter into contracts, sue, employ agents, and execute powers of attorney and deeds. For example, to keep a seized business in operation, the manager may have to carry out various functions on behalf of the business, such as purchase supplies, fixtures, or machinery. If additional authority is needed, the manager or the prosecuting authority can go back to the court to apply for further powers for the manager to administer the assets.
- Typically the managers have the power to initiate or defend legal proceedings regarding assets under their administration and are granted, as far as possible, protection from civil legal liability, except for their own negligence. To be appointed, a manager must be bonded and insured.

**Asset Confiscation/Forfeiture Fund**

- Some G8 Member States have established a dedicated fund into which seized and confiscated/forfeited assets, after liquidation, are deposited. Such a fund facilitates the effective disbursement of assets after they have been confiscated or forfeited, and has additional advantages related to the administration of seized assets.
- Liquidated assets are deposited into an interest-bearing account pending the outcome of the confiscation/forfeiture proceedings. Such a procedure is particularly useful for the administration of seized currency, which would not otherwise earn interest or would incur unnecessary
storage risks or costs. Proceeds of pre-judgment sales also are deposited into such an account.

- Establishment of a dedicated fund allows the asset confiscation/forfeiture program to be self-sustaining. The often considerable costs involved in the administration and maintenance of seized assets can be paid out of the dedicated fund, reducing the need for reliance on appropriated or other government funds.
- Where different judicial authorities have ordered the seizure of large amounts of assets in multiple cases, establishment of a dedicated fund is one way to facilitate the accountability and transparency of asset administration.
9. KYIV RECOMMENDATIONS FOR INTERNATIONAL OPERATIONAL AND JUDICIAL COOPERATION IN COMBATING TRAFFICKING IN HUMAN BEINGS


Extracts

The Second Annual International Law Enforcement Conference «International Perspectives on Law Enforcement Cooperation in Combating Trafficking in Human Beings», held on 18-20 May 2004 in Kyiv, Ukraine, which followed on from its predecessor held in the Republic of Belarus in May 2003, brought together 175 law enforcement practitioners from four core countries — the Republic of Belarus, the Republic of Moldova, the Russian Federation, and Ukraine — together with representatives of 20 other countries to continue the dialogue about practical initiatives and problems within the context of operational and judicial cooperation in combating trafficking in human beings.

The Conference was initiated by the International Organization for Migration (IOM) and conducted in cooperation with the Ministry of Interior of Ukraine, the Office of the Prosecutor General of Ukraine and the Security Service of Ukraine within the framework of the IOM Project ‘Combating Trafficking in Women: Ukraine’ funded by the Swedish International Development Cooperation Agency (Sida).

The overall objective of the Conference was to enable law enforcement practitioners to share their knowledge and experience within the field of counter-trafficking and to identify current problems and good practice in combating trafficking in human beings; this year’s special focus was victim and/or witness protection. The starting point and basis for the discussions were the principles and provisions embodied in the United Nations Convention Against Transnational Organized Crime, the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and
Children and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters. The Conference also took into account the provisions and recommendations contained in the Brussels Declaration on Preventing and Combating Trafficking in Human Beings, the Budapest Declaration on Public Health and Trafficking in Human Beings, the Commonwealth of Independent States’ Convention on Legal Assistance and Legal Relations, in Civil, Family and Criminal Matters (Chisinau version), the Minsk Recommendations for International Operational and Judicial Cooperation in Combating Trafficking in Human Beings, the UNOHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking and the World Health Organization Ethical and Safety Recommendations for Interviewing Trafficked Women.

A number of international law enforcement representatives delivered practical case study presentations. These were supplemented by a number of country reports to the Conference. The principal objective and activity of the Conference were the identification and recommendation of best practices derived from the discussions in the three multi-disciplinary, multi-national workshops that examined the issues of international operational cooperation and international judicial cooperation in this field.

The below listed are the best practice recommendations by and for law enforcement practitioners from participating States and other relevant stakeholders.

Law Enforcement and Victim/Witness Cooperation

Governments, law enforcement, and other relevant stakeholders should endeavor to develop the following:

1. A three-stage identification process to improve the ability of multi-agency counter-trafficking partners to effect rapid and accurate identification of victims of trafficking.
The identification process should comprise these three stages:

- **Stage 1** - Pre-interview assessment of a comprehensive range of trafficking indicators, such as age, gender, nationality, documentation, last location and the like.
- **Stage 2** - A structured interview covering the recruitment, transit and destination phases of the trafficking process, utilizing a set of locally developed questions that reflect the current trafficking situation.
- **Stage 3** - Assessment of any additional corroborative factors, such as travel documents, identity documents, diaries, employment contracts and the like.

2. A similar process to that shown above of trafficking indicators to identify potential victims who are ‘at risk of being trafficked’ in order to support the prevention of trafficking crime.

3. Cooperation between specialist counter-trafficking units and foreign ministry and consular offices to interview, identify and advise ‘at risk’ individuals that apply for exit and entry visas.

4. Specific guidance issued from the highest judicial level, i.e. the Supreme Court or the equivalent, on the precise definition of a victim of trafficking in accordance with the national criminal code.

5. Increased emphasis upon utilizing relevant criminal procedure provisions to ensure that victims of trafficking are legally classified as victims of serious crime.

6. Strict compliance with the UNOHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking to prevent the criminalization of trafficked victims. Trafficked victims should not be charged, prosecuted or detained in relation to any offences that may have been committed in relation to their situation as victims of trafficking.

7. Cessation of the deportation of trafficked victims. Countries should utilize assisted voluntary return programs such as those offered by relevant government structures and international organizations like the International Organization for Migration.
8. Provision of advance notice by countries that remove trafficked victims back to their countries of origin to the relevant institutions and organizations of the receiving countries to provide full information concerning the circumstances of the removal.

9. Any interview conducted with victims of trafficking that are sent home should be done by specially trained personnel in order to identify and provide assistance measures and to ascertain the circumstances of the crime committed against them.

10. Specially selected and trained operational police officers, investigators, prosecutors, members of the judiciary and inter- and non-governmental organizations’ (IGO-NGO) victim support personnel because counter-trafficking activities are complex and require specialist knowledge and skills.

11. Specific and detailed cooperation agreements between specialist counter-trafficking investigation units and IGO-NGO partners that provide specialist support to trafficked victims. These agreements should set out in detail the roles and responsibilities of each side and include practical cooperation arrangements to ensure that trafficked victims are able to know and exercise their legal options.

12. Specially appointed lawyers in each administrative department or region to represent and protect the human and legal rights of trafficked victims.

13. Access for victims of trafficking to State funded legal advocates to protect and explain their legal and human rights at every stage.

14. Access, where possible, to adequate sources of funding to support the provision of legal assistance for trafficked victims.

15. Maximizing the use of financial investigation and confiscation laws; confiscated criminal assets of traffickers should be placed in a central fund. This fund should be used to provide compensation to trafficked victims, to find direct assistance to trafficked victims and to finance the costs of trafficking investigations, such as witness protection measures.

16. Placing initial emphasis upon the stabilization and initial support and reintegration of the victim in advance of any criminal justice system procedures.
17. A clear distinction between the structure and content of an interview to identify and provide initial support to a trafficked victim and the detailed interview of an identified trafficked victim for the purposes of evidence to be used in criminal proceedings.

18. Wherever possible, inclusion of a psychologist to assist victims of trafficking at the earliest stage possible. This is particularly important in relation to the interviews of trafficked victims by law enforcement.

19. Increased utilization of female law enforcement officers in the interviewing of trafficked victims.

20. Avoiding wherever possible the use of investigative ‘confrontation’ procedures. Where this confrontation procedure and any form of identification process is required, it should only be conducted through the use of equipment, such as one way mirrors, that prevents the trafficking suspects from being able to see the victim and vice versa.

21. Witness protection programs that, in addition to the protection of trafficked victims and their families or loved ones, include the capacity to provide protection measures to other individuals engaged in counter-trafficking work. This includes law enforcement officers, prosecutors and members of the judiciary and should especially include IGO-NGO staff that provides victim support. Risk assessment procedures should incorporate all of the above personnel.

22. Extension of multi-agency support for victims of trafficking to the post-trial phase and support measures should not be immediately withdrawn at the conclusion of the trial process. These support measures should include assistance to victims to pursue their legal entitlements to compensation.

23. Developing best practice inter-agency guidance and multi-disciplinary training modules within the following categories:

- Roles and responsibilities of counter-trafficking organizations on victim-witness treatment.
- Memoranda of Understanding.
- Police access to victims in IGO-NGO care — especially victims accommodated in shelters.
• Inter-agency co-operation on the provision of physical and judicial witness protection.
• Co-operation of inter-agency and national and international information exchange.
• Risk assessment for victims, victim families, IGO-NGO support personnel, law enforcement officers, prosecutors and members of the judiciary.
• Victim interview techniques — such as preparation and assessment; interviewing skills; recording formats; interview conditions; and interview methodology.
• Recording and use of medical and psychological expert evidence.
• Other corroborative evidence.
• Judicial witness protection — confidentiality and non-disclosure; testimony options; and support measures up to and including the trial process.
• Specific additional best practices in respect of children related to each of the above categories.

IGOs and NGOs that provide support to victims of trafficking should endeavor to develop the following:

24. Provision of a detailed briefing to all victims in their care as to the legal options that are available to them.

25. Requirements in order to report cases of trafficking in minors to law enforcement agencies.

(...)

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10. LAW ON PROCEEDS OF CRIME FORFEITURE OF THE
STATE OF NEW YORK

Article 13 A “Proceeds of Crime Forfeiture” (1310-1352). New York State’s Consolidated Laws for Civil Practice Law and Rules

(Entered into force on August 1, 1984)

§ 1310. Definitions

In this article:

1. «Property» means and includes: real property, personal property, money, negotiable instruments, securities, or any thing of value or any interest in a thing of value.

2. «Proceeds of a crime» means any property obtained through the commission of a felony crime defined in subdivisions five and six hereof, and includes any appreciation in value of such property.

3. «Substituted proceeds of a crime» means any property obtained by the sale or exchange of proceeds of a crime, and any gain realized by such sale or exchange.

4. «Instrumentality of a crime» means any property, other than real property and any buildings, fixtures, appurtenances, and improvements thereon, whose use contributes directly and materially to the commission of a crime defined in subdivisions five and six hereof.

4-a. «Real property instrumentality of a crime» means an interest in real property the use of which contributes directly and materially to the commission of a specified felony offense.

4-b. «Specified felony offense» means:

(a) a conviction of a person for a violation of section 220.18, 220.21, 220.41, or 220.43 of the penal law, or where the accusatory instrument

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charges one or more of such offenses, conviction upon a plea of guilty to any of the felonies for which such plea is otherwise authorized by law or a conviction of a person for conspiracy to commit a violation of section 220.18, 220.21, 220.41, or 220.43 of the penal law, where the controlled substances which are the object of the conspiracy are located in the real property which is the subject of the forfeiture action; or
(b) on three or more occasions, engaging in conduct constituting a violation of any of the felonies defined in section 220.09, 220.16, 220.18, 220.21, 220.31, 220.34, 220.39, 220.41, 220.43 or 221.55 of the penal law, which violations do not constitute a single criminal offense as defined in subdivision one of section 40.10 of the criminal procedure law, or a single criminal transaction, as defined in paragraph (a) of subdivision two of section 40.10 of the criminal procedure law, and at least one of which resulted in a conviction of such offense, or where the accusatory instrument charges one or more of such felonies, conviction upon a plea of guilty to a felony for which such plea is otherwise authorized by law; or
(c) a conviction of a person for a violation of section 220.09, 220.16, 220.34 or 220.39 of the penal law, or a conviction of a criminal defendant for a violation of section 221.30 of the penal law, or where the accusatory instrument charges any such felony, conviction upon a plea of guilty to a felony for which the plea is otherwise authorized by law, together with evidence which: (i) provides substantial indicia that the defendant used the real property to engage in a continual, ongoing course of conduct involving the unlawful mixing, compounding, manufacturing, warehousing, or packaging of controlled substances or where the conviction is for a violation of section 221.30 of the penal law, marijuana, as part of an illegal trade or business for gain; and (ii) establishes, where the conviction is for possession of a controlled substance or where the conviction is for a violation of section 221.30 of the penal law, marijuana, that such possession was with the intent to sell it.
5. «Post-conviction forfeiture crime» means any felony defined in the penal law or any other chapter of the consolidated laws of the state.

6. «Pre-conviction forfeiture crime» means only a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law.

7. «Court» means a superior court.

8. «Defendant» means a person against whom a forfeiture action is commenced and includes a «criminal defendant» and a «non-criminal defendant».

9. «Criminal defendant» means a person who has criminal liability for a crime defined in subdivisions five and six hereof. For purposes of this article, a person has criminal liability when (a) he has been convicted of a post-conviction forfeiture crime, or (b) the claiming authority proves by clear and convincing evidence that such person has committed an act in violation of article two hundred twenty or section 221.30 or 221.55 of the penal law.

10. «Non-criminal defendant» means a person, other than a criminal defendant, who possesses an interest in the proceeds of a crime, the substituted proceeds of a crime or an instrumentality of a crime.

11. «Claiming authority» means the district attorney having jurisdiction over the offense or the attorney general for purpose of those crimes for which the attorney general has criminal jurisdiction in a case where the underlying criminal charge has been, is being or is about to be brought by the attorney general, or the appropriate corporation counsel or county attorney, provided that the corporation counsel or county attorney may act as a claiming authority only with the consent of the district attorney or the attorney general, as appropriate.

12. «Claiming agent» means and shall include all persons described in subdivision thirty-four of section 1.20 of the criminal procedure law, and sheriffs, under sheriffs and deputy sheriffs of counties within the city of New York.

13. «Fair consideration» means fair consideration is given for property, or obligation, (a) when in exchange for such property, or obligation, as a fair equivalent therefore, and in good faith, property is conveyed or an antecedent debt is satisfied, or (b) when such property, or obligation is received in good
faith to secure a present advance or antecedent debt in amount not disproportionately small as compared with the value of the property, or obligation obtained.

14. «District attorney» means and shall include all persons described in subdivision thirty-two of section 1.20 of the criminal procedure law and the special assistant district attorney in charge of the office of prosecution, special narcotics courts of the city of New York.

§ 1311. Forfeiture actions

1. A civil action may be commenced by the appropriate claiming authority against a criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime or the real property instrumentality of a crime or to recover a money judgment in an amount equivalent in value to the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime. A civil action may be commenced against a non-criminal defendant to recover the property which constitutes the proceeds of a crime, the substituted proceeds of a crime, an instrumentality of a crime, or the real property instrumentality of a crime provided, however, that a judgment of forfeiture predicated upon clause (A) of subparagraph (iv) of paragraph (b) of subdivision three hereof shall be limited to the amount of the proceeds of the crime. Any action under this article must be commenced within five years of the commission of the crime and shall be civil, remedial, and in personam in nature and shall not be deemed to be a penalty or criminal forfeiture for any purpose. Except as otherwise specially provided by statute, the proceedings under this article shall be governed by this chapter. An action under this article is not a criminal proceeding and may not be deemed to be a previous prosecution under article forty of the criminal procedure law.

(a) Actions relating to post-conviction forfeiture crimes. An action relating to a post-conviction forfeiture crime must be grounded upon a conviction
of a felony defined in subdivision five of section one thousand three hundred ten of this article, or upon criminal activity arising from a common scheme or plan of which such a conviction is a part, or upon a count of an indictment or information alleging a felony which was dismissed at the time of a plea of guilty to a felony in satisfaction of such count. A court may not grant forfeiture until such conviction has occurred. However, an action may be commenced, and a court may grant a provisional remedy provided under this article, prior to such conviction having occurred. An action under this paragraph must be dismissed at any time after sixty days of the commencement of the action unless the conviction upon which the action is grounded has occurred, or an indictment or information upon which the asserted conviction is to be based is pending in a superior court. An action under this paragraph shall be stayed during the pendency of a criminal action which is related to it; provided, however, that such stay shall not prevent the granting or continuance of any provisional remedy provided under this article or any other provisions of law.

(b) Actions relating to pre-conviction forfeiture crimes. An action relating to a pre-conviction forfeiture crime need not be grounded upon conviction of a pre-conviction forfeiture crime, provided, however, that if the action is not grounded upon such a conviction, it shall be necessary in the action for the claiming authority to prove the commission of a pre-conviction forfeiture crime by clear and convincing evidence. An action under this paragraph shall be stayed during the pendency of a criminal action which is related to it; provided, that upon motion of a defendant in the forfeiture action or the claiming authority, a court may, in the interest of justice and for good cause, and with the consent of all parties, order that the forfeiture action proceed despite the pending criminal action; and provided that such stay shall not prevent the granting or continuance of any provisional remedy provided under this article or any other provision of law.

2. All defendants in a forfeiture action brought pursuant to this article shall have the right to trial by jury on any issue of fact.
3. In a forfeiture action pursuant to this article the following burdens of proof shall apply:

(a) In a forfeiture action commenced by a claiming authority against a criminal defendant, except for those facts referred to in paragraph (b) of subdivision nine of section one thousand three hundred ten and paragraph [paragraph] [n1] (b) of subdivision one of this section which must be proven by clear and convincing evidence, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture.

(b) In a forfeiture action commenced by a claiming authority against a non-criminal defendant:

(i) in an action relating to a pre-conviction forfeiture crime, the burden shall be upon the claiming authority to prove by clear and convincing evidence the commission of the crime by a person, provided, however, that it shall not be necessary to prove the identity of such person.

(ii) if the action relates to the proceeds of a crime, except as provided in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew or should have known that the proceeds were obtained through the commission of a crime, or (B) fraudulently obtained his or her interest in the proceeds to avoid forfeiture.

(iii) if the action relates to the substituted proceeds of a crime, except as provided in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts necessary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the property sold or exchanged to obtain an interest in the substituted proceeds was obtained through the commission of a crime, or (B) fraudulently obtained his or her interest in the substituted proceeds to avoid forfeiture.

(iv) if the action relates to an instrumentality of a crime, except as provided for in subparagraph (i) hereof, the burden shall be upon the claiming authority to prove by a preponderance of the evidence the facts neces-
sary to establish a claim for forfeiture and that the non-criminal defendant either (A) knew that the instrumentality was or would be used in the commission of a crime or (B) knowingly obtained his or her interest in the instrumentality to avoid forfeiture.

(v) if the action relates to a real property instrumentality of a crime, the burden shall be upon the claiming authority to prove those facts referred to in subdivision four-b of section thirteen hundred ten of this article by clear and convincing evidence. The claiming authority shall also prove by a clear and convincing evidence that the non-criminal defendant knew that such property was or would be used for the commission of specified felony offenses, and either (A) knowingly and unlawfully benefited from such conduct or (B) voluntarily agreed to the use of such property for the commission of such offenses by consent freely given. For purposes of this subparagraph, a non-criminal defendant knowingly and unlawfully benefits from the commission of a specified felony offense when he derives in exchange for permitting the use or occupancy of such real property by a person or persons committing such specified offense a substantial benefit that would otherwise not accrue as a result of the lawful use or occupancy of such real property. «Benefit» means benefit as defined in subdivision seventeen of section 10.00 of the penal law.

(c) In a forfeiture action commenced by a claiming authority against a non-criminal defendant the following rebuttable presumptions shall apply:

(i) a non-criminal defendant who did not pay fair consideration for the proceeds of a crime, the substituted proceeds of a crime or the instrumentality of a crime shall be presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(ii) a non-criminal defendant who obtains an interest in the proceeds of a crime, substituted proceeds of a crime or an instrumentality of a crime with knowledge of an order of provisional remedy relating to said property issued pursuant to this article, shall be presumed to know that such
property was the proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime.

(iii) in an action relating to a post-conviction forfeiture crime, a non-criminal defendant who the claiming authority proves by clear and convincing evidence has criminal liability under section 20.00 of the penal law for the crime of conviction or for criminal activity arising from a common scheme or plan of which such crime is a part and who possesses an interest in the proceeds, the substituted proceeds, or an instrumentality of such criminal activity is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(iv) a non-criminal defendant who participated in or was aware of a scheme to conceal or disguise the manner in which said non-criminal obtained his or her interest in the proceeds of a crime, substituted proceeds of a crime, or an instrumentality of a crime is presumed to know that such property was the proceeds of a crime, the substituted proceeds of a crime, or an instrumentality of a crime.

(d) In a forfeiture action commenced by a claiming authority against a defendant, the following rebuttable presumption shall apply: all currency or negotiable instruments payable to the bearer shall be presumed to be the proceeds of a pre-conviction forfeiture crime when such currency or negotiable instruments are (i) found in close proximity to a controlled substance unlawfully possessed by the defendant in an amount sufficient to constitute a violation of section 220.18 or 220.21 of the penal law, or (ii) found in close proximity to any quantity of a controlled substance or marihuana unlawfully possessed by such defendant in a room, other than a public place, under circumstances evincing an intent to unlawfully mix, compound, distribute, package or otherwise prepare for sale such controlled substance or marihuana.

(e) The presumption set forth pursuant to paragraph (d) of this subdivision shall be rebutted by credible and reliable evidence which tends to show that such currency or negotiable instrument payable to the bearer is not the proceeds of a pre-conviction forfeiture crime. In an action tried before a jury,
the jury shall be so instructed. Any sworn testimony of a defendant offered to rebut the presumption and any other evidence which is obtained as a result of such testimony, shall be inadmissible in any subsequent proceeding relating to the forfeiture action, or in any other civil or criminal action, except in a prosecution for a violation of article two hundred ten of the penal law. In an action tried before a jury, at the commencement of the trial, or at such other time as the court reasonably directs, the claiming authority shall provide notice to the court and to the defendant of its intent to request that the court charge such presumption.

3-a. Conviction of a person in a criminal action upon an accusatory instrument which includes one or more of the felonies specified in subdivision four-b of section thirteen hundred ten of this article, of any felony other than such felonies, shall not preclude a defendant, in any subsequent proceeding under this article where that conviction is at issue, from adducing evidence that the conduct underlying the conviction would not establish the elements of any of the felonies specified in such subdivision other than the one to which the criminal defendant pled guilty. If the defendant does adduce such evidence, the burden shall be upon the claiming authority to prove, by clear and convincing evidence, that the conduct underlying the criminal conviction would establish the elements of the felony specified in such subdivision. Nothing contained in this subdivision shall affect the validity of a settlement of any forfeiture action negotiated between the claiming authority and a criminal defendant contemporaneously with the taking of a plea of guilty in a criminal action to any felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, or to a felony conspiracy to commit the same.

4. The court in which a forfeiture action is pending may dismiss said action in the interests of justice upon its own motion or upon an application as provided for herein.

(a) At any time during the pendency of a forfeiture action, the claiming authority who instituted the action, or a defendant may (i) apply for an order dismissing the complaint and terminating the forfeiture action in the interest of justice, or (ii) may apply for an order limiting the forfeiture to an amount equivalent in value to the value of property
constituting the proceeds or substituted proceeds of a crime in the interest of justice.

(b) Such application for the relief provided in paragraph (a) hereof must be made in writing and upon notice to all parties. The court may, in its discretion, direct that notice be given to any other person having an interest in the property.

(c) An application for the relief provided for in paragraph (a) hereof must be brought exclusively in the superior court in which the forfeiture action is pending.

(d) The court may grant the relief provided in paragraph (a) hereof if it finds that such relief is warranted by the existence of some compelling factor, consideration or circumstance demonstrating that forfeiture of the property of [or] [n2] any part thereof, would not serve the ends of justice. Among the factors, considerations and circumstances the court may consider, among others, are:

(i) the seriousness and circumstances of the crime to which the property is connected relative to the impact of forfeiture of property upon the person who committed the crime; or

(ii) the adverse impact of a forfeiture of property upon innocent persons; or

(iii) the appropriateness of a judgment of forfeiture in an action relating to pre-conviction forfeiture crime where the criminal proceeding based on the crime to which the property is allegedly connected results in an acquittal of the criminal defendant or a dismissal of the accusatory instrument on the merits; or

(iv) in the case of an action relating to an instrumentality, whether the value of the instrumentality substantially exceeds the value of the property constituting the proceeds or substituted proceeds of a crime.

(e) The court must issue a written decision stating the basis for an order issued pursuant to this subdivision.
4-a. (a) The court in which a forfeiture action relating to real property is pending may, upon its own motion or upon the motion of the claiming authority which instituted the action, the defendant, or any other person who has a lawful property interest in such property, enter an order:

(i) appointing an administrator pursuant to section seven hundred seventy-eight of the real property actions and proceedings law when the owner of a dwelling is a defendant in such action, and when persons who are not defendants in such action lawfully occupy one or more units within such dwelling, in order to maintain and preserve the property on behalf of such persons or any other person or entity who has a lawful property interest in such property, or in order to remedy any other condition which is dangerous to life, health or safety; or

(ii) otherwise limiting, modifying or dismissing the forfeiture action in order to preserve or protect the lawful property interest of any non-criminal defendant or any other person who is not a criminal defendant, or the lawful property interest of a defendant which is not subject to forfeiture; or

(iii) where such action involves interest in a residential leasehold or a statutory tenancy, directing that upon entry of a judgment of forfeiture, the lease or statutory tenancy will be modified as a matter of law to terminate only the interest of the defendant or defendants, and to continue the occupancy or tenancy of any other person or persons who lawfully reside in such demised premises, with such rights as such parties would otherwise have had if the defendant’s interest had not been forfeited pursuant to this article.

(b) For purposes of this subdivision the term «owner» has the same meaning as prescribed for that term in section seven hundred eighty-one of the real property actions and proceedings law and the term «dwelling» shall mean any building or structure or portion thereof which is principally occupied in whole or part as the home, residence or sleeping place of one or more human beings.
5. An action for forfeiture shall be commenced by service pursuant to this chapter of a summons with notice or summons and verified complaint. No person shall forfeit any right, title, or interest in any property who is not a defendant in the action. The claiming authority shall also file a copy of such papers with the state division of criminal justice services; provided, however, failure to file such papers shall not be grounds for any relief by a defendant in this section.

6. On the motion of any party to the forfeiture action, and for good cause shown, a court may seal any papers, including those pertaining to any provisional remedy, which relate to the forfeiture action until such time as the property which is the subject of the forfeiture action has been levied upon. A motion to seal such papers may be made ex parte and in camera.

7. Remission. In addition to any other relief provided under this chapter, at any time within one year after the entry of a judgment of forfeiture, any person, claiming an interest in the property subject to forfeiture who did not receive actual notice of the forfeiture action may petition the judge before whom the forfeiture action was held for a remission or mitigation of the forfeiture and restoration of the property or the proceeds of any sale resulting from the forfeiture, or such part thereof, as may be claimed by him. The court may restore said property upon such terms and conditions as it deems reasonable and just if (i) the petitioner establishes that he or she was without actual knowledge of the forfeiture action or any related proceeding for a provisional remedy and did not know or should not have known that the forfeited property was connected to a crime or fraudulently conveyed and (ii) the court determines that restoration of the property would serve the ends of justice.

8. The total amount that may be recovered by the claiming authority against all criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the same proceeds of the same crime or the same substituted proceeds
of the same crime recovered against all non-criminal defendants. Any such recovery for the value of an instrumentality of a crime shall be reduced by an amount which equals the value of the same instrumentality recovered against any non-criminal defendant.

The total amount that may be recovered against all non-criminal defendants in a forfeiture action or actions involving the same crime shall not exceed the value of the proceeds of the crime or the substituted proceeds of the crime, whichever amount is greater, and, in addition, the value of any forfeited instrumentality used in the crime. Any such recovery against non-criminal defendants for the value of the proceeds of the crime or substituted proceeds of the crime shall be reduced by an amount which equals the value of the proceeds of the crime or substituted proceeds of the crime recovered against all criminal defendants. A judgment against a non-criminal defendant pursuant to clause (A) of subparagraph (iv) of paragraph (b) of subdivision three of this section shall be limited to the amount of the proceeds of the crime. Any recovery for the value of an instrumentality of the crime shall be reduced by an amount equal to the value of the same instrumentality recovered against any criminal defendant.

9. Any defendant in a forfeiture action who knowingly and intentionally conceals, destroys, dissipates, alters, removes from the jurisdiction, or otherwise disposes of, property specified in a provisional remedy ordered by the court or in a judgment of forfeiture in knowing contempt of said order or judgment shall be subject to criminal liability and sanctions under sections 80.05 and 215.80 of the penal law.

10. The proper venue for trial of an action for forfeiture is:

(a) In the case of an action for post-conviction forfeiture commenced after conviction, the county where the conviction occurred.

(b) In all other cases, the county where a criminal prosecution could be commenced under article twenty of the criminal procedure law, or, in the case of an action commenced by the office of prosecution, special narcotics courts of the city of New York, under section one hundred seventy-seven-b of the judiciary law.
11. (a) Any stipulation or settlement agreement between the parties to a forfeiture action shall be filed with the clerk of the court in which the forfeiture action is pending. No stipulation or settlement agreement shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of the stipulation or settlement agreement, including the terms of such, has been given to the state crime victims board, the state division of criminal justice services, and in the case of a forfeiture based on a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, to the state division of substance abuse services.

(b) No judgment or order of forfeiture shall be accepted for filing unless it is accompanied by an affidavit from the claiming authority that written notice of judgment or order, including the terms of such, has been given to the state crime victims board, the state division of criminal justice services, and in the case of a forfeiture based on a felony defined in article two hundred twenty or section 221.30 or 221.55 of the penal law, to the state division of substance abuse services.

(c) Any claiming authority or claiming agent which receives any property pursuant to chapter thirteen of the food and drug laws (21 U.S.C. § 801 et seq.) of the United States and/or chapter four of the customs duties laws (19 U.S.C. § 1301 et seq.) of the United States and/or chapter 96 of the crimes and criminal procedure laws (18 U.S.C. § 1961 et seq.) of the United States shall provide an affidavit to the commissioner of the division of criminal justice services stating the estimated present value of the property received.

12. Property acquired in good faith by an attorney as payment for the reasonable and bona fide fees of legal services or reimbursement of reasonable and bona fide expenses related to the representation of a defendant in connection with a civil or criminal forfeiture proceeding or a related criminal matter, shall be exempt from a judgment of forfeiture. For purposes of this subdivision and subdivision four of section one thousand three hundred twelve of this article, «bona fide» means that the attorney who acquired such property had no reasonable basis to believe that the fee transaction was a fraudulent or sham
transaction designed to shield property from forfeiture, hide its existence from
governmental investigative agencies, or was conducted for any purpose other
than for legitimate legal representation.

**NY CLS CPLR § 1311-A (2006)**

§ 1311-a. Subpoena duces tecum

1. At any time before an action pursuant to this article is commenced, the
claiming authority may, pursuant to the provisions of subdivision two of this
section, apply without notice for the issuance of a subpoena duces tecum.

2. An application for a subpoena duces tecum pursuant to this section:
   (a) shall be made in the judicial district in which the claiming authority
       may commence an action pursuant to this article, and shall be made
       in writing to a justice of the supreme court, or a judge of the county
       court; and
   (b) shall be supported by an affidavit, and such other written documenta-
       tion as may be submitted which: (i) sets forth the identity of the claim-
       ing authority and certifies that the applicant is authorized to make the
       application on the claiming authority’s behalf; (ii) demonstrates rea-
       sonable grounds to believe that the execution of the subpoena would
       be reasonably likely to lead to information about the nature and loca-
       tion of any debt or property against which a forfeiture judgment may be
       enforced; (iii) states whether any other such subpoena or provisional
       remedy has been previously sought or obtained with respect to the sub-
       ject matter of the subpoena or the matter to which it relates; (iv) con-
       tains a factual statement which sets forth the basis for the issuance of
       the subpoena, including a particular description of the nature of the
       information sought to be obtained; (v) states whether the issuance of
       the subpoena is sought without notice to any interested party; and (vi)
       where the application seeks the issuance of the subpoena without no-
       tice to any interested party, contains a statement setting forth the fac-
       tual basis for the claiming authority’s belief that providing notice of the
application for the issuance of the subpoena may result in any property being destroyed, removed from the jurisdiction of the court, or otherwise being unavailable for forfeiture or to satisfy a money judgment that may be entered in the forfeiture action, and may interfere with law enforcement investigations or judicial proceedings.

3. An application made pursuant to this section may be granted, in the court’s discretion, upon a determination that the application meets the requirements set forth in subdivision two of this section; provided, however, that no such subpoena may be issued or directed to an attorney with regard to privileged records or documents or attorney work-product relating to a client. When a subpoena has been issued pursuant to this section, the claiming authority shall have the right to possession of the subpoenaed material. The possession shall be for a period of time, and on such reasonable terms and conditions, as the court may direct. The reasonableness of such possession, time, terms and conditions shall be determined with consideration for, among other things, (a) the good cause shown by the party issuing the subpoena or in whose behalf the subpoena is issued, (b) the rights and legitimate needs of the person subpoenaed and (c) the feasibility and appropriateness of making copies of the subpoenaed material. Where the application seeks a subpoena to compel the production of an original record or document, the court in its discretion may order the production of a certified transcript or certified copy thereof.

4. Upon a determination pursuant to subdivision three of this section that the subpoena should be granted, the court shall issue the subpoena, seal all papers relating thereto, and direct that the recipient shall not, except as otherwise ordered by the court, disclose the fact of issuance or the subject of the subpoena to any person or entity; provided, however, that the court may require that notice be given to any interested party prior to the issuance of the subpoena, or at any time thereafter, when: (a) an order granting a provisional remedy pursuant to this article with respect to the subject matter of the subpoena or the matter to which it relates has been served upon the defendant whose books and records are the subject matter of the subpoena, whether such books and records are in the possession of the defendant or a third party; or
(b) the court determines that providing notice of the application (i) will not result in any property being destroyed, removed from the jurisdiction of the court, or otherwise being unavailable for forfeiture or to satisfy a money judgment that may be entered in the forfeiture action and (ii) will not interfere with law enforcement investigations or judicial proceedings. For purposes of this section, «interested party» means any person whom the court determines might have an interest in the property subject to the forfeiture action brought pursuant to this article.

5. Notwithstanding the provisions of subdivision four of this section, where a subpoena duces tecum has been issued pursuant to this section without notice to any interested party, the claiming authority shall serve written notice of the fact and date of the issuance of the subpoena duces tecum, and of the fact that information was obtained thereby, upon any interested party not later than ninety days after the date of compliance with such subpoena, or upon commencement of a forfeiture action, whichever occurs first; provided, however, where the action has not been commenced and upon a showing of good cause, service of the notice required herein may be postponed by order of the court for a reasonable period of time. The court, upon the filing of a motion by any interested party served with such notice, may, in its discretion, make available to such party or the party’s counsel for inspection such portions of the information obtained pursuant to the subpoena as the court directs.

6. Nothing contained in this section shall be construed to diminish or impair any right of subpoena or discovery that may otherwise be provided for by law to the claiming authority or to a defendant in a forfeiture action.

NY CLS CPLR § 1312 (2006)

§ 1312. Provisional remedies; generally

1. The provisional remedies of attachment, injunction, receivership and notice of pendency provided for herein, shall be available in all actions to recover property or for a money judgment under this article.
2. On a motion for a provisional remedy, the claiming authority shall state whether any other provisional remedy has previously been sought in the same action against the same defendant. The court may require the claiming authority to elect between those remedies to which it would otherwise be entitled.

3. A court may grant an application for a provisional remedy when it determines that: (a) there is a substantial probability that the claiming authority will prevail on the issue of forfeiture and that failure to enter the order may result in the property being destroyed, removed from the jurisdiction of the court, or otherwise be unavailable for forfeiture; (b) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order may operate; and (c) in an action relating to real property, that entry of the requested order will not substantially diminish, impair, or terminate the lawful property interest in such real property of any person or persons other than the defendant or defendants.

4. Upon motion of any party against whom a provisional remedy granted pursuant to this article is in effect, the court may issue an order modifying or vacating such provisional remedy if necessary to permit the moving party to obtain funds for the payment of reasonable living expenses, other costs or expenses related to the maintenance, operation, or preservation of property which is the subject of any such provisional remedy or reasonable and bona fide attorneys’ fees and expenses for the representation of the defendant in the forfeiture proceeding or in a related criminal matter relating thereto, payment for which is not otherwise available from assets of the defendant which are not subject to such provisional remedy. Any such motion shall be supported by an affidavit establishing the unavailability of other assets of the moving party which are not the subject of such provisional remedy for payment of such expenses or fees.
NY CLS CPLR § 1313 (2006)

§ 1313. Debt or property subject to attachment; proper garnishee

Any debt or property against which a forfeiture judgment may be enforced as provided under this article is subject to attachment. The proper garnishee of any such property or debt is the person designated as a proper garnishee for purposes of enforcing money judgments in section five thousand two hundred one of this chapter. For the purpose of applying the provisions to attachment, references to a «judgment debtor» in section five thousand two hundred one and in subdivision (i) of section one hundred five of this chapter shall be construed to mean «defendant».

NY CLS CPLR § 1314 (2006)

§ 1314. Attaching creditor’s rights in personal property

Where the claiming authority has delivered an order of attachment to a claiming agent, the claiming authority’s rights in a debt owed to a defendant or in an interest of a defendant in personal property against which debt or property a judgment may be enforced, are superior to the extent of the amount of the attachment to the rights of any transferee of the debt or property, except:

1. A transferee who acquired the debt or property before it was levied upon for fair consideration and without knowledge of the order of attachment; or

2. A transferee who acquired the debt or property for fair consideration after it was levied upon without knowledge of the levy while it was not in the possession of the claiming agent.

NY CLS CPLR § 1315 (2006)

§ 1315. Discharge of garnishee’s obligation

A person who, pursuant to an order of attachment, pays or delivers to the claiming agent money or other personal property in which a defendant
has or will have an interest, or so pays a debt he or she owes the defendant, is discharged from his or her obligation to the defendant to the extent of the payment or delivery.

NY CLS CPLR § 1316 (2006)

§ 1316. Order of attachment on notice; temporary restraining order; contents

Upon a motion on notice for an order of attachment, the court may, without notice to the defendant, grant a temporary restraining order prohibiting the transfer of assets by a garnishee as provided in subdivision two of section one thousand three hundred twenty of this article. The contents of the order of attachment granted pursuant to this section shall be as provided in subdivision one of section one thousand three hundred seventeen of this article.

NY CLS CPLR § 1317 (2006)

§ 1317. Order of attachment without notice

1. When granted; contents. An order of attachment may be granted without notice, before or after service of summons and at any time prior to judgment. It shall specify the amount to be secured by the order of attachment including any interest, costs and any claiming agent’s fees and expenses, be endorsed with the name and address of the claiming authority and shall be directed to a claiming agent in any county or in the city of New York where any property in which the defendant has an interest is located or where a garnishee may be served. The order shall direct the claiming agent to levy within his or her jurisdiction, at any time before final judgment, upon such property in which the defendant has an interest and upon such debts owing to the defendant as will satisfy the amount specified in the order of attachment.

2. Confirmation of order. An order of attachment granted without notice shall provide that within a period not to exceed five days after levy, the claiming
authority shall move, on such notice as the court shall direct to the defendant, the garnishee, if any, and the claiming agent, for an order confirming the order of attachment. If the claiming authority fails to make such motion within the required period, the order of attachment and levy thereunder shall have no further effect and shall be vacated upon motion. Upon the motion to confirm, the provisions of subdivision two of section one thousand three hundred twenty-nine of this article shall apply. An order of attachment granted without notice may provide that the claiming agent refrain from taking any property levied upon into his actual custody, pending further order of the court.

NY CLS CPLR § 1318 (2006)

§ 1318. Motion papers; filing; demand; damages

1. Affidavit; other papers. On a motion for an order of attachment, or for an order to confirm an order of attachment, the claiming authority shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action and showing grounds for relief as required by section one thousand three hundred twelve of this article.

2. Filing. Within ten days after the granting of an order of attachment, the claiming authority shall file it and the affidavit and other papers upon which it was based and the summons and complaint or proposed complaint in the action. A court for good cause shown may extend the time for such filing upon application of the claiming authority. Unless the time for filing has been extended, the order shall be invalid if not so filed, except that a person upon whom it is served shall not be liable for acting upon it as if it were valid without knowledge of the invalidity.

3. Demand for papers. At any time after property has been levied upon, the defendant may serve upon the claiming authority a written demand that the papers upon which the order of attachment was granted and the levy made be served upon him or her. As soon as practicable after service of the demand, the claiming authority shall cause the papers demanded to be served by mail-
ing the same to the address specified in the demand. A demand under this subdivision shall not of itself constitute an appearance in the action.

4. Damages. The claiming authority shall be liable to the defendant for all costs and damages, including reasonable attorney’s fees, which may be sustained by reason of the attachment if the defendant recovers judgment, or if it is finally decided that the claiming authority was not entitled to an attachment of the defendant’s property. In

order to establish the claiming authority’s liability, the defendant must prove by a preponderance of the evidence that in obtaining the order of attachment the claiming authority acted without reasonable cause and not in good faith.

NY CLS CPLR § 1319 (2006)

§ 1319. Service of summons

An order of attachment granted before service is made on the defendant against whom the attachment is granted is valid only if, within sixty days after the order is granted, a summons is served upon the defendant or first publication of the summons against the defendant is made pursuant to an order and publication is subsequently completed, except that a person upon whom the order of attachment is served shall not be liable for acting upon it as if it were valid without knowledge of the invalidity. If the defendant dies within sixty days after the order is granted and before the summons is served upon him or her or publication is completed, the order is valid only if the summons is served upon his or her executor or administrator within sixty days after letters are issued. Upon such terms as may be just and upon good cause shown the court may extend the time, not exceeding sixty days, within which the summons must be served or publication commenced pursuant to this section, provided that the application for extension is made before the expiration of the time fixed.
§ 1320. Levy upon personal property by service of order

1. Method of levy. The claiming agent shall levy upon any interest of the defendant in personal property, or upon any debt owed to the defendant, by serving a copy of the order of attachment upon the garnishee, or upon the defendant if property to be levied upon is in the defendant’s possession or custody, in the same manner as a summons except that such service shall not be made by delivery of a copy to a person authorized to receive service of summons solely by a designation filed pursuant to a provision of law other than rule three hundred eighteen of this chapter.

2. Effect of levy; prohibition of transfer. A levy by service of an order of attachment upon a person other than the defendant is effective only if, at the time of service, such person owes a debt to the defendant or such person is in the possession or custody of property in which such person knows or has reason to believe the defendant has an interest, or if the claiming authority has stated in a notice which shall be served with the order that a specified debt is owed by the person served to the defendant or that the defendant has an interest in specified property in the possession or custody of the person served. All property in which the defendant is known or believed to have an interest then in and thereafter coming into the possession or custody of such a person, including any specified in the notice, and all debts of such person, including any specified in the notice, then due and thereafter coming due to the defendant, shall be subject to the levy. Unless the court orders otherwise, the person served with the order shall forthwith transfer or deliver all such property, and pay all such debts upon maturity, up to the amount specified in order of attachment, to the claiming agent and execute any document necessary to effect the payment, transfer or delivery. After such payment, transfer or delivery, property coming into the possession or custody of the garnishee, or debt incurred by him or her, shall not be subject to the levy. Until such payment, transfer or delivery is made, or until the expiration of ninety days after the service of the order of attachment upon him or her, or of such further time as is provided by any subsequent order of the court served upon him or her,
whichever event first occurs, the garnishee is prohibited to make or suffer any sale, assignment or transfer of, or any interference with any such property, or pay over or otherwise dispose of any such debt, to any person other than the claiming agent except upon direction of the claiming agent or pursuant to an order of the court. A garnishee, however, may collect or redeem an instrument received by him or her for such purpose and he or she may sell or transfer in good faith property held as collateral or otherwise pursuant to pledge thereof or at the direction of any person other than the defendant authorized to direct sale or transfer, provided that the proceeds in which the defendant has an interest be retained subject to the levy. A claiming authority who has specified personal property or debt to be levied upon in a notice served with an order of attachment shall be liable to the owner of the property or the person to whom the debt is owed, if other than the defendant, for any damages sustained by reason of the levy. In order to establish the claiming authority’s liability, the owner of the property of the person to whom the debt is owed must prove by a preponderance of the evidence that, in causing the levy to occur, the claiming authority acted without reasonable cause and not in good faith.

3. Seizure by claiming agent; notice of satisfaction. Where property or debts have been levied upon by service of an order of attachment, the claiming agent shall take into his or her actual custody all such property capable of delivery and shall collect and receive all such debts. When the claiming agent has taken into his or her actual custody property or debts having value sufficient to satisfy the amount specified in the order of attachment, the claiming agent shall notify the defendant and each person upon whom the order of attachment was served that the order of attachment has been fully executed.

4. Proceeding to compel payment or delivery. Where property or debts have been levied upon by service of an order of attachment, the claiming authority may commence a special proceeding against the garnishee served with the order to compel the payment, delivery or transfer to the claiming agent of such property or debts, or to secure a judgment against the garnishee. Notice of petition shall also be served upon the parties to the action and the claiming agent. A garnishee may assert any defense or counterclaim which he or she may have asserted against the defendant. The court may permit any adverse
claimant to intervene in the proceeding and may determine his or her rights in accordance with section one thousand three hundred twenty-seven of this article.

5. Failure to proceed. At the expiration of ninety days after a levy is made by service of the order of attachment, or of such further time as the court, upon motion of the claiming authority on notice to the parties to the action, has provided, the levy shall be void except as to property or debts which the claiming agent has taken into his or her actual custody, collected or received or as to which a proceeding under subdivision four hereof has been commenced.

NY CLS CPLR § 1321 (2006)

§ 1321. Levy upon personal property by seizure

If the claiming authority shall so direct the collecting agent, as an alternative to the method prescribed by section one thousand three hundred twenty of this article, shall levy upon property capable of delivery by taking the property into his actual custody. In cases in which the collecting agent is a sheriff, the sheriff may require that the claiming authority furnish indemnity that is either satisfactory to the sheriff or is fixed by the court. The collecting agent shall within four days serve a copy of the order of attachment in the manner prescribed by subdivision one of section one thousand three hundred twenty of this article upon the person from whose possession or custody the property was taken.

NY CLS CPLR § 1322 (2006)

§ 1322. Levy upon real property

The claiming agent shall levy upon any interest of the defendant in real property by filing with the clerk of the county in which the property is located a notice of attachment endorsed with the name and address of the claiming authority and stating the names of the parties to the action, the amount speci-
fied in the order of attachment and a description of the property levied upon. The clerk shall record and index the notice in the same books, in the same manner and with the same effect, as a notice of the pendency of an action.

NY CLS CPLR § 1323 (2006)

§ 1323. Additional undertaking to carrier garnishee

A garnishee who is a common carrier may transport or deliver property actually loaded on a conveyance, notwithstanding the service upon him or her of an order of attachment, if it was loaded without reason to believe that an order of attachment affecting the property had been granted, unless the claiming authority gives an undertaking in an amount fixed by the court, that the claiming authority shall pay any such carrier all expenses and damages which may be incurred for unloading the property and for detention of the conveyance necessary for that purpose.

NY CLS CPLR § 1324 (2006)

§ 1324. Claiming agent’s duties after levy

1. Retention of property. The claiming agent shall hold and safely keep all property or debts paid, delivered, transferred or assigned to him or her or taken into his or her custody to answer any judgment that may be obtained against the defendant in the action, unless otherwise directed by the court or the claiming authority, subject to the payment of the claiming agent’s fees and expenses, if any. Any money shall be held for the benefit of the parties to the action in an interest-bearing trust account at a national or state bank or trust company. If the urgency of the case requires, the court may direct sale or other disposition of property, specifying the manner and terms thereof, with notice to the parties to the action and the garnishee who has possession of such property.
2. Inventory. Within fifteen days after service of an order of attachment or forthwith after such order has been vacated or annulled, the claiming agent shall file an inventory of property seized, a description of real property levied upon, the names and addresses of all persons served with the order of attachment, and an estimate of the value of all property levied upon.

NY CLS CPLR § 1325 (2006)

§ 1325. Garnishee’s statement

Within ten days after service upon a garnishee of an order of attachment, or within such shorter time as the court may direct, the garnishee shall serve upon the claiming agent a statement specifying all debts of the garnishee to the defendant, when the debts are due, all property in the possession or custody of the garnishee in which the defendant has an interest, and the amounts and value of the debts and property specified. If the garnishee has money belonging to, or is indebted to, the defendant in at least the amount of the attachment, he or she may limit his or her statement to that fact.

NY CLS CPLR § 1326 (2006)

§ 1326. Disclosure

Upon motion of any interested person, at any time after the granting of an order of attachment and prior to final judgment in the action, upon such notice as the court may direct, the court may order disclosure by any person of information regarding any property in which the defendant has or may have interest, or any debts owed or which may be owed to the defendant.
§ 1327. Proceedings to determine adverse claims

Prior to the application of property or debt to the satisfaction of a judgment, any person, other than a party to the action, who has an interest in the property subject to forfeiture may commence a special proceeding against the claiming authority to determine the rights of adverse claimants to the property or debt, and in such proceeding shall serve a notice of petition upon the claiming agent and upon each party in the same manner as a notice of motion. The proceeding may be commenced in the county where the property was levied upon, or in the county where the order of attachment is filed. The court may vacate or discharge the attachment, void the levy, direct the disposition of the property or debt, direct that undertakings be provided or released, or direct that damages be awarded. Where there appear to be disputed questions of fact, the court shall order a separate trial, indicating the person who shall have possession of the property pending a decision and the undertaking, if any, which such person shall give. If the court determines that the adverse claim was fraudulent or made without any reasonable basis whatsoever, it may require the claimant to pay the claiming authority the reasonable expenses incurred in the proceeding, including reasonable attorney’s fees, and any other damages suffered by reason of the claim. The commencement of the proceeding shall not of itself subject the adverse claimant to personal jurisdiction with respect to any matter other than the claim asserted in the proceeding.

§ 1328. Discharge of attachment

1. A defendant whose property or debt has been levied upon may move, upon notice to the claiming authority and the claiming agent, for any order discharging the attachment as to all or part of the property or debt upon payment of the claiming agent’s fees and expenses, if any. On such a motion, the defendant shall give an undertaking, in an amount equal to the value of the
property or debt sought to be discharged, that the defendant will pay to the
claiming authority the amount of any judgment which may be recovered in
the action against him or her, not exceeding the amount of the undertaking.
Making a motion or giving an undertaking under this section shall not of itself
constitute an appearance in the action.

2. When a motion to discharge is made in the case of property levied upon
pursuant to a claimed violation of the tax law, the amount of the undertaking
required shall be an amount equal to the lesser of:

(a) The amount specified in subdivision one of this section; or
(b) The aggregate amount of all unpaid tax and civil penalties for such
violation.

NY CLS CPLR § 1329 (2006)

§ 1329. Vacating or modifying attachment

1. Motion to vacate or modify. Prior to the application of property or debt
to the satisfaction of a judgment, the defendant, the garnishee or any person
having an interest in the property or debt may move, on notice to each party
and the claiming agent, for an order vacating or modifying the order of attach-
ment. Upon the motion, the court may give the claiming authority a reason-
able opportunity to correct any defect. If, after the defendant has appeared
in the action, the court determines that the attachment is unnecessary to the
security of the claiming authority, it shall vacate the order of attachment. Such
a motion shall not of itself constitute an appearance in the action.

2. Burden of proof. Upon a motion to vacate or modify an order of attach-
ment the claiming authority shall have the burden of establishing the grounds
for the attachment, the need for continuing the levy and the probability that
he or she will succeed on the merits.
§ 1330. Annulment of attachment

An order of attachment is annulled when the action in which it was granted abates or is discontinued or a judgment entered therein in favor of the claiming authority is fully satisfied, or a judgment is entered therein in favor of the defendant. In the last specified case a stay of proceedings suspends the effect of the annulment, and a reversal or vacating of the judgment revives the order of attachment.

§ 1331. Return of property; directions to clerk and claiming agent

Upon motion of any interested person, on notice to the claiming agent and each party, the court may direct the clerk of any county to cancel a notice of attachment and may direct the claiming agent to dispose of, account for, assign, return or release any property or debt, or the proceeds thereof, or any undertaking, or to file additional inventories or returns, subject to the payment of the claiming agent’s fees, and expenses, if any. The court shall direct that notice of the motion be given to the claiming authority and plaintiffs in other orders of attachment, if any, and to the judgment creditors of executions, if any, affecting any property or debt, or the proceeds thereof, sought to be returned or released.
§ 1332. Disposition of attachment property after execution issued; priority of orders of attachment

Where an execution is issued upon a judgment entered against the defendant, the claiming agent’s duty with respect to custody and disposition of property or debt levied upon pursuant to an order of attachment is the same as if he or she had levied upon it pursuant to the execution. The priority among two or more orders of attachment against the same defendant shall be in the order in which they were delivered to the officer who levied upon the property or debt. The priority between an order of attachment and an execution, or a payment, delivery or receivership order, is set forth in section five thousand two hundred thirty-four of this chapter.

§ 1333. Grounds for preliminary injunction and temporary restraining order

A preliminary injunction may be granted in any action under this article, whether for money damages or otherwise, where it appears that the defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the claiming authority’s rights respecting the subject of the action, and thereby tending to render a resulting judgment ineffectual. A temporary restraining order may be granted pending a hearing for a preliminary injunction where it appears that immediate and irreparable injury, loss or damage will result unless the defendant is restrained before the hearing can be had. A preliminary injunction may be granted only upon notice to the defendant. Notice of the motion may be served with the summons or at any time thereafter and prior to judgment.
NY CLS CPLR § 1334 (2006)

§ 1334. Motion papers

Affidavit; other papers. On a motion for a preliminary injunction the claiming authority shall show, by affidavit and such other written evidence as may be submitted, that there is a cause of action and showing grounds for relief as required by section one thousand three hundred twelve of this article.

NY CLS CPLR § 1335 (2006)

§ 1335. Temporary restraining order

1. Generally. If, on a motion for a preliminary injunction, the claiming authority shall show that immediate and irreparable injury, loss or damages may result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the court shall set the hearing for the preliminary injunction at the earliest possible time.

2. Service. Unless the court orders otherwise, a temporary restraining order together with the papers upon which it was based, and a notice of hearing for the preliminary injunction, shall be personally served in the same manner as a summons.

NY CLS CPLR § 1336 (2006)

§ 1336. Vacating or modifying preliminary injunction or temporary restraining order

A defendant enjoined by a preliminary injunction may move at any time, on notice to the claiming authority, to vacate or modify it. On motion, without notice, made by a defendant enjoined by a temporary restraining order, the judge who granted it, or in his or her absence or disability, another judge, may vacate or modify the order. An order granted without notice and vacating or
modifying a temporary restraining order shall be effective when, together with
the papers upon which it is based, it is filed with the clerk and served upon the
claiming authority. As a condition to granting an order vacating or modifying
a preliminary injunction or a temporary restraining order, a court may require
the defendant to give an undertaking, in an amount to be fixed by the court,
that the defendant shall pay to the claiming authority any loss sustained by
reason of the vacating or modifying order.

NY CLS CPLR § 1337 (2006)

§ 1337. Ascertaining damages sustained by reason of preliminary
injunction or temporary restraining order

The damages sustained by reason of a preliminary injunction or tempo-
rary restraining order may be ascertained upon motion on such notice to all
interested persons as the court shall direct. Where the defendant enjoined was
an officer of a corporation or joint-stock association or a representative of an-
other person, the damages sustained by such corporation, association or per-
son represented, to the amount of such excess, may also be ascertained. The
amount of damages so ascertained is conclusive upon all persons who were
served with notice of the motion and such amount may be recovered by the
person entitled thereto in a separate action. In order to establish the claiming
authority’s liability for damages, the person seeking such damages must prove
by a preponderance of the evidence that, in causing the temporary restraining
order or preliminary injunction to be granted, the claiming authority acted
without reasonable cause and not in good faith.

NY CLS CPLR § 1338 (2006)

§ 1338. Appointment and powers of temporary receiver

1. Appointment of temporary receiver; joinder of moving party. Upon
motion of the claiming authority on any other person having an apparent in-
interest in property which is the subject of an action pursuant to this article, a temporary receiver of the property may be appointed, before or after service of summons and at any time prior to judgment, or during the pendency of an appeal, where there is danger that the property will be removed from the state, or lost, materially injured or destroyed. A motion made by a person not already a party to the action constitutes an appearance in the action and the person shall be joined as a party.

2. Powers of temporary receiver. The court appointing a receiver may authorize him or her to take and hold real and personal property, and sue for, collect and sell debts or claims, upon such conditions and for such purposes as the court shall direct. A receiver shall have no power to employ counsel unless expressly so authorized by order of the court. Upon motion of the receiver or a party, powers granted to a temporary receiver may be extended or limited or the receivership may be extended to another action involving the property.

3. Duration of temporary receivership. A temporary receivership shall not continue after final judgment unless otherwise directed by the court.

NY CLS CPLR § 1339 (2006)

§ 1339. Oath

A temporary receiver, before entering upon his or her duties, shall be sworn faithfully and fairly to discharge the trust committed to him or her. The oath may be administered by any person authorized to take acknowledgments of deeds by the real property law. The oath may be waived upon consent of all parties.
§ 1340. Undertaking

A temporary receiver shall give an undertaking in an amount to be fixed by the court making the appointment, that he or she will faithfully discharge his or her duties.

§ 1341. Accounts

A temporary receiver shall keep written accounts itemizing receipts and expenditures, and describing the property and naming the depository of receivership funds, which shall be open to inspection by any person having an apparent interest in the property, the court may require the keeping of particular records or direct or limit inspection or require presentation of a temporary receiver’s accounts. Notice of a motion for the presentation of a temporary receiver’s accounts shall be served upon the sureties on his or her undertaking as well as upon each party.

§ 1342. Removal

Upon motion of any party or upon its own initiative, the court which appointed a receiver may remove him or her at any time.
§ 1343. Notice of pendency; constructive notice

A notice of pendency may be filed in any action brought pursuant to this article in which the judgment demanded would affect the title to, or the possession, use or enjoyment of, real property. The pendency of such an action is constructive notice, from the time of filing of the notice only, to a purchaser from, or incumbrancer against, any defendant named in a notice of pendency indexed in a block index against a block in which property affected is situated or any defendant against whose name a notice of pendency is indexed. A person whose conveyance or incumbrance is recorded after the filing of the notice is bound by all proceedings taken in the action after such filing to the same extent as if he or she were a party.

§ 1344. Filing, content and indexing of notice of pendency

1. Filing. In a case specified in section one thousand three hundred forty-three of this article the notice of pendency shall be filed in the office of the clerk of any county where property affected is situated, before or after service of a summons and at any time prior to judgment. Unless it has already been filed in that county, the complaint shall be filed with the notice of pendency.

2. Content, designation of index. A notice of pendency shall state the names of the parties to the action, that the action is for forfeiture pursuant to this article and a description of the property affected. A notice of pendency filed with a clerk who maintains a block index shall contain a designation of the number of each block on the land map of a county which is affected by the notice. A notice of pendency filed with a clerk who does not maintain a block index shall contain a designation of the names of each defendant against whom the notice is directed to be indexed.

3. Indexing. Each county clerk with whom a notice of pendency is filed shall immediately record and index it against the blocks or names designated.
A county clerk who does not maintain a block index shall index a notice of pendency of an action for partition against the names of each claiming authority and each defendant not designated as wholly fictitious.

NY CLS CPLR § 1345 (2006)

§ 1345. Service of summons

A notice of pendency filed before an action is commenced is effective only if, within thirty days after filing, a summons is served upon the defendant or first publication of the summons against the defendant is made pursuant to an order and publication is subsequently completed. If the defendant dies within thirty days after filing and before the summons served upon him or her or publication is completed, the notice is effective only if the summons is served upon his or her executor or administrator within sixty days after letters are issued.

NY CLS CPLR § 1346 (2006)

§ 1346. Duration of notice of pendency

A notice of pendency shall be effective for a period of three years from the date of filing. Before expiration of a period or extended period, the court, upon motion of the claiming authority and upon such notice as it may require, for good cause shown, may grant an extension for a like additional period. An extension order shall be filed, recorded and indexed before expiration of the prior period.
§ 1347. Motion for cancellation of notice of pendency

1. Mandatory cancellation. The court, upon motion of any person aggrieved and upon such notice as it may require, shall direct any county clerk to cancel a notice of pendency, if service of a summons has not been completed within the time limited by section one thousand three hundred forty-five of this article; or if the action has been settled, discontinued or abated; or if the time to appeal from a final judgment against the claiming authority has expired.

2. Discretionary cancellation. The court, upon a motion of any person aggrieved and upon such notice as it may require, may direct any county clerk to cancel a notice of pendency, if the claiming authority has not commenced or prosecuted the action in good faith.

3. Costs and expenses. The court, in an order canceling a notice of pendency under this section, may direct the claiming authority to pay any costs and expenses occasioned by the filing and cancellation, in addition to any costs of the action. In order to establish the claiming authority’s liability for such costs and expenses, the person seeking such costs and expenses must prove by a preponderance of the evidence that, in causing the notice to pendency to be filed, the claiming authority acted without reasonable cause and not in good faith.

4. Cancellation by stipulation. At any time prior to entry of judgment, a notice of pendency shall be cancelled by the county clerk without an order, on the filing with him or her of:

(a) An affidavit by the claiming authority showing which defendants have been served with process, which defendants are in default in appearing or answering, and which defendants have appeared or answered and by whom; and
(b) A stipulation consenting to the cancellation, signed by the claiming authority and by the attorneys for all the defendants who have appeared or answered including those who have waived all notices, and executed and acknowledged, in the form required to entitle a deed to be record-
ed, by the defendants who have been served with process and have not appeared but whose time to do so has not expired, and by any defendants who have appeared in person.

5. Cancellation by a claiming authority. At any time prior to the entry of a judgment a notice of pendency of action shall be cancelled by the county clerk without an order on the filing with him or her of an affidavit by the claiming authority showing that there have been no appearances and that the time to appear has expired for all parties.

NY CLS CPLR § 1348 (2006)

§ 1348. Undertaking for cancellation of notice of pendency

The court, upon motion of any person aggrieved and upon such notice of pendency as it may require, may direct any county clerk to cancel a notice of pendency, upon such terms as are just, whether or not the judgment demanded would affect specific real property, if the moving party shall give an undertaking in an amount to be fixed by the court, and if the court finds that adequate relief can be secured to the claiming authority by the giving of such an undertaking.

NY CLS CPLR § 1349 (2006)

§ 1349. Disposal of property

1. Any judgment or order of forfeiture issued pursuant to this article shall include provisions for the disposal of the property found to have been forfeited.

2. If any other provision of law expressly governs the manner of disposition of property subject to the judgment or order of forfeiture, that provision of law shall be controlling. Upon application by a claiming agent for reimbursement of moneys directly expended by a claiming agent in the underlying
criminal investigation for the purchase of contraband which were converted into a non-monetary form or which have not been otherwise recovered, the court shall direct such reimbursement from money forfeited pursuant to this article. Upon application of the claiming agent, the court may direct that any vehicles, vessels or aircraft forfeited pursuant to this article be retained by the claiming agent for law enforcement purposes, unless the court determines that such property is subject to a perfected lien, in which case the court may not direct that the property be retained unless all such liens on the property to be retained have been satisfied or pursuant to the court’s order will be satisfied. In the absence of an application by the claiming agent, the claiming authority may apply to the court to retain such property for law enforcement purposes. Upon such application, the court may direct that such property be retained by the claiming authority for law enforcement purposes, unless the court determines that such property is subject to a perfected lien. If not so retained, the judgment or order shall direct the claiming authority to sell the property in accordance with article fifty-one of this chapter, and that the proceeds of such sale and any other moneys realized as a consequence of any forfeiture pursuant to this article shall be apportioned and paid in the following descending order of priority:

(a) Amounts ordered to be paid by the court in satisfaction of any lien or claim against property forfeited. A fine imposed pursuant to the penal law shall not be deemed to constitute a lien or claim for purposes of this section;

(b) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of the crime, which crime constitutes the basis upon which forfeiture was effected under this article, to the extent such amounts remain unpaid;

(c) Amounts ordered to be paid by the defendant in any other action or proceeding as restitution, reparations or damages to a victim of any crime committed by the defendant even though such crime did not constitute the basis for forfeiture under this article, to the extent that such amounts remain unpaid;
(d) Amounts actually expended by a claiming authority or claiming agent, which amounts are substantiated by vouchers or other evidence, for the:

(i) maintenance and operation of real property attached pursuant to this article. Expenditures authorized by this subparagraph are limited to mortgage, tax and other financial obligations imposed by law and those other payments necessary to provide essential services and repairs to real property whose occupants are innocent of the criminal conduct which led to the attachment or forfeiture; and

(ii) proper storage, cleanup and disposal of hazardous substances or other materials, the disposal of which is governed by the environmental conservation law, when such storage, cleanup or disposal is required by circumstances attendant to either the commission of the crime or the forfeiture action, or any order entered pursuant thereto;

(e) In addition to amounts, if any, distributed pursuant to paragraph (d) of this subdivision, fifteen percent of all moneys realized through forfeiture to the claiming authority in satisfaction of actual costs and expenses incurred in the investigation, preparation and litigation of the forfeiture action, including that proportion of the salaries of the attorneys, clerical and investigative personnel devoted thereto, plus all costs and disbursements taxable under the provisions of this chapter;

(f) In addition to amounts, if any, distributed pursuant to paragraph (d) of this subdivision, five percent of all moneys realized through forfeiture to the claiming agent in satisfaction of actual costs incurred for protecting, maintaining and forfeiting the property including that proportion of the salaries of attorneys, clerical and investigative personnel devoted thereto;

(g) Forty percent of all moneys realized through forfeiture which are remaining after distributions pursuant to paragraphs (a) through (f) of this subdivision, to the [fig 1] chemical dependence service fund established pursuant to section ninety-seven-w of the state finance law;

(h) All moneys remaining after distributions pursuant to paragraphs (a) through (g) of this subdivision shall be distributed as follows:
(i) seventy-five percent of such moneys shall be deposited to a law enforcement purposes subaccount of the general fund of the state where the claiming agent is an agency of the state or the political subdivision or public authority of which the claiming agent is a part, to be used for law enforcement use in the investigation of penal law offenses;

(ii) the remaining twenty-five percent of such moneys shall be deposited to a prosecution services subaccount of the general fund of the state where the claiming authority is the attorney general or the political subdivision of which the claiming authority is a part, to be used for the prosecution of penal law offenses.

Where multiple claiming agents participated in the forfeiture action, funds available pursuant to subparagraph (i) of this paragraph shall be disbursed to the appropriate law enforcement purposes subaccounts in accordance with the terms of a written agreement reflecting the participation of each claiming agent entered into by the participating claiming agents.

3. All moneys distributed to the claiming agent and the claiming authority pursuant to paragraph (h) of subdivision two of this section shall be used to enhance law enforcement efforts and not in supplantation of ordinary budgetary costs including salaries of personnel, and expenses of the claiming authority or claiming agent during the fiscal year in which this section takes effect.

4. The claiming authority shall report the disposal of property and collection of assets pursuant to this section to the state crime victims board, the state division of criminal justice services and the state division of substance abuse services.
§ 1350. Rules of procedure; in general

The civil practice law and rules shall govern the procedure in proceedings and actions commenced under this article, except where the procedure is regulated by any inconsistent provisions herein.

§ 1351. Application of article

If any provision of this article or the application thereof to any person or circumstances shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined (i) in its operation of the provision, or (ii) in its application to the person or circumstance directly involved in the controversy in which such judgment shall have been rendered.

§ 1352. Preservation of other rights and remedies

The remedies provided for in this article are not intended to substitute for or limit or supercede the lawful authority of any public officer or agency or other person to enforce any other right or remedy provided for by law.