



ESEM
ESCUELA DE SEGURIDAD
MULTIDIMENSIONAL-USP

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Course on

ILLICIT MARKETS AND ORGANIZED CRIME IN THE AMERICAS



MINISTÉRIO DA
JUSTIÇA E
SEGURANÇA PÚBLICA



Eurofront

Class

Assets Recovery from by organized crime

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Introduction

This class focuses **on the recovery of assets generated by organized crime, the importance of developing public policy strategies** that contribute to their effective recovery and the **need to improve multidisciplinary work strategies** that make it possible to actually weaken the financial structures of crime.

The objectives of this session are to identify the legal tools that exist to attack the asset, financial and economic structures of organized crime and to present the complexities that can arise in the application of these procedures.



Concepts

Operations with Resources of Illicit Origin (ORPI): it is the crime of money laundering in Mexico and the United States (among others) that has an important impact on the financial, procedural and supervisory controls arising from the special regime;

Institutions

OAS: the Organization of American States is the oldest regional cooperation institution in the world, founded in 1948 to promote common policies in the American continent;

CICTE: The Inter-American Committee against Terrorism is an OAS entity whose purpose is to develop cooperation in order to prevent and combat terrorist activities;

GAFI: the International Financial Action Group was created at the G-7 meeting in Paris, 1989, and is an international governmental grouping of an informal nature on banking and financial systems to combat money laundering;

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Our focus will be on the **case of Mexico**, which has focused its public policy on dismembering the physical structures of gangs, without managing to weaken their economic and financial structures. The Report "ETHOS: Deciphering Public Expenditure on Security" (2007) indicates the lack of specialized institutions in charge of public policies coordination. At the state and federal level, states concentrated their efforts on dismantling and weakening the physical structures of criminal groups, but they did not specifically and systematically attacked their financial and asset structures, allowing them to continue to operate under different leaderships.

However, it is very important to say that **each federal model will have different formats of action**, according to national competence.



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Free trade zones can also be a niche for the development of Operations with Resources of Illicit Source (ORPI). In the case of Mexico, the intense trade with the United States, in addition to being a catalyst for economic development, is a risk factor for money laundering, according to studies carried out by the OAS and CICTE.

It is noteworthy that money laundering affects the competitiveness of States, weakens the stability and integrity of institutions and financial systems, discourages foreign investment and discourages international capital flows between countries.



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The money is linked to the ability to penetrate campaigns to later seek positions and public contracts, and it is a mechanism that has been used to mix illicit money with legal money.

As evidenced by the Mexican case, **the border states are considered by GAFI as high-risk areas** for carrying out operations with resources of illicit origin, due to the fact that the money generated by criminal activity is invested and spent in both countries, increasing the complexity of the phenomenon. Furthermore, some of the criminals send their families to places where they can access a better quality of life. So, for that reason, much of that money goes to countries where the controls may be less strict, less impactful to their protection or to their legal benefit.



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The main characteristics of the ORPI are described in Article 400 Bis of the Federal Penal Code and concern the **use of illegally obtained resources**. Among the hypotheses of this crime are: the administration, alienation, transport, investment or transfer, in the national territory or abroad, of resources, rights or goods.

It is important that the action of using resources of illicit origin leads to the possibility that individuals are prosecuted for the crime of ORPI and subject to the process of abandonment, confiscation or forfeiture of the goods obtained. In these cases, it is important that there be a legal action, such as an accusation in which, in their theory of the case, the prosecutors will have to demonstrate that the accused had well-founded evidence or certainty that the resources used came from the commission of a crime, in addition to ensure that is not possible to prove their legitimate origin.



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One of the problems identified is the incentives that states can receive from the process of investigating and prosecuting these crimes, for example, many of the resources confiscated in the United States do not return to Mexico. Coordination is essential in this area, so as to not generate wrong incentives between government orders that generate impunity and tension.

According to Article 229 and 230 of the National Code of Criminal Procedures, goods, instruments, objects or proceeds of crime, which may have traces or a direct relationship with the crime under investigation, may be subject to **seizure** and must comply with the following rules :

- (1º) it must lead to the preparation of an inventory of all the assets to be seized, accompanied by the signature of the accused or the person present at the investigation;
- (2) the necessary measures must be taken to preserve the crime scene, as well as the products of these protected instruments or objects;
- (3) the inventory of the protected property must be made available to the competent authority as soon as possible.

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Confiscation, described in Article 250 of the National Code of Criminal Procedures, can be decreed on those assets whose abandonment has not been decreed or which have been declared for loss of property. The resources confiscated or obtained by alienation will be delivered, in equal parts, to the Federal Judiciary, to the Attorney General's Office and to a fund provided for in the General Law of Victims and for the financing of social programs, and the government will define how the rest of the money that remains will be distributed.

The **extinction of property** is an autonomous civil procedure, independent of the criminal process, which aims to withdraw from individuals the goods and rights that were obtained by the following crimes: corruption, concealment, organized crime, operations with resources of illicit origin, crimes against health, human trafficking, theft of hydrocarbons.

The property confiscation instrument used in Mexico is similar to well-known figures in comparative law, such as the "confiscation of assets" and the "confiscation of property". The legal nature of this institute is to withdraw the real rights of people who illegally obtained property, without the contribution of the State.

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Currently, countries like Argentina and Colombia have directed the resources obtained through expropriation of domain to solve problems such as the health emergency resulting from the global outbreak of COVID-19. In the Mexican case, the resources obtained were used by the federal government to promote social programs, support high-performance athletes and also, for example, to rehabilitate rural roads.

Therefore, **the use of this type of tool can strengthen countries and the application of public policies** aimed at weakening the economic, asset and financial structures of crime. And until we strengthen our intelligence units, we will continue to fill prisons with people without solving the problem in Mexico and Latin America.



Summary

- The challenges of combating Operations with Resources of Illicit Origin (ORPI) and the importance of tracking and recovering illegal financial assets are mentioned;
- The legal tools to attack these structures in the case of Mexico;
- The need for multidisciplinary action and coordination among different levels, especially at border areas;
- The use of resources obtained through domain termination to fund social programs and address emergencies such as the COVID-19 pandemic.



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