

No seizures without criminal prosecution

French criminal law is to be interpreted strictly. This principle, enshrined in Article 111-4 of the French Criminal Code, is a principle that permeates French criminal law. It follows that criminal law rules must be applied literally.

In a ruling issued on February 1, 2023^[1], the *Cour de Cassation* (French Supreme Court) recalled this principle of strict interpretation of French criminal law in a case concerning the refusal of restitution of a seized property.

In the case at hand, the sum of 58,600 euros belonging to an indicted individual had been seized incidentally in the context of a judicial investigation for drug offenses, criminal conspiracy and laundering of drug trafficking proceeds. An investigation for non-justification of resources was then launched and subsequently closed, with no further action taken, on February 22, 2017.

The Criminal Court convicted the indicted individual and held that there was no reason to reconstitute the sum of 58,600 euros on the grounds that the request for restitution concerned a sum that had not been seized in the context of the investigation.

A request for restitution of the sum of 58,600 euros was submitted to the public prosecutor who dismissed said request.

Following this decision, the indicted individual appealed to the Investigation Chamber.

The Investigation Chamber refused to order the restitution of the sum, arguing that it came from the indicted individual's activity as a forex trader and that it could be considered that this activity corresponded to the activity prohibited under Article L. 511-5 of the French Monetary and Financial Code, which meant that the sum in question was the proceeds of an offense.

As such, the question that arose was as follows: Can a seizure carried out in the context of an investigation that was subsequently closed, with no further action taken, due to an insufficiently characterized offence, lead to a refusal of restitution on the ground that the seized sum is the instrumentality or the proceeds of an

offense?

In its ruling issued on February 1, 2023, the *Cour de Cassation* answered no to this question and quashed the decision of the Investigation Chamber.

Indeed, Article 41-4 paragraph 2 of the French Code of Criminal Procedure stipulates as follows:

“There will be no restitution when such restitution is likely to endanger individuals or property, when the seized property is the instrumentality or the direct or indirect proceeds of the offense or when a specific provision provides for the destruction of the items placed under court supervision; the decision of non-restitution taken for one of these motives or for any other motive, even ex officio, by the Public Prosecutor or, may be challenged by the interested party before the President of the Investigation Chamber or to the Investigation Chamber, within one month from its notification, by declaration to the clerk’s office of the first instance court or court of appeals, or by registered letter, return receipt requested; this appeal has suspensive effect.”

The restitution of an item placed under court supervision can be refused for the three reasons mentioned in the above-cited Article:

- the property appears likely to endanger individuals or property,
- the property is the instrumentality or the direct or indirect proceeds of the offense,
- there exists a specific provision that provides for the destruction of the items placed under court supervision.

Apart from these three cases, it is not possible to refuse the restitution of an item placed under court supervision. The Investigating Chamber could not, therefore, while noting that the proceedings had been dismissed with respect to the non-justification of resources, assert that another offence had been committed but not prosecuted and that the refusal of restitution was based on this connection between said offence and the sum of money.

In short, in this ruling which is in line with the principle of legality in French criminal law, the *Cour de Cassation* clarified the restrictive nature of the grounds for non-restitution under Article 41-4 of the French Code of Criminal Procedure.

[1] Criminal Chamber of the *Cour de Cassation*, February 1, 2023, No. 22-80.461



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