

第三場

對於人口販運犯罪所得之扣押及沒收

Session 3

Seizure and Confiscation of the Human Trafficking Proceeds

主持人 國立臺灣大學法律學院院長

履歷 王皇玉



- 學歷
- ◆ 國立台灣大學法律學系學士（1991）
 - ◆ 國立台灣大學法學研究所碩士（1994）
 - ◆ 德國海德堡大學法學院法學碩士（1999）
 - ◆ 德國海德堡大學法學院法學博士（2003）
- 現職
- ◆ 國立台灣大學教授（2013 年迄今）
 - ◆ 台大法律學院副院長（2019-2022）
 - ◆ 台大科際整合法律學研究所所長（2019-2022）
 - ◆ 台灣大學法律學院院長（2022-）
- 經歷
- ◆ 台大法學論叢編輯（2014—2016）
 - ◆ 台大法學論叢主編（2018 年 8 月—2020 年 7 月）
 - ◆ 台灣大學法律學院刑事法中心主任（2015—2016）
 - ◆ 台灣刑事法學會理事長（2019-）
 - ◆ 國際婦女法學會理事長（2019-2021）
 - ◆ 台灣大學特聘教授（2021—）

CV of
Moderator

Ms. Wang, Huang Yu
Dean Professor
College of Law, National Taiwan University



- Education**
- ♦ **National Taiwan University, College of Law**
 - Bachelor of Laws, 1991
 - Master of Laws, 1994
 - ♦ **Heidelberg University, College of Law, Germany**
 - Master of Laws, 1999
 - Ph D in Law, 2003
- Current Position**
- ♦ **National Taiwan University, College of Law**
 - Professor, 2013-present
 - Distinguished Professor (2021-)
 - Vice Dean, College of Law, (2019.08-2022.07)
 - Director of Graduate Institute of Interdisciplinary Legal Studies (2019.08-2022.07)
 - Dean, College of Law (2022.08-)
- Experience**
- Editor of NTU Law Journal
 - Chief editor of NTU Law Journal
 - ♦ **Director of Criminal Law Center, NTU, 2015-2016.**
 - ♦ **Chair, Taiwan Criminal Law Society (2019-)**
 - ♦ **Chair, International Federation of Women Lawyers (2019-2021)**
 - ♦ **Distinguished Professor, National Taiwan University (2021-)**

**美國對性交易集團實施非刑事懲罰性資產及
沒收扣押之困難**

**The Difficulties of Non-Criminal Punitive Assets and
Forfeiture and Seizure Enforcement against the Sexual
Trafficking Syndicate**

[視訊 / Virtual Presentation]

主 講 人 美國司法部資深檢察官

Mr. Darrin L. McCullough

Speaker Mr. Darrin L. McCullough

Senior Prosecutor

**Money Laundering & Forfeiture Unit, Money
Laundering & Asset Recovery Section, Department of
Justice, U.S.A.**

主講人 美國司法部資深檢察官

履歷 **Mr. Darrin L. McCullough**



簡歷

Darrin L. McCullough 先生 1989 年畢業於維吉尼亞州萊辛頓的華盛頓與李大學法學院。在喬治亞州一家大型律師事務所擔任九年的出庭律師和合夥人後，於 1998 年成為美國助理檢察官，負責喬治亞州南區的有組織犯罪的緝毒工作小組 (OCDETF) 案件起訴。擔任助理檢察官期間，他負責起訴涉及麻醉藥物、洗錢和槍支的聯邦罪行，並在 40 多起刑事陪審團審判中擔任代表美國政府的首席律師。

2011 年 1 月，**McCullough** 先生加入位於華盛頓特區的司法部麻醉藥物和危險毒品部門 (NDDS) 的墨西哥大型幫派小組。在他兩年的服務期間，主要負責起訴於墨西哥和瓜地馬拉涉及國際麻醉藥物販運和洗錢的聯邦罪行。2013 年 4 月，他加入司法部的洗錢與追討犯罪所得部門 (MLARS，前身為 AFMLS)，負責調查和起訴刑事和民事資產追討案件以及職業洗錢者。2014 年，他被任命

為 MLARS 洗錢與沒收組的副組長，並於 2021 年被任命為高級政策顧問。

McCullough 先生獲得許多獎項肯定，包括 2018 年司法部長的 John Marshall 傑出表現獎，2016 年和 2019 年助理司法部長的傑出服務獎，以及 2015 年助理司法部長的特殊服務獎。他經常擔任刑法各類主題的講師，特別專精金融犯罪領域，目前也持續為國內外的檢察官、調查員和分析師授課。

Mr. Darrin L. McCullough

CV of
Speaker

Senior Prosecutor

**Money Laundering & Forfeiture Unit, Money Laundering
& Asset Recovery Section, Department of Justice, U.S.A.**



Biography **Darrin McCullough is a 1989 graduate of the Washington & Lee University School of Law in Lexington, Virginia. After working for nine years as a trial attorney and partner in a major Georgia law firm, he became an Assistant United States Attorney in 1998, prosecuting cases for the Organized Crime Drug Enforcement Task Forces (OCDETF) in the Southern District of Georgia. During his tenure as an AUSA, he was responsible for the prosecution of federal offenses involving narcotics, money laundering, and firearms, and acted as lead counsel for the United States in over 40 criminal jury trials.**

In January 2011, he joined the Mexican Cartel Unit of the Department of Justice's Narcotics and Dangerous Drugs Section (NDDS) in Washington, D.C., where he served for two years prosecuting federal offenses involving international narcotics trafficking and money laundering, primarily in Mexico and Guatemala. In April 2013, he joined the Department's Money Laundering and Asset Recovery Section (MLARS, formerly AFMLS), where he was responsible for the investigation and prosecution of criminal and civil forfeiture cases, as well as matters involving professional money launderers. In 2014, he was named Deputy Chief of the MLARS Money Laundering and Forfeiture Unit, and in 2021, Senior Policy Advisor.

He is the recipient of numerous awards, including a 2018 Attorney General's John Marshall Award for Outstanding Performance, Distinguished Service Awards from the Assistant Attorney General in 2016 and 2019, and an Exceptional Service Award from the Assistant Attorney General in 2015. He serves frequently as an instructor on various aspects of criminal law, especially in the area of financial crimes, and continues to teach prosecutors, agents, and analysts both domestically and abroad.

英國實施沒收及扣押人口販運犯罪所得之具體作為
The Specific Acts of Confiscating and Seizing the
Human Trafficking Criminal Proceeds in the United
Kingdom

主 講 人 英國國家犯罪防制局現代奴隸及人口販運組資深主管

Mr. Robert Richardson

Speaker Mr. Robert Richardson

Senior Manager

Modern Slavery & Human Trafficking Pursue,
National Crime Agency, U.K.

主講人

英國國家犯罪防制局現代奴隸及人口販運組資深

主管

履歷

Mr. Robert Richardson



學歷 1995 年於英格蘭布福德大學取得土木建築工程學士學位

現職 國家犯罪防制局現代奴隸及人口販運組資深經理

經歷 Rob 在執法單位有超過 20 年的經驗，包括在內政部關務與嚴重組織犯罪的情報部門，及目前的國家犯罪防制局(NCA)，於 2013 年成立，NCA 負責英國對嚴重組織犯罪的調查，而 Rob 是 NCA 現代奴隸及人口販運組 (MSHT PURSUE) 的主管，負責該犯行威脅與偵查，確保國內和國際的協調與聯繫。

Mr. Robert Richardson

CV of
Speaker

Senior Manager

**Modern Slavery & Human Trafficking Pursue, National
Crime Agency, U.K.**



Education **University of Bradford – 1995 – Civil & Structural Engineering
BEng**

**Current
Position** **Senior Manager, MSHT Pursue, National Crime Agency**

Experience **Rob is the Head of the Modern Slavery and Human Trafficking
Unit in the National Crime Agency. Rob has over 20 years’
experience in law enforcement working in intelligence in HM
Customs & Excise, the Serious Organised Crime Agency and the
NCA since it was created in 2013. The NCA is responsible for
leading the UK response to serious organised crime and Rob is the
MSHT threat lead acting as an advocate for the threat and
ensuring a coordinated domestic and international response.**

OFFICIAL



英國沒收和扣押人口販運犯罪所得的具體行動

主講人：英國國家犯罪防制局
現代奴隸及人口販運組
資深主管

8月23- 24日

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The Specific Acts of Confiscating and Seizing the Human Trafficking Criminal Proceeds in the United Kingdom

主講人：英國國家犯罪防制局現代奴隸及人口販運組資深主管

23rd- 24th August

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1

現代奴隸及人口販運組

國家犯罪防制局的因應措施：

1. 建立強有力的夥伴關係，從事預防活動以減輕威脅
2. 提供專家支援和量能
3. 領導高階層調查
4. 提供威嚇領導
5. 攻擊犯罪商業模式
6. 提供國際領導和協調
7. 建立一個全面且單一的威脅現況說明--NCA-OIC/MSHT



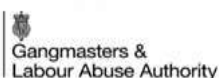
Modern Slavery and Human Trafficking Unit

NCA Response:

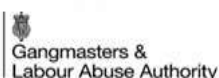
1. Building Strong Partnerships and Delivering Prevention Activity to Mitigate the Threat
2. Providing Specialist Support and Capability
3. Leading High End Investigations
4. Delivering Threat Leadership
5. Attacking the Criminal Business Model
6. Providing International Leadership and Coordination
7. Building a Single All-Source Picture of the Threat -NCA - OIC /MSHT



與夥伴同心協力



Working in Partnership



現代奴隸及人口販運威脅--金流

- 錢是用各種方法向上游轉移的，根據能力、可用性和對方法的熟悉程度而異：
 - 一些人會使用正規銀行，可能使用人頭和/或受害者帳戶來混淆視聽
 - 其他人會使用地下管道（如哈瓦拉匯兌）和金錢服務業者（如速匯金）。
 - 亦會購買高價物品並送往海外
- 受害人和/或其銀行帳戶可能被用於洗錢和轉帳過程

MSHT Threat – Money Flows

- Money is transferred upstream using a variety of methods, dependent on the capability, availability and familiarity with methods:
 - Some will use formal banking, possibly using mule and/or victim accounts to obfuscate
 - Others will use IVTS (e.g. Hawala) and MSBs (e.g. MoneyGram)
 - High value items also purchased and sent overseas
- Victims and/or their bank accounts may be used in the laundering and transfer process.

現代奴隸制的非法金融

國家犯罪防制局盡其所能追回重大及組織犯罪的收益。

- 金融情報的發展
- 金融調查工具：
 - 資料提供命令 - 帳戶監控/凍結命令
 - 資料揭露命令 - 客戶資訊命令
 - 被扣留的現金調查
- 移除犯罪所得將中斷犯罪活動，嚇阻犯罪分子，並剝奪他們繼續從事非法活動所需的資產（金錢和其他物品）。



Modern Slavery Illicit Finances

The NCA will take every opportunity to recover the proceeds of serious and organised crime through a variety of appropriate methods.

- Financial intelligence developments
- Financial investigation tools:
 - Production Order - Account Monitoring/Freezing Orders
 - Disclosure Order - Customer Information Order
 - Detained cash investigations
- Removing the proceeds of crime will **disrupt** criminal activity, **deter** criminals and **deprive** them of the assets (money and other items) that they need to continue their illegal activities.



現代奴隸制的非法金融

英國執法部門將利用各種相關立法竭力打擊現代奴隸制的組織犯罪集團，其中包括《現代奴隸制和犯罪所得法》。

- 《現代奴役法》規定的罪行最高可判處終身監禁
- 根據《犯罪所得法》，洗錢罪的最高刑期為十四年
- 輔助命令 - 奴役和販運風險命令等



Modern Slavery Illicit Finances

UK law enforcement will use a variety of relevant legislation to best disrupt Modern Slavery OCGs, including the Modern Slavery and Proceeds of Crime Act.

- Modern Slavery Act offences carry a maximum life sentence.
- Money Laundering offences under POCA carry a maximum sentencing of 14 years.
- Ancillary Orders – Slavery and Trafficking Risk Orders etc.



現代奴隸制的非法金融

金融情報是非常珍貴的，能在刑事調查的各階段提供支援

- 利用《犯罪所得法》(2002)，經認可的金融情報人員可以向英國金融機構進行「命令前查詢」，並可以僅以情報為基礎確認以下內容：
 - 帳戶所有權 - 當前餘額
 - 帳戶開立日期 - 帳戶上的簽字人
- 向政府機構提出稅務和福利申請
- 各種資產資料庫：土地登記和房屋交易實價登錄
- 可疑活動報告和聯合洗錢情報工作小組



Modern Slavery Illicit Finances

Financial intelligence is invaluable and can support all stages of a criminal investigation.

- Using the Proceeds of Crime Act (2002) accredited Financial Intelligence Officers can make 'Pre-Order Enquiries' with UK financial institutions, and can confirm the following on an **intelligence only** basis:
 - Account ownership - Current balance
 - Date account opened - Signatories on the account
- Requests to government agencies for tax and benefit claims.
- Various asset databases: Land Registry and HPI
- SARs and the Joint Money Laundering Intelligence Taskforce (JMLIT)



現代奴隸制的非法金融

《犯罪所得法》中的不同命令可用於限制、凍結、沒收和/或扣押犯罪所得

- 資料提供命令
- 資料揭露命令



Modern Slavery Illicit Finances

Different Orders under the Proceeds of Crime Act can be used to restrain, freeze, confiscate and/or seize proceeds of crime.

- Production Order
- Disclosure Order



現代奴隸制的非法金融

《犯罪所得法》中的不同命令可用於限制、凍結、沒收和/或扣押犯罪所得

- 帳戶監控命令
- 帳戶凍結命令
- 客戶資訊命令



Modern Slavery Illicit Finances

Different Orders under the Proceeds of Crime Act can be used to restrain, freeze, confiscate and/or seize proceeds of crime.

- Account Monitoring Order
- Account Freezing Order
- Customer Information Order



案例分享 – 國家犯罪防制局噴槍行動

- 向組織犯罪集團提供租賃房產做為妓院使用
- 《犯罪所得法》資訊提供命令側重於與XU租用的房產有關的帳戶，以指認相關的其他房產和受害者以及犯罪資產
- 帳戶監控--對使用銀行帳戶、房產和文件的XU及其同夥進行視覺辨識，以提出可行的共謀起訴，並顯示XU可控制非其名下的帳戶。
- 對洗錢、身份法犯罪和虛假陳述詐欺行為認罪--判處七年四個月有期徒刑
- 找出446個場所，並分配34支警方部隊採取保護行動，迄今在這些保護場所中已找到123名中國女性



Feng XU



Case Study – NCA Op AIRBRUSH

- Provided rented properties to the OCGs that are used as brothels.
- POCA Production orders focused on accounts linked to properties rented by XU to identify other properties and victims associated with them and criminal assets
- Account Monitoring- Visual Identification of XU and associates accessing bank accounts, properties and documentation to mount a viable conspiracy prosecution and to show that XU had control of accounts not in his name
- Pleaded guilty to money laundering, Identity Act offences and fraud by misrepresentation - sentence of 7 years and 4 months
- 446 premises identified and disseminated to 34 Police Forces for safeguarding action, 123 different Chinese females are known to have been encountered in the premises safeguarded to date.



Feng XU



歡迎提問

聯絡方式

Rob Richardson

英國國家犯罪防制局

現代奴隸及人口販運組資深主管

National Crime Agency

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Questions?

Contact

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Threat Leadership

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Note

Note

比利時實施沒收及扣押人口販運犯罪所得之具體作為

**The Specific Acts of Confiscating and Seizing the
Human Trafficking Criminal Proceeds in Belgium**

主 講 人 比利時安特衛普檢察官

Mr. Kenny Van de Perre

Speaker Mr. Kenny Van de Perre

Prosecutor

Prosecutor's office of Antwerp, Belgium

主講人 **比利時安特衛普檢察官**

履歷 **Mr. Kenny Van de Perre**



簡歷 我是一個積極活躍的檢察官，我重視工作品質，並以堅定和尊重的態度從事這份工作。我的職業生涯從執法工作開始。自我擔任執法人員以來，便以成為檢察官為目標，因此於 2007 年開始就讀法學院（夜校），並於 2012 年取得法律學位。正因如此，我在調查和起訴（關於人口販運的）刑事案件方面經驗豐富。

學歷 2007 年 9 月-2012 年 6 月
安特衛普安特衛普大學法學碩士學位（以優異成績畢業）

1995 年 9 月-2002 年 6 月

梅爾克塞姆 Sint-Jans Bergmanscollege 高中部畢業

1989 年 9 月至 1995 年 6 月

梅爾克塞姆 Sint-Jans Bergmanscollege 學院國中部畢業

經歷 2019 年 4 月迄今

安特衛普地檢署檢察官

專門處理人口販運和人口偷渡案件

2012 年 2 月-2019 年 4 月

安特衛普聯邦司法員警總督察

組織犯罪調查單位首席調查員

2008 年 5 月-2012 年 2 月

安特衛普賣淫調查工作小組員警督察（安特衛普警局）

負責所有與賣淫和人口販運相關案件

2003 年 5 月-2008 年 5 月

安特衛普警局巡邏員警督察

CV of
Speaker

Mr. Kenny Van de Perre

Prosecutor

Prosecutor's office of Antwerp, Belgium



Biography I am a highly motivated and dynamic magistrate who carries out his job on a qualitative, determined and respectful way. I started my career with law enforcement. During my active duty as law enforcement I started law school in 2007 (evening classes) and achieved my law degree in 2012 with the intention to become prosecutor. Because of this I have a lot of experience in conducting and prosecuting criminal cases (regarding human trafficking).National Crime Agency

Education University of Antwerp, Antwerp

September 2007 – June 2012

Degree: Master in Law (graduated with distinction)

Sint-Jans Bergmanscollege, Merksem

September 1995 – June 2002

Degree: higher general secondary education

Sint-Jans Bergmanscollege, Merksem

September 1989 – June 1995

Degree: lower general secondary education

Experience **Prosecutor for the Prosecutor's office of Antwerp**

Specialised in cases of Human trafficking and human smuggling

April 2019 – present

Chief-Inspector of Police for the Federal Judicial Police of Antwerp

Lead investigator in organised crime investigations

February 2012 – April 2019

Inspector of police for the Prostitution Team of Antwerp (Police of Antwerp)

Responsible for all prostitution and human trafficking related situations

Mai 2008 – February 2012

Inspector of police for the Police of Antwerp

Patrol officer

Mai 2003 – Mai 2008



openbaar
ministerie

2022年人口販運防制策略國際研討會（台灣）

比利時安特衛普檢察官

Kenny VAN DE PERRE



openbaar
ministerie

2022 International Workshop on Strategies for Combating Human Trafficking (Taiwan)

Kenny VAN DE PERRE

Public prosecutor Antwerp (Belgium)



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- 安特衛普人口販運 (HT) 熱區
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- 人口販運受害者辨識
- 人口販運受害者保護
- 犯罪手法
- 刑事偵查
- 扣押/沒收
- 總體趨勢
- 比利時判例法
- 問與答



CONTENT

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- Hot spots Antwerp relating human trafficking (HT)
- Legal framework
- Forms of HT in Belgium
- Identification victim of HT
- Protection victim of HT
- Modus operandi
- Criminal investigation
- Seizure / confiscation
- General tendency
- Belgian case law
- Questions



個人簡介



PRESENTATION



個人簡介 (1)

- 比利時安特衛普檢察署
- 組織犯罪部



PRESENTATION (1)

- **Public prosecutor district Antwerp (Belgium)**
- **Department organised crime**





個人簡介 (2)

- **專門處理：**
 - 人口販運案件
 - 人口走私案件
 - 性交易案件
- **曾任治安官 3 年**
- **在此之前 → 擔任安特衛普警官 17 年**
 - 一般巡警 4 年
 - 安特衛普性交易偵緝小組 6 年
 - 安特衛普聯邦司法警局 7 年



Politie Police



PRESENTATION (2)

- **Specialized in:**
 - cases of human trafficking (HT)
 - cases of human smuggling
 - cases of prostitution
- **Magistrate for 3 years**
- **Before → 17 years police officer in Antwerp**
 - 4 years regular patroll officer
 - 6 years in Prostitution Team of Antwerp
 - 7 years in Federal Judicial Police of Antwerp



Politie Police



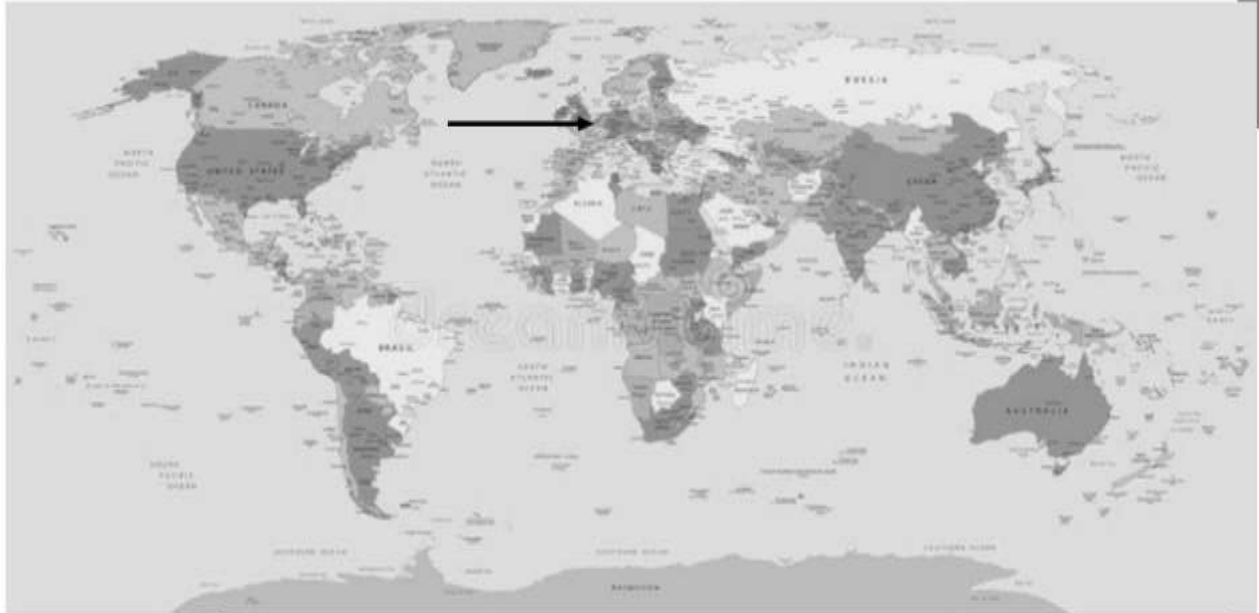
司法概況



JUDICIAL LANDSCAPE



比利時司法概況



JUDICIAL LANDSCAPE (BELGIUM)





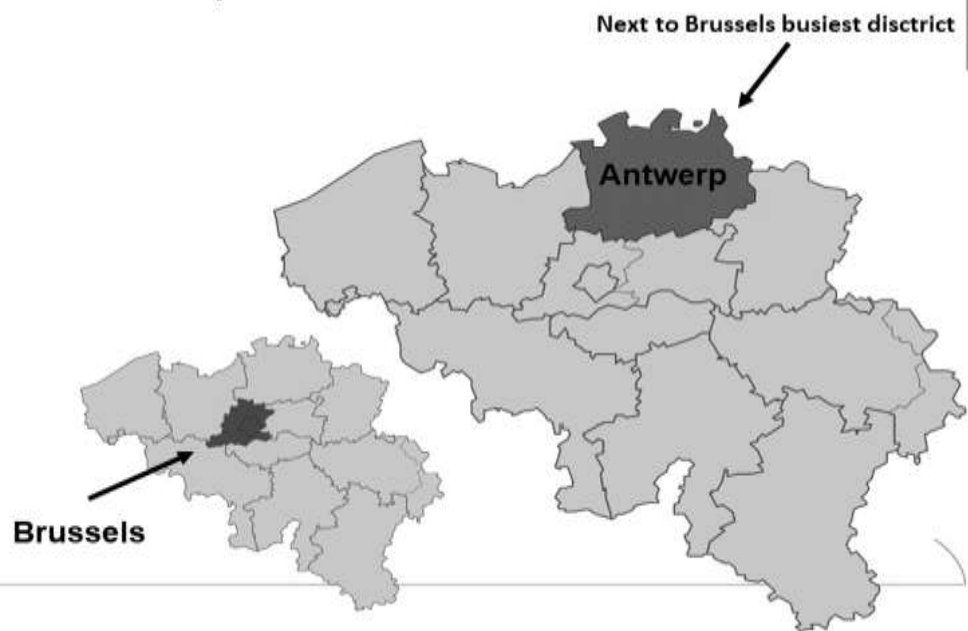
比利時司法概況

- 分為 12 個司法區



JUDICIAL LANDSCAPE (BELGIUM)

- Divided in 12 judicial districts





安特衛普人口販運熱區



HOT SPOTS ANTWERP (HT)



安特衛普 (市) 人口販運熱區

- 國際大城
- 安特衛普港
- 荷比盧三國最大的紅燈區
 - 比利時僅有 3 個紅燈區
- 容許性交易 (不起訴)
- 位居中心 (比利時相對歐洲)



HOT SPOTS (CITY) ANTWERP (HT)

- International city
- Port of Antwerp
- Biggest red light district of the BENELUX
 - in Belgium: only 3 red light districts
- Prostitution is tolerated (no prosecution)
- Central location (Belgium - Europe)





安特衛普的性交易產業 (1)

- 安特衛普容許從事性交易 (一般不起訴)
 - 櫥窗 / 私人場所 (住家)
- 社區性交易管理人員 (無執法單位)
- 禁止街頭賣淫
- 禁止於酒吧/按摩會館從事性交易
- 私人場所(居家)的性交易活動受到監控
 - PTA/聯邦司法警察隨機管控



PROSTITUTION IN ANTWERP (1)

- **Tollerated in Antwerp (in general no prosecution)**
 - window / private places (home)
- **Prostitution officer of the commune (no law enforcement)**
- **Street prostitution is forbidden**
- **Prostitution in bars / massagesalons is forbidden**
- **Prostitution in private places (homes) is monitored**
 - randomly controled by PTA / federal judicial police



安特衛普的性交易產業 (2)

- 櫥窗女郎僅限紅燈區
 - 受管制的工作環境
 - 3 條街區
 - 高達 550 座櫥窗 (2 班輪值 · 每班 12 小時)
 - 行人徒步區 (無車)
 - 錄影監控
 - 警察經常巡邏 (PTA / 一般員警)
 - 注重性工作者的安全和理性



PROSTITUTION IN ANTWERP (2)

- Window prostitution only in red light district
 - controled work environment
 - 3 streets
 - up to 550 windows (2 working shifts of 12 hours)
 - pedestrian zone (no cars)
 - camera surveillance
 - frequent presence of police (PTA / regular police)
 - attention for safety and sanity of the prostitutes





法律架構 (人口販運)



LEGAL FRAMEWORK (HT)



法律架構 (1)

人口販運 (1)

(刑法第 433 條之四):

以下列目標進行招募、運輸、傳播、窩藏或控制之人：

- *利用他人從事性交易或其他形式的性剝削*
- *乞討剝削*
- *經濟剝削*
- *透過摘除器官或身體組織進行剝削*
- *犯罪*



監禁 1-5 年 + 罰款 500 - 50000 歐元 (乘以受害者人數)



LEGAL FRAMEWORK (1)

HUMAN TRAFFICKING (1)

(art. 433quinquies CC):

The recruitment, transportation, transmission, housing or taking control of a person with the following goals:

- *exploit his/her prostitution or other forms of sexual exploitation*
- *exploitation of begging*
- *economical exploitation*
- *exploitation by removing organs or physical tissue*
- *committing crimes*



imprisonment of 1-5 years + fine 500 - 50000 euro (multiplied by number of victims)



法律架構 (2)

人口販運 (2)

加重刑罰情況

(刑法第 433 條之六)

下列人士涉及人口販運時：

- 對受害者具權力或濫用職權之人
- 公職人員



監禁 5-10 年 + 罰款 750 - 75000 歐元 (乘以受害者人數)



LEGAL FRAMEWORK (2)

HUMAN TRAFFICKING (2)

Aggravating circumstances

(art. 433sexies CC)

Human trafficking committed by:

- *person who has authority over victim / abuse of authority*
- *public officer in duty*



imprisonment of 5-10 years + fine 750 – 75000 euro (multiplied by number of victims)



法律架構 (3)

人口販運 (3)

加重刑罰情況

(刑法第 433 條之七)

人口販運：

- 販賣未成年人
- 利用受害者的危險處境
- 使用暴力、武力、威脅、欺騙、綁架、濫用權力
- 向/從對受害者具權力的人提供/接受金錢賄賂
- 危及生命/嚴重過失
- 重傷
- 次數頻繁
- 涉及幫派

↳ 監禁 10-15 年 + 罰款 1000 – 100000 歐元 (乘以受害者人數)



LEGAL FRAMEWORK (3)

HUMAN TRAFFICKING (3)

Aggravating circumstances

(art. 433septies CC)

Human trafficking:

- *on a minor*
- *by taking advantage of the precarious situation of the victim*
- *by using violence, force, threat, deceit, kidnapping, abuse of power*
- *by offering/accepting money to/from the person who has authority over victim*
- *endangerment of life / severe negligence*
- *serious injury*
- *frequent basis*
- *by a gang*

↳ imprisonment of 10-15 years + fine 1000 – 100000 euro (multiplied by number of victims)



法律架構 (4)

人口販運(4)

加重刑罰情況

(刑法第 433 條之八)

人口販運：

- 致死 (非故意殺人)
- 透過犯罪組織

↳ 監禁 15-20 年 + 罰款 1000 – 150000 歐元 (乘以受害者人數)



LEGAL FRAMEWORK (4)

HUMAN TRAFFICKING (4)

Aggravating circumstances

(art. 433octies CC)

Human trafficking:

- *causing death (without the intention to kill)*
- *by a criminal organisation*

↳ imprisonment of 15-20 years + fine 1000 – 150000 euro
(multiplied by number of victims)



法律架構 (5)

其他相關犯罪

- 任何促使未成年人賣淫的行為
- 從賣淫剝削獲得巨大利益
- 阻止他人停止從事性交易



LEGAL FRAMEWORK (5)

OTHER RELATED CRIMES

- *Every action that facilitates prostitution of a minor*
- *Exploitation of prostitution to gain a large benefit*
- *To prevent somebody to quit prostitution*



法律架構 (6)

賣淫剝削和人口販運的差異

↳ 嫌犯的控制/強迫程度



LEGAL FRAMEWORK (6)

Difference between exploitation of prostitution and human trafficking

↳ degree of control / force by the suspect(s)



法律架構 (7)

其他懲罰

- **刑罰 (法院) :**
 - 褫奪公權
 - 禁治剝削工作
 - 關閉集團/公司
 - 禁止與未成年者一同工作
 - 禁止停留/前往特定地點
 - 沒收物品 / 資產 / 現金 (後續說明)
- **行政罰 (市長) :**
 - 關閉公司 (最長 6 個月)
 - 無需定罪 → 只要涉嫌人口販運



LEGAL FRAMEWORK (7)

ADDITIONAL PUNISHMENTS

- **Criminal (court):**
 - deprivation of (civil) rights
 - interdiction exploitation job
 - closing establishment / company
 - interdiction executing job with minors
 - interdiction to stay / come in a specific location
 - **confiscation objects / assets / money (see further)**
- **Administrative (mayor):**
 - closing establishment (maximum 6 months)
 - no conviction is needed → only indications of HT



比利時人口販運形式



FORMS OF **HT** IN BELGIUM



比利時人口販運形式

- 性交易 (紅燈區)
- 隱藏的性交易活動 (伴遊 / 私人場所)
- 酒吧
- 按摩會館
- 飯店 [愛情騙子(loverboy)]



FORMS OF HT IN BELGIUM

- **Prostitution (red light district)**
- **Hidden prostitution (escort / private places)**
- **Bars**
- **Massage salons**
- **Hotels (loverboys)**



辨識人口販運受害者



IDENTIFICATION VICTIM HT



辨識人口販運受害者 (1)

- **安特衛普區內的專業警隊**
 - 聯邦司法警察 / 安特衛普性交易偵緝小組
- **審視色情廣告**
 - 接著進行盤查 (住家、飯店、酒吧、伴遊等...)
- **酒吧/度假屋/按摩會館管制**
 - 警察主動執法
 - 鄰居投訴...
- **強制櫥窗業主為紅燈區性工作者進行登記 (資料庫)**
 - 警察實際控管櫥窗女郎 (訪談)



IDENTIFICATION VICTIM HT (1)

- **Specialised police teams within district of Antwerp**
 - Federal judicial police / Prostitution Team Antwerp
- **Scanning sex advertisements**
 - followed by a check up (home, hotel, bar, escort, ...)
- **Controles of bars / rendez-vous houses / massagesalons**
 - own initiative police
 - after complaints of neighbors, ...
- **Mandatory registration (database) of prostitutes in red light district by owner window**
 - real controle by police in window (intake)



辨識人口販運受害者 (2)

- 巡邏時的一般員警
 - 警校教育
 - 可利用數位指南辨識人口販運受害者
- 通知公民/援助或(非)政府組織
- 受害者投訴 (罕見)
- ...



IDENTIFICATION VICTIM HT (2)

- **Regular police during patrol**
 - education in police academy
 - digital guidelines are available for detection victim of HT
- **Notification civilians / aid or (non-)governmental organisations**
- **Complaint victim (rare)**
- ...



辨識人口販運受害者

- 未持有身份證件
- 不健康的外表
- 非歐盟成員
- 與家人/友人沒有聯繫
- 只會說幾個關鍵詞彙 (賣淫)
- 沒有錢
- 年紀輕
- 衣著邋邋
- 手機內容
- 面部表情
- ...



INDICATIONS VICTIM HT

- **Not in possession of identity documents**
- **Unhealthy look**
- **No EU-member**
- **No contact with family / friends**
- **Only speaks few keywords (prostitution)**
- **Not in possession of money**
- **Young age**
- **Sloppy clothing**
- **Content cell phone**
- **Facial expression**
- ...



訪談 (潛在人口販運受害者)

- **討論內容：**
 - 身份/居留證件
 - 地址
 - 其他收入
 - 家庭情況 (伴侶、小孩、家人...)
 - 開支 (身邊可以留多少錢)
 - 先前職業
 - 工作價格 (一般 = 50歐元 / 15分鐘)
 - 一天接客數
 - 前來比利時/安特衛普的交通方式
 - 從事性工作的原因
 - 訪談時觀察態度



以此為依據 → 警局搭配翻譯深入管制



INTAKE (POTENTIAL VICTIM HT)

- **Discussed content:**
 - identity / residence documents
 - adress
 - other income
 - situation at home (partner, children, family, ...)
 - expenses (how much can they keep)
 - former work
 - work price (normal = 50 euro / 15 min)
 - number of clients a day
 - way of traveling to Belgium / Antwerp
 - reason to become a prostitute
 - observation attitude during intake



based on this → profound control at police station with interpreter



保護人口販運受害者



PROTECTION VICTIM HT



保護人口販運受害者 (1)

「人口販運受害者條例」

- 比利時政府規範下的官方保護
- 經人口販運檢察官核准
- 一般強制性條件：
 - 調查期間與司法/警察單位合作
 - 脫離嫌犯 / 犯罪環境
 - 由專門的援助機構(非政府組織)強制監督
 - 可能起訴嫌犯



PROTECTION VICTIM HT (1)

“Statute of a victim of human trafficking”

- **Official protection regulated by the Belgian government**
- **Granted by HT prosecutor**
- **Mandatory general conditions:**
 - collaborate with justice / police (during investigation)
 - break up with the suspect(s) / criminal environment
 - mandatory supervision by a specialised aid organisation (non-governmental)
 - possibility of prosecution suspect(s)



保護人口販運受害者 (2)

- 規範提供的保護：
 - 庇護收容 (如有需要)
 - 非政府援助機構的心理/行政/後勤/教育輔導
 - 比利時臨時居留權 (嫌犯被起訴/定罪的情況下為永久居留)
 - (合法)工作的可能性



PROTECTION VICTIM HT (2)

- **Regulated protection:**
 - shelter in refugee house (if wanted)
 - mental / administrative / logistic / educational coaching by the non-governmental aid organisations
 - temporary right of residence in Belgium (permanent in case of prosecution / conviction suspect(s))
 - possibility to (legal) work



保護人口販運受害者 (3)

- 非政府援助機構：

- 僅 3 所正式機構
- PAYOKE (安特衛普)
- PAG-ASA (布魯塞爾)
- SÜRYA (列日)



PROTECTION VICTIM HT (3)

- Non-governmental aid organisations:

- only 3 official organisations:
- PAYOKE (Antwerp)
- PAG-ASA (Brussels)
- SÜRYA (Liège)





犯罪手法



MODUS OPERANDI



犯罪手法 (1)

- **性剝削 = 比利時人口販運最常見的形式**
 - ↳ 十分常見：
 - 個人皮條客
 - 伴侶之間
 - 小型犯罪網絡(基於相同種族和文化背景)
- **犯罪手法 = 各不相同 → 取決於嫌犯國籍**



MODUS OPERANDI (1)

- **Sexual exploitation = most common form of HT in Belgium**
 - ↳ very often:
 - individual pimps
 - within couple
 - small criminal networks (based on same ethnic and culture background)
- **MO = different → based on the nationality of the suspect(s)**



犯罪手法 (2)

比利時籍嫌犯：

- 受害者經常活躍於酒吧和度假屋
- 多採用 loverboy 的愛情騙子手段

東歐籍嫌犯：

- 嫌犯多為羅馬尼亞/保加利亞籍
- 在本國招募十分年輕的受害者 (loverboy手段)
- 多為櫥窗女郎或於飯店從事性交易

阿爾巴尼亞籍嫌犯：

- 嫌犯/集團之間有家族關係
- 受害者暫時安置於廉價飯店
- 時常與毒品/武器/勒索有關



MODUS OPERANDI (2)

Belgian suspects HT:

- victims often active in bars and rendez-vous houses
- often loverboy technique

Eastern European suspects HT:

- mostly Romanian / Bulgarian suspects
- recruiting very young victims in home country (loverboy technique)
- mostly prostitution in window / hotel

Albanian suspects HT:

- family connection between suspects / clans
- victims temporary placed in low budget hotels
- often connection with drugs / weapons / extortion



犯罪手法 (3)

南美籍嫌犯：

- 受害者經常為南美(變性)性工作者
- 常用假證件
- 多為櫥窗女郎或於家中從事性交易

亞洲籍嫌犯：

- 最近興起
- 受害者被安置於度假屋和按摩會館
- 多為亞裔受害者(只會說亞洲語言)
- 大型犯罪網絡



MODUS OPERANDI (3)

South American suspects HT:

- victims are often South American (transsexual) prostitutes
- often use of false documents
- mostly prostitution in window / homes

Asian suspects HT:

- recently rising
- victims are placed in rendez-vous houses and massage salons
- mostly Asian victims (they only speak Asian)
- big criminal networks



犯罪手法 (4)

非洲籍嫌犯：

- 於國際間十分活躍
- 嫌犯多半來自奈及利亞
- 結構性網絡 / 手法 = 相同
- 受害者在非洲受到「鴇母(madam)」(之前的受害者)招募
- 受害者在巫毒祭司前立誓
- 受到不實承諾誘騙走私至歐洲(多半靠假證件)
- 從事性交易償還走私費用

↳ 最近終止 → 奈及利亞總統破除巫毒迷信



MODUS OPERANDI (4)

African suspects HT:

- international active
- mostly Nigerian suspects
- structure network / MO = the same
- victims are recruited in Africa by a “madam” (former victim)
- victim take an oath in front of voodoo priest
- smuggled to Europe (mostly by false documents) with false promise
- repay smuggling money by working in prostitution

↳ recently stopped → president of Nigeria broke voodoo oath



刑事偵查



CRIMINAL INVESTIGATION



刑事偵查 (1)

一般工作：

- 人口販運：
 - 安特衛普聯邦司法警察 (人口販運小組)
 - 安特衛普性交易偵緝小組 (安特衛普當地警察)
- 人口販運檢察官
- 偵查法官 → 採取強制措施的必要性



CRIMINAL INVESTIGATION (1)

GENERAL:

- HT:
 - Federal judicial police of Antwerp (team HT)
 - Prostitution Team of Antwerp (local police of Antwerp)
- HT prosecutor
- Investigative judge → necessity taking compulsive measures



刑事偵查 (2)

偵查 (1):

- **起始 :**
 - 受害人投訴 (罕見)
 - 警方發現
 - 合作夥伴通知 (政府/非政府組織)
- **期間 :**
 - 偵訊 (受害者/證人/嫌犯)
 - 資訊交流 (警方對警方/國內外)
 - 竊聽
 - 住家搜索



CRIMINAL INVESTIGATION (2)

INVESTIGATION (1):

- **Start:**
 - complaint of the victim (rare)
 - findings of the police
 - notification partners (governmental / non-governmental)
- **During:**
 - interrogations (victim / witness / suspect)
 - exchange of information (police to police / national and international)
 - wire taps
 - house searches



刑事偵查 (3)

偵查 (2):

- 期間：
 - 從手機、電腦等擷取資訊...
 - 利用相機影像
 - 財務調查
 - 監控
 - 扣押資料/文件/物品/金錢/資產...
 - 調查社群媒體
 - 與合作夥伴合作
 - 調查其他國家(歐盟調查令/國際調查委員會)
 - ...



CRIMINAL INVESTIGATION (3)

INVESTIGATION (2):

- During :
 - extraction of cell phones, computers, ...
 - exploitation of camera footage
 - financial investigation
 - surveillance
 - **seizure of data / documents / objects / money / assets ...**
 - investigation social media
 - collaboration with partners
 - investigation other countries (European Investigation Order / International Rogatory Commission)
 - ...



扣押 / 沒收



Seizure / confiscation



扣押 (1)

- **法律可能性：**
 - 犯罪物品
 - 犯罪所用物品
 - 犯罪所產生的物品
 - 犯罪資產 (主要/次要/利息)
 - 任何有助於尋找真相的物品
 - 不動產 (犯罪資產/貧民窟)
- **法律途徑：**
 - 嫌犯持有
 - 若嫌犯未持有 ➡ 扣押相當於犯罪資產價值的(合法購買)物品
 - 不動產 = 特別程序



Seizure (1)

- **Legal possibilities:**
 - object of the crime
 - objects that are used to commit the crime
 - objects that are produced by the crime
 - criminal assets (primary / secondary / interest)
 - everything that can help to find the truth
 - Real estate (criminal asset / slum farm)
- **Legal ways:**
 - in the possession of the suspect
 - if not in possession ➡ seizure of (legal purchased) objects to the value of the criminal asset
 - real estate = special procedure



扣押 (2)

- **第三方的/持有的貨物？**
 - 如有下列情況，可扣押這些貨物：
 - 1) 嫌犯移動了貨物/資產來防止扣押，以及
 - 2) 第三方知情/應該已知情 - 嫌犯因為 1) 提及的原因而移動了貨物/資產
- **其他國家之貨物/資產？**
 - 1) 警方之間交流資訊 (透過各國金融情報中心)
 - 2) 歐盟調查令 (歐盟) 或司法互助請求 (其他國家)
 - 3) 由其他國家進行扣押 (通常會成功) ➡ 目標 = 沒收



Seizure (2)

- **Goods of / in possession of a third party?**
 - seizure of those goods is possible if:
 - 1) suspect has moved goods / assets to prevent seizure **AND**
 - 2) third party knew / should have known that the suspect did it because of the reason mentioned in 1)
- **Goods / assets in other country?**
 - 1) exchange information police to police (through Financial Information Unit)
 - 2) redaction European Investigation Order (European Union) or Request for Mutual Legal Assistance (other countries)
 - 3) seizure by country itselfs (often succes) ➡ goal = confiscation



扣押 (3)

- **由誰執行？**
 - 警方
 - 檢察官 / 偵查法官



Seizure (3)

- **Who?**
 - police
 - prosecutor / investigative judge



沒收 (1)

- 沒收物品？

- 1) 犯罪物品
- 2) 犯罪所用物品
- 3) 犯罪所產生的物品
- 4) 犯罪資產 (主要/次要 /利息)
- 5) 不動產 (犯罪資產/ 貧民窟)

僅當財產可疑時

1)、2) 和 3) 由法官強制沒收



Confiscation (1)

- What?

- 1) object of the crime
- 2) objects that are used to commit the crime
- 3) objects that are produced by the crime
- 4) criminal assets (primary / secondary / interest)
- 5) Real estate (criminal asset / slum farm)

only if property suspect

1), 2) and 3) are mandatory confiscations by judge



沒收 (2)

- **如何執行？**
 - 被扣押的物品/資產/不動產本身 (嫌犯或第三方持有)
 - 推定之犯罪資產/現金 (嫌犯不再持有) ➡ 由法官估計金額並沒收
- **規定：**
 - 1) 檢察官提出要求
 - 2) 書面申請
- **由誰判定？**
 - 法官 (庭審)



Confiscation (2)

- **How?**
 - seized object / asset / realestate itself (was in possession of suspect or third party)
 - presumed criminal assets / money (not in possession of suspect anymore) ➡ judge estimates amount and confiscates it
- **Requirements:**
 - 1) demanded by prosecutor
 - 2) written
- **Who?**
 - judge (trial)



沒收 (3)

- **執行沒收：**
 - 司法部
 - 可透過徵稅執行
- **其他國家執行：**
 - 將判決移交到扣押資產的國家
 - 由其他國家沒收
 - 利益由執行國家享有/由兩國均分
- **結果：**
 - 有利於比利時政府(或扣押海外資產的外國政府)收入
 - 賠償受害者 (人口販運)



Confiscation (3)

- **Execution of confiscation:**
 - Department of Justice
 - collecting through taxes is possible
- **Execution in other country:**
 - transfer judgement to country which seized the assets
 - confiscation by country
 - benefit for executing country / split between countries
- **Result:**
 - revenue in favor of the Belgian government (or foreign government if seized in other country)
 - restitution to the victim (of HT)



總體趨勢



GENERAL TENDENCY



總體趨勢

- (可見的)暴力減少
- 多為心理勒索或濫用危急情況
- 常結合非法入境和居留/走私/偽造證件
- 常為小型犯罪集團 (而非大型犯罪組織)
- 受害者鮮少投訴/合作意願低
- **Loverboy**受害者日益增加



GENERAL TENDENCY

- **Less (visible) violence**
- **Often psychological force / abuse of precarious situation**
- **Often combined with illegal entry and residence / smuggling / false documents**
- **Often small criminal groups (instead of big criminal organisations)**
- **Not many complaints of the victims / little collaboration**
- **Rising victims of loverboys**



比利時判例法



BELGIAN CASE LAW



比利時判例法 (1)

- (近期) 無兒童販運案件
- 人口販運案件主要為性剝削
 - 偶有乞討剝削
- 彈性解讀/應用法律
 - 控制/強迫程度 (比較人口販運與剝削)
 - 加重刑罰情況
 - 法院可自行調整罪行



BELGIAN CASE LAW (1)

- **No (recent) cases of trafficking of children**
- **Mainly HT cases with sexual exploitation**
 - occasionally exploitation of begging
- **Flexible interpretation / application of the law**
 - controle / force (HT *versus* exploitation)
 - aggravating circumstances
 - court it self can adjust the crime



比利時判例法 (2)

- 嫌犯定罪率高
- **99%的資產/現金/擔保品遭到沒收**
- 定罪處 **4–10** 年徒刑
- 一致的判例法
 - 人口販運案件 → 僅由安特衛普法院其中一庭審理



BELGIAN CASE LAW (2)

- **High success rate for suspects**
- **99% confiscation of assets / money / objects guaranteed**
- **Convictions between 4 – 10 years**
- **Consistent case law**
 - HT cases → reviewed by only one chambre in court of Antwerp



歡迎提問



Questions?



Note

Note

**臺灣犯罪所得沒收及扣押新架構及
對於人口販運犯罪所得之實施**

**New Mechanism of Confiscating and Seizing Criminal
Proceeds and Its Implementation in Taiwan**

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律師高考及格

專長 刑事法（以刑事訴訟法為主）、刑事人權法、歐盟刑法

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Experience **Lecture, Academy for Judiciary, Ministry of Justice**
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Scholarship for Study Abroad, Ministry of Education
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Passing the bar entrance examination

Expertise **Criminal Law (mainly Criminal Procedure Law), Criminal Human Right Law, European Criminal Law**

2022 防制人口販運國際工作坊

2022.08.24

臺灣犯罪所得沒收及扣押新架構 及對於人口販運犯罪所得之實施

New Mechanism of Confiscating and Seizing Criminal Proceeds
and Its Implementation in Taiwan



王士帆
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1

2022 International Workshop on Strategies for Combating Human Trafficking

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Wang, Shih Fan
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1

報告大綱

- 壹、開場案例
- 貳、刑法犯罪所得沒收規定優先適用
- 參、犯罪所得沒收之審查體系
- 肆、保全扣押犯罪所得

2

Outline

- I. Opening Case
- II. Prior Application of Criminal Proceeds
Confiscation Rules
- III. Review System of Seizure of Criminal
Proceeds
- IV. Security Seizure of Criminal Proceeds

2

犯罪所得沒收之宗旨

刑法法律效果：刑罰、保安處分、沒收

- 任何人不得保有犯罪所得

剝奪犯罪行為人之實際犯罪所得，使其不能坐享犯罪之成果，以杜絕犯罪誘因，可謂對抗、防止經濟、貪瀆犯罪之重要刑事措施，性質上屬類似不當得利之衡平措施

- 恢復合法之財產秩序

ex. 犯罪所得來自於被害人，發還被害人優先

3

Purpose of Confiscating Criminal Proceeds

Legal Effects of Criminal Code: Penalty, Rehabilitative Measures, Confiscation

- No one can retain the proceeds of crime

Depriving offenders' actual proceeds of crime, so they cannot enjoy the fruits of their crime, thus eliminating criminal incentives, is an important criminal measure to fight and prevent economic or corruption crimes, and is in nature similar to an equity measure of unjust enrichment.

- Restoring Legal Property Order

ex. Criminal proceeds come from the victims, and shall be first returned to the victims.

3

壹、開場案例

人口販運防制法 32 I

意圖營利，以強暴、脅迫、恐嚇、拘禁、監控、藥劑、詐術、催眠術或其他違反本人意願之方法，使人從事勞動與報酬顯不相當之工作者，處七年以下有期徒刑，得併科新臺幣五百萬元以下罰金。

4

I. Opening Case

Human Trafficking Prevention Act 32 I

Anyone using such means as force, threat, intimidation, confinement, monitoring, drugs, fraud, hypnosis, or other means against another person's will to labor to which pay is not commensurate with the work duty for profit, shall be sentenced to imprisonment under seven years, and may also be fined up to NT\$5 million.

4

案情（改編110台上42）

A透過仲介公司，僱用印尼籍看護工O，監護工勞動契約，約定每月薪資17,000元，每7日給與1日休假，工作須給加班費，日薪與假日加班費為每日567元，O自2015年6月7日開始工作。A向仲介公司抱怨O表現不佳，要求更換外籍監護工，仲介公司乃將O帶回公司。9月14日，仲介公司再將O帶回A住處。

5

Case (Adapted from 110 Tai Shang No. 42)

A hired Indonesian caregiver O through a broker. According to nursing aid employment contract, the monthly salary was TWD 17,000, and the employee got one day off every seven days. The employer shall pay for overtime, and the daily wage and holiday overtime wage were TWD 567/day. O started working on June 7, 2015. A complained to the broker about O's performance at work, and demanded to replace O. The broker brought O back to the company, and on September 14, the broker brought O to A's place again.

5

案情（改編110台上42）

A明知O是花費高額費用前來我國工作之人，若遭遣送回國，將失去工作機會，無力償還來台費用及改善家中生計，且O初來臺灣，對環境陌生，不熟諳本地語言，利用O處於弱勢，如對O工作不滿，並會毆打O，倘遇不法侵害情事難以向外界求援之處境，使O繼續勞務工作。

A未給O休假，自2015年9月14日起，未支付O薪資。嗣因勞工局人員12月29日會同警員共同實施檢查，查悉上情。

6

Case (Adapted from 110 Tai Shang No. 42)

A was fully aware of the fact that O was someone who had spent a significant amount of money just to come to work in Taiwan. Once repatriated, O would lose the job opportunity, and would not be able to pay back the debt or improve family livelihood. Moreover, O had just arrived in Taiwan, and did not know the environment or speak the language. A took advantage of O's situation, such as abusing O when dissatisfied with O's performance; A knew that O could not reach out for help when encountering unlawful infringement, and forced O to continue working. A did not give O any days-off, and did not pay O any money starting from September 14, 2015. On an joint inspection on December 29, Department of Labor and the police found out about O's situation, and reported the case.

6

人口販運罪之犯罪所得沒收與扣押

- 被害人O於2015年9月14日起至12月29日止之工作期間應受領之薪資應為68,577元，A未發給薪資
- A有無犯罪所得？偵查機關如何保全扣押？

7

Seizure and Confiscation of the Human Trafficking Proceeds

- The victim, O, was entitled to TWD 68,577 of salary from September 14 to December 29, 2015, which A did not pay.
- Did A get any criminal proceeds? How should investigative agencies secure the seized properties?

7

貳、刑法犯罪所得沒收

人口販運犯罪所得沒收之法律依據

1. 刑法38-1, 38-2, 38-3
2. 人口販運防制法 35

8

II. Criminal Proceeds Confiscation in Criminal Code

The legal basis of confiscating criminal proceeds of human trafficking

1. Criminal Code 38-1, 38-2, 38-3
2. Human Trafficking Prevention Act 35

8

刑法38-1

- I. 犯罪所得，屬於犯罪行為人者，沒收之。但有特別規定者，依其規定。
- II. 犯罪行為人以外之自然人、法人或非法人團體，因下列情形之一取得犯罪所得者，亦同：
 - 一、明知他人違法行為而取得。
 - 二、因他人違法行為而無償或以顯不相當之對價取得。
 - 三、犯罪行為人為他人實行違法行為，他人因而取得。
- III. 前二項之沒收，於全部或一部不能沒收或不宜執行沒收時，追徵其價額。
- IV. 第一項及第二項之犯罪所得，包括違法行為所得、其變得之物或財產上利益及其孳息。
- V. 犯罪所得已實際合法發還被害人者，不予宣告沒收或追徵。

9

Criminal Code 38-1

- I. Proceeds of the crime that belong to the offender shall be confiscated. If there are special provisions, these special provisions shall be followed.
- II. Proceeds of the crime obtained by natural persons, legal persons or an unincorporated body other than the offender under one of the following conditions shall be confiscated:
 1. Knowingly obtain the illegal proceeds from the offender.
 2. Obtain the illegal proceeds from the offender for free or at a cost that is considerably not reciprocal.
 3. The party is benefited from illegal act committed by the offender for the said party.
- III. If the entire or partial confiscation mentioned in the preceding two subparagraphs as above was failed or not appropriate, the value thereof shall be collected from the offender.
- IV. The proceeds of crime specified in paragraph 1 and 2 means any property derived from or obtained directly or indirectly, through the commission of an offence.
- V. The proceeds of crime having been legally returned to the victim shall not be confiscated or collected.

9

人口販運防制法 35

- I. 犯人口販運罪者，其因犯罪所得財物或財產上利益，除應發還被害人外，不問屬於加害人與否，沒收之。全部或一部不能沒收時，追徵其價額或以其財產抵償之。
- II. 為保全前項財物或財產上利益追徵或財產之抵償，必要時，得酌量扣押其財產。
- III. 依第一項沒收之現金及變賣所得，由法務部撥交中央主管機關，作為補償人口販運被害人之用。
- IV. 前項沒收之現金及變賣所得撥交及人口販運被害人補償之辦法，由中央主管機關會同法務部定之。

10

Human Trafficking Prevention Act 35

- I. Any property or profit from assets acquired from human trafficking shall be confiscated regardless of its ownership except the part that shall be returned to victims. When the entirety or part of the property cannot be confiscated, the trafficker shall pay according to its value or give his/her assets as compensation.
- II. For the purpose of preserving the full value of the confiscated property or profit from assets as stated in the preceding paragraph, a certain portion of the property may be seized discretionally if necessary.
- III. The Ministry of Justice shall transfer the seized cash or proceeds from the sale of the confiscated property stated in paragraph one to the central competent authorities for the compensation of human trafficking victims.
- IV. The directions for the transfer of seized cash and proceeds from the sale of the confiscated property as stated in the preceding paragraph and compensation to human trafficking victims, shall be enacted by the central competent authorities along with the Ministry of Justice.

10

刑法施行法10-3

中華民國104年12月17日及105年5月27日修正之刑法，自105年7月1日施行。105年7月1日前施行之其他法律關於沒收、追徵、追繳、抵償之規定，不再適用。

11

Enforcement Law of the Criminal Code of R.O.C. 10-3

The Criminal Code amended and promulgated on December 17, 2015 and May 27, 2016 shall be in force from July 1, 2016.

Other regulations of confiscation, collection, recovery, and compensation enacted before July 1, 2016 will no longer apply.

11

刑法施行法10-3立法理由

- 三、因特別法關於沒收實體之規定，錯綜複雜，而刑法既已整體修正沒收規定，包括發還被害人、第三人沒收、價額之追徵、估算、義務沒收與過苛調節條款等，已全盤修正，自應回歸刑法，一體適用。據此，早於此次刑法沒收修正之施行日前，所制定之其他法律關於沒收、追徵、追繳及抵償等沒收實體規定，已無獨立存在之必要，故增訂第二項明白揭示「後法優於前法」之原則，以杜適用法律之爭議。
- 四、至於刑法沒收施行後，其他法律另有特別規定者，仍維持第11條「特別法優於普通法」之原則。

12

Enforcement Law of the Criminal Code of R.O.C. 10-3 Legislative Explanation

- III. Since the rules on substantive confiscation of special laws are complicated, and the Criminal Code has already amended rules on confiscation, including articles on returning to victim, third party confiscation, forced collection, estimation, collection of value thereof, compulsory confiscation, and paragraph on overtly harsh penalties. Therefore, the Criminal Code shall prevail and be applied to all cases. Based on this, other regulations of confiscation, collection, recovery, and compensation enacted before the promulgation date of the amended Criminal Code were no longer necessary, and therefore the second paragraph was added to clearly disclose the principle of "Lex posterior derogat legi priori," to eliminate the dispute of applicable laws.
- IV. After the execution of confiscation of the Criminal Code, the principle of "lex specialis derogat legi generali" of Article 11 will applies to punishment otherwise prescribed in other laws and measures.

12

人口販運防制法 35 I 不再適用

人口販運防制法 35 : 2009.06.01-
刑法38-1 : 2016.07.01-

- ∴ 刑法施行法10-3 : 2016年7月1日前施行之
其他法律關於沒收、追徵、追繳、抵償之規
定，不再適用
- ∴ 人口販運防制法 35 I 不再適用
人口販運之犯罪所得，回歸刑法38-1

13

Human Trafficking Prevention Act 35 I No Longer Applicable

Human Trafficking Prevention Act 35 : 2009.06.01-
Criminal Code 38-1 : 2016.07.01-

- ∴ Enforcement Law of the Criminal Code 10-3 :
Other regulations of confiscation, collection,
recovery, and compensation enacted before July
1, 2016 will no longer apply.
- ∴ Human Trafficking Prevention Act 35 I No Longer
Applicable
Criminal proceeds of human trafficking shall be
handled in accordance with Criminal Code 38-1

13

犯罪所得沒收，依裁判時法

刑法 2 II：沒收、非拘束人身自由之保安處分
適用裁判時之法律。

- 刑法38-1：2016.07.01-
2016年7月1日前的犯罪所得，法院裁判時在2016年
7月1日以後，依新法判斷沒收（溯及適用）
- 被害人O於2015年9月14日至12月29日應受領薪資
為68,577元，A未發給薪資

14

Confiscating Criminal Proceeds Pursuant to the principle of law in force at the time of judgment

Criminal Code 2 II: For punishment made as a rehabilitative
measure that does not involve confiscation or restrictions on
personal freedom, the law in force at the time of judgment shall
apply.

- Criminal Code 38-1：2016.07.01-
Criminal proceeds before July 1, 2016, was confiscated
according to the new law as the judgement was made after July
1, 2016 (Retroactive application)
- The victim, O, was entitled to TWD 68,577 in salary during the
period from September 14 to December 29, 2015, but A did not
pay.

14

沒收味全混油所得3292萬元違憲？大法官7/19召開言詞辯論



15

Confiscating Wei Chuan's Proceeds of TWD 329.2 Million a Violation of Constitution? Grand Justices to Debate on 7/19

沒收味全混油所得3292萬元違憲？大法官7/19召開言詞辯論



15

「意圖營利」

人口販運防制法第1條所揭示其立法目的，係「為防制人口販運行為及保護被害人權益」，可見所欲保護者，屬重層法益，亦即非僅在保護社會法益，尚且兼及被害人的個人法益（106台上4079）

人口販運防制法31, 32, 33, 34 「意圖營利」

16

「Intent to Profit」

Human Trafficking Prevention Act Article 1 discloses the legislative purpose: “This Act is enacted to prevent human trafficking and to safeguard the rights of victims.” This shows that the act is enacted for multiple protection of legal interests—that is, not just for the protection of legal interests of society, but also personal legal interests of individuals (106 Tai Shang Tzi No. 4079)

Human Trafficking Prevention Act 31, 32, 33, 34 「Intent to Profit」

16

人口販運防制法 32 I

- 意圖營利，以強暴、脅迫、恐嚇、拘禁、監控、藥劑、詐術、催眠術或其他違反本人意願之方法，使人從事勞動與報酬顯不相當之工作者，處七年以下有期徒刑，得併科新臺幣五百萬元以下罰金。

17

Human Trafficking Prevention Act 32 I

Intent to Profit. Anyone using such means as force, threat, intimidation, confinement, monitoring, drugs, fraud, hypnosis, or other means against another person 's will to labor to which pay is not commensurate with the work duty for profit, shall be sentenced to imprisonment under seven years, and may also be fined up to NT\$5 million.

17

104台上2189：意圖營利

主觀上須有「意圖營利（剝削）」之犯罪動機或目的，客觀上祇要有為求牟利而剝削之行為，即足構成，至於實際得利與否，則非所問。因此包括不給予對待給付，剋扣應給予之對待給付，或為其他顯失公平或不相當之對待給付，甚或因而減少成本或費用支出。

18

104 Tai Shang No. 2189: Intent to Profit

If an offender subjectively has the criminal motive or purpose and the "intent to profit (deprive)," and objectively has actions of deprivation for profiting, it constitutes a crime of human trafficking; as for whether the offender profits or not, it is not the question.

Therefore, including non-payment of correspondent grant, deduction of correspondent grant, and other unfair or inappropriate correspondent grant, or even reduced cost or expenses as the result.

18

本件犯罪所得

- 被害人O於2015年9月14日起至12月29日止之工作期間應受領之薪資應為68,577元，A未發給薪資
- 本案結論：A所減省之消極財產上利益，屬A之犯罪所得，宣告沒收。

[判決主文] A犯意圖營利，以強暴、脅迫，使人從事勞動與報酬顯不相當之工作罪，處有期徒刑6月。未扣案之犯罪所得新臺幣68577元沒收，於全部或一部不能沒收或不宜執行沒收時，追徵其價額。

19

Criminal Proceeds in This Case

- Victim O was entitled to TWD 68,577 of salary during the period from September 14 to December 29, which A did not pay.
- Conclusion: The passive benefit in property saved by A is A's criminal proceeds and are adjudged to confiscation.
- [Judgement] With intent to profit, A uses such means as force, and threat against another person's will to labor to which pay is not commensurate with the work duty for profit, and shall be sentenced to imprisonment of 6 months. The unseized criminal proceeds of TWD 68,577 will be confiscated, if the whole or a part of such benefit cannot be confiscated, the value thereof shall be collected from the offender.

19

參、犯罪所得沒收之審查體系

審查順序

1. 前提審查：存在刑事違法行為 (38-1I)
2. 有無犯罪所得：因犯罪而有所得 (38-1I)
3. 犯罪所得人：何人因犯罪有所得 (38-1I+II)
4. 犯罪所得範圍：直接、間接 (38-1IV)、追徵 (38-1III)、總額原則、估算 (38-2 II)
5. 排除沒收：實際合法發還被害人 (38-1V)
6. 法律效果：義務沒收 (38-1I) [追徵]、過苛減免 (38-2II)、權利移轉 (38-3)

20

III. Review System of Seizure of Criminal Proceeds

Review Order

1. Review in Advance: Criminal violations (38-1I)
2. Criminal Proceeds or Not: Profited through crime (38-1I)
3. Person with Criminal Proceeds: Who profits from the crime (38- 1I + II)
4. Scope of Criminal Proceeds: Direct, indirect (38-1IV), compulsory collection (38-1III), gross value principle, estimation (38-2II)
5. Not Confiscated: Been legally returned to victim (38-1V)
6. Legal Effect: Compulsory confiscation (38-1I) [Compulsory collection], too harsh and reduced (38-222II), and transfer of right/ownership (38-3)

20

二、有無犯罪所得：因犯罪而有所得

1. 有無犯罪所得，僅取決於行為人事實上對財產標的有無支配權（事實支配權）
2. 無型態限制，任何直接因犯罪而來的經濟上可得衡量的財產利益
3. 依犯罪所得之取得原因區分：「為了犯罪」而獲取的報酬（如公務員違背職務收受賄賂）及「產自犯罪」而獲得的利潤（如強盜的項鍊）。
4. 「為了犯罪」與「產自犯罪」的區分實益，後者涉及發還被害人

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2. Criminal Proceeds or Not: Profited from Crime

1. Criminal proceeds are solely determined by whether the offender has de facto power over the asset
2. Unlimited by type, any measurable economic benefit in property directly from crimes
3. Categorized by the reasons of attaining criminal proceeds:
Compensation received “for crime” (such as bribes received by civil servant in violation of duty) and profits gained “from crime” (such as robbed necklace)
4. The difference between “for crime” and “from crime” is that the latter involves returning to victim

21

110台上5316：犯罪所得概念

「犯罪所得」，係指不法行為所得，乃與犯罪有直接關連性之所得、所生之財物及利益（即直接所得），不問物質抑或非物質、動產抑或不動產、有形抑或無形均屬之，並包括其所變得之物或財產上之利益及其孳息；

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110 Tai Shang No. 5316: Concept of Criminal Proceeds

The “criminal proceeds” refer to all property which a person benefits from by being a party to criminal conduct, either directly or indirectly (direct profit), regardless of material or immaterial, movable or immovable property, tangible or intangible, and include the benefits and interests of derived properties and assets.

22

三、犯罪所得人：何人因犯罪有所得

1. 犯罪行為人：正犯與共犯 (刑法38-1 I)
2. 犯罪行為人以外之第三人 (刑法38-1 II)
 - a. 明知他人違法行為而取得 [挪移型]
 - b. 因他人違法行為而無償或以顯不相當之對價取得 [挪移型；繼承型]
 - c. 犯罪行為人為他人實行違法行為，他人因而取得 [代理型]

23

3. Person with Criminal Proceeds: Who profits from the crime

1. Offender: Criminal offender and accomplice (Criminal Code 38-1I)
2. Third party other than offender (Criminal Code 38-1II)
 - a. Knowingly obtain the illegal proceeds from the offender.
 - b. Obtain the illegal proceeds from the offender for free or at a cost that is considerably not reciprocal.
 - c. The party is benefited from illegal act committed by the offender for the said party.

23

四、犯罪所得範圍

1. 犯罪所得包括違法行為所得、其變得之物或財產上利益及其孳息（38-1 IV），倘「全部或一部不能沒收或不宜執行沒收時，追徵其價額」（38-1 III）
→ 未支付勞務費用，節省支出之犯為所得
2. 不扣除犯罪成本，採總額原則
「基於澈底剝奪犯罪所得，以根絕犯罪誘因之意旨，不問成本、利潤，均應沒收」（38-1立法理由）

24

4. Scope of Criminal Proceeds

1. Criminal proceeds include the proceeds of crime, any property derived from or obtained through the commission of an offence (38-1 IV); If “the entire or partial confiscation mentioned in the preceding two subparagraphs as above was failed or not appropriate, the value thereof shall be collected from the offender” (38-1 III)
→ Unpaid salary and saved expenses are criminal proceeds
2. Adopts the gross value principle and does not deduct criminal cost
“To thoroughly deprive criminal proceeds to eliminate criminal incentives, everything shall be confiscated regardless of cost and profit” (38-1 Legislative explanation)

24

五、排除沒收：發還被害人（38-1 V）

刑法38-1 V：犯罪所得已實際合法發還被害人者，不予宣告沒收或追徵

- 1. 避免國家與被害人爭利
- 2. 防止行為人雙重負擔
- 3. 限於「實際合法發還」，才不沒收

25

5. Not Confiscated: Legally Returned to Victim (38-1 V)

Criminal Code 38-1 V: The proceeds of crime having been legally returned to the victim shall not be confiscated or collected.

- 1. Avoid the situation where the state fights the victim for profit
- 2. Avoid double burden of offender
- 3. Only “proceeds legally returned to the victim” are not confiscated

25

109台上1116

倘利得未實際合法發還被害人，縱被害人放棄求償，法院仍應為沒收之宣告，藉以避免修法前不法利得既不發還被害人，亦未經法院宣告沒收，而使犯罪行為人繼續保有不法利得之不合理現象。故倘若犯罪行為人雖與被害人達成民事賠償和解，惟實際上並未將犯罪所得返還被害人，自仍應就該犯罪所得諭知沒收或追徵

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109 Tai Shang No. 1116

if the criminal proceeds are not legally returned to the victim, even when the victim abandons the claim, the court shall still make judgement of confiscation, in order to avoid the unreasonable situation where the offender is able to retain criminal proceeds that are not legally returned to the victim and not confiscated by the court before the amendment of the law. Therefore, even if the offender reaches settlement with the victim, but does not in fact return the criminal proceeds to the victim, the court shall still notify the offender of the confiscation or forced collection of the criminal proceeds.

26

本案審查

1. 人口販運防制法32 I：A犯意圖營利，以強暴、脅迫，使人從事勞動與報酬顯不相當之工作罪
2. 被害人O於2015年9月14日起至12月29日止之工作期間應受領之薪資應為68,577元，A未發給薪資。A減省之消極財產上利益，屬犯罪所得。
3. 未移轉第三人
4. 直接利得、間接利得（ex. 孳息）
5. 未發還被害人
6. 宣告追徵68,557元

27

Case Review

1. Human Trafficking Prevention Act 32 I: Offender A uses such means as force, threat, intimidation, confinement, monitoring, drugs, fraud, hypnosis, or other means against another person's will to labor .
2. Victim O was entitled to TWD 68,577 in salary from September 14 to December 29, 2015, which was not paid by A. A's saved passive benefit in property shall be considered criminal proceeds.
3. Not transferred to a third party
4. Direct/indirect benefits (ex. Interest)
5. Not returned to the victim
- 6 Forced collection of TWD 68,577 adjudged

27

肆、犯罪所得保全扣押



28

IV. Security Seizure of Criminal Proceeds



28

刑事訴訟為因應沒收修法

- 一、扣押犯罪所得，確保沒收或追徵判決順利執行（刑訴133以下）
- 二、增訂第三人沒收程序與單獨宣告沒收程序（刑訴455-12以下）
- 三、修正執行沒收後之被害人發還規定（刑訴473）

29

Code of Criminal Procedure In Response to Amended Laws on Confiscation

- I. Seizure of criminal proceeds, securing smooth execution of the judgement of confiscation or forced collection (Code of Criminal Procedure 133 onward)
- II. Added procedures of third party confiscation or NCBC (Code of Criminal Procedure 455-1222 onward)
- III. Amended rules on return to the victim after confiscation (Code of Criminal Procedure 473)

29

刑訴133

- I. 可為證據或得沒收之物，得扣押之。
- II. 為保全追徵，必要時得酌量扣押犯罪嫌疑人、被告或第三人之財產。
- III. 對於應扣押物之所有人、持有人或保管人，得命其提出或交付。
- IV. 扣押不動產、船舶、航空器，得以通知主管機關為扣押登記之方法為之。
- V. 扣押債權得以發扣押命令禁止向債務人收取或為其他處分，並禁止向被告或第三人清償之方法為之。
- VI. 依本法所為之扣押，具有禁止處分之效力，不妨礙民事假扣押、假處分及終局執行之查封、扣押。

30

Code of Criminal Procedure 133

- I. An item which can be used as evidence, or that is subject to confiscation, may be seized.
- II. To ensure a forced collection, a certain portion of the property of the suspect, accused, or a third party, may be seized with discretion as required.
- III. The owner, holder, or custodian of the items to be seized shall bring forward or deliver the items as ordered.
- IV. The competent authority should be notified and a registration method should be used when seizing real estate, ships, or aircraft.
- V. To seize creditors' rights, a seizure order may be issued to prohibit a collection from debtors, or other sanctions, and to prohibit the action of paying off for the accused or a third party.
- VI. The seizure, as implemented under this Code, has the effect of prohibiting a disposition. It does not impede the seal or seizure of provisional attachment, provisional injunction of civil proceedings, or the enforcement of a final judgment.

30

確保沒收、追徵判決順利執行

保全沒收執行之扣押（刑訴133 I：得沒收之物，得扣押之）

保全追徵執行之扣押（刑訴133 II：為保全追徵，必要時得酌量扣押犯罪嫌疑人、被告或第三人之財產）

31

Secure smooth execution of the judgement of confiscation or compulsory collection

Seizure securing execution of confiscation (Code of Criminal Procedure 133 I: An item that is subject to confiscation may be seized)

Seizure securing execution of forced collection (Code of Criminal Procedure 133 II: To ensure a forced collection, a certain portion of the property of the suspect, accused, or a third party, may be seized with discretion as required.)

31

110台聲253

可為證據或得沒收之物，得扣押之；為保全追徵，必要時得酌量扣押犯罪嫌疑人、被告或「第三人」之財產，刑事訴訟法第133條第1項、第2項定有明文。上開「為保全追徵，必要時得酌量扣押第三人之財產」之規定，係為避免阻礙日後追徵裁判之執行，所特別賦予暫時禁止處分人民特定財產之保全制度設計，此即學理上所稱之「保全追徵執行之扣押」類型，有別於保全犯罪證據之「證據扣押」類型。

32

110Tai Sheng No. 253

As clearly prescribed in Paragraphs 1&2, Article 133, Code of Criminal Procedure: an item which can be used as evidence, or that is subject to confiscation, may be seized; to ensure a forced collection, a certain portion of the property of the suspect, accused, or a third party, may be seized with discretion as required. The provision of “to ensure a forced collection, a certain portion of the property of a third party may be seized with discretion as required” intends to avoid hampering future execution of the judgment of forced collection, and is a design of security system that temporarily prohibits disposition of specific assets of citizens, which is referred to as “seizure securing execution of forced collection” in theory, unlike “seizure of evidences” that aims to secure criminal evidences.

32

簡單說

刑訴保全扣押，

Q. 要保全什麼？

1. 證據：證據扣押
2. 沒收：保全「沒收（利得物）」或「追徵（價額）」之扣押

33

Simply Put...

Code of Criminal Procedure Security Seizure

Q. What to secure?

1. Evidence: Seizure of evidences
2. Confiscation: Seizure securing “confiscation of (proceeds)” or “forced collection of value thereof”

33

扣押程序要件

A. 附隨於搜索：依搜索法

B. 非附隨於搜索(133-1)

1. 核准權限：相對法官保留，扣押裁定
2. 例外：「僅」得為證據之物、同意扣押(133-1)、緊急扣押(133-2 III)、附帶扣押(137 I)、另案扣押(152)

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Requirements of Seizure Procedure

A. Covered by a search warrant: Rules of Searching

B. Not covered by a search warrant (133-1)

1. Approval Authority: comparative judge reserved, seizure adjudication
2. Exception: “Only” when the item is seized for evidence, or the oblige of the seizure target has given consent (133-1), immediate seizure (133-2 III), seizure in relation to case (137 I), seizure for another case (152)

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本件扣押依據

1. 被害人O於2015年9月14日至12月29日應受領之薪資應為68577元，A未發給薪資，減省之消極財產上利益，屬犯罪所得
2. 為追徵「節省支出」（68557元），進行保全追徵之扣押，以A之財產為整體責任財產（動產、不動產或其他財產權利）酌量扣押
3. 附隨於搜索之扣押：搜索票/無票搜索
非附隨於搜索之扣押：扣押裁定/無票扣押

35

Basis of Seizure of This Case

1. Victim O was entitled to TWD 68,577 in salary from September 14 to December 29, 2015, which was not paid by A. A's saved passive benefit in property shall be considered criminal proceeds.
2. For forced collection of "saved expenses" (TWD 68,577), seizure is executed to secure forced collection, seizing a certain proportion of the property of A with discretion using A's properties as overall responsible property (movable, unmovable, and other property rights)
3. Search and Seizure: Search with/without a warrant
Seizure not covered by a search warrant: seizure adjudicated by judge/seizure without a warrant

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謝謝聆聽

36



Thank You

36

與談人

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人口販運犯罪所得扣押及沒收 - 與談稿

司法院刑事廳調辦事法官
施育傑

08.24.2022



1

Seizure and Confiscation of the Human Trafficking Proceeds – Panel Discussion Notes

Judge, Criminal Department, Judicial
Yuan
Shih Yu-Chieh

08.24.2022



1

人口販運防制法的規定

- § 35 :

「I 犯人口販運罪者，其因犯罪所得財物或財產上利益，除應發還被害人外，不問屬於加害人與否，沒收之。全部或一部不能沒收時，追徵其價額或以其財產抵償之。」

「II 為保全前項財物或財產上利益追徵或財產之抵償，必要時，得酌量扣押其財產。」



2

Human Trafficking Prevention Act

- . § 35 :

「I. Any property or profit from assets acquired from human trafficking shall be confiscated regardless of its ownership except the part that shall be returned to victims. When the entirety or part of the property cannot be confiscated, the trafficker shall pay according to its value or give his/her assets as compensation.」

「II For the purpose of preserving the full value of the confiscated property or profit from assets as stated in the preceding paragraph, a certain portion of the property may be seized discretionally if necessary.」



2

人口販運防制法的規定

• § 35 : (2009年施行)

→刑法施行法§10-3 : 「 I 中華民國104年12月17日及105年5月27日修正之刑法 , 自105年7月1日施行」、 「 II 105年7月1日前施行之其他法律關於沒收、追徵、追繳、抵償之規定 , 不再適用。 」 (2016年施行)

→沒收等事項 , 依刑法處理



3

Human Trafficking Prevention Act

§ 35 : (Enacted in 2009)

→ Enforcement Law of the Criminal Code of the Republic of China §10-3: 「 I The Criminal Code amended and promulgated on December 17, 2015 and May 27, 2016 shall be in force from July 1, 2016. 」 、 「 II Other regulations of confiscation, collection, recovery, and compensation enacted before July 1, 2016 will no longer apply. 」 (Promulgated in 2016)

→Confiscation and seizure shall be executed in accordance with the Criminal Code



3

共通議題

- 沒收目的：違禁物、犯罪所用之物、犯罪所得
- 扣押目的：證據、沒收原物、替代追徵
- 目前實務的問題：其他執行程序競合與沒收發還？
(例如：被害人民事求償；行政罰鍰或其他公法債權)



4

Common Topics

- . Purpose of Confiscation: contraband, criminal objects, criminal proceeds
- . Purpose of Seizure: evidence, confiscated original objects, substitute assets collection
- . Issues in Current Practices: Concurrence with other execution procedures and confiscation for return to victims?
(For example: victim makes civil claims; administrative fines, or other obligatory payments under public law)



4

共通議題

• 沒收目的：違禁物、犯罪所用之物、犯罪所得

• 重心：犯罪所得沒收 / 追徵

對第三人沒收

第三人程序保障 (刑訴第 7 編之 2 : § § 455-12~455-37)



5

Common Topics

. Purpose of Confiscation: contraband, criminal objects, criminal proceeds

. Focus: **Confiscation of criminal proceeds/Forced collection**

Confiscating a third party

Procedural protection for the third party (Code of Criminal Procedure Part 7 – 2: § § 455-12~455-37)



5

程序競合／沒收發還的問題

- 刑事扣押 v. 其他執行程序
- 沒收（發還）刑事扣押目的 v. 其他執行程序目的

Q1：要不要讓扣押物維持原狀？

Q2：如果不需要（或不能），那麼應該在哪個程序處理？

Q3：發還的範圍、次序？



6

Concurrence/Confiscation for Return to Victim

. Criminal seizure v. Other execution procedures

. Purpose of confiscation (to be returned to victim) criminal seizure v. Other execution procedures

Q1: Should the seized item be kept in original condition?

Q2: If it is not necessary (or cannot), in which procedure should it be handled?

Q3: Scope and order of returning to victim?



6

沒收與發還

- 犯罪所得沒收 / 追徵
- 與被害人的關聯：發還

- 刑§ 38-1 V：「犯罪所得已實際合法發還被害人者，不予宣告沒收或追徵。」



7

Confiscation and Returning to Victim

- . Confiscating criminal proceeds/Forced collection
- . Connection with victim: return to victim

- . Criminal Code § 38-1 V：「 The proceeds of crime having been legally returned to the victim shall not be confiscated or collected. 」



7

沒收與發還

- 犯罪所得沒收 / 追徵

• 刑訴§ 473 I : 「沒收物、追徵財產，於裁判確定後一年內，由權利人聲請發還者，或因犯罪而得行使債權請求權之人已取得執行名義者聲請給付，除應破毀或廢棄者外，檢察官應發還或給付之；其已變價者，應給與變價所得之價金。」



8

Confiscation and Returning to Victim

- . Confiscating criminal proceeds/Forced collection

.Code of Criminal Procedure § 473 I : 「 If **the rights holders** file a motion to have confiscated items or force-collected property returned, or if **persons, who are allowed to exercise the right to a claim as a result of the defendant's crime**, have obtained the civil compulsory execution and file a motion to be paid, within a year after the judgment is finalized, the prosecutor shall return such items/property or pay such claims, with the exceptions of: items/property that should be destroyed or abandoned; if the items/property are sold, the price of the sale shall be returned. 」



8

沒收與發還

- 犯罪所得沒收 / 追徵

- 爭議問題：

Q1：發還被害人就不沒收，但「潛在被害人」應該怎麼處理？

Q2：沒收就不能發還嗎？（潛在被害人事後出現）

Q3：與其他執行程序競合時，應如何處理？



9

Confiscation and Returning to Victim

. Confiscating criminal proceeds/Forced collection

. Disputed Questions:

Q1: No confiscation when proceeds returned to victims, but how to handle “potential victim”?

Q2: Not returned to victim when confiscated? (Potential victim shows up after the fact)

Q3: How to handle the situation in concurrence with other execution procedures.



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司法院正在研擬刑訴相關草案

- 針對第133條以下（扣押競合）、第470條以下（沒收發還），分別有甲乙案的討論

- 我們正在評估當中



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The Judicial Yuan Is Drawing up Criminal Procedure-related Drafts

- Targeting Article 133 onwards (Concurrence of Seizure), and Article 470 onwards (Confiscation and Returning to Victim), the Judicial Yuan has discussed drafts A and B.

- We are still evaluating.



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**謝 謝 聆 聽
敬 請 指 教**

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**Thank You for Listening
Comments Are Welcome**

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交通方式

財團法人張榮發基金會國際會議中心

地址：台北市中正區中山南路 11 號

張榮發基金會國際會議中心位於中山南路，正對凱達格蘭大道，緊鄰台大醫院及自由廣場(中正紀念堂)，距離台大醫院捷運站步行約 5 分鐘，至台北車站車程為 5 分鐘。

開車 (備有地下停車場，可供中小型汽車停放)

- 中山高速公路→建國北路→下高架橋→仁愛路→景福門前
- 中正橋→重慶南路→總統府→凱達格蘭大道→信義路
- 忠孝橋→忠孝西路右轉→中山南路→信義路
- 台北橋→民權西路→中山北路二段→中山南路→信義路

捷運

- 搭乘捷運淡水信義線
至「台大醫院」站 2 號出口下車
(步行時間約 5 分鐘左右)
- 搭乘捷運淡水信義線或松山新店線
至「中正紀念堂」站 5 號或 6 號出口下車
(步行時間約 10 分鐘左右)

公車

- 搭乘 37、249、261、270、621、630、651、仁愛幹線公車
於「仁愛中山路口」下車
- 搭乘 0 東、20、22、38、88、204、588、607、1503 公車
於「中正紀念堂」下車
- 搭乘 15、208 公車
於「景福門」下車

Location and Directions

CHANG YUNG-FA FOUNDATION International Convention Center

Address: No.11, Zhongshan S. Rd., Taipei City 10048, Taiwan (R.O.C.)

CHANG YUNG-FA FOUNDATION International Convention Center is located on Zhongshan South Road. The building faces the Ketagalan Boulevard and is close to the National Taiwan University Hospital and Liberty Square (Chiang Kai-shek Memorial Hall). It is a 5min walk from MRT National Taiwan University Hospital Station and a 5min drive from Taipei Main Station.

By Car (our underground parking lot offers parking for small and medium automobiles)

- Zhongshan Freeway → Jianguo N. Rd. → exit viaduct → Renai Rd. → front of Jingfu Gate
- Zhongzheng Bridge → Chongqing S. Rd. → Presidential Office Building → Ketagalan Boulevard → Xinyi Rd.
- Zhongxiao Bridge → turn right at Zhongxiao W. Rd. → Zhongshan S. Rd. → Xinyi Rd.
- Taipei Bridge → Minquan W. Rd. → Sec. 2, Zhongshan N. Rd. → Zhongshan S. Rd. → Xinyi Rd.

By MRT

- Take line 2 to National Taiwan University Hospital Station and walk one block south to Sec 1, Renai Road (also called 3rd Blvd). This walk takes approximately five minutes.
- Take line 2, or 3 to the CKS Memorial Hall Station, then across the CKS Memorial Hall to Sec 1, Xinyi Road (also called 2nd Blvd). This walk takes approximately ten minutes.

By Bus

- To Renai-Zhongshan Intersection: Bus Nos. 37, 249, 261, 270, 621, 630, 651, Renai Line
- To the CKS Memorial Hall: Bus Nos. 0-East, 20, 22, 38, 88, 204, 588, 607, 1503
- To Jing Fu Men: Bus Nos. 15, 208