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The Criminal Sanctions against the Illicit Proceeds of Criminal Organisations

Anna Maria Maugeri*

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Abstract

The most recent tendency to place confiscation at the forefront of the fight against organised crime emerges from several important supranational legal instruments (for example, the 1990 Strasbourg Convention, Council Framework Decisions 2005/212/JHA and 2006/783/JHA, and the proposed Directive of the European Parliament and of the Council in 2012). Through a comparative study of current legal systems it is possible to identify four models of confiscation: the criminal penalty; confiscation based on the presumption of the illegal destination of the assets; confiscation of the suspected illicit proceeds, based on the assumption of the source of the proceeds, and the *actio in rem*. These legislative forms of confiscation are criticised at the national level, particularly as regards their compatibility with the presumption of innocence, with the principle of proportionality and with protection of property rights. In some judgments, in fact, the ECtHR has evaluated whether some forms of extended confiscation based on rebuttable presumptions are compatible with the guarantees of article 6 (presumption of innocence and fair trial) or article 7 (nullum crimen, nulla poena sine lege - the prohibition of retroactive criminalisation) of the Convention, or with article 1 of its First Protocol (right to property). In conclusion, the author presents some proposals to interpret the new types of extended confiscation in order to find a good balance between the exigencies of efficiency in the fight against criminal organisations and the protection of citizens' safeguards.

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Keywords

[confiscation](#), [efficiency](#), [presumption of innocence](#), [proceeds](#), [proportionality](#)

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