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The Criminal Sanctions against the Illicit Proceeds of Criminal Organisations

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Abstract

The most recent tendency to place confiscation at the forefront of the fight against organise
emerges from several important supranational legal instruments (for example, the 1990 Str
Convention, Council Framework Decisions 2005/212/JHA and 2006/783/JHA, and the prop
Directive of the European Parliament and of the Council in 2012). Through a comparative s
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 i
rem. These legislative forms of confiscation are criticised at the national level, particularly as rega
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 guaran
article 6 (presumption of innocence and fair trial) or article 7 (nullum crimen, nulla oena sine lege
the prohibition of retroactive criminalisation) of the Convention, or with article 1 of its First Protoco
(right to property). In conclusion, the author presents some proposals to interpret the new types o
extended confiscation in order to find a good balance between the exigencies of efficiency in the f
against criminal organisations and the protection of citizens' safeguards.

Keywords

confiscation, efficiency, presumption of innocence, proceeds, proportionality

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