

						3)ANY SAFEGUARDS REQUIRED FOR THE PROTECTION OF THE DEFENDANTS' RIGHTS? ANY LESSONS FROM THE NATIONAL EXPERIENCE?		NE BIS IN IDEM PRINCIPLE? AND OTHER RELEVANT RIGHTS – WHAT SORT OF?	
direct confiscation,	<p>Art. 44. Forfeiture of items.</p> <p>§ 1. The court shall order forfeiture of items derived directly from an offence.</p> <p>§ 2. The court may, and in the cases prescribed by law shall, order forfeiture of the items that were used or intended to be used to commit the offence.</p> <p>(...)</p> <p>§ 5. No forfeiture shall be ordered with regard to the items specified in §§ 1 or 2 if these</p>	<p>Items derived directly from the crime.</p> <p>Items used or intended to be used to commit s crime.</p>	<p>General prevention without a specific objective plus the application of the principle that crime doesn't pay.</p>	<p>-link - between the crime and the proceeds/instruments/products;</p> <p>-illegal origin (suspects/ presumption of illegal origin</p>	NO	<p>1) Polish criminal law maintains full compliance with the Directive 2014/42/EU.</p> <p>2) The solutions adopted in Polish criminal law fully correspond to the concept of "criminal procedure" adopted in EU Regulation No. 1805/2018 both for subject and</p>	<p>1)applicable within the criminal case trial and in the court proceedings;</p> <p>2)basic standard of proof;</p> <p>3)safeguard: appeal against the judgment;</p> <p>4)trial in absentia is not considered if the defendant does not answer the summons or the summoned person does not appear</p> <p>5)not possible in case of acquittal</p> <p>SPECIAL PROVISION ON SAFEGUARDS:</p> <p>Article 192 of the Criminal Executive Code. [Return after revocation of the forfeiture].</p> <p>§ 1. In the event that the decision on forfeiture is revoked,</p>	Full compliance	No issues

	<p>can be returned to the aggrieved party or to any other authorised entity.</p>					<p>object reasons. In cases concerning all types of confiscation in Poland, judicial authorities adjudicate also as regards extended confiscation of an undertaking, against third persons, against absent, not apprehended, deceased etc. This happens ex officio in pending proceedings (main trial) or upon request of the public prosecutor in incidental proceedings.</p>	<p>its donation or the release of the item as a result of an action brought, the items of property seized during the execution of the forfeiture shall be returned to the entitled person. If the return is not possible, the State Treasury shall be liable for the damage suffered by the entitled person.</p> <p>§ 2 The person to whom the items of property subject to forfeiture are returned or compensation is paid under the liability referred to in § 1 shall be obliged to reimburse the State Treasury for the sums paid to the creditors under Article 190 up to the value of the returned items of property or the compensation paid. If real property is subject to restitution, the State Treasury's claim shall be secured by entry of a compulsory mortgage in the land and mortgage register maintained for that real property. The basis for the entry is a decision on security issued by the head of the tax office.</p> <p>§ (3) To the extent not regulated by this Act, the provisions of the Civil Code shall apply to the liability referred to in § 1.</p>		
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						3) Confiscation and forfeiture, as well as security measures, are fully reversible measures according to Article 192 of the Polish Criminal Executive Code, which is quoted in this overview. Substitutive compensatory measures as a part of the system of forfeiture.. sss	§ 4. the provisions of § 1-3 shall apply mutatis mutandis to forfeiture ordered in the event of suspension or discontinuance of proceedings.		
confiscation of the value,	<p>Art. 44. Forfeiture of items. § 4. If the items specified in §§ 1 or 2 cannot be forfeited, the court may order forfeiture of items with a monetary value equivalent to the items derived directly from the offence, or items used or intended to be used to commit the offence.</p> <p>Art. 45. Forfeiture of proceeds of crime .</p>	<p>Substitute mechanism , Forfeiture of a “value equivalent” : <i>forfeiture of items with a monetary value equivalent to the items derived directly from the offence, or items used or intended to be used to commit the offence.</i></p>			NO		<p>Art. 44</p> <p>1)applicable within the criminal case trial and in the court proceedings; 2)basic standard of proof; 3)safeguard: appeal against the judgment; 4)trial in absentia is not considered if the defendant does not answer the summons or the summoned person does not appear 5)not possible in case of acquittal</p> <p>Art.45</p>	Full compliance	No issues

	<p>§ 1. If the offender has obtained, even indirectly, financial proceeds of crime as a result of the offence, which is not forfeitable as mentioned in Article 44 § 1 or § 6, the court shall order forfeiture of the proceed of crime or its equivalent-in-value. The forfeiture shall not be ordered, either in part or in full, if the proceed of crime or its equivalent-in-value is repaid to the aggrieved party or another person.</p> <p>§ 1a. A financial proceed derived from the commission of a criminal offence shall also be deemed profits derived from things or rights</p>						<p>1)applicable within the criminal case trial and in the court proceedings; 2) 45§2 -“unless the offender or another interested party tenders evidence to the contrary” – a reversed burden of proof for proving that financial proceeds of crime didn’t derive form the criminal offense; 45§3 presumption for transferred assets: <i>“(…) unless on the basis of the circumstances surrounding their acquisition, it could not be assumed that the assets derive, even indirectly, from a prohibited act.”</i> 3)safeguard: appeal against the judgment or against the ruling on confiscation if it is related to another interested party tenders ; 4)trial in absentia is not considered if the defendant does not answer the summons or the summoned person does not appear 5)not possible in case of acquittal</p> <p>SPECIAL PROVISION ON SAFEGUARDS:</p>		
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	<p>constituting that proceed.</p> <p>§ 2. When sentencing for an offence whereby the offender has even indirectly obtained a substantial financial proceed of crime, or from which a proceed of crime has been or could have been derived, even indirectly, which offence is punishable by imprisonment for a term of 5 years or more, or committed in an organised group or association aimed at committing an offence, the assets that the offender took possession of, or to which any title was acquired, within 5 years prior to committing the same until a sentence, even a</p>						<p>Article 192 of the Criminal Executive Code. [Return after revocation of the forfeiture].</p> <p>§ 1. In the event that the decision on forfeiture is revoked, its donation or the release of the item as a result of an action brought, the items of property seized during the execution of the forfeiture shall be returned to the entitled person. If the return is not possible, the State Treasury shall be liable for the damage suffered by the entitled person.</p> <p>§ 2 The person to whom the items of property subject to forfeiture are returned or compensation is paid under the liability referred to in § 1 shall be obliged to reimburse the State Treasury for the sums paid to the creditors under Article 190 up to the value of the returned items of property or the compensation paid. If real property is subject to restitution, the State Treasury's claim shall be secured by entry of a compulsory mortgage in the land and mortgage register maintained for that real property. The basis for the entry is a decision on security issued by the head of the tax office.</p>		
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	<p>non-appealable one, is passed, shall be considered as a proceed derived from the offence, unless the offender or another interested party tenders evidence to the contrary.</p> <p>§ 3. If the assets constituting a proceed derived from the offence referred to in § 2, are transferred to an individual, a company or an organisational entity without legal personality, whether in fact or under any legal title, it is considered that the assets in the sole possession of the person, company or entity and the ownership rights thereto, accrue to the offender, unless on the basis of the</p>						<p>§ (3) To the extent not regulated by this Act, the provisions of the Civil Code shall apply to the liability referred to in § 1.</p> <p>§ 4. the provisions of § 1-3 shall apply mutatis mutandis to forfeiture ordered in the event of suspension or discontinuance of proceedings.</p>		
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	<p>circumstances surrounding their acquisition, it could not be assumed that the assets derive, even indirectly, from a prohibited act.</p> <p>§ 4. (<i>repealed</i>)</p> <p>§ 5. In the event of co-ownership, a forfeiture order concerns the offender's share or the monetary equivalent.</p>								
<p>extended confiscation,</p>	<p>Art. 44. Forfeiture of items.</p> <p>§ 6. When sentencing for an offence of violating a prohibition from producing, possessing, distributing or transporting specific items, the court may, and in the cases prescribed by law shall, order forfeiture with</p>				<p>NO</p>		<p>Forfeiture of undertaking</p> <p>1)applicable within the criminal case trial and in the court proceedings;</p> <p>2)basic standard of proof;</p> <p>3)safeguard: appeal against the judgment;</p> <p>4)trial in absentia is not considered if the defendant does not answer the summons or the summoned person does not appear</p> <p>5)not possible in case of acquittal</p>	<p>Full compliance</p>	<p>No issues</p>

	<p>regard to such items.</p> <p>Art. 44a. Forfeiture of an undertaking.</p> <p>§ 1. When sentencing for an offence from which the offender has obtained, even indirectly, a substantial financial proceed of crime, the court may order forfeiture of an undertaking owned by the offender, or its equivalent-in-value, if the undertaking was used to commit the offence or to conceal the proceed derived therefrom.</p> <p>§ 2. When sentencing for an offence from which</p>	<p>Provision 44a of the Criminal Code clearly indicates that the commission or concealment of the proceeds of crime can lead to confiscation. This means that law enforcement authorities can only apply this measure to an intentional offence. In contrast, it is not</p>					<p>SPECIAL PROVISION ON SAFEGUARDS: Article 192 of the Criminal Executive Code. [Return after revocation of the forfeiture].</p> <p>§ 1. In the event that the decision on forfeiture is revoked, its donation or the release of the item as a result of an action brought, the items of property seized during the execution of the forfeiture shall be returned to the entitled person. If the return is not possible, the State Treasury shall be liable for the damage suffered by the entitled person.</p> <p>§ 2 The person to whom the items of property subject to forfeiture are returned or compensation is paid under the liability referred to in § 1 shall be obliged to reimburse the State Treasury for the sums paid to the creditors under Article 190 up to the value of the returned items of property or the compensation paid. If real property is subject to restitution, the State Treasury's claim shall be secured by entry of</p>		
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	<p>the offender has obtained, even indirectly, a substantial financial proceed of crime, the court may order forfeiture of the undertaking of a natural person not owned by the offender or its equivalent-in-value, if the undertaking was used to commit the offence or to conceal the proceed derived therefrom and the owner of the undertaking wanted the undertaking to be used to commit the offence or to conceal the proceed of crime derived therefrom or, foresaw such possibility yet accepted same.</p> <p>§ 3. In the case of jointly-owned</p>	<p>possible to apply extended confiscation in the absence of guilt of the direct perpetrator .</p> <p>What is an enterprise? Pursuant to Article 551 of the Act of 23 April 1964. - Civil Code (hereinafter referred to as the Civil Code), an enterprise is an organised group of intangible and tangible components designed to conduct</p>					<p>a compulsory mortgage in the land and mortgage register maintained for that real property. The basis for the entry is a decision on security issued by the head of the tax office.</p> <p>§ (3) To the extent not regulated by this Act, the provisions of the Civil Code shall apply to the liability referred to in § 1.</p> <p>§ 4. the provisions of § 1-3 shall apply mutatis mutandis to forfeiture ordered in the event of suspension or discontinuance of proceedings.</p>		
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	<p>property, the forfeiture referred to in §§ 1 and 2 shall be ordered taking into account the will and awareness of each of the co-owners and within their limits.</p> <p>§ 4. The forfeiture referred to in §§ 1 and 2 shall not be ordered if it would be disproportionate to the seriousness of the offence committed, the degree of culpability of the accused or the motivation and conduct of the owner of the undertaking.</p> <p>§ 5. The forfeiture referred to in §§ 1 and 2 shall not be ordered if the damage caused by the offence or the value of the concealed proceed</p>	<p>business activity. It includes in particular:</p> <p>a designation individualising the enterprise or its separated parts (the name of the enterprise);</p> <p>ownership of immovable or movable property, including equipment, materials, goods and products, as well as other rights in rem to immovable or movable property;</p>							
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	<p>is not significant in relation to the size of the undertaking. § 6. The court may decide not to order forfeiture referred to in § 2 also in other, particularly justified cases where it would be disproportionately onerous for the owner of the undertaking.</p>	<p>rights arising from agreements for the lease of immovable or movable property and rights to use immovable or movable property arising from other legal relationships;</p> <p>receivables, rights in securities and cash;</p> <p>concessions, licences and permits</p> <p>patents and other industrial</p>							
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		<p>property rights;</p> <p>proprietary copyrights and property related rights;</p> <p>business secrets;</p> <p>books and documents relating to the conduct of business activities.</p> <p>Considering the above, confiscation of the company or its components will not only concern movable property (e.g. office</p>							
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		<p>equipment, production machinery), real estate (e.g. the building of the company's headquarters) or funds in company bank accounts. If possible, in addition to the above, receivables, securities, patents or copyrights may also be confiscated or secured.</p> <p>Whose company is subject to confiscation?</p> <p>The provision of § 1 of</p>							
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		<p>Article 44a of the Criminal Code indicates that confiscation is only possible with regard to an enterprise owned by the offender. On the other hand, § 2 of this provision broadens this group and states that confiscation may also be applied to an enterprise that is not owned by the perpetrator. A prerequisite</p>							
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	Art. 45. Forfeiture of a proceed of crime. (...)	e for ruling on confiscation is to prove that the owner of the business, directly or indirectly, allowed the perpetrators to use his/her business. Therefore, it should be considered that forfeiture of a business is only possible if the business is owned by a natural person. Period of control over the							
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	<p>§ 1a. A financial proceed derived from the commission of a criminal offence shall also be deemed profits derived from things or rights constituting that proceed.</p> <p>§ 2. When sentencing for an offence whereby the offender has even indirectly obtained a substantial financial proceed of crime, or from which a financial proceed has been or could have been derived, even indirectly, which offence is punishable by imprisonment for a term of 5 years or more, or committed in an organised group or association aimed at committing an</p>	<p>legitimacy of the origin of a company's sources of income</p> <p>The provision of Article 45 § 2 of the Criminal Code regulates that the institution of extended confiscation shall be applied to property which the perpetrator has taken possession of or obtained any title to in the period of 5 years prior to the commissio</p>							
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	<p>offence, the assets that the offender took possession of, or to which any title was acquired, within 5 years prior to committing the same until a sentence, even a non-appealable one, is passed, shall be considered as a proceed derived from the offence, unless the offender or another interested party tenders evidence to the contrary.</p> <p>§ 3. If the assets constituting a proceed derived from the offence referred to in § 2, are transferred to an individual, a company or an organizational entity without legal personality, whether in fact or under any legal title, it is considered that the</p>	<p>n of the offence up to the moment of even a non-final judgment. The period of 5 years prior to the commission of the offence is therefore the limit for controlling the lawfulness of the origin of the offender's property. This means that in the situation of a conviction of the offender for a serious property crime, law</p>							
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	assets in the sole possession of the person, company or entity and the ownership rights thereto, accrue to the offender, unless on the basis of the circumstances surrounding their acquisition, it could not be assumed that the assets derive, even indirectly, from a prohibited act.	enforcement authorities will have the right to control the legality of the property acquired by the offender in the last 5 years.							
non-conviction based confiscation,	Art. 45a. Forfeiture. § 1. The court may order forfeiture if the social harmfulness of the act is negligible, as well as in the event of conditional discontinuance of proceedings or a finding that the offender has committed a prohibited act in the state of		General prevention without a specific objective plus the application of the principle that crime doesn't pay. The other purpose is to make justice and the to deprive a perpetrator of the proceeds of	1) property or availability of the confiscation object, 2)link - between the crime and the proceeds/instruments/products, etc.,	YES – art.45a §1and2		Art.45a Forfeiture 1)applicable within the criminal case trial and in the court proceedings; 2)basic standard of proof; 3)safeguard: appeal against the judgment (" discontinuance of the proceedings due to the failure to identify the offender, and in the event of the proceedings being stayed where the accused cannot be apprehended or cannot participate in the proceedings ")	Full compliance	No issues

	<p>diminished capacity referred to in Article 31 § 1, or if there is a circumstance preventing the offender of the prohibited act from being punished.</p> <p>§ 2. If the evidence gathered indicates that in the event of a conviction a forfeiture order would be issued, the court may also order forfeiture in the event of the offender's death, discontinuance of the proceedings due to the failure to identify the offender, and in the event of the proceedings being stayed where the accused cannot be apprehended or cannot participate in the proceedings because of mental</p>		<p>crime even without complying the entire criminal procedure against the defendant as a natural; person.</p>	<p>3) disproportionality ("the value of the property is disproportionate to the lawful income of the convicted person"), 4)illegal origin (suspects/ presumption of illegal origin</p>			<p>because of mental illness or another serious illness.") 4)proceedings in absentia may be applicable in case 5)possible with no conviction (a finding that the offender has committed a prohibited act in the state of diminished capacity referred to in Article 31 § 1, or if there is a circumstance preventing the offender of the prohibited act from being punished, in the event of the offender's death, discontinuance of the proceedings due to the failure to identify the offender, and in the event of the proceedings being stayed where the accused cannot be apprehended or cannot participate in the proceedings because of mental illness or another serious illness).</p> <p>SPECIAL PROVISION ON SAFEGUARDS:</p> <p>Article 192 of the Criminal Executive Code. [Return after revocation of the forfeiture].</p>		
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	illness or another serious illness.						<p>§ 1. In the event that the decision on forfeiture is revoked, its donation or the release of the item as a result of an action brought, the items of property seized during the execution of the forfeiture shall be returned to the entitled person. If the return is not possible, the State Treasury shall be liable for the damage suffered by the entitled person.</p> <p>§ 2 The person to whom the items of property subject to forfeiture are returned or compensation is paid under the liability referred to in § 1 shall be obliged to reimburse the State Treasury for the sums paid to the creditors under Article 190 up to the value of the returned items of property or the compensation paid. If real property is subject to restitution, the State Treasury's claim shall be secured by entry of a compulsory mortgage in the land and mortgage register maintained for that real property. The basis for the entry is a decision on security issued by the head of the tax office.</p> <p>§ (3) To the extent not regulated by this Act, the provisions of the</p>		
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							Civil Code shall apply to the liability referred to in § 1. § 4. the provisions of § 1-3 shall apply mutatis mutandis to forfeiture ordered in the event of suspension or discontinuance of proceedings.		
confiscation against third parties ,	<p>Art. 44. Forfeiture of items. § 7. If the items referred to in §§ 2 or 6 are not the offender's property, the court may only order their forfeiture in the cases provided for in law; if the items are jointly owned, the forfeiture shall only apply to the share held by the offender or to its equivalent-in-value.</p> <p>Art. 45. Forfeiture of a proceed of crime. § 3. If the assets constituting a proceed derived from the offence</p>						<p>1)applicable within the criminal case trial or in the court proceedings on request of the prosecutor or ex officio by the court during the proceedings;;</p> <p>2)basic standard of proof though the formula: <i>"unless on the basis of the circumstances surrounding their acquisition, it could not be assumed that the assets derive, even indirectly, from a prohibited act"</i> which is a kind of prima facie evidence abolished a general presumption based on art. 45 §3;</p> <p>3)safeguard: appeal against the judgment, ruling;</p> <p>4)trial in absentia is not considered if the defendant does not answer the summons or the summoned person does not appear</p> <p>5)not possible in case of acquittal, compare art. 45 §3 in fine.</p>	Full compliance	No issues

	referred to in § 2, are transferred to an individual, a company or an organizational entity without legal personality, whether in fact or under any legal title, it is considered that the assets in the sole possession of the person, company or entity and the ownership rights thereto, accrue to the offender, unless on the basis of the circumstances surrounding their acquisition, it could not be assumed that the assets derive, even indirectly, from a prohibited act.								
other & different	Art. 46. Redress of damage, compensation for harm.	Substitutive compensatory	Substitutive compensatory measures as a part of the	Substitutive compensatory	Substitutive compensatory		SPECIAL PROVISION ON SAFEGUARDS:	Full compliance	No issues

<p>models or supplementary provisions</p>	<p>§ 1. In the event of a conviction, the court may (and if the aggrieved party or another entitled party so requests shall) order the offender, while applying the civil law provisions, to partially or fully redress the damage caused by the offence, or to compensate for the harm suffered; the civil law provisions on the possibility of awarding a pension shall not apply. § 2. If it is significantly difficult to order the obligation set out in § 1, the court may instead order a surcharge of up to PLN 200,000 to be paid for the benefit of the aggrieved party and in the event of his or her death following the</p>	<p>measures as a part of the system of forfeiture..</p>	<p>system of forfeiture..</p>	<p>measures as a part of the system of forfeiture.</p>	<p>measures as a part of the system of forfeiture..</p>		<p>Article 192 of the Criminal Executive Code. [Return after revocation of the forfeiture]. § 1. In the event that the decision on forfeiture is revoked, its donation or the release of the item as a result of an action brought, the items of property seized during the execution of the forfeiture shall be returned to the entitled person. If the return is not possible, the State Treasury shall be liable for the damage suffered by the entitled person. § 2 The person to whom the items of property subject to forfeiture are returned or compensation is paid under the liability referred to in § 1 shall be obliged to reimburse the State Treasury for the sums paid to the creditors under Article 190 up to the value of the returned items of property or the compensation paid. If real property is subject to restitution, the State Treasury's claim shall be secured by entry of a compulsory mortgage in the land and mortgage register maintained for that real property. The basis for the entry is a decision on security issued by the head of the tax office.</p>		
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	<p>offence committed by the sentenced person, the court may order a surcharge of up to PLN 200,000 to be paid for the benefit of the aggrieved party's family or household member whose life situation has deteriorated significantly as a result of the aggrieved party's death. Where more than one such person has been identified, the surcharge shall be ordered for the benefit of each of them.</p> <p>§ 3. The award of damages or compensation under § 1 or the surcharge under § 2 shall not preclude the unsatisfied portion of the claim from being pursued in a civil action.</p>						<p>§ (3) To the extent not regulated by this Act, the provisions of the Civil Code shall apply to the liability referred to in § 1.</p> <p>§ 4. the provisions of § 1-3 shall apply mutatis mutandis to forfeiture ordered in the event of suspension or discontinuance of proceedings.</p>		
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	<p>Art. 47. Surcharge. § 1. If an offender is sentenced for an intentional offence against life or health, or for an intentional offence resulting in a death, grievous bodily harm or physical injury, or damage to health, the court may order a surcharge to be paid to the Victim Support and Post Penitentiary Aid Fund. § 2. If an offender is sentenced for an offence against the environment, the court may order a surcharge to be paid to the National Fund for Environmental Protection and Water Management mentioned in Article 400 of the Act on</p>								
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	<p>Environmental Protection dated 27 April 2001 (Journal of Laws of 2021, items 1973 and 2127).</p> <p>§ 2a. In the cases referred to in Article 44a §§4 to 6, the court may order a surcharge of up to PLN 1,000,000 to be paid for the benefit of the aggrieved party or the Victim Support and Post Penitentiary Aid Fund.</p> <p>§ 3. Where the offender is sentenced for the offence referred to in Article 173, Article 174, Article 177 or Article 355, if the offender was intoxicated or fled the scene of the incident, the court shall order a surcharge to be paid to the aggrieved party</p>								
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	<p>and, in the event of his or her death following the offence committed by the sentenced person, to the aggrieved party's family or household member whose life has significantly deteriorated following the aggrieved party's death. Where more than one such person has been identified, payment of the surcharge shall be ordered for the benefit of each of them. If it is impossible to identify such person, the court shall order a surcharge to be paid to the Victim Support and Post Penitentiary Aid Fund. The court shall order a surcharge</p>								
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	<p>amounting to PLN 10,000 or more.</p> <p>§ 4. In particularly justified circumstances, where a surcharge order would affect the offender's capacity to provide necessary subsistence for himself or herself and his family, or where the aggrieved party has reconciled with the offender, the court may order a surcharge to be paid in a lower amount than that specified in § 3.</p> <p>§ 5. The provision of § 3 shall not apply if the court has imposed the obligation to redress the damage caused by the offence or to compensate for the harm suffered in excess of PLN 10,000.</p>								
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	(...) Art. 48. Amount of surcharge. Unless otherwise provided herein, a surcharge shall be ordered in the amount of PLN 100,000 or less.							
Security measure	CHAPTER 32. SECURITY ON PROPERTY. Art. 291. Basis. § 1. If the accused is charged with an offence liable to or in connection with which it is possible to order: 1) a fine, 2) a monetary performance, 3) a forfeiture, 4) a compensatory measure, 5) a return to the aggrieved party or to another entitled entity a financial proceed, which the offender obtained from the offence, or its equivalent,	Safeguarding the proper course of the proceedings	General prevention with a procedural objectives	See the provision	N/A			

	<p>- the enforcement of the judgment may be secured ex officio on the property of the accused or on the property referred to in Article 45 § 2 of the Criminal Code, if there is a justified concern that without such a security the enforcement of the judgment as to the penalty or penal measures will be impossible or significantly hindered.</p> <p>§ 2. The execution of the judgment referred to in § 1 point 3 or 5 may also be secured on the property of a natural person referred to in Article 44a of the Criminal Code, or of a natural or legal or an organisational entity without</p>								
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	<p>legal personality referred to in Article 45 § 3 of the Criminal Code, or on property, which would be liable to forfeiture in accordance with Article 45a § 1 or 2 of the Criminal Code and Article 33 § 3, Article 43 § 1 or 2 or Article 43a of the Fiscal Criminal Code.</p> <p>§ 2a. A judgment concerning the return of material proceed or its equivalent or a judgment concerning forfeiture of a material proceed of crime or its equivalent issued against an entity referred to in Article 91a may be secured ex officio on the property of this entity.</p> <p>§ 3. The execution of the judgment</p>								
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	<p>concerning court costs may also be secured ex officio on the property of the accused, if there is a justified concern that without such a security the enforcement of the judgment in this respect will be impossible or significantly hindered.</p> <p>§ 4. Security established on the property of the accused should be immediately annulled in whole or in part, if circumstances due to which it was established ceased to exist or reasons have arisen justifying its even partial annulment.</p> <p>§ 5. Security established on the property of the accused should be immediately</p>								
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	<p>annulled in whole or in part, if circumstances due to which it was established ceased to exist or reasons have arisen justifying its even partial annulment.</p>								
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RECENT JURISPRUDENCE OF THE ECHR

Recently, before the European Court of Human Rights (hereinafter: ECtHR), rulings in Polish cases regarding confiscation of property within the meaning of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing and confiscation orders were made, inter alia:

1. Łysak v. Poland of 7 October 2021. (Application no. 1631/16), in which the ECtHR found a violation of Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter: ECHR) in relation to the detention of property (clothing) belonging to him for more than six years as evidence in criminal proceedings. The ECtHR pointed out that there had been a violation of the applicant's right to respect for property, which was lawful and in the public interest, but that the measures taken by the authorities conducting the criminal proceedings did not meet the requirement of proportionality and constituted an undue burden on the applicant. The Court stated in its reasoning that Article 1 of Protocol No. 1, which guarantees the right to protection of property, consists of three distinct principles:

- Principle I contained in the first sentence of the first paragraph is of a general nature and expresses the standard of respect for property;
- Principle II contained in the second sentence of the first paragraph refers to the deprivation of property and makes it subject to certain conditions;
- Principle III in the second sentence of the second paragraph recognises the right of the Contracting States to regulate the use of property in accordance with the general interest.

However, these principles are not "distinct" in the sense of not being linked to each other. The second and third principles deal with specific cases of interference with the right to respect for property and must therefore be interpreted in the light of the general principle expressed in principle one" (see J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd v. the United Kingdom, Application no. 44302/02, § 52, ECHR 2007-III; Anheuser-Busch Inc. v. Portugal, Application no. 73049/01, § 62, ECHR 2007-I; AGOSI v. the United Kingdom, 24 October 1986, § 48, Series A no. 108; and Hábenczius v. Hungary, Application no. 44473/06, § 27, 21 October 2014).

The retention of property for the purposes of legal proceedings usually involves the regulation of the use of property, which falls within the scope of the second paragraph of Article 1 of Protocol No. 1 (see Raimondo v. Italy, 22 February 1994, § 27, Series A no. 281-A; Patrikova v Bulgaria, Application no. 71835/01, § 81, 4 March 2010; JGK Statyba Ltd and Guselnikovas v Lithuania, Application no. 3330/12, § 117, 5 November 2013; Hábenczius, op. cit., § 28; Džinić v Croatia, Application no. 38359/13, § 62, 17 May 2016; Lachikhina v Russia, Application no. 38783/07, § 58, 10 October 2017; and Adamczyk v Poland (dec.), Application no. 28551/04, 7 November 2006). An interference in accordance with Article 1 of Protocol No. 1 must be lawful, in the general interest and in the general interest and be proportionate, that is, it must strike a "fair balance" between the requirements of the general interest of society and the requirements of the protection of the fundamental rights of the individual (see Beyeler v. Italy, Application no. 33202/96, § 107, ECHR 2000-I, and J.A. Pye (Oxford) Ltd and J.A. Pye (Oxford) Land Ltd, op. cit., § 75). The requisite equitable balance will not be struck if a singular, excessive burden is placed on a person (see Sporrang and Lönnroth v. Sweden, 23 September 1982, §§ 69-74, Series A no. 52, and Hábenczius, op. cit., § 29). The use of interim measures in the context of judicial proceedings to anticipate possible confiscation of property has already been recognised as

being in the in the "general interest" of society (see, for example, Borzhonov v. Russia, Application no. 18274/04, § 58, 22 January 2009, and cases cited therein; East West Alliance Limited v. Ukraine, Application no. 19336/04, § 187, 23 January 2014; and Džinić, op. cit., § 65).

2. Waldemar Nowakowski v Poland of 24 July 2012. (Application no. 55167/11), in which the ECtHR found a violation of Article 1 of Protocol No. 1 to the ECHR in relation to the confiscation of the applicant's property (antique weapons collection), although the criminal proceedings against him had been discontinued. The ECtHR found that there had been a violation of the applicant's right to respect for his property, which was lawful and made in the public interest, but the national court failed to verify that the weapons were in working order by confiscating the entire collection and transferring it free of charge to a public museum. The court did not consider whether it was possible to register the collection and what subjective value it represented for the applicant, who was a Second World War resistance activist and former professional soldier. The ECtHR also referred to the three principles in Article 1 of the Protocol in the grounds of this judgment. In the Court's view, it was reasonable to assume that a collection of old weapons, collected by a recognised specialist, had a significant monetary value. However, the courts failed to weigh whether the forfeiture of the collection in its entirety imposed an undue burden on the applicant - both in terms of the monetary value of the collection and its sentimental significance to the applicant. Similarly, the courts did not consider alternative measures to reduce the burden imposed on the applicant, including by taking steps to register the collection.

ABOUT REFORM PROPOSALS OF NATIONAL LAW

Currently, no work is being carried out on the reform of criminal law confiscation mechanisms.

In the opinion of the Ministry of Justice of the Republic of Poland, it is premature to plan a draft amendment to national law.

This will only be possible after the adoption of the Proposal for a Directive of the European Parliament and of the Council on asset recovery and confiscation (RP. COM(2022) 245)

At the same time, we would like to inform you that no analytical work is currently underway at the Ministry of Justice of the Republic of Poland to draft concrete reforms.

Comment by Prof. dr hab. Elżbieta Hryniewicz-Lach, the Polish member of the Advisory Board: The “full compliance with legal principle” conclusions seem to be quite optimistic. Often, it’s a matter of assessment; however, at least in case of the principle of non-retroactivity of the more severe statute, Polish regulation of extended confiscation repeated the mistake from the ECtHR’s Welch judgement: application of the criminal law to behavior committed before its entry into force.