



POLISH NATIONAL REPORT

At the end of the document you will also find the comment by Prof. dr hab. Elżbieta Hryniewicz-Lach, the Polish member of the Advisory Board of RECOVER.

Which are the different models of forfeiture/confiscation in Your system of law:

MODE	Provision of Polish	OBJECT &	THE SCOPE OF	THE	APPLIED	THE LEGAL	1)QUALIFICATION/NATURE, THE	LACK OF COMPLIANCE	1)CONSTI
L	Criminal Code	MEANING	ITS	ELEMENT	WHEN THE	NATURE	COMPETENT AUTHORITY, THE	WITH THE PRINCIPLES OF:	TUTIONA
			INTRODUCTION	S TO BE	OWNER OR		DIFFERENT STEPS,	LEGALITY?	LITY
				REALISED	THE	1)		L	ISSUES
				AND/OR	CONVICTED	CONFORMITY	2)STANDARD OF THE PROOF/IS	EGAL SPECIFICITY OF A	
				TO BE	IS DEAD AS	WITH THE	THE REVERSAL OF THE BURDEN	STATUTE?	2)ECHR
				ASSESSED	WELL AS IN	DIRECTIVE	OF THE PROOF ADMITTED?		ISSUES
				FOR ITS	CASE OF	2014/42/EU		NON-RETROACTIVITY OF	
				APPLICATI	ILLNESS,	TRANSPOSITIO	3) SAFEGUARDS (LIMITATIONS	THE /MORE	3)RELEVA
				ON	ABSCONDI	N	E.G. PROPORTIONALITY	SEVERE/STATUTE?	NT
					NG,		CLAUSES, RELEVANT LEGAL		DECISION
					PRESCRIPTI	2)FALING	REMEDIES)?	THE RIGHT TO PRIVATE	S
					ON,	WITHIN THE		PROPERTY?	
					AMNESTY	CONCEPT OF	4)IS THE TRIAL IN ABSENTIA		
					(IN	"PROCEEDING	POSSIBLE TO APPLY THE	PROPORTIONALITY?	
					PARTICULA	S IN CRIMINAL	CONFISCATION?		
					R	MATTERS"		THE RIGHT TO A FAIR	
					CIRCUMST	PROVIDED	5)CAN THE CONFISCATION BE	TRIAL?	
					ANCES)	FOR BY THE	APPLIED ALSO IN CASE OF		
					WITHOUT	REGULATION	ACQUITTAL?	THE RIGHT TO DEFENCE?	
					THE	(EU) NO.		THE PRESUMPTION OF	
					CONVICTIO	1805/2018?		INNOCENCE?	
					N				

confis cation, \$ 1. The court shall order forfeiture of items derived directly form an offence. \$ 2. The court may, and in the cases prescribed by law shall, order forfeiture of the cation, \$ 1. The court shall order forfeiture of items used or intended shall, order forfeiture of the cation, \$ 1. The court shall directly from an offence. \$ 1. The court shall directly without a the crime and the compliance with the crime and the compliance compliance with the compliance compliance compliance with the compliance compliance compliance with the compliance compliance compliance compliance compliance compliance compliance with the compliance co							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?	
used or intended to be used to commit the offence. () § 5. No forfeiture shall be ordered with regard to the with regard to the offence. (with regard to the ordered with regard to the ordered with regard to the ordered with regard to the ordered shall be ordered with regard to the ordered intended to ion of the correspond to the correspond to the concept of correspond to the cor	confis	of items. § 1. The court shall order forfeiture of items derived directly from an offence. § 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. () § 5. No forfeiture shall be ordered	derived directly form the crime. Items used or intended to be used to commit s	prevention without a specific objective plus the application of the principle that crime	between the crime and the proceeds/ instrume nts/produ cts; -illegal origin (suspects/ presumpt ion of illegal	NO	criminal law maintains full compliance with the Directive 2014/42/EU. 2) The solutions adopted in Polish criminal law fully correspond to the concept of "criminal procedure" adopted in EU Regulation No.	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 SPECIAL PROVISION ON SAFEGUARDS: Article 192 of the Criminal Executive Code. [Return after]	Full compliance	No issues

can be returned to	object	its donation or the release of the
the aggrieved party	reasons. In	item as a result of an action
or to any other	cases	brought, the items of property
authorised entity.	concerning a	
,	types of	the forfeiture shall be returned
	confiscation	in to the entitled person. If the
	Poland,	return is not possible, the State
	judicial	Treasury shall be liable for the
	authorities	damage suffered by the entitled
	adjudicate	person.
	also as regard	
	extended	items of property subject to
	confiscation	
	an	compensation is paid under the
	undertaking,	
	against third	obliged to reimburse the State
	persons,	Treasury for the sums paid to the
	against	creditors under Article 190 up to
	absent, not	the value of the returned items
	apprehended	d, of property or the compensation
	deceased etc	paid. If real property is subject to
	This happens	restitution, the State Treasury's
	ex officio in	claim shall be secured by entry of
	pending	a compulsory mortgage in the
	proceedings	land and mortgage register
	(main trial) o	or maintained for that real
	upon reques	t property. The basis for the entry
	of the public	is a decision on security issued by
	prosecutor ir	the head of the tax office.
	incidental	§ (3) To the extent not regulated
	proceedings.	by this Act, the provisions of the
		Civil Code shall apply to the
		liability referred to in § 1.

cation of the value, so the va	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. Art. 45. Forfeiture	Substitute mechanism, Forfeiture of a "value equivalent": 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.		NO	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. Art. 44 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	Full compliance	No issues
	of proceeds of crime .					AI C43		

§ 1. If the offender	1)applicable within the criminal
has obtained, even	case trial and in the court
indirectly, financial	proceedings;
proceeds of crime	2) 45§2 -"unless the offender or
as a result of the	another interested party tenders
offence, which is	evidence to the contrary" – a
not forfeitable as	reversed burden of proof for
mentioned in	proving that financial proceeds
Article 44 § 1 or §	of crime didn't derive form the
6, the court shall	criminal offense;
order forfeiture of	45§3 presumption for
the proceed of	transferred assets: "() unless
crime or its	on the basis of the
equivalent-in-	circumstances surrounding their
value. The	acquisition, it could not be
forfeiture shall not	assumed that the assets derive,
be ordered, either	even indirectly, from a
in part or in full, if	prohibited act."
the proceed of	3)safeguard: appeal against the
crime or its	judgment or against the ruling on
equivalent-in-value	confiscation if it is related to
is repaid to the	another interested party tenders
aggrieved party or	;
another person.	4)trial in absentia is not
§ 1a. A financial	considered if the defendant
proceed derived	does not answer the summons or
from the	the summoned person does not
commission of a	appear
criminal offence	5)not possible in case of acquittal
shall also be	
deemed profits	
derived from things	SPECIAL PROVISION ON
or rights	SAFEGUARDS:

constituting that	Article 192 of the Criminal
proceed.	Executive Code. [Return after
§ 2. When	revocation of the forfeiture].
sentencing for an	§ 1. In the event that the
offence whereby	decision on forfeiture is revoked,
the offender has	its donation or the release of the
even indirectly	item as a result of an action
obtained a	brought, the items of property
substantial	seized during the execution of
financial proceed	the forfeiture shall be returned
of crime, or from	to the entitled person. If the
which a proceed of	return is not possible, the State
crime has been or	Treasury shall be liable for the
could have been	damage suffered by the entitled
derived, even	person.
indirectly, which	§ 2 The person to whom the
offence is	items of property subject to
punishable by	forfeiture are returned or
imprisonment for a	compensation is paid under the
term of 5 years or	liability referred to in § 1 shall be
more, or	obliged to reimburse the State
committed in an	Treasury for the sums paid to the
organised group or	creditors under Article 190 up to
association aimed	the value of the returned items
at committing an	of property or the compensation
offence, the assets	paid. If real property is subject to
that the offender	restitution, the State Treasury's
took possession of,	claim shall be secured by entry of
or to which any	a compulsory mortgage in the
title was acquired,	land and mortgage register
within 5 years prior	maintained for that real
to committing the	property. The basis for the entry
same until a	is a decision on security issued by
sentence, even a	the head of the tax office.

	S (2) To the section 1 1 1
non-appealable	§ (3) To the extent not regulated
one, is passed, shall	by this Act, the provisions of the
be considered as a	Civil Code shall apply to the
proceed derived	liability referred to in § 1.
from the offence,	§ 4. the provisions of § 1-3 shall
unless the offender	apply mutatis mutandis to
or another	forfeiture ordered in the event of
interested party	suspension or discontinuance of
tenders evidence	proceedings.
to the contrary.	
§ 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	

	circumstances					
	surrounding their					
	acquisition, it could					
	not be assumed					
	that the assets					
	derive, even					
	indirectly, from a					
	prohibited act.					
	§ 4. (repealed)					
	§ 5. In the event of					
	co-ownership, a					
	forfeiture order					
	concerns the					
	offender's share or					
	the monetary					
	equivalent.					
	A		NO	F. C. C. C. C. L. C. L. C. C. C.	E II P	NI. C.
exten	Art. 44. Forfeiture		NO	Forfeiture of undertaking	Full compliance	No issues
ded	of items.			1) and inchination the entire in a		
confis	§ 6. When			1)applicable within the criminal case trial and in the court		
cation,	sentencing for an					
	offence of violating			proceedings;		
	a prohibition from			2)basic standard of proof;		
	producing,			3)safeguard: appeal against the judgment;		
	possessing, distributing or			4)trial in absentia is not		
	transporting			considered if the defendant		
	specific items, the			does not answer the summons or		
	court may, and in			the summoned person does not		
	the cases			appear		
	prescribed by law			5)not possible in case of acquittal		
	shall, order			Synot possible in case of acquittar		
l .	forfeiture with					

regard to such		
items.		
		SPECIAL PROVISION ON
		SAFEGUARDS:
		Article 192 of the Criminal
Art. 44a. Forfeitur	e Provision	Executive Code. [Return after
of an undertaking	44a of the	revocation of the forfeiture].
	Criminal	
	Code	§ 1. In the event that the
§ 1. When	clearly	decision on forfeiture is revoked,
sentencing for an	indicates	its donation or the release of the
offence from whic		item as a result of an action
the offender has	commissio	brought, the items of property
obtained, even	n or	seized during the execution of
indirectly, a	concealme	the forfeiture shall be returned
substantial	nt of the	to the entitled person. If the
financial proceed	proceeds of	return is not possible, the State
of crime, the court	1 '	Treasury shall be liable for the
may order	lead to	damage suffered by the entitled
forfeiture of an	confiscatio	person.
undertaking owne	d n. This	
by the offender, or		§ 2 The person to whom the
its equivalent-in-	law	items of property subject to
value, if the	enforceme	forfeiture are returned or
undertaking was	nt	compensation is paid under the
used to commit th	e authorities	liability referred to in § 1 shall be
offence or to	can only	obliged to reimburse the State
conceal the	apply this	Treasury for the sums paid to the
proceed derived	measure to	creditors under Article 190 up to
therefrom.	an	the value of the returned items
	intentional	of property or the compensation
§ 2. When	offence. In	paid. If real property is subject to
sentencing for an	contrast, it	restitution, the State Treasury's
offence from whic	-	claim shall be secured by entry of

a compulsory mortgage in the
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.
§ (3) To the extent not regulated
by this Act, the provisions of the
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.

property, the	business			7
	activity. It			
	includes in			
	particular:			
taking into account	particular.			
_				
	a			
	designation			
	individualisi			
	ng the			
	enterprise			
_	or its			
	separated			
	parts (the			
	name of			
	the			
disproportionate to	enterprise);			
the seriousness of				
the offence	ownership			
committed, the	of			
degree of	immovable			
culpability of the	or movable			
accused or the	property,			
motivation and	including			
	equipment,			
	materials,			
	goods and			
_	products,			
	as well as			
	other rights			
	in rem to			
	immovable			
	or movable			
	property;			
concealed proceed	property,			

	T	T	ı		1
is not significant in	rights				
relation to the size	arising				
of the undertaking.	from				
§ 6. The court may	agreement				
decide not to order	s for the				
forfeiture referred	lease of				
to in § 2 also in	immovable				
other, particularly	or movable				
justified cases	property				
where it would be	and rights				
disproportionately	to use				
onerous for the	immovable				
owner of the	or movable				
undertaking.	property				
under taking.	arising				
	from other				
	legal				
	relationshi				
	ps;				
	receivables				
	, rights in				
	securities				
	and cash;				
	concession				
	s, licences				
	and				
	permits				
	patents				
	and other				
	industrial				

property	
rights;	
proprietary	
copyrights	
and	
property	
related	
rights;	
rights,	
business	
secrets;	
books and	
documents	
relating to	
the	
conduct of	
business	
activities.	
Considering	
the above,	
confiscatio	
n of the	
company	
or its	
component	
s will not	
only	
concern	
movable	
property	
(e.g. office	
15-0-5	

	equipment,
	production
	machinery)
	, real estate
	(e.g. the
	building of
	the
	company's
	headquarte
	rs) or funds
	in company
	bank
	accounts. If
	possible, in
	addition to
	the above,
	receivables
	, securities,
	patents or
	copyrights
	may also
	be be
	confiscated
	or secured.
	Whose
	company is
	subject to
	confiscatio
	n?
	The
	provision of
	§ 1 of
· · · · · · · · · · · · · · · · · · ·	

	1	-		
Article 44a				
of the				
Criminal				
Code				
indicates				
that				
confiscatio				
n 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				
confiscatio				
n may also				
be applied				
to an				
enterprise				
that is not				
owned by				
the				
perpetrator				
l A				
prerequisit				

	e for ruling	
	on _	
	confiscatio	
	n is to	
	prove that	
	the owner	
	of the	
	business,	
	directly or	
	indirectly,	
	allowed the	
	perpetrator	
	s 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.	
Art. 45. Forfeiture		
of a proceed of	Period of	
crime.	control	
	over the	

§ 1a. A financial	legitimacy
proceed derived	of the
from the	origin of a
commission of a	company's
criminal offence	sources of
shall also be	income
deemed profits	
derived from things	The
or rights	provision of
constituting that	Article 45 §
proceed.	2 of the
§ 2. When	Criminal
sentencing for an	Code
offence whereby	regulates
the offender has	that the
even indirectly	institution
obtained a	of
substantial	extended
financial proceed	confiscatio
of crime, or from	n shall be
which a financial	applied to
proceed has been	property
or could have been	which the
derived, even	perpetrator
indirectly, which	has taken
offence is	possession
punishable by	of or
imprisonment for a	obtained
term of 5 years or	any title to
more, or	in the
committed in an	period of 5
organised group or	years prior
association aimed	to the
at committing an	commissio

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 of from the offence, unless the offender or another or another to the contrary. § 3. If the assets constituting a proceed derived from the offerce ereferred to in § 2, are transferred to an individual, a scompany or an organizational entity without legal personality, whether in fact or under any legal title, it is	offence, the assets	n of the		
took possession of, or to which any title was acquired, within 5 years prior to committing the same until a sentence, even a on-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. § 3. If the assets ocnstituting a proceed derived from the offence referred to in § 2, are transferred to an individual, a stompany or an organizational entity without legal personality, whether in fact or under any legal title, it is	*			
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. § 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		· · · · · · · · · · · · · · · · · · ·		
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, § 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 gersonality, whether in fact or under any legal title, it is	-			
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. § 3. If the assets constituting a proceed derived from the offence, unless the offender or another interested party tenders evidence to the contrary. § 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	· · · · · · · · · · · · · · · · · · ·			
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. § 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 serious in the property. The period of 5 years prior to the commissio nof the offsue offsue the limit for controlling the lawfulness of the offence or situation of a situation of a company or an organizational entity without legal personality, whether in fact or under any legal title, it is property	-			
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. § 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 ittle, it is				
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. § 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	_			
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. § 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 proceed derived offender to the commissio n of the offence is the limit for controlling the lawfulness of the offence is the limit for controlling the lawfulness of the offence is the limit for controlling the lawfulness of the offender's property. This means that in the situation of of a serious title, it is rof to the offence is the limit for controlling the lawfulness of the offence is the limit for controlling the lawfulness of the offender of or offender of or offender of or of a serious title, it is rof offender				
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. § 3. If the assets constituting a proceed derived from the offence property. This means and individual, a company or an organizational entity without legal personality, whether in fact or under any legal title, it is		· · · · · · · · · · · · · · · · · · ·		
be considered as a proceed derived from the offence, unless the offender or another interested party tenders evidence to the contrary. § 3. If the assets origin of the offender's 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 or or another or another of the limit for controlling the	* *	The state of the s		
proceed derived from the offence, unless the offender or another interested party tenders evidence to the contrary. § 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 of since is therefore the limit for controlling the limit	· · · · · · · · · · · · · · · · · · ·			
from the offence, unless the offender or another interested party tenders evidence to the contrary. § 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 without legal title, it is without legal title, it is without legal property. the limit for controlling the limit for control				
unless the offender or another interested party tenders evidence to the contrary. § 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	1 -			
or another interested party the lawfulness to the contrary. § 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 contract of the contract	from the offence,	therefore		
interested party tenders evidence to the contrary. § 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 to in the soft the original of the original of the original entity without legal title, it is to right and the original of the original entity whether in fact or under any legal title, it is to right assets the fact or origin of the original entity whether in fact or under any legal title, it is to right assets the fact or to fact or the fact or to for a the fact or the fact or to for a the fact or the fact	unless the offender	the limit for		
tenders evidence to the contrary. § 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 origin of the origin of the origin of the offender's property. This means that in the situation of company or an of the offender offender offender serious of the offender offender offender serious of the offender offender offender serious or a	or another	controlling		
to the contrary. § 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 offender origin of the origin of the offender's property. This means that in the situation of conviction of the of the offender for a serious property	interested party	the		
§ 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 organizations of the offence property offender serious that in the serious definition of the offender serious origin of the offender serious of the origin of the offender serious origin of the offender serious origin of the offender serious offender serious origin of the origin ori	tenders evidence	lawfulness		
constituting a proceed derived offender's property. 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 property the offender property. This means that in the situation of company or an a conviction of the offender for a serious property.	to the contrary.	of the		
constituting a proceed derived offender's 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 offender sproperty.	§ 3. If the assets	origin of		
proceed derived from the offence property. referred to in § 2, This means that in the an individual, a situation of company or an organizational entity without legal personality, whether in fact or under any legal title, it is property property. This means that in the situation of conviction of conviction of the offender that in the situation of conviction of the offender that is property.	constituting a			
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 This means that in the situation of conviction of the offender for a under any legal title, it is This means that in the situation of conviction of the offender for a under any legal title, it is This means that in the situation of conviction of the offender for a under any legal serious property	proceed derived	offender's		
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 This means that in the situation of conviction of the of the offender for a under any legal title, it is This means that in the situation of conviction of the offender of the offender to a under any legal title, it is This means that in the situation of conviction of the offender of	from the offence	property.		
are transferred to an individual, a situation of company or an a organizational entity without legal personality, whether in fact or under any legal title, it is property	referred to in § 2,			
an individual, a situation of company or an organizational conviction entity without legal personality, offender whether in fact or under any legal title, it is property				
company or an organizational conviction of the entity without legal personality, offender whether in fact or under any legal title, it is property				
organizational conviction entity without legal of the personality, offender whether in fact or under any legal serious title, it is property				
entity without legal of the personality, offender whether in fact or under any legal serious title, it is property				
personality, offender whether in fact or for a under any legal serious title, it is property	_			
whether in fact or under any legal serious title, it is property	-			
under any legal serious title, it is property				
title, it is property				
	considered that the	crime, law		

	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.	enforceme nt authorities will have the right to control the legality of the property acquired by the offender in the last 5 years.						
non- convic tion based confis cation,	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 availabilit y of the confiscati on object, 2)link - between the crime and the proceeds/ instrume nts/produ cts, 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

diminished	crime ever	n 3)	because of mental illness or
capacity refer	ed without	dispropor	another serious illness.")
to in Article 31	§ 1, complying	the tionality	4)proceedings in absentia may
or if there is a	entire crim	ninal ("the	be applicable in case
circumstance	procedure	value of	5)possible with no conviction (a
preventing the	against the	e the	finding that the offender has
offender of the	defendant	as a property	committed a prohibited act in
prohibited act	natural; pe	erson. is	the state of diminished capacity
from being		dispropor	referred to in Article 31 § 1, or if
punished.		tionate to	there is a circumstance
§ 2. If the evide	ence	the lawful	preventing the offender of the
gathered indic	ates	income of	prohibited act from being
that in the eve	nt of	the	punished, in the event of the
a conviction a		convicted	offender's death,
forfeiture orde	r	person"),	discontinuance of the
would be issue	d,	4)illegal	proceedings due to the failure to
the court may	also	origin	identify the offender, and in the
order forfeitur	e in	(suspects/	event of the proceedings being
the event of the	e	presumpt	stayed where the accused
offender's dea	-	ion of	cannot be apprehended or
discontinuance		illegal	cannot participate in the
the proceeding		origin	proceedings because of mental
due to the fail	ıre		illness or another serious
to identify the			illness).
offender, and			
the event of the			
proceedings b	_		
stayed where			SPECIAL PROVISION ON
accused canno			SAFEGUARDS:
apprehended			
cannot partici			Article 192 of the Criminal
in the proceed	_		Executive Code. [Return after
because of me	ntal		revocation of the forfeiture].

illness or another	§ 1. In the event that the
serious illness.	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.
	§ (3) To the extent not regulated
	by this Act, the provisions of the

confis cation agains t third parties ,	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. Art. 45. Forfeiture of a proceed of crime. § 3. If the assets constituting a proceed derived from the offence		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. 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;; 2) basic standard of proof though the formula: "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" which is a kind of prima facie evidence abolished a general presumption based on art. 45 §3;. 3) safeguard: appeal against the judgment, ruling; 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, compare art. 45 §3 in fine.	Full compliance	No issues
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		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.						
differe compensation for compensat measures as a compensat nt harm. compensat part of the tory ory	& differe		compensat	compensa	compensat	SPECIAL PROVISION ON SAFEGUARDS:	Full compliance	No issue:

model	§ 1. In the event of	measures	system of	measures	measures	Article 192 of the Criminal	
s or	a conviction, the	as a part of	forfeiture	as a part	as a part of	Executive Code. [Return after	
supple	court may (and if	the system		of the	the system	revocation of the forfeiture].	
menta	the aggrieved party	of		system of	of	§ 1. In the event that the	
ry	or another entitled	forfeiture		forfeiture.	forfeiture	decision on forfeiture is revoked,	
provisi	party so requests					its donation or the release of the	
ons	shall) order the					item as a result of an action	
	offender, while					brought, the items of property	
	applying the civil					seized during the execution of	
	law provisions, to					the forfeiture shall be returned	
	partially or fully					to the entitled person. If the	
	redress the					return is not possible, the State	
	damage caused by					Treasury shall be liable for the	
	the offence, or to					damage suffered by the entitled	
	compensate for the					person.	
	harm suffered; the					§ 2 The person to whom the	
	civil law provisions					items of property subject to	
	on the possibility of					forfeiture are returned or	
	awarding a pension					compensation is paid under the	
	shall not apply.					liability referred to in § 1 shall be	
	§ 2. If it is					obliged to reimburse the State	
	significantly					Treasury for the sums paid to the	
	difficult to order					creditors under Article 190 up to	
	the obligation set					the value of the returned items	
	out in § 1, the					of property or the compensation	
	court may instead					paid. If real property is subject to	
	order a surcharge					restitution, the State Treasury's	
	of up to PLN					claim shall be secured by entry of	
	200,000 to be paid					a compulsory mortgage in the	
	for the benefit of					land and mortgage register	
	the aggrieved party					maintained for that real	
	and in the event of					property. The basis for the entry	
	his or her death					is a decision on security issued by	
	following the					the head of the tax office.	

	S (2) T. H
offence committed	§ (3) To the extent not regulated
by the sentenced	by this Act, the provisions of the
person, the court	Civil Code shall apply to the
may order a	liability referred to in § 1.
surcharge of up to	§ 4. the provisions of § 1-3 shall
PLN 200,000 to be	apply mutatis mutandis to
paid for the benefit	forfeiture ordered in the event of
of the aggrieved	suspension or discontinuance of
party's family or	proceedings.
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.	
§ 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.	

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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					

Environmental	<u> </u>	T	
Protection dated			
27 April 2001			
(Journal of Laws of			
2021, items 1973			
and 2127).			
§ 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.			
§ 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			

and, in the eve	nt of			
his or her deat				
following the				
offence comm	tted			
by the sentence				
person, to the				
aggrieved part	/'s			
family or				
household me	nber			
whose life has				
significantly				
deteriorated				
following the				
aggrieved part	/'s			
death. Where	nore			
than one such				
person has bee				
identified, pay				
of the surcharg				
shall be ordere				
the benefit of	ach			
of them. If it is				
impossible to				
identify such				
person, the co	ırt			
shall order a				
surcharge to b				
paid to the Vic				
Support and Po				
Penitentiary A				
Fund. The cour	t			
shall order a				
surcharge				

	 1		T	
amounting to PLN				
10,000 or more.				
§ 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.				
§ 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.				

() Art. 48. Amount of surcharge. Unless otherwise provided herein, a surcharge shall be ordered in the amount of PLN 100,000 or less.
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

Abo outousous			
- 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.			
§ 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			

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.			
§ 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.			
§ 3. The execution			
of the judgment			

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.			
§ 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.			
§ 5. 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.			

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 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 Sporrong 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 ECHR 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.