

RECOVER

I RESEARCH QUESTIONNAIRE - II WORKPACKAGE

“ESTABLISHING THE SUBJECT MATTER OF THE REGULATION”:

NATIONAL CONFISCATION MODELS COVERED BY THE REGULATION no. 1805/2018. TYPES, FEATURES AND SAFEGUARDS

LITHUANIA

The question:

- 1) **Which are the different models of forfeiture/confiscation in Your system of law** (direct confiscation, confiscation of the value, extended confiscation, non-conviction based confiscation, confiscation against third parties, etc.)? Please, explain which are the different models in general, also the ones not falling under the scope of the Regulation.

The answer:

There are all the models of confiscation: direct confiscation, confiscation of the value, extended confiscation, non-conviction based confiscation, confiscation against third parties, in Lithuania.

There are two tools of confiscation in Criminal Law: Confiscation (Article 72 of the Criminal Code of the Republic of Lithuania (hereinafter CC)) and Extended Confiscation (Article 72(3) CC). Confiscation of the value, confiscation against third parties, and non-conviction-based confiscation can be applied within the framework of Confiscation (Art.72 CC) and Extended Confiscation (Art. 72(3) CC).

Civil confiscation, which is non-conviction-based confiscation, is also in Lithuania. Civil confiscation is regulated by the Law on Civil Confiscation of the Republic of Lithuania. Confiscation of the value and confiscation against third parties can be applied in civil confiscation.

In summary, confiscation models can overlap and be applied simultaneously.

The question:

- 2) For each model of confiscation:
 - a) **Which is the object of the confiscation and its meaning/interpretation?** (proceeds, products of the crime, instruments of the crime, etc.). Clarify if and in which case it is possible to confiscate the ‘value equivalent’.
 - b) **Which is the scope of its introduction?** (the fight against organized crime/money laundering/corruption/terrorism, etc., the application of the principle that crime doesn’t pay, etc.)
 - c) **Which are the elements to be realized and/or to be assessed for its application?**

e.g., conviction for a crime,

property or availability of the confiscation object,

link -between the crime and the proceeds/instruments/products, etc.,

disproportionality (“*the value of the property is disproportionate to the lawful income of the convicted person*”),

illegal origin (suspects/presumption of illegal origin),

temporal connection with the crime,

the lack of a justification of the legal origin by the owner, etc.

d) **Can this form of confiscation be applied when the owner or the convicted is dead?**

e) For the model of confiscation which demands the conviction for a crime:

Can this model of confiscation be applied when the crime is statute barred (i.e. after the prescription) or somehow (in particular circumstances) without the conviction?

f) **Which is the legal nature?** (a criminal sanction - accessory or principal criminal penalty -, a preventive measure - *ante delictum* criminal prevention measure -, security measure in a broad sense, administrative measure, civil measure *in rem*, a civil consequence of committing an offense - provided for by criminal law -, another type of autonomous - *sui generis* - instrument, etc.)

The answer:

Confiscation (Art.72 of CC)

2.a. Which is the object of the confiscation and its meaning/interpretation? (proceeds, products of the crime, instruments of the crime, etc.). Clarify if and in which case it is possible to confiscate the ‘value equivalent’.

The object of confiscation is an instrument or a means used to commit an act prohibited by this Code or the result of such an act.

Where the property which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in paragraph 4 (see below under explanation of 2c) a sum of money equivalent to the value of the property subject to confiscation (CC Art.72 Para 5).

2.b. Which is the scope of its introduction? (the fight against organised crime/money laundering/corruption/terrorism, etc., the application of the principle that crime doesn’t pay, etc.)?

The scope of confiscation are all criminal offences: the property of any form directly or indirectly obtained/derived from the act prohibited by CC shall be considered as the result of the act.

We agree that the nature of confiscation is also the application of the principle “crime does not pay”.

2.c. Which are the elements to be realised and/or to be assessed for its application?

Confiscation of property *is the compulsory* uncompensated taking into the ownership of a state of any form of property subject to confiscation and held by the offender or other persons.

An instrument or a means used to commit an act prohibited by this Code or the result of such an act shall be considered as property subject to confiscation. The property *of any form directly or indirectly obtained/derived* from the act prohibited by the Criminal Code shall be considered as the result of the act.

The property held by the offender and being subject to confiscation must be confiscated in all cases.

The property held by another natural or legal person and being subject to confiscation shall be confiscated irrespective of whether the person has been convicted of the commission of an act prohibited by this Code, where: when transferring the property to the offender or other persons, he was, or ought to have been, aware that this property would be used for the commission of the act prohibited by this Code; the property has been transferred thereto under a fake transaction; the property has been transferred thereto as to a family member or close relative of the offender; the property has been transferred to him as to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.); when acquiring the property, he or the persons holding executive positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property is an instrument or a means used to commit an act prohibited by this Code or the result of such an act.

Art. 72 Para 1. Confiscation of property shall be the compulsory uncompensated taking into the ownership of a state of any form of property subject to confiscation and held by the offender or other persons.

Art. 72 Para 2. An instrument or a means used to commit an act prohibited by this Code or the result of such an act shall be considered as property subject to confiscation. The property of any form directly or indirectly obtained/derived from the act prohibited by this Code shall be considered as the result of the act.

Art. 72 Para 3. The property held by the offender and being subject to confiscation must be confiscated in all cases.

Art. 72 Para 4. The property held by another natural or legal person and being subject to confiscation shall be confiscated irrespective of whether the person has been convicted of the commission of an act prohibited by this Code, where:

- 1) when transferring the property to the offender or other persons, he was, or ought to have been, aware that this property would be used for the commission of the act prohibited by this Code;
- 2) the property has been transferred thereto under a fake transaction;
- 3) the property has been transferred thereto as to a family member or close relative of the offender;
- 4) the property has been transferred to him as to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);
- 5) when acquiring the property, he or the persons holding executive positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control

the activities of the legal person was/were, or ought and could have been, aware that the property is an instrument or a means used to commit an act prohibited by this Code or the result of such an act.

e.g., conviction for a crime: Yes.

property or availability of the confiscation object: Yes.

link -between the crime and the proceeds/instruments/products, etc.: Yes.

disproportionality (*“the value of the property is disproportionate to the lawful income of the convicted person”*),

No.

illegal origin (suspects/presumption of illegal origin): No.

temporal connection with the crime : Yes.

the lack of a justification of the legal origin by the owner, etc.: No.

2.d. Can this form of confiscation be applied when the owner or the convicted is dead?:

Yes.

2.e. For the model of confiscation which demands the conviction for a crime:

Can this model of confiscation be applied when the crime is statute barred (i.e. after the prescription) or somehow (in particular circumstances) without the conviction?: Yes.

2.f. Which is the legal nature? (a criminal sanction - accessory or principal criminal penalty -, a preventive measure - *ante delictum* criminal prevention measure -, security measure in a broad sense, administrative measure, civil measure *in rem*, a civil consequence of committing an offense - provided for by criminal law -, another type of autonomous - *sui generis* - instrument, etc.)

The nature of the confiscation is a penal sanction. The list of penal sanctions are foreseen in the Art. 67 of CC: prohibition to exercise a special right, deprivation of public rights, deprivation of the right to be employed in a certain position or to engage in a certain type of activities, compensation for or elimination of property damage; unpaid work; payment of a contribution to the fund of crime victims; confiscation of property; the obligation to reside separately from the victim and/or prohibition to approach the victim closer than a prescribed distance; participation in the programmes correcting violent behaviour; extended confiscation of property; etc.

Penal sanctions must assist in implementing the purpose of a penalty.

Extended confiscation (Article 72-3 CC)

2.a. Which is the object of the confiscation and its meaning/interpretation? (proceeds, products of the crime, instruments of the crime, etc.). Clarify if and in which case it is possible to confiscate the ‘value equivalent’:

The object of the extended confiscation is the property of the offender or part thereof *disproportionate* to the legitimate income of the offender, *where there are grounds for believing* that the property has been obtained by criminal means.

Where the property, or part thereof, which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons where are specific the grounds, a sum of money equivalent to the value of the property subject to confiscation (CC Art 72-3 Para 5)

2.b. Which is the scope of its introduction? (the fight against organised crime/money laundering/corruption/terrorism, etc., the application of the principle that crime doesn't pay, etc.).

The scope of extended confiscation is when the offender has been convicted of a less serious (premeditated crime punishable by a custodial sentence of the maximum duration in excess of three years, but not exceeding six years in prison), serious (a premeditated crime punishable by a custodial sentence of the duration in excess of six years, but not exceeding ten years in prison) or grave crime (premeditated crime punishable by a custodial sentence of the maximum duration in excess of ten years) *from which he obtained, or could have obtained, material gain.*

We agree that the nature of extended confiscation is also the application of the principle "crime does not pay".

2.c. Which are the elements to be realised and/or to be assessed for its application?

e.g., conviction for a crime,

Extended confiscation of property shall be imposed provided that all of the following conditions are met: the offender has been convicted of a less serious, serious or grave premeditated crime from which he obtained, or could have obtained, material gain; the offender holds the property acquired during the commission of an act prohibited by Criminal Code, after the commission thereof or within the period of five years prior to the commission thereof, whose value does not correspond to the offender's legitimate income, and the difference is greater than 250 minimum standards of living (MSLs, 1 MSL is 50 EUR) or transfers such property to other persons within the period specified in this point; the offender fails, in the course of criminal proceedings, to provide proof of the legitimacy of acquisition of the property.

The property referred to in paragraph and being subject to confiscation, if it has been transferred to another natural or legal person, shall be confiscated from this person, where at least one of the following grounds exists: the property has been transferred under a fake transaction; the property has been transferred to the offender's family members or close relatives; the property has been transferred to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.); the person whereto the property has been transferred or the persons holding executive positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property has been obtained by criminal means or with illicit funds of the offender.

When deciding on extended confiscation, courts are guided not only by the provisions of Article 72-3 of the Criminal Code, but also by the principles of proportionality, balance of interests, and other principles formulated in international normative documents and clarified in the case law of the European Court of Human Rights. It is noted that money derived from activities which cannot in any circumstances be regarded as lawful (e.g. distribution of narcotic drugs or psychotropic substances, trafficking in human beings, bribery, etc.) must be confiscated without

exception, as such a conclusion is in line with the provisions of the principle of proportionality, as laid down in the case law of the Constitutional Court of the Republic of Lithuania.

Art. 72-3 Para 2: “Extended confiscation of property shall be imposed provided that all of the following conditions are met:

- 1) the offender has been convicted of a less serious, serious or grave premeditated crime from which he obtained, or could have obtained, material gain;
- 2) the offender holds the property acquired during the commission of an act prohibited by Criminal Code, after the commission thereof or within the period of five years prior to the commission thereof, whose value does not correspond to the offender’s legitimate income, and the difference is greater than 250 minimum standards of living (MSLs, 1 MSL is 50 EUR) or transfers such property to other persons within the period specified in this point;
- 3) the offender fails, in the course of criminal proceedings, to provide proof of the legitimacy of acquisition of the property.”

Art. 72(3) Para 3: The property referred to in paragraph 2 of this Article and being subject to confiscation, if it has been transferred to another natural or legal person, shall be confiscated from this person, where at least one of the following grounds exists:

- 1) the property has been transferred under a fake transaction;
- 2) the property has been transferred to the offender's family members or close relatives;
- 3) the property has been transferred to a legal person, and the offender, his family members or close relatives is/are the legal person’s manager, a member of its management body or participants holding at least fifty percent of the legal person’s shares (member shares, contributions, etc.);
- 4) the person whereto the property has been transferred or the persons holding executive positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property has been obtained by criminal means or with illicit funds of the offender.

link -between the crime and the proceeds/instruments/products, etc.: No

disproportionality (*“the value of the property is disproportionate to the lawful income of the convicted person”*):

Yes

illegal origin (suspects/presumption of illegal origin), Yes

temporal connection with the crime, (?)No

the lack of a justification of the legal origin by the owner, etc. Yes

2.d. Can this form of confiscation be applied when the owner or the convicted is dead?

Yes.

2.e. For the model of confiscation which demands the conviction for a crime:

Can this model of confiscation be applied when the crime is statute barred (i.e. after the prescription) or somehow (in particular circumstances) without the conviction?

Yes.

2.f. Which is the legal nature? (a criminal sanction - accessory or principal criminal penalty -, a preventive measure - *ante delictum* criminal prevention measure -, security measure in a broad

sense, administrative measure, civil measure *in rem*, a civil consequence of committing an offense - provided for by criminal law -, another type of autonomous - *sui generis* - instrument, etc.)

The nature of extended confiscation is a penal sanction. The list of penal sanctions are foreseen in the Art. 67 of CC (see the list where confiscation is explained 2.f.).

Penal sanctions must assist in implementing the purpose of a penalty.

3) In particular, in Your national legal order is confiscation without conviction possible in cases of death, illness, absconding, prescription, amnesty, etc.

and which are the relevant legal bases?

Criminal Procedure Code of the Republic of Lithuania (hereinafter CPC) Article 94, Para 1 sets out: At the time of sentencing or termination of the proceedings, the issue of objects relevant to the investigation and examination of the offense shall be resolved as follows: the property referred to in Articles 72 and 72-3 of the Criminal Code of the Republic of Lithuania shall be confiscated).

The Supreme Court of Lithuania in "The Review of Court Practice in the Application of Confiscation of Property (Article 72 of the Criminal Code)" No. AB-32-1: (Published: "Court Practice. 2010, 32") set out: "It should be noted that, in the cases in question, the provisions of Article 72 of the CC must be considered in a systematic manner in conjunction with Article 94(1)(1) of the CPC, which provides that, at the time of sentencing or termination of the proceedings, the instruments, means and results of the criminal offense, which correspond to the features provided for in Article 72 of the CC, shall be confiscated. In certain cases, this provision has been interpreted in case-law as allowing for the confiscation of assets on condition that the assets (but not the conditions for their confiscation) meet the requirements of Article 72 CC. The reason for this is that the end of the proceedings cannot be the basis for keeping in circulation property whose criminal origin has been objectively established or which has been used in the commission of an offense. The possibility to confiscate assets without prosecuting the perpetrator is in line with the purpose of the confiscation of assets. The case law of the Supreme Court of Lithuania has stated that confiscation of property derived from a criminal offense is similar in nature to civil measures, as only the illegally obtained property is confiscated. On the other hand, confiscation of assets differs from civil measures in that, in the case of confiscation of assets, the State receives the assets, whereas in the case of civil liability measures, the victim receives the assets (Cassation case No 2K-270/2004). It is generally accepted in legal doctrine that law cannot be derived from wrongfulness, and that therefore, given this legal status of the property, it must be confiscated irrespective of whether or not the perpetrator and the other persons to whom it has been transferred have been held criminally liable for prosecution. Otherwise, it would create an incentive for those persons to dispose of the illegally acquired property. Consequently, when criminal proceedings are terminated by a court decision on the grounds referred to in Article 3 Para 1 (2), (4) and (7) of the CPC, the property may be confiscated pursuant to Article 94(1)(1) of the CPC if it meets the criteria set out in Article 72 of the CPC".

Article 3 Para 1 CPC providing provisions about circumstances preventing criminal proceedings establishes that criminal proceedings may not be instituted and must be discontinued: <...> (2) if the period of limitation of criminal liability has expired; <...> 4) (after 28/11/2017 amendments No XIII-805 changed to (3)) in the case of a person who, at the time of the commission of the offence, was under the age of criminal responsibility; <...> 7) (after 28/11/2017 amendments No XIII-805 changed to (5)) a deceased person, except where the case is necessary for the rehabilitation of the deceased person or for the reopening of the case of other persons on the grounds of newly discovered circumstances; <...>."

Other grounds for applying non-conviction based confiscation.

When an adult person is released from criminal liability on the grounds provided for in Chapter VI he/she is a subject to the penal sanctions (Confiscation and Extended Confiscation are penal sanctions) under Article 67.

Chapter VI (RELEASE FROM CRIMINAL LIABILITY) includes these provisions:

- Article 36 CC. Release from Criminal Liability When a Person or Criminal Act Loses Its Dangerousness.
- Article 37 CC. Release from Criminal Liability due to Minor Relevance of a Crime.
- Article 38 CC. Release from Criminal Liability upon Reconciliation between the Offender and the Victim.
- Article 39 CC. Release from Criminal Liability on the Basis of Mitigating Circumstances.
- Article 39(1) CC. Release from Criminal Liability When a Person Actively Assisted in Detecting the Criminal Acts Committed by Members of an Organised Group or a Criminal Association.
- Article 39-2. Release from criminal liability of the whistleblower,
- Article 40 CC. Release from Criminal Liability on Bail.

When a minor released from criminal liability on the grounds provided for in Chapter VI or Chapter XI of CC or released from a penalty on the grounds provided for in Chapter X of this Code may be subject to extended confiscation of property.

Article 93 Para 1 (in Chapter XI) sets out Release of a Minor from Criminal Liability:

1. A minor who commits a misdemeanour, or a negligent crime, or a minor or less serious premeditated crime for the first time may be released by the court from criminal liability where he:
 - 1) has offered his apology to the victim and has compensated for or eliminated, fully or in part, the property damage incurred by his work or in monetary terms; or
 - 2) is found to be of diminished capacity; or
 - 3) pleads guilty and regrets having committed a criminal act or there are other grounds for believing that in the future the minor will abide by the law and will not commit new criminal acts.

Please note, there is possibility of applying Civil Confiscation under the Law on Civil Confiscation of the Republic of Lithuania.

4) For each model of confiscation:

a) which is the procedure for its application? (the qualification/nature, the competent authority, the different steps, etc.).

At the time of sentencing or termination of the proceedings, the property referred to in Articles 72 and 72-3 of the Criminal Code of the Republic of Lithuania shall be confiscated. The decision is rendered by the court.

Article 94 Para 3 CPC also sets out that Confiscation or Extended Confiscation are imposed by the court. If the issue concerning property confiscation according to Article 72 or 72-3 of the Criminal Code has to be solved before the discontinuation of the pre-trial investigation, the pre-trial investigation is discontinued by the decision of a pre-trial judge approving the decisions of the prosecutor to discontinue the pre-trial investigation. When the issue of property confiscation or extended property confiscation has to be solved, a meeting is organized with the participation of the prosecutor, a person in relation to whom the decision of confiscation was adopted, as well as the representative of that person. The pre-trial judge

may decide to invite other persons as well. Participation of the prosecutor and representative of a person in relation to whom the decision of confiscation was adopted is obligatory. Decision of a pre-trial judge may be appealed in line with the procedure stipulated in part X of this Code.

Article 94 Para 4: A court that has passed a decision indicated in paragraph 3 of this Article following the order prescribed by the Government of the Republic of Lithuania may give over the implementation of such a decision to the competent institution of another EU Member State in the territory of which the property subject to confiscation is present or in the territory of which a person in relation to whom the decision of confiscation was adopted may have income or property.

Article 94 Para 5. On the basis and in the order set in the international agreements of the Republic of Lithuania and upon the request of a foreign institution the court may decide that after the legitimization of the decision the objects and valuables obtained in a criminal way may be transferred to a foreign institution in order it returned it to the rightful owners if the latter are established and if this does not violate the rightful interests of other persons. The objects which are prohibited from circulation are not transferred to a foreign institution.

- b) which is the standard of the proof/is the reversal of the burden of the proof admitted?**
In cases of Confiscation under Article 72 CC the burden of proof is on the prosecution.

What regards Extended Confiscation under Article 72-3, the burden of proof is also laid on prosecution, but it is also to be mentioned that Article 72-3 sets out provision if the offender fails, in the course of criminal proceedings, to provide proof of the legitimacy of acquisition of the property. The Supreme Court of the Republic of Lithuania concluded (cassation decision No 2K-195-976/2022): “The CPC does not provide for special methods of proof specifically for establishing the grounds and conditions for confiscation of property, so all the grounds and conditions necessary for extended confiscation of property are determined in accordance with the general rules of evidence. The burden of proving that the value of the property acquired or transferred by the perpetrator does not correspond to the perpetrator's legitimate income and that this difference exceeds the amount of the MGL 250 is on the prosecution in the case (Cassation ruling in criminal case No 2K-72-511/2021).<...>At the same time, it should be noted that decisions on confiscation of the proceeds of drug trafficking, money laundering, corruption or other serious crimes do not necessarily have to be based on full proof of the illicit origin of such assets, i.e. in accordance with the principle of "beyond reasonable doubt". Where there is evidence of such criminal activity, proof of the illicit origin of the property may also be based on the principle of a high degree of probability, combined with the owner's inability to prove otherwise (e.g., judgment of 12 May 2015 in Gogitidze and Others v. Georgia, petition No. 36862/05, para. 107; Judgment of 26 June 2018, Telbis and Viziteu v. Romania, Petition No. 47911/15, para. 68). This is also the practice of the Court of Cassation (e.g. Cassation decisions in criminal cases No 2K-51-788/2021, 2K-72-511/2021, 2K-62-495/2022)”.

Lithuanian jurisprudence follows the principles of proportionality, balance of interests set out by the European Court of Human Rights. Court does not require proof “beyond reasonable doubt” of the illicit origins of the property in such proceedings. Instead, proof on a balance of probabilities or a high probability of illicit origins, combined with the inability of the owner to prove the contrary, was found to suffice for the purposes of the proportionality test.

- c) **Which are the safeguards (limitations e.g. proportionality clauses, relevant legal remedies)?** Practice of the Supreme Court of Lithuania pays attention to the principle of proportionality. For example, Cassation decision No 2K-201-303/2022 lays down that the Jcourt draws attention to the fact that in order to have a preventive effect, i.e. to ensure that the relevant measure will not be used in the future, the possibility of confiscating the confiscated property (instrument) itself into the ownership of the State should be considered first (cassation rulings in criminal cases No 2K-107-976/2021, 2K-91-303/2021). Therefore, in cases where confiscated property is identified in a case, the court must first assess the possibility of confiscating such property on the basis of Article 72(1) to (4) of the CC, and only in the absence of such a possibility, or where for certain reasons it is not appropriate, should it decide on the recovery of the value of the property to be confiscated, in accordance with Article 72(5) of the CC. In such cases, reasons must be given, inter alia, as to why the case does not establish the possibility of confiscating the instrument itself and why confiscation of the value of the instrument (or part of it) is more appropriate. When applying the provisions of Article 72(5) of the CC, i.e. confiscating the monetary value of the instrument of commission of the offence rather than the instrument itself, it is also necessary to consider whether such a measure of criminal sanction is in line with the objectives of confiscation of property, and to assess the proportionality of such recovery (Cassation decisions in Criminal Cases No 2K-17-788/2019, 2K-195-788/2019, 2K-107-976/2021, 2K-91-303/2021).
- d) **Is the trial *in absentia* possible in your legal system in order to apply the confiscation?**

The trial *in absentia* is possible to apply in Lithuanian legal system. It is possible to confiscate the property *in absentia*.

Art. 246 CPC sets out that the case shall be heard at the court of first instance in the presence of the accused, who shall be obliged to appear before the court. The trial shall be conducted in the absence of the accused only if he is outside the territory of the Republic of Lithuania and refuses to appear before the court. The presence of an accused person who is unable to appear before the court in which the case is being heard or who is detained in a detention center may be ensured by means of audio-visual remote transmission. Where the accused does not attend the court hearing in the case provided for in paragraph 1 of this Article, the proceedings shall be held in accordance with the general procedure, except for the exceptions provided for in Chapter XXXII of this Code.

A case may be heard in the absence of the accused in the case provided for in Article 246 of CPC. The judge shall decide whether the case may be tried in the absence of the accused at the time of preparation for the trial. If, during the trial, it appears that it is impossible to give a fair trial in the absence of the accused, the trial shall be adjourned.(Article 433 CPC. Trial in the absence of the accused).

Article 436 CPC lays down special rules of proceedings in the absence of the accused:
1. In the absence of the accused, at the beginning of the examination of evidence in court, after the prosecutor has read out the indictment in accordance with the procedure laid down in Article 271 of this Code, the defense counsel shall be given an opportunity to state his/her

opinion on the accusation. The parties to the proceedings may ask the defense counsel to clarify his position.

2. In the absence of the accused, the possibility provided for in Article 273 of this Code to conduct a summary examination of evidence may not be exercised, although the case file contains a confession of the accused, which is not contested by the defense.

3. In the absence of the accused, the defense counsel shall be given the opportunity to make a closing statement after the closing arguments. The court shall then proceed immediately to deliver its verdict.

Article 437 CPC establishes the rules of enforcement the judgment *in absentia*.

1. The judgment delivered in the absence of the accused shall be served on the defense counsel. The time-limit within which the judgment shall become final shall begin to run from the moment of service of the judgment on the defense counsel.

2. A judgment which has been delivered and has become final shall be enforceable only in so far as it is possible to execute it without the convicted person before the convicted person is arrested or brought before the court by way of extradition or pursuant to a European Arrest Warrant.

- e) For the confiscation without conviction: **can this form of confiscation be applied also in case of acquittal?**

Civil confiscation can be applied in case of acquittal on certain legal grounds. The Law on Civil Confiscation of Property of the Republic of Lithuania was adopted on 31 March 2020 and came into force on 1 July 2020.

Property and property benefits derived therefrom (hereinafter referred to as “property”) may be confiscated where there are grounds for believing that such property has not been obtained in a lawful manner and where the total value of such property does not correspond to the legitimate income of the person or persons referred to in paragraph 2 of this Article and the difference exceeds the sum of 2000 basic penalties (please note, 100’000 EUR).

2. Assets shall be presumed not to have been obtained lawfully when they are owned and cannot be based on legal income by persons meeting at least one of the following conditions:

1) who have been suspected, charged or convicted of the offences provided for in Articles 147, 147(2), 157, 162(1), 178(2) and (3), 180, 181, 182(2), 182(1), 183(2), 184(2), 189(2), 199, 199-1, 199-2, 200 of the Criminal Code of the Republic of Lithuania, the completion of Article 201(2), Article 213(2), Article 213(4), Articles 214, 215, 216, 218, 220(2), 225(1), (2), (3), 226(1), (2), (3), (4), Article 227(12), (3), 228, 249, 250, 250-1, 250-2, 25-3, 250-4, 250-5, 250-6 , 251, 251-1, 252, 253, 254, 256, 257-1, 2, 260, 261, 292(1), (2), (3), and 307;

2) who have been refused to initiate criminal proceedings in respect of the offences referred to in paragraph 1 of this paragraph, Article 3(1)(2) and (3) of the Code of Criminal Procedure of the Republic of Lithuania,

On the grounds set out in points 5, 6 and, if criminal proceedings have been instituted, it has been terminated on the grounds set out in Articles 3, 212, 327 of the Code of Criminal Procedure;

3) released from criminal liability for the offences referred to in paragraph 1 of this paragraph in accordance with the procedure laid down in the Criminal Code;

4) are included in the lists of members of organised crime groups identified by the Police Department under the Ministry of the Interior of the Republic of Lithuania ('the Police Department'), drawn up in accordance with the criteria laid down in the Law;

5) who is the spouse of a person referred to in points 1.2, 3 or 4 of this Part or a person with whom a person referred to in points 1, 2, 3 or 4 of this Part manages a holding jointly.

3. The property referred to in paragraph 1 of this Article, or part thereof, transferred by the person referred to in paragraph 2 of this Article to another natural or legal person who knew or should have known that the purpose of the transfer or acquisition of such property was to avoid the confiscation of those assets (hereinafter referred to as the 'unfair acquirer') may also be confiscated.

4. The acquirer shall be presumed to be unfair where the assets referred to in paragraph 1 of this Article:

1) shall be transferred to the close relatives (parents), children (adopted children), siblings, grandparents and grandchildren of the person referred to in subparagraphs 1, 2, 3.4 or 5 of paragraph 2 of this Article;

2) acquired through a fictitious or alleged transaction;

3) acquired on a non-remunerated basis from a person referred to in points 1, 2, 3, 4 or 5 of paragraph 2 of this Article;

4) acquired by a legal person whose manager, member of the management body or participants holding at least fifty percent of the shares (fees, contributions) of the legal person shall be the persons referred to in paragraph 2 of this Article.

5) For each model of confiscation:

The answer is applicable for each model of confiscation:

**Does it comply with the principles of:
legality?**

The purpose of criminal proceedings shall be, in the interests of the protection of human and civil rights and freedoms, and the interests of society and the State, to detect criminal offences promptly and thoroughly, and to apply the law correctly, so that the person who has committed a criminal offence may be punished justly and so that no innocent person may be convicted (Art.1 CPC).

legal specificity of a statute? All model of confiscation have their legal grounds and specific rules.

non-retroactivity of the /more severe/statute?

Article 3 CC establishes the rules of duration of criminal law.

1. The criminality of an act and the criminality of a person shall be determined by the criminal law in force at the time the act was committed. The time of the commission of a criminal offence shall be the time of the act (omission) or the time of the occurrence of the consequences provided for by the criminal law, if the person intended the consequences to occur at another time.

2. A criminal law that abolishes the criminality of an act, mitigates the punishment or otherwise alleviates the legal position of the perpetrator shall have retroactive effect, i.e. it shall apply to persons who committed a criminal offence prior to the entry into force of the law, as well as to persons who are serving a sentence and persons who have a criminal record.

3. A criminal law which criminalizes an act, increases the penalty or otherwise aggravates the legal position of a person who has committed an offence shall not have retroactive effect. Exceptions

to this are the provisions of this Code establishing liability for genocide (Article 99), the treatment of human beings prohibited by international law (Article 100), the killing of persons protected by international humanitarian law (Article 101), the deportation or transfer of civilians (Article 102), the maiming, torture or other inhuman treatment of persons protected by international humanitarian law, or the violation of protection of their property (Article 103), the forcible use of civilians or prisoners of war in the armed forces of the enemy (Article 105), the destruction of protected objects or the plundering of national treasures (Article 106), aggression (Article 110), a prohibited attack (Article 111), the use of prohibited means of warfare (Article 112), the negligent discharge of the duties of a commander (Article 113-1).

the right to private property?

Article 23 of the Constitution of the Republic of Lithuania establishes that property shall be inviolable. Property rights shall be protected by law. Property may be taken only for public use in accordance with the procedure laid down by law and with just compensation.

Article 151 and 152 CPC lays down strict rules of provisional restraint of ownership rights and right to appeal this decision.

the proportionality?

Article 11 Para 1 CPC tells about Respect for the principle of proportionality in the application of procedural coercive measures and investigative measures (provisional restraint of ownership rights is considered as procedural coercive measure): procedural coercive measures shall only be used in cases where the necessary procedural objectives cannot be achieved without them. The application of any procedural coercive measure shall be immediately terminated when it becomes unnecessary.

the right to a fair trial?

Article 6 CPC sets out that Criminal cases shall be heard only by the courts. Justice in criminal matters shall be administered in accordance with the principle that all persons shall be equal before the law and the courts, irrespective of their origin, social or property status, nationality, race, sex, education, language, religious or political opinions, type or nature of their occupation or activity, place of residence or any other circumstances. It is forbidden to grant privileges to anyone or to impose restrictions on the basis of any circumstance or on the basis of a person's personal qualities, social or financial status.

Articles 57-61 of CPC establish the grounds and the rules of removal of a judge, prosecutor, attorney, translator, investigator, expert.

The principle of impartiality (cassation rulings in criminal cases No 2K-49/2014, 2K-145-139/2015, 2K-452-788/2016, etc.) means that the parties to the proceedings should be treated equally during the investigation and examination of a criminal case, and that the entities conducting the proceedings (the pre-trial investigation officer, the public prosecutor, the pre-trial judge and the court) should not have an interest in adopting a favourable decision for one of the parties or otherwise create grounds for questioning the impartiality of their activities. Judicial bias may be related to the holding of a preconceived opinion. Other circumstances of the criminal case, such as the judge's position in assessing the evidence in the case, the hearing of motions before the court, the adoption of a new decision (verdict or decision), etc., are also relevant in assessing the question of the judge's objective impartiality. Lithuanian courts follow the jurisprudence of the European Court of Human Rights that the impartiality of a court is tested in two aspects. First, the court must be subjectively impartial. This aspect takes into account the personal disposition and conduct of the individual judge, whether he or she is personally prejudiced or biased in a particular case. Second, the court must be impartial in the objective sense.

the right to defence?

Suspects, accused persons and convicted persons have the right to a defence. This right shall be guaranteed to them as soon as they are arrested or first questioned. The court, the prosecutor, the pre-trial investigation officer shall ensure that the suspect, the accused and the convicted person have the opportunity to defend themselves against suspicions and accusations by the means and in the manner prescribed by law, and shall take the necessary measures to ensure the protection of their personal and property rights (Article 10 CPC).

the presumption of innocence?

The principle of the presumption of innocence is provided in Article 31 of the Constitution and echoed by Art. 44 para 6 of CPC, which declare that a person shall be presumed innocent until his guilty proven in accordance with the procedure laid down by law and convicted by a final court judgment.

the *ne bis in idem* principle?

Article 3 Para 1(8) of the CPC provides that criminal proceedings may not be opened and must be discontinued against a person against whom a court judgment on the same charge or a court order or a prosecutor's decision to discontinue proceedings on the same grounds has become final. The *ne bis in idem* provision is also provided in Article 31 Para 5 of the Constitution of the Republic of Lithuania and Article 2 Para 6 of the CC. Constitutional jurisprudence has established that the principle of non bis in idem also means that if a person has been held administratively liable for an act contrary to the law, i.e. a sanction has been imposed on him/her, he/she is not also be held criminally liable for the same act (Decision of the Constitutional Court of the Republic of Lithuania of 10 November 2005).

and other relevant rights – what sort of?

Article 44 CPC. Protection of personal rights in criminal proceedings

1. No one shall be deprived of his liberty except in the cases and according to the procedure provided for in this Code.
2. Every detainee or arrested person shall be informed without delay, in a language which he understands, of the reasons for which he is being detained or arrested.
3. Every detainee or arrested person shall have the right to apply to a court of law to complain that he has been wrongly detained or arrested.
4. Any person who has been wrongfully detained or arrested shall have the right to redress in accordance with the procedure laid down by law.
5. Any person charged with a criminal offence shall have the right to have his or her case heard by an independent and impartial tribunal within the shortest possible time and under conditions of equality and publicity.
6. Any person suspected or accused of having committed a criminal offence shall be presumed innocent until his or her guilt has been proved in accordance with the procedure laid down in this Code and has been recognised by a final court judgment. All doubts and/or uncertainties as to the guilt of the person accused of committing a criminal offence or other circumstances relevant to the fair resolution of the case, which cannot be eliminated in the course of the criminal proceedings after exhausting all possibilities of procedural steps, shall be assessed in favour of the person accused of committing a criminal offence.
7. Every person suspected or accused of having committed a criminal offence shall have the right to be promptly and fully informed, in a language which he or she understands, of the nature and the grounds of the charge against him or her, to be given sufficient time and opportunity to prepare his or her defence, to cross-examine witnesses or to request that witnesses be examined, and to have access to an interpreter free of charge if he or she does not understand or speak the language of the authorities, in the case where he or she does not understand or speak Lithuanian.
8. Any person suspected or accused of committing a criminal offence may defend himself or herself or through a defence counsel of his or her choice, and if he or she does not have sufficient

means to pay for a defence counsel, he or she shall be entitled to free legal aid in accordance with the procedure laid down in the Law on the Provision of State-Guaranteed Legal Aid. It shall be prohibited to control communication between a suspect, accused, convicted person, acquitted person and his/her defence counsel in the form of meetings, correspondence, telephone conversations or any other form of communication.

9. Everyone has the right to respect for his or her private life and that of his or her family, as well as the right to the inviolability of his or her home and the right to the confidentiality of correspondence, telephone conversations, telegraphic communications and other communications. These rights may be restricted in the course of criminal proceedings in the cases and according to the procedure provided for in this Code.

Please note, what regards Extended Confiscation there might be clarifications in the context of the file in the Constitutional Court of Lithuania (see below under 7 a))

7) For each model of confiscation:

a) Are there constitutionality issues which have been detected in the legal doctrine and is there any relevant jurisprudence ruling on the constitutionality (or not) of the confiscation measure?

The Constitutional Court of Lithuania will assess the constitutionality of the Criminal Code's provisions on extended confiscation of property. The Constitutional Court of Lithuania has received a request from a natural person to examine the compatibility of Article 72(3) Para 1 (Extended Confiscation) of the Criminal Code with Articles 23, 31 of Constitution of the Republic of Lithuania.

In his application, the applicant submits that Article 23 of the Constitution ensures the right to property and guarantees the protection of this right. This right is not absolute, but may be restricted by law on the basis of the nature of the object of the property, the commission of acts contrary to the law and/or a socially necessary and constitutionally justifiable necessity. The applicant submits, referring to the provisions of the official constitutional doctrine formulated in the interpretation of Article 23 of the Constitution, that in all cases of restriction of the right to property, the following conditions must be complied with: the right to property may be restricted only on the basis of a law; the restriction must be necessary in a democratic society in order to protect the rights and freedoms of others, the values enshrined in the Constitution, and the constitutionally necessary and important objectives pursued by the society; and the principle of proportionality, according to which the measures provided for by law must be in conformity with the objectives pursued, which are necessary for the society and which are constitutionally justifiable, must be respected.

According to the applicant, under the contested legislation, the court's doubt as to the lawfulness of the acquisition of the property, which is based solely on the assumption that the property may have been acquired unlawfully, is sufficient for the application of extended confiscation, and that such property may therefore be confiscated, even though its connection with a criminal offense has not been proved. Thus, in principle, it is permissible to expropriate a person's assets which are not necessarily illegally acquired.

According to the applicant, given the *ultima ratio* nature of criminal law, the grounds for restricting the right to property must be clear and precisely formulated, but, in the applicant's view, the contested legislation allows the court to deprive property on the basis of presumptions, without the unlawful origin of the property being objectively established and proved. Moreover, according

to the applicant, the extended confiscation of property is not the main penalty for the convicted person, but an additional measure of penal effect intended to help achieve the purpose of the penalty, but in the absence of a mandatory requirement to establish and prove the illegality of the origin of the property beyond doubt, the above-mentioned measure of penal effect, in the applicant's view, is to be regarded as an extreme measure, which is more serious than a penalty, and which is manifestly disproportionate in relation to the circumstances and seriousness of the crime committed. The applicant therefore doubts that a severe criminal measure such as extended confiscation can be justified in the interests of public security.

The applicant submits that the presumption of innocence, enshrined in Article 31(1) of the Constitution, is a fundamental principle of the administration of justice in criminal proceedings and one of the most important guarantees of human rights and freedoms, namely that a person shall be presumed to be innocent of any offense until his or her guilt is proved in accordance with the procedure laid down by the law and recognized by a final judgment of a court. The applicant points out that, in accordance with the principle of the presumption of innocence, the burden of proving the unlawfulness of the acquisition of property should be borne by the prosecuting authorities, and that this burden cannot be shifted to the accused, but that any doubt should be assessed in favour of the accused. Therefore, in the applicant's view, the contested legislation, which requires the prosecution to prove the lawfulness of the acquisition of the property in the course of the criminal proceedings, establishes a 'presumption of guilt' of the person subject to the extended confiscation of property. This does not respect the principle of *in dubio pro reo*, according to which doubts are to be interpreted in favour of the accused when all possibilities have been exhausted and cannot be removed. The applicant considers that such a presumption of guilt is therefore incompatible with the principle of the presumption of innocence enshrined in Article 31(1) of the Constitution and infringes the rights of the defence.

Having established that the application meets the requirements for admissibility laid down in Article 106(4) of the Constitution and in the Law on the Constitutional Court, the application is admitted for examination before the Constitutional Court.

b) Are there European Court of Human Rights cases in relation to “Your” model of confiscation?

Please, explain the position of the ECHR about “Your” model of confiscation.

c) Is there any CJEU decision concerning “Your” confiscation model?

9) For each model of confiscation:

a) How was the Directive 2014/42/EU transposed in Your national legal order and how did this affect national law?

All provisions of CC and CPC and its amendments were made before the adoption of Directive 2014/42/EU.

b) Does the relevant confiscation procedure fall within the concept of “proceedings in criminal matters” which is provided for by the Regulation (EU) no. 1805/2018?

Yes

- c) In Your opinion are the safeguards required by the Regulation enough for the protection of the defendants' rights? Is there any additional national legislation aimed at adjusting the national legal order to the provisions of Regulation or any relevant need thereof in order to make Your national confiscation models more compliant with the safeguards required by the Regulation? Are there any lessons that we should learn from Your national experience?

In our opinion safeguards required by the Regulation seems to be sufficient.

LEGISLATION

CRIMINAL CODE OF THE REPUBLIC OF LITHUANIA

Article 72. Confiscation of Property

1. Confiscation of property shall be the compulsory uncompensated taking into the ownership of a state of any form of property subject to confiscation and held by the offender or other persons.

2. An instrument or a means used to commit an act prohibited by this Code or the result of such an act shall be considered as property subject to confiscation. The property of any form directly or indirectly obtained/derived from the act prohibited by this Code shall be considered as the result of the act.

3. The property held by the offender and being subject to confiscation must be confiscated in all cases.

4. The property held by another natural or legal person and being subject to confiscation shall be confiscated irrespective of whether the person has been convicted of the commission of an act prohibited by this Code, where:

1) when transferring the property to the offender or other persons, he was, or ought to have been, aware that this property would be used for the commission of the act prohibited by this Code;

2) the property has been transferred thereto under a fake transaction;

3) the property has been transferred thereto as to a family member or close relative of the offender;

4) the property has been transferred to him as to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);

5) when acquiring the property, he or the persons holding executive positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property is an instrument or a means used to commit an act prohibited by this Code or the result of such an act.

5. Where the property which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in paragraph 4 of this Article a sum of money equivalent to the value of the property subject to confiscation.

6. When ordering confiscation of property, the court must specify the items subject to confiscation or the monetary value of the property subject to confiscation.

Article 72-3. Extended Confiscation of Property

1. Extended confiscation of property shall be the taking into ownership of the State of the property of the offender or part thereof disproportionate to the legitimate income of the offender, where there are grounds for believing that the property has been obtained by criminal means.

2. Extended confiscation of property shall be imposed provided that all of the following conditions are met:

1) the offender has been convicted of a less serious, serious or grave premeditated crime from which he obtained, or could have obtained, material gain;

2) the offender holds the property acquired during the commission of an act prohibited by this Code, after the commission thereof or within the period of five years prior to the commission thereof, whose value does not correspond to the offender's legitimate income, and the difference is greater than 250 minimum standards of living (MSLs) or transfers such property to other persons within the period specified in this point;

3) the offender fails, in the course of criminal proceedings, to provide proof of the legitimacy of acquisition of the property.

3. The property referred to in paragraph 2 of this Article and being subject to confiscation, if it has been transferred to another natural or legal person, shall be confiscated from this person, where at least one of the following grounds exists:

1) the property has been transferred under a fake transaction;

2) the property has been transferred to the offender's family members or close relatives;

3) the property has been transferred to a legal person, and the offender, his family members or close relatives is/are the legal person's manager, a member of its management body or participants holding at least fifty percent of the legal person's shares (member shares, contributions, etc.);

4) the person whereto the property has been transferred or the persons holding executive positions in the legal person and being entitled to represent it, to make decisions on behalf of the legal person or to control the activities of the legal person was/were, or ought and could have been, aware that the property has been obtained by criminal means or with illicit funds of the offender.

4. The extended confiscation of property provided for in this Article may not be imposed on the property of the offender or third parties or part thereof if it is not recoverable under international treaties of the Republic of Lithuania and provisions of the Code of Civil Procedure of the Republic of Lithuania and other laws.

5. Where the property, or part thereof, which is subject to confiscation has been concealed, consumed, belongs to third parties or cannot be taken for other reasons or confiscation of this property would not be appropriate, the court shall recover from the offender or other persons indicated in paragraph 3 of this Article a sum of money equivalent to the value of the property subject to confiscation.

6. When ordering extended confiscation of property, the court must specify the items subject to confiscation or the monetary value of the property or part thereof subject to confiscation.

Article 10. Types of Criminal Acts

Criminal acts shall be divided into crimes and misdemeanours.

Article 11. Crime

1. A crime shall be a dangerous act (act or omission) forbidden under this Code and punishable with a custodial sentence.

2. Crimes shall be committed with intent and through negligence. Premeditated crimes shall be divided into minor, less serious, serious and grave crimes.

3. A minor crime shall be a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration of three years.

4. A less serious crime shall be a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of three years, but not exceeding six years in prison.

5. A serious crime shall be a premeditated crime punishable, under the criminal law, by a custodial sentence of the duration in excess of three years, but not exceeding ten years in prison.

6. A grave crime shall be a premeditated crime punishable, under the criminal law, by a custodial sentence of the maximum duration in excess of ten years.

Article 12. Misdemeanour

A misdemeanour shall be a dangerous act (act or omission) forbidden under this Code which is punishable by a non-custodial sentence, with the exception of arrest.

**CHAPTER VI
RELEASE FROM CRIMINAL LIABILITY**

Article 36. Release from Criminal Liability When a Person or Criminal Act Loses Its Dangerousness

A person who commits a criminal act shall be released from criminal liability where a court acknowledges that before opening of the hearing of the case in the court this person or the act committed thereby had lost its dangerous character due to a change in circumstances.

Article 37. Release from Criminal Liability due to Minor Relevance of a Crime

A person who commits a crime may be released from criminal liability by a court where the act is recognised as being of minor relevance due to the extent of the damage incurred, the object of the crime or other peculiarities of the crime.

Article 38. Release from Criminal Liability upon Reconciliation between the Offender and the Victim

1. A person who commits a misdemeanour, a negligent crime or a minor or less serious premeditated crime may be released by a court from criminal liability where:

1) he has confessed to commission of the criminal act, and

2) voluntarily compensated for or eliminated the damage incurred to a natural or legal person or agreed on the compensation for or elimination of this damage, and

3) reconciles with the victim or a representative of a legal person or a state institution, and

4) there is a basis for believing that he will not commit new criminal acts.

2. A dangerous repeat offender, also a person who had already been released from criminal liability on the basis of reconciliation with the victim, where less than four years had lapsed from the day of reconciliation until the commission of a new act, may not be released from criminal liability on the grounds provided for in paragraph 1 of this Article.

3. If a person released from criminal liability under paragraph 1 of this Article commits a misdemeanour or a negligent crime within the period of one year or fails, without valid reasons, to comply an agreement approved by a court on the terms and conditions of and procedure for compensating for the damage, the court may revoke its decision on the release from criminal liability and decide to prosecute the person for all the criminal acts committed.

4. If a person released from criminal liability under paragraph 1 of this Article commits a new premeditated crime within the period of one year, the previous decision releasing him from criminal liability shall become invalid and a decision shall be adopted on the prosecution of the person for all the criminal acts committed.

Article 39. Release from Criminal Liability on the Basis of Mitigating Circumstances

A person who commits a misdemeanour or a negligent or minor premeditated crime may be released from criminal liability by a reasoned decision of the court where:

1) he commits the criminal act for the first time, and

2) there are at least two mitigating circumstances provided for in paragraph 1 of Article 59 of this Code, and

3) there are no aggravating circumstances.

Article 39¹. Release from Criminal Liability When a Person Actively Assisted in Detecting the Criminal Acts Committed by Members of an Organised Group or a Criminal Association

1. A person who is suspected of participation in the commission of criminal acts by an organised group or a criminal association or belonging to a criminal association may be released from criminal liability where he confesses his participation in the commission of such a criminal act or his membership of the criminal association and where he actively assists in detecting the criminal acts committed by members of the organised group or the criminal association.

2. Paragraph 1 of this Article shall not apply to a person who participated in the commission of a premeditated murder or who had already been released from criminal liability on such grounds, also to the organiser or leader of an organised group or a criminal association.

Article 39-2. Release from criminal liability of the whistleblower

1. A person who has committed a criminal misdemeanour, a reckless offence or a minor or trivial offence may be released from criminal liability by the court if:

1) he/she has been recognised as a whistleblower in accordance with the Law on the Protection of Whistleblowers of the Republic of Lithuania and

2) he has confessed to the commission of a criminal offence, and

3) he/she has actively assisted in the detection of a criminal offence committed by another person, and

4) the criminal offence which he/she has helped to disclose is of a more serious nature than the criminal offence committed by him/her.

2. On the grounds referred to in paragraph 1 of this Article, a dangerous recidivist, a person with a criminal record who was the organiser of the criminal offence which he/she has helped to uncover shall not be exempted from criminal liability.

3. If a person who has been released from criminal liability pursuant to paragraph 1 of this Article has committed a criminal misdemeanour or a reckless offence within a period of one year, the court may revoke the decision on the release from criminal liability and decide on the criminal liability of such a person for all the criminal offences committed.

4. If a person who has been released from criminal liability pursuant to paragraph 1 of this Article commits a new intentional offence within a period of one year, the previous decision to release him from criminal liability shall lapse and the decision shall be taken on the criminal liability of such person for all the offences committed.

Article 40. Release from Criminal Liability on Bail

1. A person who commits a misdemeanour, a negligent crime or a minor or less serious intentional crime may be released by a court from criminal liability subject to a request by a person worthy of a court's trust to transfer the offender into his responsibility on bail. Bail may be set with or without a surety.

2. A person may be released from criminal liability by a court on bail where:

1) he commits the criminal act for the first time, and

2) he fully confesses his guilt and regrets having committed the criminal act, and

3) at least partly compensates for or eliminates the damage incurred or undertakes to compensate for such where it has been incurred, and

4) there is a basis for believing that he will fully compensate for or eliminate the damage incurred, will comply with laws and will not commit new criminal acts.

3. A bailman may be parents of the offender, close relatives or other persons worthy of a court's trust. When taking a decision, the court shall take account of the bailman's personal traits or nature of activities and a possibility of exerting a positive influence on the offender.

4. The term of bail shall be set from one year up to three years.

5. When requesting to release a person on bail with a surety, a bailman shall undertake to pay a surety in the amount specified by a court. Taking account of a bailman's personal traits and his financial situation, the court shall specify the amount of the surety or decide on release from criminal liability on bail without a surety. The bail bond shall be returned upon the expiry of the term of bail

where a person subject to bail does not commit a new criminal act within the term of bail as laid down by the court.

6. A bailman shall have the right to withdraw from bail. In this case, a court shall, taking account of the reasons for a withdrawal from bail, decide on the return of a surety, also on a person's criminal liability for the committed criminal act, appointment of another bailman or the person's release from criminal liability.

7. If a person released from criminal liability on bail commits a new misdemeanour or negligent crime during the term of bail, a court may revoke its decision on the release from criminal liability and shall decide to prosecute the person for all the criminal acts committed.

8. If a person released from criminal liability on bail commits a new premeditated crime during the term of bail, the previous decision releasing him from criminal liability shall become invalid and the court shall decide to prosecute the person for all the criminal acts committed.

CRIMINAL PROCEDURE CODE OF THE REPUBLIC OF LITHUANIA

Article 151 CPC. Provisional restraint of ownership rights

1. For the purposes of securing a civil claim or a probable (extended) confiscation of property, provisional restraint of the ownership rights may be imposed, upon the decision of the prosecutor, on a suspect or a natural person who, in accordance with the provisions of legal acts, is held financially responsible for the actions of the suspect, or on any other natural persons who possess the property received or acquired as a result of a criminal offence or who possess the property subject to confiscation which corresponds to the property defined by Article 723 of the Criminal Code of the Republic of Lithuania. Provisional restraint of the ownership rights may be imposed in conjunction with seizure or search.

2. The ownership rights of a legal person may be provisionally restrained further to the prosecutor's decision:

1) in order to secure a probable confiscation of property in the cases provided for by article 72 of the Criminal Code of the Republic of Lithuania and a probable extended confiscation of property in the cases provided for by article 723 of the Criminal Code of the Republic of Lithuania;

2) in order to secure a civil claim where there are sufficient grounds for bringing a civil action against a legal person;

3. A detailed list of the property of a person subject to provisional restraint of the ownership rights shall be made in the presence of persons indicated in Paragraph 4 of Article 145 of this Code. All the property subject to inventory must be shown to the persons present. In the official record of the provisional restraint of ownership rights or in annex thereof which is drawn up separately (detailed list of property) the quantity and individual features of the objects listed in the inventory must be specified. Provisional restraint of the ownership rights may not be applied in respect of objects which, pursuant to the list laid down by the laws of the Republic of Lithuania, are necessary for the suspect, his family members or persons dependant upon him.

4. Property in respect of which the right of ownership is provisionally restrained shall be transferred, at the discretion of the prosecutor, to a representative of a municipal institution or to the owner of such property or a member of his family, a close relative, or another person. Liability under Article 246 of the Criminal Code of the Republic of Lithuania for the disposal, concealment, destruction or damage of such property must be clarified to them. As a result, a written undertaking is taken from such persons. If necessary, such assets may be taken away. Where ownership of cash deposits is provisionally restrained, all operations with them shall be terminated unless otherwise specified in the decision on the provisional restraint of ownership rights.

5. A person subject to provisional restraint of the ownership rights shall be entitled to appeal against such decision of a prosecutor to a pre-trial judge. Such an appeal must be examined by the investigating judge not

later than within seven days from the receipt of the appeal. The resolution of the investigating judge may be appealed against to a higher court. The resolution of the higher court shall be final and not subject to appeal.

6. Provisional restraint of the ownership rights imposed further to the prosecutor's decision may not last longer than for a period of six months. This term may be extended by the ruling of a pre-trial judge but for not more than six months. The pre-trial judge rulings on either extending or refusing to extend the time period of provisional restraint of the ownership rights shall be appealed in accordance with the procedure established in Part X of this Code. Where the case has been referred to the court, the imposition of provisional restraint of the ownership rights or the extension of the time period of this penal measure shall be decided (in the form of a court ruling) by the court having jurisdiction over the case. The court ruling shall be appealed against in accordance with the procedure established in Part X of this Code.

7. In cases involving medium crimes provided for under Article 189 Parts 1 and 2 of the Criminal Code of the Republic of Lithuania, serious or particularly serious (grave) crimes or in criminal cases where a civil action has been brought with regard to reimbursement of damages caused by the criminal offence or where the suspect has gone into hiding, the number of extensions of the time periods of provisional restraint of ownership rights shall be unlimited.

8. Provisional restraint of the ownership rights shall be cancelled further to the decision of a prosecutor or a court ruling, where this measure has become unnecessary.

Article 152. Resolution on provisional restraint of ownership rights

1. Resolution on provisional restraint of ownership rights shall indicate:

- 1) time and location of making the resolution;
- 2) the prosecutor who made the resolution;
- 3) motives of making the resolution and the grounds for provisional restraint of ownership rights;
- 4) the person with regard to whom the provisional restraint of ownership rights was imposed (name, surname, personal number, and the place of residence of a natural person; name, address of the registered office and code of a legal person);
- 5) the person with regard to the satisfaction of whose claim the provisional restraint of ownership rights is being imposed (name, surname, personal number, and the place of residence of a natural person; name, registered office and the code of a legal person) when the ownership right is restricted with a view to securing a civil claim;
- 6) the name of the property the ownership rights thereto are provisionally restrained, its code (where the property is registered in the property register), its brief description, location and other identifying information;
- 7) the owner (co-owners) of the property subject to provisional restraint of ownership rights: name, surname, personal number, the place of residence of a natural person; name, location of the registered office and code of a legal person;
- 8) forms of provisional restraint of ownership rights (total restriction of ownership right or individual components of this right) and the extent;
- 9) the term of application of provisional restraint of ownership rights;
- 10) the custodian or administrator of the property (name, surname, personal number and the place of residence of a natural person; location of the registered office and code of a legal person);
- 11) procedure for execution of the resolution;

12) procedure for appealing the resolution.

2. The resolution shall be notified to the person whose property rights are to be provisionally restrained and all the owners (co-owners) of the property the ownership rights to which are subject to provisional restraint immediately but not later than on the next work day, following the procedure established in this Code. A copy of the resolution on provisional restraint of ownership rights shall be delivered to the owner (co-owners) of the property the ownership right to which is subject to the provisional restraint. Where there is no possibility of a prompt notification of resolution, it shall be deemed that the resolution is notified upon its registration in the register of the statements of seizure of property.

3. A copy of the resolution on provisional restraint of ownership right and its record shall be delivered to the administrator of the register of acts of seizure of property immediately and not later than on the next working day.

4. Where at the moment of passing of the resolution on provisional restraint of ownership right the composition and location of the property subject to restraint is not known, the particular property may not be indicated in the resolution. In such a case, the prosecutor making the resolution shall undertake measures in order to establish the composition and location of the property the ownership rights to which are to be restrained and as soon as this information is established, an additional resolution shall be made.

5. The additional resolution shall be passed, notified and registered following the procedure provided for in this Article.

6. Having revoked the provisional restraint of ownership rights, the prosecutor or the court shall promptly notify the administrator of the register of the acts of seizures of property and deliver the resolution or the ruling on revocation of provisional restraint of ownership rights.

Article 94 CPC. Measures to be taken regarding tangible objects relevant for investigation and trial when terminating the proceedings and making a judgment

1. When making a judgment, or terminating the proceedings the issue of tangible objects relevant for the investigation of a criminal act and the trial should be solved in the following way:

1) instruments, means and results of a criminal act, corresponding to the signs indicated in Articles 72 and 72³ of the Criminal Code, shall be confiscated’.

2) tangible objects which are prohibited from circulation shall be transferred to national institutions or destroyed;

3) documents having the characteristics indicated in Article 91 of CCP shall be preserved as the material of investigation of a criminal act or shall be transferred to the interested enterprises, bodies, organisations or natural persons at their request; the data storage devices containing data acquired in accordance with the rules set in article 160 of the CCP when conducting secret surveillance shall be returned to the pre-trial investigation institutions filling the covering documents, without their request;

4) tangible objects having no value which cannot be utilised shall be destroyed, or when the interested enterprises, bodies, organisations or natural persons so request may be given over to them.

5) other tangible objects shall be returned to the rightful owners, in case the latter are not established, then shall become a national property. The disputes arising from the ownership of such tangible objects shall be solved in accordance with the civil procedure.

2. The decisions indicated in paragraph 1 of this Article are made at a pre-trial stage by a prosecutor or a pre-trial judge that discontinue the pre-trial investigation, and in the later stages of the procedure – by a judge hearing the case.

3. If the issue concerning property confiscation according to Article 72 or 72³ of the Criminal Code has to be solved before the discontinuation of the pre-trial investigation, the pre-trial investigation is discontinued by the decision of a pre-trial judge approving the decisions of the prosecutor to

discontinue the pre-trial investigation. When the issue of property confiscation or extended property confiscation has to be solved, a meeting is organised with the participation of the prosecutor, a person in relation to whom the decision of confiscation was adopted, as well as the representative of that person. The pre-trial judge may decide to invite other persons as well. Participation of the prosecutor and representative of a person in relation to whom the decision of confiscation was adopted is obligatory. Decision of a pre-trial judge may be appealed in line with the procedure stipulated in part X of this Code.

4. A court that has passed a decision indicated in paragraph 3 of this Article following the order prescribed by the Government of the Republic of Lithuania may give over the implementation of such a decision to the competent institution of another EU Member State in the territory of which the property subject to confiscation is present or in the territory of which a person in relation to whom the decision of confiscation was adopted may have income or property.

5. On the basis and in the order set in the international agreements of the Republic of Lithuania and upon the request of a foreign institution the court may decide that after the legitimization of the decision the objects and valuables obtained in a criminal way may be transferred to a foreign institution in order it returned it to the rightful owners if the latter are established and if this does not violate the rightful interests of other persons. The objects which are prohibited from circulation are not transferred to a foreign institution.

Article 108. Return of Objects and Valuables

1. Where the court is assured that the objects or valuables found and seized during the proceedings belong to a victim or to any other person, it shall decide that these objects or valuables are returned to their owner after the judgement comes into effect.

2. At the request of the owner, objects or valuables indicated in paragraph 1 of this Article may be returned to him by a prosecutor or a pre-trial investigation officer before termination of the proceedings provided but only after the said objects or valuables in this case have been thoroughly examined and described. When receiving such objects or valuables, the person usually must give a written consent to keep them until the end of the court hearing.

3. Objects which are prohibited from circulation shall not be returned.

In absentia

Article 246 Presence of the accused at the trial

1. The case shall be heard at the court of first instance in the presence of the accused, who shall be obliged to appear before the court. The trial shall be conducted in the absence of the accused only if he is outside the territory of the Republic of Lithuania and refuses to appear before the court. The presence of an accused person who is unable to appear before the court in which the case is being heard or who is detained in a detention centre may be ensured by means of audio-visual remote transmission.

2. Where the accused does not attend the court hearing in the case provided for in paragraph 1 of this Article, the proceedings shall be held in accordance with the general procedure, except for the exceptions provided for in Chapter XXXII of this Code.

Article 433. Trial in the absence of the accused

A case may be heard in the absence of the accused in the case provided for in Article 246 of this Code. The judge shall decide whether the case may be tried in the absence of the accused at the time of preparation for the trial. If, during the trial, it appears that it is impossible to give a fair trial in the absence of the accused, the trial shall be adjourned.

Article 436. Special features of proceedings in the absence of the accused

1. In the absence of the accused, at the beginning of the examination of evidence in court, after the prosecutor has read out the indictment in accordance with the procedure laid down in Article 271 of this Code, the defence counsel shall be given an opportunity to state his/her opinion on the accusation. The parties to the proceedings may ask the defence counsel to clarify his position.
2. In the absence of the accused, the possibility provided for in Article 273 of this Code to conduct a summary examination of evidence may not be exercised, although the case file contains a confession of the accused, which is not contested by the defence.
3. In the absence of the accused, the defence counsel shall be given the opportunity to make a closing statement after the closing arguments. The court shall then proceed immediately to deliver its verdict.

Article 437. Service and enforcement of a judgment handed down in the absence of the accused

1. The judgment delivered in the absence of the accused shall be served on the defence counsel. The time-limit within which the judgment shall become final shall begin to run from the moment of service of the judgment on the defence counsel.
2. A judgment which has been delivered and has become final shall be enforceable only in so far as it is possible to execute it without the convicted person before the convicted person is arrested or brought before the court by way of extradition or pursuant to a European Arrest Warrant.

STATISTICS

	2021		2022	
Incoming	Outgoing	Incoming	Outgoing	
95 Total	25 Total	161 Total	35 Total	
81 recognised	23 recognised	156 recognised	24 recognised	
14 non-recognised	2 non-recognised	5 non-recognised	1 non-recognised	

UPDATE: the Constitutional Court of Lithuania recognised that the provisions of the CC regarding Extended Confiscation comply with the Constitution.

The provisions of the Criminal Code on the extended confiscation of property are not in conflict with the Constitution

Byla Nr. 14-A/2022

LIETUVOS RESPUBLIKOS KONSTITUCINIS TEISMAS
LIETUVOS RESPUBLIKOS VARDU

NUTARIMAS

DĖL LIETUVOS RESPUBLIKOS BAUDŽIAMOJO KODEKSO 723 STRAIPSNIO (2010 M. GRUODŽIO 2 D. REDAKCIJA) 1 DALIES, 2 DALIES 3 PUNKTO ATITIKTIES LIETUVOS RESPUBLIKOS KONSTITUCIJAI

2023 m. spalio 12 d. Nr. KT86-A-N10/2023
 Vilnius

Having examined a constitutional justice case subsequent to an individual constitutional complaint, the Constitutional Court recognised in its ruling of 12 October 2023 that the provisions of the Criminal Code (paragraph 1 and item 3 of paragraph 2 of Article 723 thereof) governing the extended confiscation of property are not in conflict with the Constitution, i.e. with Article 23 thereof, which establishes the inviolability of property, and with paragraph 1 of Article 31 thereof, consolidating the principle of the presumption of innocence.

Taking into account the fact that the impugned legal regulation clearly defines the application of the extended confiscation of property to persons who have committed specified most serious crimes, as well as the amount of property acquired during the specified period that is subject to the extended confiscation of property, the Constitutional Court noted that the extended confiscation of property is a proportionate measure to the constitutionally justified objective pursued (which is to ensure effective protection of the whole of society against criminal acts and to restore justice and legal order based on constitutional values).

The Constitutional Court also noted that a person against whom the application of the extended confiscation of property is sought does not have to prove that he or she has not committed a criminal act, but he or she must justify the legality of the acquisition of the property held only when the prosecutor and the court, in the exercise of their powers, collect sufficient data (evidence) suggesting that property that does not correspond to the amount specified in the law on the person's legal income has been acquired by criminal means. Moreover, the application of the extended confiscation of property is not intended to find a person guilty and punish him or her for specific criminal acts, but to ensure that the person is deterred from committing new criminal acts or to restrict the possibility of the convicted person to commit new criminal acts.