

RECOVER – GA 101091375***Answers from Estonia*****Jaan Ginter (University of Tartu)**

The interviewee begins by outlining various forms of confiscation in his jurisdiction. Confiscation of instrumentalities of crime, referring to the means used to commit an offense, is available for all crimes, with the court having discretion in deciding whether to confiscate these means. Confiscation of direct objects is optional unless there is some specific law requiring confiscation (like in case of drugs or prohibited firearms). Mandatory confiscation comes into play concerning the proceeds of crime. If someone benefits from a crime, it is required to confiscate those gains for all types of offenses. Value confiscation, however, is optional, involving the confiscation of part of the criminal's belongings when the proceeds are no longer available. Extended confiscation is reserved for specific crimes as indicated in the CC special part. It is somewhat like unexplained wealth confiscation, but the latter does not apply in extended confiscation. In unexplained wealth confiscation, the state presumes that wealth has been acquired through criminal acts, and the burden of proof lies with the offender to demonstrate otherwise. The interviewee touches upon third-party confiscation, where something acquired through offenses is transferred to a third party before confiscation. In such cases, it can be confiscated from the third party, but their bona fide must be proven. This involves showing that the third party received the property from or on behalf of the offender, knowing that the transfer was aimed at avoiding confiscation. In situations where a convicted individual is deceased or the crime is statute-barred, the "no conviction-based confiscation" (NCBC) is not applicable in

Estonia. Confiscation is possible without a conviction if the property is seized or frozen, and the criminal proceeding is terminated due to reasons like death or illness, with no claimant coming forward.

The interviewee acknowledges a lack of good statistics on the amount of confiscated assets and provides no information on the application of the regulation or practical problems related to grounds for refusal. However, they emphasize the need for reform in confiscation models, attributing underapplication to a shortage of personnel resources and prioritization of investigative actions over confiscation efforts.

While the guarantees provided by the regulation are deemed satisfactory, the interviewee suggests that the prosecutor's office should place more emphasis on collecting statistical data and recognize the potential impact of confiscation on the criminal world. The application of confiscation to legal persons is discussed, with no distinction made between natural and legal persons. Confiscation is applicable to legal persons if they are convicted. The transposition of Directive 42/2014 into the Criminal Procedure Code (CCP) is highlighted, noting that it now includes all necessary provisions from the directive.

The interviewee outlines the procedure for the application of confiscation, involving the police in identifying assets that can be confiscated, the prosecutor's office in making applications, and the court in deciding on those applications. The standard of proof is aligned with criminal law principles, specifically "*in dubio pro reo*," and there have been no reported cases where confiscation was denied based on this principle. The interviewee assures that safeguards, limitations, and proportionality clauses are sufficiently strong,

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emphasizing that, if the offender can prove the legal acquisition, the court cannot apply extended confiscation.

Regarding compliance with fundamental constitutional principles, no cases have been reported, and there are no claims against the state's power to confiscate property. Similarly, there are no reported rulings or cases from the European Court of Human Rights (ECHR) or the European Court of Justice (ECJ). As a reform proposal, the interviewee suggests allocating more resources to confiscation activities, recognizing the importance of strengthening this aspect of law enforcement.