

THE CONCEPT OF
PROCEEDING IN CRIMINAL
MATTER IN THE EU
REGULATION N. 1805/2018
AND RELATED SAFEGUARDS

PROJECT RECOVER (GA
101091375)

31 JANUARY 2023

Anna Maria Maugeri



Co-funded by
the European Union

MUTUAL RECOGNITION

- “Criminals must find no ways of exploiting differences in the judicial systems of Member States” and
- “no hiding place for ... the proceeds of crime within the Union”,
Tampere European Council, October 15-16, 1999, Presidency Conclusions, § 5.
- **This principle has to be the cornerstone of judicial co-operation in both civil and criminal matters within the Union (§ 33);**

it should apply both to judgements and to other decisions of judicial authorities:

- (§ 36) “The principle of mutual recognition should also apply to **pre-trial orders**, in particular to those which would enable competent authorities ... to seize assets which are easily movable”.
- Tampere European Council, October 15-16, 1999, Presidency Conclusions, § 36.

harmonisation - mutual trust

- Mutual recognition has to be built
- on the **harmonisation** of the confiscation models and, first of all,
 - Framework Decision 2001/500/GAI
 - Framework Decision 212/2005/GAI
 - Directive 42/2014
- on the **mutual trust**, which demands the **respect for the safeguards of the rule of law**.
 - Framework Decision 2003/577/GAI on the **execution in the European Union of orders freezing property or evidence** (Still applicable for Denmark and Ireland; for other MS replaced by Regulation 2018/1805)
 - Framework Decision 783/2006 on the application of the principle of **mutual recognition to confiscation orders** (Still applicable for Denmark and Ireland; for other MS replaced by Regulation 2018/1805)
 - Regulation n. 1805/2018

Mutual recognition: framework decision 2003/577/GAI

- on the execution in the European Union of orders freezing property or evidence,
è stata sostituita per quanto riguarda il sequestro probatorio dalla Direttiva 2014/41/UE a decorrere dal 22 maggio 2017 che ha introdotto l'OEI (**ordine europeo di indagine penale**).
- La Direttiva 2014/41 è stata recepita in Italia con il d.lgs. 21 giugno 2017, n. 108 che, nel suo impianto generale, appare largamente fedele all'impostazione seguita dal legislatore eurounitario.
- **L'OEI, però, non si applica al sequestro ai fini di confisca** che rimane pertanto disciplinato dalla Decisione quadro 2003/577/GAI,
- che come accennato, ai sensi dell'art. 39 sarà sostituita dal Regolamento

Mutual recognition of confiscation: Framework Decision 2006/783/JHA

- The Council has adopted Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders,
- **in particular to implement extended confiscations under Article 3 of the Framework Decision 2005/212/JHA, now replaced by the art. 5 of the Directive n. 42/2014**

Dual criminality checks: abolished in relation to 32 categories of offences

- This Framework Decision applies the principle of mutual recognition to confiscation orders issued by a court competent in criminal matters for the purpose of facilitating enforcement of such confiscation orders in a Member State other than the one in which the confiscation order was issued.
- It applies to all offences in relation to which confiscation orders can be issued.
- Dual criminality checks were abolished in relation to 32 categories of offences listed in the Framework Decision.

Art. 7

- According to Article 7, a confiscation order must be recognised without any further formality and all the necessary measures for its execution must be taken immediately

Article 8: grounds for refusal

- **Article 8 provides for a number of grounds that can constitute a basis for refusing recognition or execution.**
- All grounds set out in this Article are optional for the Member States, who may choose to implement them or otherwise, and may also make their implementing laws subject to more stringent conditions than those laid down in this provision (ECJ (Grand Chamber) Case C-123/08, *Dominic Wolzenburg*, (2009) ECR I-09621).
- If implemented, grounds of refusal should be written into domestic law as optional for the competent authority ("The competent authority of the executing Member State *may* refuse...").
- Since they constitute a derogation from the general principle of mutual recognition, **the list of grounds is exhaustive, so the Member States cannot include any additional grounds for refusal in implementing legislation.**

Framework Decision 2006/783/JHA

Opinion of some authors

- Although Framework Decision 2006/783/JHA is the leading legal instrument on mutual recognition of judicial decisions on confiscation **the mutual recognition of confiscation issued by a non-criminal court is confronted with significant difficulties, because:**
- **Article 1 (Objective) demands a court competent in criminal matters**
- **art. 2 defines ‘confiscation order’ as final penalty or measure imposed by a court following proceedings in relation to a criminal offence or offences, resulting in the definitive deprivation of property; so demanding a judicial proceeding connected with one or more crimes**

conviction

- **Not only that, but the Framework Decision refers to confiscation orders against the convicted individual,**
- **insisting that it concerns**
- **forms of criminal confiscation, issued as a result of a criminal trial in the strict sense.**



Contra

- **The framework decision, however, allows the mutual recognition of confiscation orders taken with additional powers of confiscation, - allowed by the f.d. 212/2005,**
- **regardless of the safeguards recognized and the powers implemented, which can conflict with the fundamental principles such as the presumption of innocence.**

THE OPPOSITION OF THE GROUNDS FOR REFUSAL

- In this way, the Framework Decision has **chosen not to establish a minimum standard of essential safeguards**, on which the principle of mutual recognition should be based,
- but, while **admitting the application of this principle in relation to forms of confiscation applied without the safeguards laid down in Decision 212**, allowing the opposition of the grounds for refusal

GROUND FOR REFUSAL : ART. 8 N. 2, G) AND N. 3

- n. 2, g): “the confiscation order, in the view of that authority, was issued in circumstances where confiscation of the property was ordered under the extended powers of confiscation referred to in Article 2(d)(iv)”

Art. 7, n. 5 MS declaration

- Each Member State, in fact, may deposit at the Secretary-General a declaration that its competent authorities will not recognize confiscation orders based on the extended powers of confiscation referred to in Article 2, letter d), iv), ie, extended powers of confiscation under the law of the issuing State.
- Such a declaration may be withdrawn at any time.

Actio in rem: the recognition isn't mandatory

- In conclusion the Framework decision n. 783/2006 doesn't hinder the mutual recognition of confiscation orders issued in an actio in rem,
- but in this case the recognition isn't mandatory

Mutual recognition non-conviction based confiscation

- Before the Regulation introduction, **the 1990 Council of Europe Strasbourg Convention,**
- ratified by all EU MS, **remains the cornerstone of judicial cooperation in relation to confiscation without conviction,**
- Because the **2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism** hasn't been ratified by many MS.

“penalty” or “measure”

- However, at the same time, the Convention requires that the confiscation has been ordered by a court “following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property”: **also proceedings *in rem* are considered**

explanatory report

- **each type of procedure**, regardless of its connection with criminal proceedings and the procedural rules applicable, **can be the basis for the application of a confiscation order**,
- **as long as it is conducted by a judicial authority**
- **and has criminal nature because**
- **it concerns the instruments and the proceeds of crime:**
- **proceedings in rem, it is specified in the report, fall into this category (art. 13)**

Crisafulli-Friolo case

- Is an interesting case of judicial cooperation relating to a Italian confiscation preventive measure.
- The French Supreme Court upheld the decision of the Appeal Court of Aix en Provence (19 December 2002), which authorized the implementation in France of a confiscation pronounced by the Milan Criminal Court against a property, which is considered the product of money laundering from drug trafficking.

- The Court based its decision on the fact that, pursuant to art. 12 and 14 of the Strasbourg Convention of 1990, mutual assistance was required;
- the confiscation order was final and enforceable;
- the French law provided for the confiscation of the proceeds of drug trafficking and subsequent money laundering activities.
- the French legislation does not require the same legislation (with the risk of hindering any cooperation),



with the favorable opinion of the Senate Justice Commission

- which noted that the provisions on seizure and confiscation
- *«n'imposent toutefois pas que la confiscation [applicable par renvoi à la saisie] elle-même ait été prononcée dans le cadre d'une procédure pénale,*
- *et elle estime en conséquence qu'elles ne devront pas empêcher la France de reconnaître et d'exécuter, dans le cadre de la coopération internationale,*
- *des décisions de confiscation prononcées par une juridiction étrangère*
- *dans le cadre d'une procédure civile ou d'une utilisation étendue de compétences fiscales,*
- *dès lors que les exigences du procès équitable auront été respectées».*



Statement of the European Parliament and the Council “on an analysis to be carried out by the Commission”

- In approving the directive the European Parliament and the Council have issued a statement which **urges the Commission to undertake further analysis in order to identify a model of actio in rem in respect of shared common legal traditions:**
- "The European Parliament and the Council call on the Commission to analyse, at the earliest possible opportunity and taking into account the differences between the legal traditions and the systems of the Member States, the feasibility and possible benefits of introducing further common rules on the confiscation of property deriving from activities of a criminal nature, also in the absence of a conviction of a specific person or persons for these activities".
- The European legislator is aware of the need for further reflection on whether to valorise the *actio in rem*.

Regulation of the European Parliament and of the Council

**“on the mutual recognition of freezing
and confiscation order ” 2018**

(19 December 2020)

Aim of the introduction

- 1. To improve the mutual recognition of freezing and confiscation orders in cross-border cases by extending the scope of the mutual recognition instrument;
- 2. To provide simpler and faster procedures and certificates;
- 3. To increase the number of victims receiving cross-border compensation.

Article 39: **Replacement**

- This Regulation replaces the provisions of **Framework Decision 2003/577/JHA** as regards the freezing of property between the Member States.
- This Regulation replaces **Framework Decision 2006/783/JHA** between the Member States bound by this Regulation as from 19 December 2020.



The adoption of this Regulation represents a doubly significant event

- first of all, because the principle of mutual recognition is affirmed in this delicate sector in the wake of the framework decision n. 783/2006,
- and also because
- mutual recognition is imposed with a **directly applicable legislative measure** such as a **regulation**,
- adopted with the **ordinary legislative procedure on the basis of art. 82, par. 1, of the Treaty** on the functioning of the European Union.

In the first direction Recital 13

- **While such orders might not exist in the legal system of a Member State**
- **the Member State concerned should be able to recognise and execute such an order issued by another Member State.**

With the Regulation in question, the path of mutual recognition was chosen, regardless of harmonization

- In approving Directive no. 42/2014 aimed at pursuing the harmonization of confiscation orders,
- the Parliament and the Council had, in fact, **invited the Commission to make a further effort of analysis**
- "to present a **legislative proposal on mutual recognition** of freezing and confiscation orders at the earliest possible opportunity" (...),
- "to analyse, at the earliest possible opportunity and taking into account the differences between the legal traditions and the systems of the Member States, the feasibility and possible benefits of **introducing further common rules on the confiscation of property** deriving from activities of a criminal nature, **also in the absence of a conviction** of a specific person or persons for these activities".

In the second direction, instead, as stated in
the art. 41

- This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Moreover, Recital 11

- In order to ensure the effective mutual recognition of freezing orders and confiscation orders,
- the rules on the recognition and execution of those orders should be established **by a legally binding and directly applicable act of the Union**

REGULATION, art. 82, c. 1 TFUE

- The choice of a regulation ex art. 288 TFEU on the basis of art. 82, § 1 TFUE is **appreciable in terms of effectiveness, because**
- It is directly applicable in the Member States.

but it is also a bit problematic because,

- this approach ends up attributing **direct competence in criminal procedure matters to the European legislator**, even if only for the purposes of vertical cooperation,
- **in the absence of a more explicit and clear legislative will of the Member States** themselves in this direction:
- it is a choice that assumes a **strong political value**.
- even if involves only the cooperation and not the harmonization - which demands a directive as established in art. 82 § 2 -,
- the mutual recognition, apparently unrelated to **substantive issues**, however,
- **ends to exercise a drag effect on the same**

Recital 53: The legal form of this act should not constitute a precedent

- for future legal acts of the Union in the field of mutual recognition of judgments and judicial decisions in criminal matters.
- The choice of the legal form for future legal acts of the Union should be carefully assessed on a case-by-case basis taking into account, among other factors, the effectiveness of the legal act and the principles of proportionality and subsidiarity.

Scope: all crimes

- The Regulation should cover all crimes,
- otherwise, it is expressly stated in recital no. 14, from Directive 42/2014 which refers only to
- serious transnational crimes, the so-called 'Eurocrimes' (the ten serious crimes indicated in art. 83, c. 1) as based on art. 83 TFEU
- (even if the Directive is also based on art. 82, § 2, as well as on art. 83, § 1, and
- art. 3 extends the definition of crime to the criminal offense provided for "by other instruments legal if the latter specifically provide that this Directive applies to the offenses harmonized there").

Scope: recital 14

This Regulation should cover freezing orders and confiscation orders related to criminal offences covered by Directive 2014/42/EU, **as well as freezing orders and confiscation orders related to other criminal offences.**

The criminal offences covered by this Regulation should therefore **not be limited to particularly serious crimes that have a cross-border dimension,** as Article 82 of the Treaty on the Functioning of the European Union (TFEU) **does not require such a limitation for measures laying down rules and procedures for ensuring the mutual recognition of judgments in criminal matters.**

Art. 3 of the Regulation contains the list of serious crimes punished with a prison sentence of at least three years

- for which verification of the **double criminality** of the facts is not required,
- borrowing a choice for the first time adopted by the European legislator with art. 2, § 2, of the **Framework Decision n. 2002/584 / JHA on the European arrest warrant e**
- this list is the same as provided for in other instruments on mutual recognition (thirty-two types of offense),
- to which is added the **offense** provided for in point (y) of the list, included following the introduction of the
- **framework decision 2001/413 / JHA for the fight against fraud and counterfeiting of non-cash means of payment ()**.

In the case of offenses not included in the list,

- recognition can be refused
- **if the predicate crime is not a criminal offense in the State that has to execute the measure (Article 3, paragraph 2)**
- based on the principle of double criminality (while the framework decision 783/2006 presupposes the so-called "double confiscability").

The verification in a non-formalistic way (cons. 20)

- The verification of double criminality must be carried out in a non-formalistic way
 - The competent authority of the executing State should verify
 - whether the factual elements underlying the offense in question (as they result from the freezing certificate or confiscation certificate transmitted by the competent authority of the issuing State) **would be liable to criminal prosecution in the territory of the executing State,**
in the hypothesis in which they had occurred in the executing State at the time of the decision on recognition
- THIS
- regardless of the offence nomen juris** and
the **perfect correspondence** of the constituent elements of the internal crime and the one configured by the issuing Authority

Mutual recognition of seizure

- Regulation, while admitting - as provided for in Directive 42/2014, art. 8 (4) - that the **seizure order (freezing) can be ordered by a non-judicial authority,**
- and in particular **“by an authority, designated by the issuing State, which is competent in criminal matters to issue or execute the freezing order in accordance with national law, and which is not a judge, court or public prosecutor”**
- in any case it claims that **“In such cases, the freezing order should be validated by a judge, court or public prosecutor, before it is transmitted to the executing authority. “** (recital no. 22 of the Regulation).
- **However, it is not required,** as would have been desirable in terms of guarantees, **that any seizure pronounced by the public prosecutor is validated by the judge.**

Practical aspect (seizure)

- The Regulation incorporates the conditions for issuing and transmitting a freezing order provided for in **art. 6 of Directive 2014/41 / EU**,
- so as to apply the **same conditions both to freezing for probative purposes and to that for confiscation purposes.**
- Furthermore, to **simplify** the procedure with respect to the Framework Decision 2003/577 / JHA,
- the **issuing of the freezing order** should take place through a **standard model** and
- no longer a "certificate" accompanying the national decision to be executed.

art. 2, n. 8, b) demands for confiscation:
authority which is competent in criminal
matters

- Also in respect of a confiscation
- ‘issuing authority’ means: an authority which is designated as such by the issuing State and
- which is competent in criminal matters to execute a confiscation order
- but it is specified that the provision must be
- “a confiscation order issued by a court in accordance with national law”.

European Court of Justice (Grand Chamber)

14 November 2013, case Balázˇ, C-60/12

- “the term ‘court having jurisdiction in particular in criminal matters’,
- within the meaning of Article 1(a)(iii) of the Framework Decision [2005/214/JHA – Application of the principle of mutual recognition to financial penalties –],
- must be interpreted as an **autonomous concept of Union law** and, if so, what **the relevant criteria are in that regard**.
- It also asks whether the Unabhängiger Verwaltungssenat comes within the scope of that term.
- In this connection, it must be stated that,as the Advocate General has observed in point 45 of her Opinion, the meaning of ‘**court having jurisdiction in particular in criminal matters’ cannot be left to the discretion of each Member State**” (§ 25).
- “in order to ensure that the Framework Decision is effective, it is appropriate to rely on an interpretation of the words ‘having jurisdiction in particular in criminal matters’ in which the **classification of offences by the Member States is not conclusive**” (§ 35).

- The national judge «is formally established as an **independent administrative authority**, under Paragraph 51(1) of the VStG, it none the less has, inter alia,
- jurisdiction as an **appeal body in relation to administrative offences**, including, in particular, road traffic offences.
- In an appeal of that kind, which has suspensory effect, the Unabhängiger Verwaltungssenat has **unlimited jurisdiction** and applies
- a criminal procedure which is subject to **compliance with the procedural safeguards appropriate to criminal matters**” (§ 39).

- « To that end, the court having jurisdiction within the meaning of Article 1(a)(iii) of the Framework Decision **must apply a procedure which satisfies the essential characteristics of criminal procedure,**
- **without, however, it being necessary for that court to have jurisdiction in criminal matters alone» (§36).**
- “even though the Unabhängiger Verwaltungssenat is formally established as **an independent administrative authority,** under Paragraph 51(1) of the VStG,
- , the Unabhängiger Verwaltungssenat **has unlimited jurisdiction and applies a criminal procedure which is subject to compliance with the procedural safeguards appropriate to criminal matters (§ 39).**

follows

- In this respect, it should be pointed out that included, in particular, among the applicable procedural safeguards are **the principle *nulla poena sine lege***, laid down in Paragraph 1 of the VStG,
- **the principle that culpability** should arise only where there is capacity or criminal responsibility, laid down in Paragraphs 3 and 4 of the VStG, and
- **the principle that the penalty must be in proportion to the degree of responsibility and to the facts**, laid down in Paragraph 19 of the VStG (§ 40).

Art. 2

■ Definitions

■ For the purpose of this Regulation, the following definitions apply:

■ ‘confiscation’ means a final deprivation of property ordered by a court **in relation to a criminal offence;**

■ (‘confiscation order’ means a final penalty or measure imposed by a court following proceedings in relation to a criminal offence, resulting in the final deprivation of property from a natural or legal person; original version 2016)

All types of confiscation orders within the framework of criminal proceedings

- in order to impose the mutual recognition of all types of orders covered by Directive 2014/42/EU
- **direct confiscation** ex art. 4
- **confiscation of the value** ex art. 4,
- **extended confiscation** ex art. 5, and
- **confiscation of assets in the possession of third parties** ex art. 6,
- Non conviction based confiscation (absconding and illness)
- as well as other types of **orders issued without final conviction (recital 13)**

not only orders covered by Directive 2014/42/EU (recital 13)

- The term therefore covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders covered by Directive 2014/42/EU.
- It also covers other types of order issued without a final conviction.

Non-conviction based confiscation

- the cases of death of a person,
- immunity,
- Prescription ,
- cases where the perpetrator of an offence cannot be identified,
- or other cases where a criminal court can confiscate an asset without conviction when **the court has decided that such asset is the proceeds of crime**
- **(Explanatory memorandum)**

Actio in rem pure

- Provided that the confiscation is (art. 2) a “a final deprivation of property ordered by a court in relation to a criminal offence”
- Regulation doesn't demand – as the Directive – that a criminal trial has begun but the sentence cannot be pronounced,
- but precisely as a hypothesis of a real actio in rem,
- of an autonomous proceeding against assets related to a crime

Article 8: An exhaustive list of grounds for non-recognition and non-execution of confiscation orders

- **The list differs significantly from the list contained in the 2006 Framework Decision.** Some grounds for refusal remain the same, e.g. the ground based on the principle 'ne bis in idem' or the ground based on immunity or privilege.
- However,
- **the grounds for refusal linked to the type of the confiscation order** (e.g. extended confiscation)
- **have not been included in the proposal**
- **thus considerably broadening and strengthening the mutual recognition framework.**
-

ART. 1 Subject matter

- 1. This Regulation lays down the rules under which a Member State recognises and executes in its territory freezing orders and confiscation orders issued by another Member State
- **within the framework of proceedings in criminal matters**
- (as opposed to “within the framework of criminal proceedings”)

within the framework of criminal proceedings IN THE ORIGINAL VERSION 2016

- In order to be included in the scope of the Regulation,
- these types of confiscation orders had to be issued within the framework of criminal proceedings,
- and therefore **all safeguards applicable to such proceedings had to be fulfilled in the issuing State**

Council of the European Union

Interinstitutional File: 2016/0412 (COD)_{2016/0412 (COD)}, doc. n. 12685/17 of
2.10.2017.

- In the proposal presented by the Commission, the scope of the instrument is defined as to apply to freezing orders and confiscation orders issued within the framework of "criminal proceedings". Additionally, civil and administrative confiscation regimes are explicitly excluded from the scope of the proposed Regulation.
- **It is worth noting that there are different systems of confiscation in place in the Member States, including various forms of non-conviction based confiscation.**
- **The regimes of purely civil and administrative confiscation cannot be covered on the basis of Article 82(1) TFEU.**

(follows) Italian delegation: the words "criminal proceedings" posed a problem

- However, the discussions in the Working Party have shown that some Member States, notably Italy, seem to have
- confiscation systems that,
- while being clearly linked to criminal activities,
- are not conducted in the course of criminal proceedings.
- As from the outset of the discussions, the Italian delegation, supported by some other delegations, observed that
- **the proposed wording of the scope of the Regulation as defined in Art. 1(1), with the words "criminal proceedings", posed a problem,**
- **since its system of so-called "preventive confiscation" would be excluded**

(follows) Italy explained

- Italy explained that under this system,
- confiscation orders are issued by a criminal court
- in proceedings that are not aimed at convicting the person for committing a specific offence,
- but are based on proven facts that assets are derived from criminal activities, while also taking into account previous criminal behaviour of the person.
- The system is a "preventive" system in the sense that confiscation orders issued under this system aim at preventing the re-use of property which is proved to have derived from criminal activities committed in the past.

(follows) According to Italy,

- its system of confiscation would not fall, at least not entirely,
- within the notion of "criminal proceedings" as currently used in the proposed Regulation.
- However, Italy suggested using the concept of Article 82(1) TFEU and referring to "proceedings in criminal matters".
- This would allow to include its **system of preventive confiscation**,
- whereas freezing and confiscation orders issued within the framework of proceedings in civil and administrative matters would explicitly be excluded

(follows) Italy confirmed that fundamental rights

- **and similar procedural safeguards as in criminal proceedings, notably foreseen by the six Directives on procedural rights,**
- **are adequately respected, and**
- **that confiscation orders issued under its system of preventive confiscation have a clear link with criminal activities and therefore**
- **fall in principle within the framework of proceedings in criminal matters**

Extension of the scope: Italian delegation

- Quoting the notion of "criminal matter" adopted in Directive 2011/99 of 13.12.2011 on the European Protection Order for Victims
- (to allow the recognition of orders for the protection of crime victims taken by a judicial authority that is not only criminal, but also civil or administrative)

During the meetings of the Working Party on Judicial Cooperation in Criminal Matters (COPEN), on 28 September 2017

- a number of Member States indicated that they could support or at least accept the modification requested by Italy.
- Member States stressed that the mutual recognition of (freezing orders and) confiscation orders in the European Union would be greatly enhanced if this system could benefit from the application of the Regulation.
- It was underlined that **the Italian system is considered to be one of the most effective confiscation systems in the European Union.**
- Member States would not be obliged to have themselves such a system, but **they should merely be able to recognize and execute confiscation orders issued by Member States under such a system.**
- Such orders are already recognised in several Member States

Some other Member States expressed doubts

- about the advisability of accepting this modification.
- They observed that the Italian system of preventive confiscation seems to be of a hybrid nature (criminal/administrative),
- and they wondered whether this system would be covered by the legal basis of Art. 82(1) TFEU.

These Member States also inquired whether in the Italian system there is a link between confiscation order and a criminal offence

- or whether the procedural rights of the persons concerned would be adequately respected.
- In order to address these concerns, the Presidency invited the Council Legal Service to give its opinion on this issue.
- The opinion of the Legal Service is set out in doc. 12708/17.
- The Presidency considers that the decision on the extension of the scope to include the systems of preventive confiscation, such as the Italian system, is a **political one** and therefore guidance by the Ministers is required.
- In the light of the foregoing, the Council is invited to indicate whether certain systems of preventive confiscation, such as Italian system, should fall within the scope of the Regulation, provided that the confiscation order is clearly linked to criminal activities and that appropriate procedural safeguards apply.

art. 1: “within the framework of proceedings in criminal matters”

- 1. This Regulation lays down the rules under which a Member State recognises and executes in its territory freezing orders and confiscation orders issued by another Member State
- **within the framework of proceedings in criminal matters**
- (as opposed to “within the framework of criminal proceedings”)

Proceedings in criminal matters' is an autonomous concept of Union law

- interpreted by the **Court of Justice** of the European Union, notwithstanding the case law of the European Court of Human Rights (recital 13).
- This reference to the **Court of Justice** seems appropriate because the adoption of a regulation in a more direct and immediate manner call into question **the Court of Justice pursuant to Art. 267 TFEU** as
- **an interpreter in its original capacity**, intended to resolve the interpretative doubts of Member States in its application

“PROCEEDINGS IN RELATION TO A CRIMINAL OFFENCE”

- Recital 13. “The term therefore covers
- all types of freezing orders and confiscation orders issued following
- **proceedings in relation to a criminal offence,**
- Art. 2 in the definition of confiscation: “a final deprivation of property ordered by a court **in relation to a criminal offence**” (in the original proposal “proceeding for a crime”)



UE, Cons. JAI, 12/13 october 2017

- In the context of a debate on the matter by the EU ministries of justice, it was specified
- also certain preventive confiscation systems are included in the Regulation scope
- Provided that the choice to confiscate «soit clairement en rapport avec des activités criminelles et que des garanties procédurales appropriées 'appliquent».

Proceeding with a “link to a crime”

- With this modification, then,
- as emerges in Recital (13) and
- as emerges in the press release of 8 December 2017 on the orientation reached by the Council on the proposed Regulation,
- it is proposed, among other things, to ensure that **mutual recognition covers a broad spectrum of confiscations,**
- including **those adopted without conviction** and
- including **certain preventive confiscation systems,**
- provided there is a **link to a crime**
- **proceedings relate to the profits or instruments of offense,**

The ascertainment of the connection (link) with the crime (ECHR *Todorov and others v. Bulgaria*, n. 50705/11, 2021)

- In examining the forms of extended confiscation, also in the light of art. 5 of Directive 42/2014 and recital no. 21,
- the ECtHR recognizes the correctness of the procedure for ascertaining the illicit origin of goods (for all *Balsamo v. San Marino*),
- **«to ascertain a link between proceeds and criminal activity - understood in a broad sense and demonstrable even with presumptions -**,
- **in the absence of which the confiscation represents a disproportionate sacrifice of the right of ownership pursuant to art. 1 I Pr. ECHR».**



Proceedings in criminal matters may also include **criminal investigations by the police and other law enforcement authorities** (recital 13).

- It is not acceptable **in a rule of law** that the Regulation can refer to forms of freezing and confiscation not adopted in a judicial proceeding but in the investigation phase,
- representing already the seizure, and even more the confiscation,

form of limitation of a citizen's right, such as the **right of property** guaranteed by Art. 1 of ECHR Protocol 1 and Art. 17 of the Charter of Fundamental Rights of the European Union

- Also the definition of **confiscation** of the Art. 2, n. 2 of Regulation refers to a **measure taken by a judicial authority**
- also the **freezing** pursuant to Art. 2, n. 8, at least, **must be validated by a a court or a public prosecutor** in the issuing state

No civil or administrative proceedings (art. 1, n. 4 and recital 13)

- Art. 1, n. 4. This Regulation does not apply to freezing orders and confiscation orders issued within the framework of proceedings in civil or administrative matters.
- r. 13 Freezing orders and confiscation orders that are issued within the framework of
- **proceedings in civil or administrative matters**
- **should be excluded** from the scope of this Regulation.

proceeding in criminal matter

- Some concern regards also the concept of proceedings in criminal matter,
- as in this sector there are different kinds of proceedings which are possible to define **hybrids**,
- **they are held before the criminal court,**
- **but without the safeguards of the criminal matter.**

hybrid proceedings

- Within the category of hybrid measures that characterise the adoption of extended forms of confiscation and without conviction,
- Included in civil and or administrative matters, but
- **which fall perfectly in the definition of «proceedings in relation to a criminal offence»**
- **as they relate to the proceeds or instruments of offense,**
- such as the proceeding to apply some forms of civil recovery or civil forfeiture

model adopted by the Regulation:
German confiscation without conviction
(Explanatory Report to the original proposal)

- in the sector of the fight against organised crime and terrorism adopted in the law of reform of confiscation 13.4.2017, BGBl.I S. 872 (implementation of the Directive 42/2014) in the German system of law § 76, § 4
- “if, based on all circumstances of the case, the court is convinced that an object is the proceeds of a crime, even if the person affected by the confiscation cannot be prosecuted or convicted for this crime”
(Gesetzes zur Reform der strafrechtlichen Vermögensabschöpfung).

- German criminal order provided also before some forms of forfeiture applied independently of the determination of guilt (§ 76a I StGB, §§ 440 - 441 StPO; § 74, Abs. 2 n. 2, Abs. 3 - 74d StGB)
- With the recent reform the possibility to apply confiscation without conviction is extended

1990 Strasbourg Convention

- This notion of proceeding in criminal matters, as connected with a crime, accepted in the Regulation
- recalls the notion of **procedure also in re** accepted by the **Explanatory Report of the 1990 Strasbourg Convention** that includes
- **any proceeding carried out by a judicial authority** and with criminal nature,
- in the sense of covering instruments or proceeds of crime

with the safeguards of criminal matter
in the Member State

- But the Regulation demands that the confiscation is applied not only in a proceeding in criminal matter, but with
- the safeguards of criminal matter in the Member State

Safeguards (follows) Art. 1 Regulation

- 2. This Regulation shall not have the effect of modifying the obligation to respect the fundamental rights and legal principles enshrined in Article 6 TEU.

As specified in recital no. 17, the Regulation also respects the fundamental rights provided for

-
- in the ECHR and
- in the European Charter of Fundamental Rights.
- This means, first of all,
- Artt. 49 and 50 of the European Charter of Fundamental Rights.
- And artt. 6 e 7 ECHR as interpreted by European Court HR;

And (recital 18)

- The procedural rights set out in Directives 2010/64/EU [\(6\)](#),
- 2012/13/EU [\(7\)](#),
- 2013/48/EU [\(8\)](#),
- (EU) 2016/343 [\(9\)](#),
- (EU) 2016/800 [\(10\)](#) and
- (EU) 2016/1919 [\(11\)](#) of the European Parliament and of the Council should apply, within the scope of those Directives, to criminal proceedings covered by this Regulation as regards the Member States bound by those Directives.

Not only, but above all the safeguards of the criminal matter (recital 18)

- “In any case, the **safeguards under the Charter** should apply to
- **all proceedings covered by this Regulation.**
- In particular, the **essential safeguards for criminal proceedings set out in the Charter** should apply to
- proceedings in criminal matters
- **that are not criminal proceedings but**
- **which are covered by this Regulation”.**

Procedural safeguards: art. 8 of the directive n. 42/2014

- In this direction it will be very important to implement the application of the art. 8 of the directive in relation to the safeguards of the proceeding, ensuring to the persons affected by the measures the right to an
 - **effective remedy** and
 - **a fair trial** in order to uphold their rights;
 - **adversarial judicial proceeding**

In recital no. 15 it is pointed out that cooperation between Member States,

- based on the principle of mutual recognition and immediate execution of judicial decisions, demands mutual trust that decisions will be recognized and executed
- in compliance with the principles of
- **legality,**
- **subsidiarity** and
- **proportionality** (the same is foreseen in recital 9 of Framework Decision 783/2006), and that
- **the rights of third parties in good faith will be guaranteed.**

It also provides for the protection of third parties in good faith by establishing, first of all,

- the obligation to inform the parties involved in the execution of a seizure order, and
- to specify the reasons behind the measure, as indeed provided for in art. 8 of the Directive n. 42/2014, and the available remedies (Article 21), and
- the obligation of Member States to **provide legal remedies in the executing State** (Article 33) is also imposed for all interested parties,
- including third parties in good faith (as well as the obligation of the requesting State for the seizure to inform the requested State of the existence of third party interests in good faith, Article 14).

ECJ 14.1.2021, C-393/19 (*Okrazhna prokuratura – Haskovo e Apelativna prokuratura*).

The Court of Justice affirmed the principle that Article 2(1) of Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property,

- read in the light of Article 17(1) of the Charter of Fundamental Rights of the European Union,
- must be interpreted as **precluding a national law which permits the confiscation of an instrumentality used to commit an aggravated smuggling offence where that property belongs to a third party acting in good faith.**
- **2. Article 4 of Framework Decision 2005/212/JHA, read in the light of Article 47 of the Charter of Fundamental Rights, must be interpreted as precluding a national law which permits the confiscation, in the context of criminal proceedings, of property belonging to a person other than the person who committed the criminal offence, without the former being afforded an effective remedy.**

Among the Ground for refusal ex art. 8 Reg. the respect for the safeguards

- executing the freezing order would be contrary to the principle of *ne bis in idem*;
- in exceptional situations, there are substantial grounds to believe, on the basis of specific and objective evidence, that the execution of the freezing order would, in the particular circumstances of the case, entail **a manifest breach of a relevant fundamental right as set out in the Charter**, in particular
 - **the right to an effective remedy,**
 - **the right to a fair trial or**
 - **the right of defence.**

Ne bis in idem

- This is a reason for non-recognition already provided for, with a similar formulation,
- by articles 7 and 8 of framework decisions 2003/577 and 2006/783,
- The identical formulation contained in the articles 8 and 19 of the Regulation appear happier and more suitable to include additional cases with respect to those set forth in the aforementioned articles 6

Issue:

- The hybrid confiscation proceedings of the MS
- have to respect the safeguards of the criminal matter
- In order to apply the Regulation, it is important to verify if the confiscation is adopted in a
- proceeding in criminal matter with the connected safeguards

complete jurisdictionalization

- The Regulation could moreover represent
- **a challenge to provide for a complete jurisdictionalization** within the criminal law
- of proceedings seeking to enforce forms of non-conviction based confiscation,
- in order to guarantee mutual recognition

follows

- an incentive to adopt a model of trial against property compliant with criminal law guarantees,
- starting from the standard of criminal proof of the illicit origin of the goods,
- if we want to guarantee the mutual recognition of the forms of extended confiscation envisaged in the European legal systems,
- for example the extended confiscation pursuant to art. 240 bis of the Italian criminal code or the Italian preventive confiscation.

Art. 240 bis c.p. Italian Extended confiscation

- Measure of security with preventive nature
- (C. cost., ord. n. 18/1996, Basco; Supreme Court, VI, n. 1600/1996)
- “atypical asset security measure, replicating the characteristics of the anti-mafia preventive measure ..and the same preventive purpose ” (Cass. S.U., n. 29022/2001, Derouach; Cass. S.U., n. 33451/2014; C. V, n. 1012/2017; Cass. I, n. 19470/2018; Cass. II, n. 5378/2018; Cass. VI, n. 54447/2018;
- **no punishment, non- retroactivity principle, no safeguards of criminal matter**

when applied by the judge of the execution?

- the powers of the enforcement judge are **residual** powers and
- the confiscation is allowed to be pronounced *inaudita altera parte* (the judge can decide *de plano* on the basis of the request and the elements proposed by the public prosecutor or *ex officio*; the Chamber hearing can only take place following an objection) and
- against the decisions of the execution judge **it is not possible to appeal,**
- but only **to recourse to Cassation** – to the Supreme Court - (a practice considered constitutional by Constitutional Court in sentence no. 106/2015).

Art. 578 bis c.p.p.: it is possible to apply after prescription or amnesty

- When the confiscation in particular cases provided for in the first paragraph of article 240 bis of the criminal code ...has been ordered, the appellate judge or the court of cassation, in declaring the crime extinguished by prescription or amnesty, they decide on the appeal solely for the purposes of confiscation, after ascertaining the accused's responsibility

Italian confiscation preventive measure (non conviction based), art. 24 leg. decree 159/2011 (code of preventive measures)

- **It is applied in a proceeding «in relation to a offence» (recital 13) because**
- **it demands that the recipient is considered «a social danger» because he/she is suspected of criminal activity**
- **confiscation of assets of criminal origin**
(the value of assets is disproportionate to declared income or economic activity, or when *it transpires* that they are derived from illicit activity or used for reinvestment, and,
 - at any rate, are assets for which the “dangerous” owner has not demonstrated a legitimate origin

notion of criminal matter of ECtHR?

- It does not seem possible to refer to the notion of criminal matter of ECtHR and
- to the relative **Engel (v. Netherlands, 1976) criteria** for **establishing the criminal nature** of a procedure and a measure, because

Engel criteria

- the official formal qualification or the determination of the legal system of belonging;
 - the "very nature" of the infringement with particular reference to its forms of typification and the procedure adopted;
 - the nature of sanction and degree of sanction severity
-
- the sub-criteria adopted to establish the nature of the procedure are not so significant because the Court merely requires that
 - the procedure be applied by a public authority on the basis of
 - enforcement powers conferred by law and
 - on the basis of an infringement (nature of the infringement) based on a precept of a general nature addressed to all citizens

it is a broad notion of "criminal matter" which includes

- all measures of an afflictive nature, which pursue general and special prevention purposes;
- the punitive administrative offense falls within this,
- as has been expressly stated in relation to the Ordnungswidrigkeiten of the German legal system or in relation to the Verwaltungsstrafverfahren of the Austrian legal system,
- or disciplinary sanctions when such sanctions "merit the guarantees inherent in the criminal procedure", or, again,
- "proceedings for recovery of an unpaid community charge", considered by the English law "civil in nature"
- or the German detention security measure - the Sicherungsverwahrung (§ 66 StGB).

- - apart from the not always completely consistent and unequivocal use of these criteria in the same ECtHR case law - ,
- **the Court has substantially excluded the inclusion in the notion of «criminal matter» of the proceedings for the application of form of confiscation without condemnation,**
- from the Italian preventive confiscation to the British civil recovery or other forms of civil forfeiture

Positive attitude of ECHR towards forms of confiscation without conviction

- not only because it always confirms the substantial compatibility of these measure with the principles of ECHR,
- subtracting them to the principles of criminal law, but
- it approves a more general supranational position which **supports the use of civil forfeiture as a criminal policy strategy against serious criminal phenomena**

ECHR in *Gogitidze* case:

Having regard to **such international legal mechanisms as**

- the 2005 United Nations Convention against Corruption,
- the Financial Action Task Force's (FATF)
- Recommendations and the two relevant Council of Europe Conventions of 1990 and 2005 concerning confiscation of the proceeds of crime (ETS No. 141 and ETS No. 198) (..),
- the Court observes that **common European and even universal legal standards can be said to exist which encourage, firstly, the confiscation of property linked to serious criminal offences** such as corruption, money laundering, drug offences and so on, **without the prior existence of a criminal conviction”**.



ECHR: “is not of a punitive but of a preventive and/or compensatory nature”

- In the ***Gogitidze case*** (*v. Georgia*, 12 maggio 2015, no. 36862/05) the ECourt HR has confirmed its opinion in relation to the civil forfeiture (*civil proceeding in rem*):
- «the forfeiture of property ordered as a result of civil proceedings *in rem*, without involving determination of a criminal charge, **is not of a punitive but of a preventive and/or compensatory nature**».
- *Civil recovery Butler case*, recently *Todorov v. Bulgaria*

ECHR: Italian preventive confiscation

- measure of prevention has a distinct function and nature from that of criminal sanction.
- does not presuppose a crime and a conviction,
- it seeks to prevent the commission from people who are considered dangerous

- ECTHR, 25 March 2003, *Madonia c. Italia*, n. 55927/00, § 4; *Id.*, 20 June 2002, *Andersson v. Italy*, n. 55504/00, § 4; *Id.*, 5 July 2001, *Arcuri e tre altri c. Italia*, n. 52024/99, § 5; *Id.*, 4 September 2001, *Riela c. Italia*, n. 52439/99, § 6; *Id.*, *Bocellari e Rizza c. Italia*, n. 399/02, § 8.

ECHR, *Butler c. Royaume-Uni*, 26 June 2002, n 41661/98.

- “the forfeiture order was a preventive measure and cannot be compared to a criminal sanction,
- since it was designed to take out of circulation money which was presumed to be bound up with the international trade in illicit drugs.
- It follows that the proceedings which led to the making of the order did not involve “the determination ... of a criminal charge”

Consistency with ECHR

- From the recognition of the preventive or compensative nature of the anti-mafia confiscation or other forms of civil forfeiture
- derive the consistency of these measure with the right to property (Article 1 of the 1st Additional Protocol to the ECHR)
- and the principle of legality (Article 7) (retroactive application is permitted)
- the presumption of innocence (Article 6 § 2)

no violation of Article 1 of Protocol No. 1 right to property

- the **interference** suffered by the applicant with the peaceful enjoyment of his possessions is **proportionate** to the aim pursued with the weapon of the confiscation, i.e. the fight against the scourge of **drug trafficking**” (*Butler v. Royaume – Uni; Philips*)
- the fight against **Mafia** (Marandino, Madonia,..)
- the fight against **corruption** (*Gogitidze, Telbis and Vizeteu 2018*)
- or, in any case, the fight against the crime (Todorov 2021, Telbis and Vizeteu 2018)

Fight against Mafia

- the fight against organised crime like the Mafia, “ an aim that was in the general interest.....The Court is fully aware of the difficulties encountered by the Italian State in the fight against the Mafia. As a result of its unlawful activities, in particular drug-trafficking, and its international connections,
- this "organization" has an enormous turnover that is subsequently invested, inter alia, in the real property sector.
- Confiscation, which is designed to block these movements of suspect capital, is an effective and necessary weapon in the combat against this cancer. It therefore appears **proportionate** to the aim pursued, ..»

reversal of the burden of the proof:

**“the Court reiterates there can be nothing arbitrary, for the purposes of the “civil” limb of Article 6 § 1 of the Convention,
in the reversal of the burden of proof onto the respondents in the forfeiture proceedings *in rem*”.**

civil standard “or a high probability of illicit origins”

- “found it legitimate for the relevant domestic authorities to issue confiscation orders on the basis of a **preponderance of evidence** which suggested that the respondents’ lawful incomes could not have sufficed for them to acquire the property in question.
- **“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 under Article 1 of Protocol No. 1”.**

ECHR: The verification of the link with the crime (Todorov)

- in examining many forms of extended confiscation, also in the light of art. 5 of Directive 42/2014 and its recital no. 21,
- the Court recognizes the correctness of the procedure that led to the assessment of the unlawful origin of the assets (for all the case *Balsamo v. San Marino*),
- **to ascertain a link between proceeds and criminal activity** - understood in a broad sense and **demonstrable even with presumptions** -,
- **in the absence of which the confiscation represents a disproportionate sacrifice of the right of ownership pursuant to art. 1 I Pr. ECHR.**



PARTLY DISSENTING OPINION OF JUDGE

PINTO DE ALBUQUERQUE in

ECHR, *Varvara v. Italy*, no. 17475/09, 29 March 2014.

- “Accordingly, beyond the contradictions in the various cases concerning measures which are substantially analogous,
- **the Court affords weaker safeguards for more serious, indeed more intrusive, confiscation measures,**
- **and stronger guarantees for less serious confiscation measures.**
- **Some “civil-law” measures and some “crime prevention” measures which disguise what is in effect action to annihilate the suspect’s economic capacities, sometimes on threat of imprisonment should they fail to pay the sum due, are subject to weak, vague supervision, or indeed escape the Court’s control, while other intrinsically administrative measures are sometimes treated as equivalent to penalties and made subject to the stricter safeguards of Articles 6 and 7 of the Convention”.**

- “The repercussions of the Court’s case-law can be considerable in cases of enlarged confiscation as a measure to attach property in general (e.g. Article 43a of the German Criminal Code and Article 229-49 of the French Penal Code),
- property having an unlawful purpose (e.g. § 72 of the Swiss Criminal Code and § 20b of the Austrian Criminal Code)
- and property suspected of having an unlawful origin (e.g. § 73d of the German Criminal Code, section 20b (2) of the Austrian Code and section 7 of the Portuguese Law no. 5/2002)”.

Punitive nature of confiscation without conviction in the autonomous meaning of the ECHR

- Limit the right property or permits to forfeit the whole property
- Limit the freedom of economic activity
- stigmatise the person affected, without a demonstration of guilt and a conviction

Criminal standard

- It would be more respectful of the safeguards to adopt the **criminal standard of the proof** in order to apply a kind of confiscation which,
- without the conviction and the demonstration of guilty,
- allows to forfeit the whole property of the subject because **the property is considered of criminal origin,**
- **with the connected stigma for the owner:**
- **The assets are confiscated because the owner is involved in criminal activities**
- **The proof of the illegal origin of the assets is the only element that can justify the confiscation in a State based on the rule of law**

“to square the circle”

- The LIBE Committee model is perhaps too ambitious because it attempts “to square the circle”:
- to consider a “criminal sanction” a kind of confiscation without conviction and to apply the safeguards of the criminal matter, but
- it is an interesting model of actio in rem in order to improve the respect of the safeguards.

lex fori

- Art. 23 of the Regulation establishes the principle of the lex fori for the purpose of identifying the rules applicable to the procedure for the execution of the confiscation order:
- only the executing authorities, in fact, are competent to decide on the procedures for its execution and to determine all the measures relating thereto.

Legal persons, art. 23

- 2. A freezing order or confiscation order issued against a legal person shall be executed
- even where the executing State does not recognise the principle of criminal liability of legal persons.

Means of appeal against the recognition and execution of a confiscation decision

- art. 33 (Article 9, § 2 Framework Decision) provides that
- the substantive reasons may be asserted only before the judicial authority of the issuing State, while
- before the judicial authority of the executing State each interested party,
- including third parties of good faith,
- must have appropriate means of appeal to protect their rights, according to the rules applicable in the legislation of that State (which may also provide, if necessary, suspensive effects of the action).

Third parties

- It will be particularly important to provide for particularly streamlined procedures in the individual legal systems that guarantee the protection of the rights of third parties,
- in order to limit as much as possible the suspensive effect of the legal remedy (where the law of the executing State so provides) provided for by art. 33 (formerly 9, § 1 of the framework decision) or
- the refusal of mutual recognition provided for by art. 8 (in the proposal art. 9 (e) precisely in consideration of the rights of third parties in good faith).

the confiscated proceeds are divided between the executing State and the issuing State of the order (Art. 31),

- "The executing authority may submit a proposal to the issuing authority that the costs be shared where it appears, either before or after the execution of a freezing order or confiscation order, that the execution of the order would entail large or exceptional costs".
- As advocated by the Vienna Convention of 1988, the Explanatory Report of the Strasbourg Convention of 1990, the Council Action Plan against Organized Crime of 1997, the United Nations Convention against Organized Crime of 2000 (Article 14), and as envisaged by the same framework decision 783/2006,
- thus encouraging cooperation by the executing State who will benefit greatly from his collaboration.
- In this regard, the US Department of Justice underlined that the division of confiscated assets among the nations that have collaborated in the application of the confiscation
- **"increases cooperation for confiscation at the international level**, creating an incentive in the countries that collaborate with each other,
- regardless to the place where the assets are located or to the jurisdiction that will have the final say in ordering the confiscation ".

Art. 28, Management and disposal of frozen and confiscated property

- recalling art. 10 of Directive 42/2014, calls on
- the Member States to **properly manage seized or confiscated assets to avoid their loss of value**, and
- establishes rules for the destination of confiscated assets
- a particular reflection and a specific cooperation discipline will be necessary to regulate the cases in which the assets seized and then confiscated are **company assets**
- whose value is to be preserved, as well as to guarantee
- the carrying on of the business activity of fundamentally healthy companies or , however, remediable

Reuse for public interest or social purpose

- Art. 10, § 3. Member States **shall consider taking** measures allowing confiscated property to be used for **public interest or social purposes**.
- Recital 35. for law enforcement and crime prevention projects, as well as for other projects of public interest and social utility
- **LIBE Committee** «*each Member State shall provide for the possibility of confiscated property being used for social purposes*» : mandatory.

Freedom finds a tangible expression in property

- as United States Supreme Court observed in *United States v. James Daniel Good Real Property*, freedom finds a tangible expression in property, there is an insoluble bond between right of freedom and property rights
- if a government has an uncontrollable power on property rights of a citizen, all other rights become without value.
- The explanatory report of Article I of ECHR Protocol I affirms that: “property rights are a condition for personal and family independence”.



[1]) *United States v. James Daniel Good Real Property*, 114 Supreme Court 492 (1993).

middle-ground system

- drawing on elements from both civil and criminal processes
- Criminal standard of the proof
- Presumption of innocence (burden of proof being imposed on the State)
- Hearsay evidence
- greater reliance on documentary evidence

Good compromise between efficiency and safeguards

Thank you for your attention