# Training course "Legal regulation on confiscation of property in Latvia and European Union; ensuring effective execution mechanism"
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## Summary of the lecture.

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## I Problems of distinguishing confiscation of property of crime from the penalty – confiscation of property. Theory and practice.

Laws and regulations also envisage such institutes of law as confiscation of property and property of crime. It is important to distinguish between them and not to relate them that may be mainly done by evaluating the content, purposes and criteria of application of these institutes of law.

The institute of law – confiscation of property by notion is forced free of charge transfer of property or a part of it owned by the sentenced person in favour of the state, and it is a type of penalty that is imposed by a court under the law as a coercion measure to a person who is guilty in committing a criminal offence. The purpose of this institute as a penalty is to punish the guilty person for the committed criminal offence, as well as to achieve that the sentenced person and other persons observe law and refrain from committing criminal offences. The application criteria of this institute of law are the nature of committed criminal offence, damage caused, personality of the guilty person, attenuating and aggravating circumstances.

On the contrary, the institute of law - property of crime by notion is a property that directly or indirectly came to ownership or possession of the person as a result of a criminal offence and the purpose of this institute is fair regulation of the criminal legal relationship. The application criteria of this institute of law are sufficient evidences that do not incur doubts about the criminal nature of the property or the relation of the property to a criminal offence.

The joint aspect of both these institutes of law is their nature – in both cases it is property – movable or immovable property, funds. However, the use of both institutes in achieving fair regulation of the criminal legal relationship is significantly different.

When studying the case law of courts regarding application of penalty – confiscation of property and confiscation of property of crime, it may be concluded that the main obstacle for the application of the institute of law – property of crime – is insufficient understanding of the notion and essence of the property of crime used in laws and regulations.

Property of crime may be confiscated only in case, when its acquisition as a result of a criminal offence is proven, but confiscation of property as a penalty may be imposed and in this case property belonging to a person is confiscated irrespective of the source of its acquisition.

It is significant to distinguish the meaning of the use of both these institutes of law that may not be interrelated, therefore it would be wrong to think that the purpose of the law – fair

regulation of the criminal legal relationship – is achieved by applying the penalty – confiscation of property and it is not necessary to decide on the issue of recognition of the property as a property of crime, because the property is confiscated.

Moreover, without distinguishing between the application of both these institutes and falsely allowing to think that confiscation of property as a penalty also fulfills the function of confiscation of property of crime, a whole range of irregularities is allowed that significantly affect the correct achievement of the purpose of the law – fair regulation of the criminal legal relationship, including also in respect of other persons involved in the proceedings.

- the victim receives nothing from proceeds (in case of confiscation of property of crime, the proceeds are first used to satisfy compensations of victims);
- property required to the sentenced person or his/her dependents the scope of which is determined by the law is not subject to confiscation;
- it is possible that property of crime remains property of the sentenced person and the sentenced person continues to gain profit from its use;
- in case of penalty – confiscation of property – it is possible to exclude property from the list of seized property using civil procedure by disputing the belonging of the property;
- when property is recognized as property of crime it is not possible to dispute the belonging of property after the decision has entered into force.

When evaluating current practices of those applying the law it must be concluded that it does not comply with requirements set forth by laws and regulations and does not correspond to interests of the society.

However, the existing practice may be affected and changed.

Courts must change their attitude and must start to apply the institute of crime – property of crime.

The prosecutor during court debates must request to recognize property as property of crime and submit a protest requesting to recognize property as property of crime, if the court has not evaluated it.

When seizing, investigating authorities must determine as an additional or only purpose – to ensure confiscation of property of crime, as well as to act during the investigation to collect evidence and grounds for recognizing the property as property of crime.

The current case law also demonstrated that irregularities in respect of property to be confiscated in cases from the property does not exist any more, are stated.

It is stated that there is no property any more, but no actions are performed to determine its value and state other property that might become subject to confiscation as envisaged by Section 358 of the Criminal Procedure Law. In these cases courts confine to the victim's application for compensation of damages, but, if there is no property of crime the turnover of which is prohibited or it should not be returned to its owner or legitimate possessor, then the issue of confiscation of its value or recovery during criminal proceedings is not solved, although these proceeds must be transferred to the state budget.

## II Proceedings on property of crime. Standard of proof in matters concerning confiscation of property of crime in Latvia.

In accordance with laws and regulations property may be recognized to be property of crime:

- with a court decision that has become effective;

- with a decision of a prosecutor regarding discontinuation of criminal proceedings that has become effective;
- during pretrial proceedings:
  - with a decision of the driving force of the proceedings, if during pretrial criminal proceedings the property which was reported to be lost by its owner or legitimate possessor is found and removed from the suspect, accused or a third person, and its owner or legitimate possessor proved its rights to the property after it has been found, thus eliminating reasonable doubt;
  - with a decision of a district (city) court in the manner prescribed by Chapter 59 of the Criminal Procedure Law.

Property may be recognized as property of crime by a court decision or a decision of a prosecutor regarding discontinuation of criminal proceedings that have entered into effect in case, when there is sufficient evidence that raise no doubts regarding the criminal origin of the property or the relation of the property to a criminal offence, as well as in cases, when property belonging to the accused (sentenced) person or a person maintaining permanent relationship with the accused (sentenced) person in relation to committing a criminal offence, as envisaged by Section 355(2) of the Criminal Procedure Law, is stated.

Property may be recognized as property of crime during pretrial proceedings with a decision of the driving force of the proceedings, if during pretrial criminal proceedings the property which was reported to be lost by its owner or legitimate possessor is found and removed from the suspect, accused or a third person, and its owner or legitimate possessor proved its rights to the property after it has been found, thus eliminating reasonable doubt.

Property may be recognized as property of crime during pretrial proceedings with a decision of a district (city) court in the manner prescribed by Chapter 59 of the Criminal Procedure Law, if it is necessary for timely resolution of property matters and is done in the interest of economy of the proceedings. Having regard to the fact that the body of evidence provides grounds to consider that the removed or seized property is of criminal origin or is related to a criminal offence and its transfer of the criminal matter to court in the nearest time (within reasonable period) is not possible due to objective reasons or this may incur significant ineligible expenditures.

When examining the issue of recognition of property as property of crime during pretrial proceedings in the manner prescribed by Chapter 59 of the Criminal Procedure Law, the circumstances to be clarified and proved are:

1) information about the facts confirming the relationship of property with a criminal offence or a criminal origin of property;
2) which persons are related to the specific property;
3) whether the owner or legitimate possessor of the property is known;
4) whether any person has legitimate rights to the property.

The driving force of the proceedings is a person submitting evidence regarding the presence of a criminal offence and the relationship of the property to the criminal offence or criminal origin of the property. But the persons related to the specific property, submit evidence that it has legitimate rights to the property.

Moreover, the duty of the driving force of the proceedings is to clarify all the circumstances that are important for the correct resolution of the matter.

The court decides whether there was a criminal offence, whether the property is related to it or whether the origin of the property is criminal. The court must also clarify whether there is any objective cause due to which the transfer of the criminal matter to court in the nearest

time (within reasonable period) is not possible due to objective reasons or this may incur significant ineligible expenditures.

When evaluating the existing case law it must be concluded that there is a problem related to the fact that the driving force of the proceedings does not sufficiently understand the need to prove the existence of a criminal offence to have a reason to apply provisions of Chapter 59 of the Criminal Procedure Law.

## III Confiscation of material evidence, including instrumentalities. Practical problems with enforcement of confiscation of property in Latvia. International cooperation aspects in the field of confiscation of property.

### Confiscation of material evidence, including instrumentalities.

In practice material evidence is considered to be everything removed during criminal proceedings, and completely without any grounds items are recorded in a criminal matter in the list of material evidence and documents.

It may be concluded that driving forces of the proceedings ignore the definition of material evidence specified in Section 134(1) of the Criminal Procedure Law and clearly stating that a material evidence in criminal proceedings may be any item, used as an instrumentality or object of committing a criminal offence, or that has kept traces of a criminal offence, or in any other way contains information about facts and may be used in proving.

If an item is used in proving due to the information in contains, it is considered a document rather than a material evidence, which is in its turn specified in Section 134(2) of the Criminal Procedure Law.

It may also be concluded that no attention is paid to the issues related to handling material evidence that is regulated by Section 240 of the Criminal Procedure Law. Mainly, the regulation specified in Section 240(1)(2) of the Criminal Procedure Law is not observed providing that only those instrumentalities may be confiscated that are owned by a suspect or accused, but if they do not have any value, they are destroyed.

Moreover, no case were stated, when a court would decide on the issue that any other property of the suspect or the accused would be subject to confiscation or funds in the value of the instrumentality would be recovered, if this instrumentality belongs to other persons, as envisaged in Section 240(7) of the Criminal Procedure Law.

### Practical problems with enforcement of confiscation of property in Latvia.

When facing the issue of enforcement of confiscation of property, it may mainly be concluded that problems are caused by its long-term enforcement which, in its turn occurs, because the limitation period for enforcement of confiscation of property is understood and interpreted differently.

In accordance with Section 62 of the Criminal Law the decision imposing a penalty – confiscation of property, is not enforceable, if it has not been enforced within two years from the day of its entry into legal effect. Having regard to the above mentioned legal regulation, no misunderstanding should occur regarding the duration of the enforcement limitation period, however they occur, because in practice this term is frequently without any reason related to the enforcement limitation period set in the Civil Procedure Law which respectively regulates issues regarding actions of court bailiffs. It should be recognized that the only regulation for the enforcement limitation period in criminal matters in which the penalty – confiscation of property – is enforced, are the provisions of Section 62 of the Criminal Law and it is not viewed in connection with the regulation of the Civil Procedure Law.

Having evaluated the existing case law it is stated that no time is specified to which confiscation of property may refer.

In accordance with Section 143 of the Sentence Execution Code of Latvia having received a writ of execution and a copy of the property inventory statement, the bailiff shall **without delay** verify the property indicated in the property inventory statement and the existence of the property to be confiscated indicated in the court judgment, shall draw up a property inventory statement regarding the property which has been found in the possession of the convicted person or other persons during the verification and is subject to confiscation but has not yet been inventoried and shall determine the procedures for preservation of such property.

In the author's opinion it might be required to set a time in laws and regulations to which the enforcement of the penalty – confiscation of property – may refer. If it would be specified, the driving force of the proceedings during pretrial proceedings should have stated the financial situation of the person at the time of committing a criminal offence and only that property would be subject to confiscation.

A regulation would also be necessary for the cases, when funds are inexpediently spent when enforcing the penalty – confiscation of property (a writ of execution is issued and sent to the court bailiff to perform enforcement activities knowing that the accused person has no property).

If it is stated during pretrial proceedings of a criminal matter that there is no property, but the penalty under the Criminal Law envisages a mandatory additional penalty – confiscation of property, the court should provide the rights in all cases not to impose the additional penalty – confiscation of property, motivating it by the non-existence of property.

The case law also shows cases and different practices in matters, when money is seized during pretrial proceedings and later, when enforcing the court judgment about confiscation of property, the sentenced asks for the removal of seizure from money the total amount of which does not exceed one month minimum subsistence level for him/her and his/her family member, if he/she was a dependent of the accused and has no other income. In accordance with Annex 1 to the Criminal Procedure Law the above mentioned money may not be seized, because if the money is seized, it must be assumed that the seizure was imposed on the money not exceeding one month minimum subsistence level, as otherwise the law is not complied with. It is a significant issue for the court to pay due attention to.

**International cooperation aspects in the field of confiscation of property**.

**Enforcement of confiscation of property imposed by a foreign country,** except member states of the European Union, **in Latvia.**

In accordance with Section 791(1) of the Criminal Procedure Law the confiscation of property to be enforced in Latvia is defined, if it was imposed in a foreign country, except member states of the European Union, and for the same offence, as principal penalty and additional penalty, the property provided for in the Criminal Law or in criminal proceedings taking place in Latvia must be confiscated on the basis provided for in other law.

Section 791(2) of the Criminal Procedure Law also provides that if confiscation of property is provided for in a foreign decision, but the Criminal Law does not envisage confiscation of property as a principal or additional sentence, confiscation is applicable only in the amount in which it is stated in the foreign decision that the property to be confiscated is an instrumentality of crime or a property of crime.

It may be concluded from the above mentioned legal provisions that in any case both institutes of law are recognized and may be applied – either confiscation of property or also confiscation of property of crime, it is significant to evaluate the institute of law applicable in each particular case.

Grounds for enforcement of property confiscation imposed by a **member state of the European Union**.

A decision of a member state of the European Union regarding confiscation of property, instrumentalities and proceeds (hereinafter referred to as the decision regarding confiscation of property) may be enforced in Latvia and in accordance with Section 793 of the Criminal Procedure Law there are 3 grounds for it:
1) a decision regarding confiscation of property or its certified copy and a certification of a special form;
2) the fact that the person the decision regarding confiscation of property refers to has a place of residence (a registered address for a legal entity) or owns property or gains other income in Latvia;
3) a decision of a Latvian court regarding the confiscation of property to be enforced in Latvia and a writ of execution regarding transfer of this decision for enforcement.

Section 794(3) of the Criminal Procedure Law provides that no verification should be made so as to know whether a specific offence is criminal also according to Latvian legislation, if the decision regarding confiscation of property was made by a member state of the European Union for the offences specified in Annex 2 to the Criminal Procedure Law.

**The case is examined *in absentia* of the person**

In accordance with Section 755(1) of the Criminal Procedure Law, if a decision has been rendered in a foreign country, except member states of the European Union *in absentia* of the person and Latvia has an agreement with this country about enforcement of the imposed penalty *in absentia* of the person, before making a decision regarding recognition of the foreign decision and enforcement of penalty in Latvia the court issues a notice to the person sentenced in the foreign country concerned.

Section 794(2) of the Criminal Procedure Law provides that it is not possible to refuse enforcement of a decision regarding confiscation of property, if it has been made *in absentia* of the sentenced person in a member state of the European Union, when the person:
1) received summons or was otherwise informed that the decision may be made in absentia of it;
2) was informed about the proceedings and its defense counsel took part in the court hearing;
3) received a decision about confiscation of property and informed that it does not appeal this decision or has not appealed it.

A decision of judge of a district (city) court regarding the determination of the penalty to be enforced in Latvia may be appealed to the Senate of the Supreme Court using cassation procedure.

**Enforcement of confiscation of property imposed by Latvia in a foreign country**

In accordance with Section 808 of the Criminal Procedure Law the submission of a request to a foreign country regarding the enforcement of a penalty imposed in Latvia is possible, if the court decision has entered into effect and the enforcement of the penalty in the foreign country would promote resocialization of the sentenced person and one or more of these circumstances are in effect:

1) the foreign country is a country of citizenship of the sentenced or his/her permanent place of residence is there;

2) the sentenced has property or earns income in the foreign country;

3) the foreign country is a country of citizenship of the sentenced, and it expressed its readiness to promote resocialization of the person;

4) Latvia would not be able to enforce the penalty, even if it asked for extradition of the person.

It is important to draw attention to the regulation provided in Section 811 of the Criminal Procedure Law regarding the enforcement of confiscation of property in case when a request regarding enforcement of a penalty was submitted to a foreign country, because after such request has been submitted Latvian authorities do not perform any penalty enforcement related actions, but may enforce confiscation of property irrespective of submission of a request regarding enforcement of penalty to a foreign country.

Section 832(2) of the Criminal Procedure Law provides that the decision made in Latvia regarding compensation of property may be simultaneously sent to several foreign countries, because properties are located in different foreign countries or confiscation is related to actions in several foreign countries.

**Sending a decision regarding confiscation of property for enforcement to a member state of the European Union**

There are cases when it is not possible to enforce the decision regarding confiscation of property made in Latvia, because the place of residence of the sentenced (a registered address for a legal entity), the property owned by him/her or its income is gained in other member state of the European Union.

In these cases the decision regarding confiscation of property made in Latvia may be sent to several member states of the European Union, if properties are located in different foreign countries or confiscation is related to actions in several foreign countries as provided by Section 837 of the Criminal Procedure Law. Furthermore, in accordance with Section 838 of the Criminal Procedure Law the sending of the decision regarding confiscation of property made in Latvia simultaneously to several countries does not restrict Latvia in the enforcement of this decision.