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MODELING THE PATTERNS OF CIVIL CONFISCATION: BALANCING EFFECTIVENESS, PROPORTIONALITY AND THE RIGHT TO BE PRESUMED INNOCENT

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ABSTRACT

This article elaborates on recent developments in modelling the advanced measure for prevention of organized and serious criminality and corruption – civil confiscation. It distinguishes and discusses the safeguards in civil confiscation patterns that are supposed to ensure the balance between the effectiveness and proportionality of the recovery of the proceeds of crime. Based on different sets of the distinguished safeguards, the article abstracts the variety of civil confiscation patterns in European national jurisdictions into three models and discusses the advantages and the risks the regulation based on these models may pose. The analysis is supplemented with the assessments made by the European Court of Human Rights in the cases related to civil confiscation regulation and insights of the practitioners who participated in the legislative proceedings on the draft of the Lithuanian law on civil confiscation. The article concludes with the thesis that some patterns of the civil

confiscation may pose serious risks of disproportional or erroneous decisions to recover property and abuse of civil confiscation proceedings.

KEYWORDS

Civil confiscation, proportionality, presumption of innocence, proceeds of crime

INTRODUCTION

Since the end of the twentieth century, an accelerating evolution of the policies that target proceeds of crime may be observed. The traditional confiscation of proceeds of crime in criminal proceedings has been supplemented with the extended powers of confiscation and with the non-conviction based confiscation.[1] Some states introduced the "ordinary" civil confiscation,[2] some went further and adopted legal schemes that allowed forfeiture of unexplained wealth.[3] Additionally, criminal liability for illicit enrichment has been introduced in some jurisdictions.[4] The evolution has been encouraged by the internationally acknowledged criminological fact that most of the proceeds of crime are out of reach for the authorities that rely on traditional confiscation powers in criminal proceedings[5]. The criminal proceedings provide maximum guarantees that wrongful decisions to confiscate legally acquired assets would not be passed. However, the cost for the low risk of error is lack of effectiveness of the confiscation efforts in cases of sophisticated crime schemes and advanced management of the crime proceeds. The international acknowledgement of the important role of efficient recovery of criminal gains in control of serious crime together with an acknowledgement of lack of effectiveness of traditional confiscation regimes, encouraged the political shift in national penal policies. The tolerance of failure to confiscate proceeds of crime decreased and some degree of the risk of erroneous decisions to confiscate property accumulated from legal income became more acceptable.[6] As the result, some safeguards that were common to criminal proceedings have been dropped to create more efficient policies for confiscation of crime proceeds.

However, every state that makes effort to create a modern legal confiscation tool needs to strike the right balance between effectiveness and guarantees of human rights. Otherwise, it risks infringe the rights of natural persons and companies seriously and cause highly undesirable negative economic-social impact.

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[1] *Council Framework Decision 2005/212/JHA of 24 February 2005 On Confiscation of Crime-Related Proceeds, Instrumentalities and Property*, OJ L 68, 15.3.2005; *Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 On the freezing and confiscation of instrumentalities and proceeds of crime in the European Union*, OJ L 127, 29.4.2014.
[2] Georgia, Italy, Ireland, the United Kingdom, Slovenia.
[3] Slovakia, Bulgaria 1973-2005, Ukraine, the United Kingdom since 2017.
[4] In Ukraine since 2011, Art. 368-2 of the Ukrainian Penal Code and new wording since 2019, Art. 368-5 of the Penal Code, in Lithuania since 2010, Art. 189-1 of the Lithuanian Penal Code, also in France since 2000, Art. 321-6 of the French Penal Code.
[5] Recommendations to consider new approaches to the regulation of confiscation of criminal gains have been provided in *Communication from the Commission to the European Parliament and the Council, Proceeds of Organised Crime, Ensuring that "Crime Does Not Pay"* (European Commission Brussels (20 November 2008) COM (2008) 766 final); in *The Financial Action Task Force (FATF) recommendations*, B.4; also in the UN Conventions: *Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances* (1988); *Against Transnational Organized Crime* (2000); *Against Corruption* (2005).
[6] More on the idea that the standard of proof reflects the tolerable risk of the for erroneous decisions see in Johan Boucht, *The Limits of Asset Confiscation* (Oxford: Hart Publishing, 2017), 220.

This article introduces the key elements that form different patterns of "checks and balances" in the civil confiscation proceedings that are supposed to balance the desired effectiveness and the necessary guarantees for protection of the right to enjoy property peacefully. The discussions in the legislative process for drafting the Lithuanian law on civil confiscation serves as the starting point for the analysis, as they cover a wide range of possible patterns and highlighted some specific issues. Also, legal frameworks in other European countries that introduced civil confiscation on the variety of patterns provide rich comparative supplement for the analysis. This paper covers all the countries that have introduced civil confiscation regimes and are subject to the jurisdiction of the European Court of Human Rights (ECHR). Developing jurisprudence of the ECHR in civil confiscation cases makes an important background for the discussion and the evaluation of the said legal regimes. The article refers to all four present ECHR cases where certain properties or entire concepts of the civil confiscation regimes have been challenged.

1. LITHUANIA'S PATHWAY TO THE LAW ON CIVIL CONFISCATION

In Lithuania the evolution of crime proceeds confiscation policies began in December 2010, when two concurring legal instruments have been introduced in the Lithuanian Penal Code: extended powers of confiscation (Art. 72-3) and criminalization of illicit enrichment (Art. 189-1). At that time the idea to introduce civil confiscation instead of the severely criticized criminalization of illicit enrichment was presented by the experts but did not receive any political support.[7] By introducing extended powers of confiscation, Lithuania fulfilled the obligation for the member states set in the Framework Decision 2005/212/JHA.[8] Criminalization of illicit enrichment was introduced following the recommendation provided in the UN Convention against Corruption 2005.[9] In comparison to traditional confiscation of proceeds of crime extended powers of confiscation enabled the expansion of the scope of recoverable property from proceeds from established crime to the proceeds from unspecified criminal conduct. It also lowered the standard of proof for the criminal origin of the unexplained property. In contrast to civil confiscation it operated within criminal proceedings as the conviction-based confiscation measure. Criminalization of illicit enrichments provided broader scope of recoverable property than extended powers of confiscation: it covered any illegally gained unexplained property. Moreover, the proceedings did not depend on the conviction for a predicate ('trigger') crime. However, the burden of proof of the origin of property

[7] *Working paper for the hearing at the Parliamentary Committee on Law and Legal Order on the draft law No. XIP-2344, 28.10.2010* [Unpublished].
[8] *Council Framework Decision 2005/212/JHA*, *supra* note 1.
[9] See https://www.unodc.org/documents/brussels/UN_Convention_Against_Corruption.pdf.

remained on the prosecution in full at the standard of beyond reasonable doubt as the presumption of innocence was fully applicable to the charges with illicit enrichment.[10] Failure to escape from the area of operation of the presumption of innocence became the key reason why criminalization of illicit enrichment appeared to be very inefficient. From 2011 to 2014 none of conviction has been upheld by the Supreme Court of Lithuania.[11] During 2015-2019 defendants have been convicted for illicit enrichment in only 4 criminal cases and 24 criminal trials ended with the acquittals. In the majority of the acquittals (17 out of 24), the courts referred to the prosecution's failure to prove the illicit origin of the assets beyond reasonable doubt. The success rate for confiscation was only 6 per cent, as the courts ordered confiscation of property worth in total 0,58 million Euros, while prosecutors requested for confiscation of property worth 9,7 million Euros.[12]

Concurrence with the criminalization of illicit enrichment eliminated the use of extended powers of confiscation in practice. From 2011 to 2018 prosecution for illicit enrichment was set as the ultimate priority by the Prosecutor General[13]. As the result, from the introduction in 2010 till 2019 there were no final decisions to apply extended powers of confiscation.

In the face of the evident disfunction of the criminalization of illicit enrichment, the political decision has been finally made in June 2018 to make a rapid further step in the evolution of the illegal asset confiscation measures and join other European countries (Italy, Bulgaria, Slovenia, Ireland, UK, Slovakia, Ukraine, Georgia) that have already introduced laws on civil confiscation[14]. The draft was elaborated and then adopted by the Parliament in January of 2020. After partial veto of the President of Republic, the amendments proposed by the President were included and the law was finally passed in March 2020 and entered into force on 1st July 2020.

[10] *Decision in the Case No. KT4-N3/2017*, Constitutional Court of Lithuania, OG (2017 No. 4356); *Decision in the Case No. 2K-P-93/2014*, Supreme Court of Lithuania, Teismų praktika (2014, Nr. 41).
[11] Skirmantas Bikelis, "Prosecution for Illicit Enrichment: The Lithuanian Perspective," *Journal of Money Laundering Control* 20(2) (2017).
[12] Skirmantas Bikelis, "Chasing Criminal Wealth: Broken Expectations for the Criminalization of Illicit Enrichment in Lithuania," *Journal of Money Laundering Control* [accepted for publication on 2020-12-16, pending for EarlyCite] // DOI:10.1108/JMLC-12-2020-0135.
[13] Skirmantas Bikelis, *supra* note 11: 207; also *Strategic Action Plans of the Prosecutor General's Office of the Republic of Lithuania for 2012-2014, 2013-2015, 2014-2016 and 2015-2017* [inaccessible publicly since 2018].
[14] The first attempt to provide legal ground for civil confiscation in Lithuania was made back in 2016 when working group proposed to list the civil confiscation among preventive measures in the early draft of the law on Organized Crime Control.

2. BALANCE ELEMENTS AND CIVIL CONFISCATION PATTERNS

One could compare the operating principle of the civil confiscation to that of the nuclear reactor. Both have an extremely potent power element and a system of balance elements, which allow controlling the power in the way that on one hand directs it to serve the vital needs of the society (control of organized crime and corruption), and on the other hand prevents ill-targeted and disproportional burst of its potential, thus preventing huge negative social impact. In civil confiscation proceedings, the 'power element' is the presumption of the illegal origin of the unexplained assets altogether with the civil standard of proof. The balance elements might be: 1) threshold for a minimum value of unexplained assets, 2) certain legal facts, which trigger the civil confiscation proceedings (charges with serious offence in criminal proceedings against the person, who controls the property or his or her status of politically exposed person (PEP) etc.), 3) general clause that recoverable assets must be related to the criminal conduct. The variations of civil confiscation patterns vary in number and strength of the balance elements. The elements should not be considered remotely, as they form a system in which where more strength of one element may compensate the lower requirements for or absence of the other element.

The patterns may be classified into three categories:

1) Pure unexplained wealth confiscation model (PUWCM), where no links between recoverable wealth and criminal conduct are required. The only balance element provided (if any) is a certain threshold of minimum value of unexplained assets that is normally high.[15] Examples close to this pattern may be found in Slovakian *law on Proof of Origin of Property* (2011) and in the former Bulgarian *law on Citizens Property* (1973-2005).[16]

2) Unexplained wealth confiscation model (UWCM), where, in addition to the minimum value threshold, formal conditions for the start of the civil proceedings (charges with serious offences or PEP status) are required. Examples close to this model are unexplained wealth orders, provided in *2017 Financial Act* of the United Kingdom[17], Slovenian *Law on Civil Confiscation* (2011),[18] Ukrainian *Law*

[15] Although there is one known case of legislation, where even this kind of safeguard did not exist – *Bulgarian law on Citizens Property* (1973-2005).
[16] *The Law of the Republic of Slovakia No. 101/2010 on Proof of Origin of Property* (2010:50) // https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/2010/101/; *The Law on Citizens Property of the Republic of Bulgaria*, OG (1973-26) [repealed: OG, 2015-39] // https://www.ciela.net/svobodna-zona-darjaven-vestnik/document/2127836161/issue/469/zakon-za-sobstvenostta-na-grazhdanite.
[17] *Criminal Finances Act 2017*, UK Public General Acts, 2017 c. 22 // https://www.legislation.gov.uk/ukpga/2017/22/part/1/chapter/1/crossheading/unexplained-wealth-orders-england-and-wales-and-northern-ireland/enacted.
[18] *Zakon o odvzemu premoženja nezakonitega izvora (ZOPNI)* (*The Law on Confiscation of Illegally Acquired Property of the Republic of Slovenia*), OG (2011, 3911- 11817) // https://www.uradni-list.si/glasilo-uradni-list-rs/vsebina/105868.

on Seizure of Illegal Assets of Persons Authorized to Perform State or Local Government Functions (2019),[19] Bulgarian *Law on Fight Against Corruption And Forfeiture of Illegally Acquired Assets* (2018)[20] and, to some extent, the final version of the Lithuanian C*ivil Confiscation Law* (2020).[21]

3) Ordinary civil confiscation model (OCCM), where in addition to the formal "triggers" for civil proceedings, also substantial (either direct or indirect) link between unexplained wealth and criminal conduct must be established by the courts. The minimum assets value may be also provided unless other balance elements are strong enough to make minimum assets value threshold irrelevant (i.e. if property has connections with mafia activities). Close examples are Italian *Anti-mafia code* (2011),[22] Irish *Proceeds of Crime Act* (1996),[23] UK *Proceeds of Crime Act* (2002),[24] Bulgarian *law on Forfeiture of Illegally Acquired Assets on Behalf of the State* (2012)[25] and "pre-veto" version of the Lithuanian *law on civil confiscation* (2020).[26]

3. PURE UNEXPLAINED WEALTH CONFISCATION MODEL

Pure unexplained wealth confiscation model (PUWCM) is the farthest-reaching and the most aggressive confiscation model. One of the alternative suggestions for the draft of the Lithuanian civil confiscation law was also based on PUWCM.[27]

PUWCM does not restrict the target of proceedings and confiscation with the property which is believed to be the proceeds from serious offences. In this model, the ground for the ultimate intervention into the person's right peacefully enjoy the

[19] *Law of the Republic Ukraine On Amendments to Some Legislative Acts of Ukraine Concerning the Seizure of Illegal Assets of Persons Authorized to Perform State or Local Government Functions and Punishment for Acquiring Such Assets*, Official Gazette, 2020, No 2 (5) // https://zakon.rada.gov.ua/laws/main/263-IX#Text.
[20] *The Law on the Corruption Prevention and Recovery of the Illegally Gained Property of the Republic of Bulgaria*, OG (2018, No. 7) //
https://www.mi.government.bg/files/useruploads/files/antikorupzia/zpkonpi.pdf.
[21] *Law on Civil Confiscation of the Republic of Lithuania*, OG (2020, No. 6992).
[22] *Codice Antimafia (Anti-mafia Code of Italy)*, Decreto legislativo, 06.09.2011 n° 159 //
https://www.altalex.com/documents/codici-altalex/2014/07/24/codice-antimafia-edizione-giugno-2014.
[23] *Proceeds of Crime Act of the Republic of Ireland* (1996:30) //
http://www.irishstatutebook.ie/eli/1996/act/30/enacted/en/html.
[24] Anthony Kennedy observes, that under Proceeds of Crime Act (2002) "the correct approach is somewhere between the Agency having to prove a particular crime and a reversal of the burden of proof" (Anthony Kennedy "Civil recovery proceedings under Proceeds of Crime Act 2002," *Journal of Money Laundering Control* 9 (3), (2006): 258).
[25] *Law on Forfeiture of Illegally Acquired Assets on Behalf of the State of the Republic of Bulgaria*, Official Gazette (2012, No. 38) // https://www.lex.bg/laws/ldoc/2135793015. Literally, the text of the law reflected the UWCM, as it did not require establishing a substantial link between the unexplained assets and the criminal conduct. However, Bulgarian courts interpreted the law in the way that establishment of such link was necessary for the recovery of unexplained assets, therefore I assign this law to the OCCM. More on the practice of Bulgarian courts (see Antoniy Galabov, et. al., *Legislation meets practice: national and European perspectives in confiscation and forfeiture of assets. Comparative report* (Sofia: Transparency International, 2015), 91).
[26] *Draft Law on Civil Confiscation of the Republic of Lithuania No. XIII-2780*, adopted on 14.01.2020 [vetoed by the President of the Republic].
[27] *The Opinion from the Anti-Corruption Service on the Draft Law No. XIIIP-3214-3217, Working papers of the Parliamentary Committee on Law and Legal Order*, 2019.04.24 [unpublished].

property is merely the fact that person cannot explain his or her wealth with the evidence of his or her legal income.

The authors of the alternative suggestion to the draft law on civil confiscation of Lithuania noted that PUWCM serves for the principle of equality, as it indiscriminately targets every person who controls the unexplained wealth. They criticized the idea that civil confiscation proceedings could be initiated against persons, who have provisional procedural status in criminal proceedings - the status of suspect or person charged with the commission of criminal offence, but not against people without any status in criminal proceedings. They claimed that in light of the presumption of innocence the status of a person with provisional status in criminal proceedings is equal to the status of any other innocent person. Another point was that the establishment of the criminal origin of the assets in the civil proceedings against a defendant who had not been convicted would infringe upon the presumption of innocence. Therefore, the definition of "unexplained assets" was deemed more favourable than "proceeds from criminal conduct" or any similar one that would implicate the criminal origin of the recoverable assets.[28] In addition to the claimed model's soundness in the light of the principle of equality and presumption of innocence, the PUWCM offers exceptional effectiveness by removing most of the balance elements and thus stripping the defendants of important defence options. No doubt under PUWCM it would be easier for the authorities to reach confiscation decisions in the civil confiscation proceedings. On the other hand, this is exactly why the model has the biggest chance of erroneous confiscation decisions. Moreover, the PUWCM is highly disputable concerning the proportionality of the intervention into the right to enjoy the property.

The authors of the alternative model for the Lithuanian law on civil confiscation claimed that high threshold of the unexplained assets minimum value could eliminate both insignificant cases and tensions with the principle of proportionality. The exact minimum value has not been specified in the suggestion, but indications have been given that it could be significantly (even several times) higher than 100,000 EUR.[29] The Slovakian legislator took a similar approach and set indeed high threshold, which amounted to nearly 500,000 EUR.[30] Currently, it is the highest threshold among all European jurisdictions that provide any model of civil confiscation.

[28] *Ibid*.
[29] 2000 of basic units of fine, which amount to 100,000 EUR were provided as the minimum threshold value for the unexplained property in the main draft and also in the final text of the law on Civil Confiscation of the Republic of Lithuania, Art. 2.
[30] Art. 8 of the Slovakian Law on Origin of Property provides minimum value of recoverable property 1500 amounts of the minimum wage.

Table 1. Minimum unexplained assets value thresholds and "triggers" for civil confiscation proceedings in European jurisdictions[31]

	Preconditions for the proceedings	Approx. minimum value in Eur	Article and year of the current law[32]
Italy	Link to the mafia activities etc.	None	Art. 4, 24-26 (2011)
Georgia	Charges with serious organized crime, or PEP status	None	Ch. LXIV (2004)
Ireland	Property is proceeds of crime	12 000	Art. 2 (1996)
UK	Property is proceeds of crime	12 000	Art. 287 (2002)
	Charges with serious crime or PEP status	56 000	Art. 362B (2002, 2017)
Ukraine	PEP status	38 100	Art. 290 (2019)
Slovenia	Charges with serious crime (list)	50 000	Art. 3 (2011)
Bulgaria	Charges with serious crime (list); Final decision for acquisitive infringement that resulted in profit of more than 25 600 EUR	76 800	Art. 107, 109 (2018)
	PEP status	10 240	Art. 108 (2018)
Lithuania	Suspicion, charges with or conviction for the organized crime, corruption, serious acquisitive crime (with some exceptions); intelligence data on relations with dangerous organized groups	100 000	Art. 2 (2020)
Slovakia	none	500 000	Art. 8 (2011)

It would be difficult to argue that unexplained property of value more than 500,000 EUR may indicate high scale illicit activity. However, the scope of possible sources of illegal or undocumented income is by far larger than proceeds from serious offences and corruption. Without additional circumstances involving criminal context in the case, it would be difficult to believe even on the civil standard of proof that the assets are probable result of corruption or any other serious criminal conduct, especially when the defendant has no status of PEP and is legally entitled to any kind of business activities.[33] High-value unexplained assets may be a result of, for example, long term savings from undocumented business activities,

[31] CC – civil confiscation, PEP – politically exposed person.

[32] Italy: *Codice Antimafia (Anti-mafia Code of Italy)*, *supra* note 22; Georgia: *Civil Procedure Code of Georgia*, N 1106, OG (1997, 47-48); Ireland: *Proceeds of Crime Act of the Republic of Ireland*, *supra* note 23; the United Kingdom: *Proceeds of Crime Act 2002*, UK Public General Acts 2002 c. 29; *Criminal Finances Act 2017*, *supra* note 17; Ukraine: *Law of the Republic Ukraine On Amendments to Some Legislative Acts of Ukraine Concerning the Seizure of Illegal Assets of Persons Authorized to Perform State or Local Government Functions and Punishment for Acquiring Such Assets*, *supra* note 19; Slovenia: *Zakon o odvzemu premoženja nezakonitega izvora (ZOPNI) (The Law on Confiscation of Illegally Acquired Property of the Republic of Slovenia)*, *supra* note 18; Bulgaria: *The Law on the Corruption Prevention and Recovery of the Illegally Gained Property of the Republic of Bulgaria*, *supra* note 20; Lithuania: *Law on Civil Confiscation of the Republic of Lithuania*, *supra* note 21; Slovakia: *The Law of the Republic of Slovakia No. 101/2010 on Proof of Origin of Property, supra* note 16.

[33] Michele Panzavolta also argues that "the use of assumptions based on the possession of disproportionate wealth (compared to income) is *per se* insufficient unless it is accompanied by further, stronger evidence (which could also be circumstantial but still requires the establishment of a link with a criminal activity)" (Michele Panzavolta, "Confiscation and the Concept of Punishment: Can There be a Confiscation Without a Conviction?": 50; in: Katalin Ligeti and Michele Simonato, eds., *Chasing Criminal Money. Challenges and Perspectives on Asset Recovery in the EU* (Hart Publishing, 2019)).

undocumented transactions or other income etc. In such cases, tax measures may be more proportionate than the ultimate measure: the confiscation of all the unexplained property.[34]

Moreover, the absence of any other balance element except the high value of the assets creates a risk that numerous inquiries might be launched without solid factual ground. That might expose competing businesses or any other defendants for proceedings abuse. Civil confiscation proceedings itself (even unsuccessful ones) may bring vast financial and reputational harm to the defendant. These risks put into question the credibility of the aforementioned claim that targeting property with civil confiscation proceedings indiscriminately without any regard to the broader context except the value of their suspicious wealth would be an advantage of the PUWCM.

PUWCM seems to be reaching too far, but on the other hand, it may be too restrictive. Why should very high property value threshold prevent civil confiscation proceedings in the cases where additional evidence shows the probable link of the assets with serious organized crime or corruption? From the perspective of the principle of proportionality, the more evidence of criminal context of the unexplained assets exist, the lesser value threshold should be required. It is important to maintain a well balanced, fairly high threshold of the value of the recoverable assets to prevent overburden of the authorities with the insignificant investigations, also avoiding excessive costs of administration of low value confiscated property. Investigations of small discrepancies between legal and illegal income are likely to have poor success rate as in most cases small discrepancies may be easily explained by the defendants. But, on the other hand, the threshold should not eliminate too many cases where public interest in prevention of serious crime exists. Also, it is worth mentioning the note from the Slovak commentators, that the very high threshold of the value of recoverable assets provided in Slovak law facilitated the practice where defendants split their possessions and thus effectively circumvented the required assets value precondition for the civil confiscation proceedings.[35]

The claim that the law based on PUWCM may infringe on the right to peaceful enjoyment of property in the light of the principle of proportionality has been heard

[34] However, some tax measures may be also rather severe. Since January 2019 Lithuanian Law on Tax Administration provides special tax measure, which in its substance is very close to the confiscation – a tax fine from 50 to 100 per cent for the unexplained income, which actually may make up from 20 to 40 per cent of the total value of unexplained income. This tax measure may be regarded as "back door" if any other confiscation attempt, either in criminal or in civil proceedings, fails (*Law on Amendment and Supplement of the Law on Tax Administration of the Republic of Lithuania*, OG (TAR) (2018, Nr. 10972)).
[35] *Zákon č. 101/2010 Z. z. o preukazovaní pôvodu majetku (Act no. 101/2010. On proof of origin of property)*, Slovak Government Office on Corruption Prevention // https://www.bojprotikorupcii.gov.sk/zakon-c-1012010-z-z-o-preukazovani-povodu-majetku/.

by the ECHR in the case Dimitrovi v. Bulgaria.[36] The applicants complained against the confiscation of the assets based on the Bulgarian *Law on Citizens Property*, that was in force until 2005. The Bulgarian law reflected the PUWCM: it provided, that, until proven otherwise, it was presumed that "unlawful" or "non-work-related" income had been received where 1) the value of a person's property manifestly exceeded the income lawfully received by him and the members of his household, or 2) the expenditure by a person and his household manifestly exceeded their lawful income. Any "unlawful" or "non-work-related" income within the meaning above, or property acquired by means thereof, was to be forfeited.[37] The law did not provide any reasonable threshold for the value of the unexplained assets, except that it excluded proceedings against the property of insignificant value.[38]

In its jurisprudence the Court allows wide margin of appreciation to the State under the European Convention of Human Rights (Convention)[39] when it comes to general measures of political, economic or social strategy, and the Court generally respects the legislature's policy choice unless it is "manifestly without reasonable foundation".[40] Also, as Simonato observes, contrary to national constitutional courts, the ECtHR does not evaluate a legal provision or institution as such, but the concrete case in its entirety, where an important role is played by every opportunity granted to a person to challenge before a judicial authority those orders or findings that can be detrimental to his/her interests.[41]

Despite its reserved attitude and resistance to evaluate the legislation in general, in the case *Dimitrovi v. Bulgaria* the Court found not only the infringement of the applicant's right to peaceful enjoyment of property in the particular case but also found, among other issues, that the regulation itself, in general, could not be perceived as aiming for a legitimate aim.

The PUWCM does not restrict the target of civil confiscation with the proceeds from crime or the assets connected with the criminal conduct in any way and the Court did not accept this approach in the light of the principle of proportionality. The position of the Court was firm that the confiscation might be legitimate only against the assets linked to the crimes. It declared that the aim of the law "to protect justice and equality and to guarantee just conditions for economic activity", which did not specify prevention of the gravest assaults on the interests of the

[36] *Dimitrovi v. Bulgaria*, European Court of Human Rights, App. No. 12655/09 (2016).
[37] See *ibid*., also *The Law on Citizens Property of the Republic of Bulgaria*, *supra* note 16.
[38] *Ibid.*, Art. 39, Sec. 3.
[39] *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 1, supplemented by Protocols Nos. 1, 4, 6, 7, 12, 13 and 16*, Council of Europe, ETS (1950, 5).
[40] *Gogitidze and others v. Georgia*, European Court of Human Rights, App. No. 36862/05 (2015), Sec. 97.
[41] Michele Simonato, "Directive 2014/42/EU and Non-Conviction Based Confiscation: A Step Forward on Asset Recovery?" *New Journal of European Criminal Law* 6(2) (2015): 226 // doi:10.1177/203228441500600205

society (prevention of the criminal offences), was too general and vague. The Government's argument that prevention of criminal offences fell into the more general scope of prevention of any forbidden activities did not convince the Court. The Court noted that not only the aim of the law but also concrete facts of the domestic proceedings against the applicant, where at no point did the authorities attempt to establish that the properties whose forfeiture was being sought had been acquired through proceeds of crime, persuaded it that confiscation proceedings were not targeting the proceeds of the crime.[42]

4. UNEXPLAINED WEALTH CONFISCATION MODEL

UWCM narrows the target area of the confiscation proceedings by requiring the 'criminal context' as the trigger for the proceedings. The 'criminal context' may range from suspicion of a defendant with a profitable (serious) crime to his or her conviction for such crime. Status of the defendant as a politically exposed person in connection with the fact of possessing or controlling of high-value unexplained wealth may serve as presumed 'criminal context' in the proceedings under UWCM as well. However, in UWCM the 'criminal context' plays the role only as a trigger of the confiscation proceedings but has nothing or very little to do with the grounds of confiscation. Like in the PUWCM, the ground for confiscation is unexplained (presumably illicit) origin of the wealth but not the criminal origin of it. The proof of criminal origin of the recoverable assets is not the subject matter of the dispute and proof in the proceedings. Thus 'criminal context' in such proceedings is rather formal.

The formal nature of the trigger of the confiscation proceedings poses at least two kinds of risks. First, in the regimes that allow mere suspicion as the formal trigger for the proceedings, which are not uncommon, it appears to be a very weak safeguard and may not prevent possible abuse of proceedings. For example, if the suspicion with money laundering is a formal trigger for the civil confiscation proceedings, this trigger may work in any case where the suspicious assets of significant value are detected. The detection of suspicious assets of significant value formally may be a self-sufficient fact for suspicion for money laundering. If the law enforcement would use formal suspicion with money laundering as 'universal' formal trigger for civil confiscation, the scope of the UWCM would cease to be

[42] The Court also pointed out the provision of the law that proceeds of crime should be confiscated under the provisions of Criminal Code as the argument against Government's statement, that the law covered also the proceeds of crime. It seems, that indeed those provisions indicated priority for the confiscation in criminal proceedings when criminal proceedings were possible but did not preclude confiscation under the disputed law where the criminal proceedings were not possible.

different from the excessively broad scope of PUWCM and, in general, any difference between these two models would vanish.

Secondly, formal triggering of the proceedings does not prevent and does not provide a solution in the situations where triggering fact has nothing to do with the suspicious assets and thus confiscation proceedings fail to serve for their true aim. For example, the defendant is suspected with (or convicted for) the attempt to bribe the road traffic officer and civil confiscation proceedings are being launched against his unexplained assets on this ground. As long the triggering fact and unexplained wealth have no reasonable link, the defendant should not be subject to the civil confiscation proceedings, but that's not the case under the UWCM.

Another issue common to both UWCM and 'ordinary' civil confiscation model (OCCM) is the scope of the triggers. This issue has two layers – what offences should trigger the proceedings and what level of certainty that a defendant has committed a said offence is sufficient for triggering the proceedings?

The level of the certainty of factual background for triggering the civil confiscation proceedings may vary. The least restrictive trigger would be mere suspicion for the commission of the criminal offence. A more substantiated one is a finalized criminal investigation where the criminal case is adjourned to the court. The strongest trigger would be final conviction for the criminal offence.

The dilemma between suspicion and finalized criminal investigation was long discussed during the elaboration on the draft of Lithuanian law on civil confiscation. It is true that suspicion may be based on scarce evidence and therefore it is a rather weak safeguard that civil proceedings shall be launched on the solid factual ground proving that the unexplained assets have a probable link to the criminal activities. In contrast to the OCCM, where substantial link between the assets and the criminal conduct must be established by the court, in the UWCM, where no such link but only formal proceedings trigger is required, there is no other safeguard that would compensate the weakness of the trigger. It exposes both problems that arise from the formal nature of the proceedings trigger.[43] On the other hand, it is difficult to overestimate the importance of the time factor for the successful tracing, investigating and securing the suspicious assets. Postponing the assets search, investigation and freezing until the finalization of the criminal investigation (or even until conviction) would give the suspect more than enough time to conceal the assets and secure them from confiscation or destroy them. Therefore, an early

[43] In the UWCM, a suspicion as a proceedings trigger is vulnerable to the abuse practices where suspicion may be issued without any factual base (except the fact of detected assets) and without any intent to prosecute the defendant, but solely with the intent to provide a formal ground for the launch of the civil confiscation proceedings.

start to civil confiscation proceedings is necessary.[44] If a legal model lacks safeguards that would balance the risks related to the early start of the confiscation proceedings (like UWCM), it should be assumed to be a serious disadvantage of the civil confiscation pattern.

In the discussions on Lithuanian draft on the law *on Civil Confiscation*, the agreement has been reached to allow suspicion for a criminal offence as a trigger for civil confiscation proceedings. Unfortunately, the law also provides a rather contradictory rule that after the suspicion is issued in the criminal proceedings, the civil confiscation proceedings shall not be initiated until the final decision in the criminal proceedings (Article 3). Assumably, in many cases delay will have a negative impact on the civil confiscation proceedings results.

Concerning the scope of the offences that might trigger civil confiscation proceedings, on the international level the confiscation regimes that include reversal of burden of proof of the assets origin have been proposed in the context of the prevention and control of organized crime, drug-related crime and corruption.[45] The list of the offences provided in the Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union closely reflects this idea, even though it defines the guidelines for the regime (extended powers of confiscation) that includes more safeguards than civil confiscation proceedings. However, in the national regulation, as many academics observe, there is a temptation to expand the scope of the modern confiscation regimes to cover also other offences not necessarily serious and not necessary related to organized crime, drugs or corruption.[46]

The attempt to expand the scope of the civil confiscation proceedings was also made in Lithuania. It received support in the Parliament but in major part it was blocked by a Presidential veto. The suggestion was made to expand the scope of the Law by including the economic offences that are not classified as serious offences under Lithuanian Penal Code, for example, unauthorized engagement in commercial activities and fraudulent bookkeeping. The representatives of the police and prosecution claimed that organized groups employ illegal companies and use fraudulent bookkeeping for laundering their criminal money. They argued that expanding the scope could efficiently lead to the main aim of the civil confiscation –

[44] Johan Boucht, *supra* note 6, 12.
[45] *UN Convention Against Corruption*, *supra* note5, *UN Convention Against International Organized Crime*, *supra* note5, and the *UN Convention Against Illicit Traffic In Narcotic Drugs And Psychotropic Substances*, *supra* note5.
[46] Johan Boucht, "Asset confiscation in Europe – past, present and future challenges," *Journal of Financial Crime* 26(2) (2019): 540; on the USA: Mathew. R. Lasky, "Imposing Indigence: Reclaiming the Qualified Right to Counsel of Choice in Criminal Asset Forfeiture Cases," *Journal of Criminal Law and Criminology,* 104(1) (2014): 169; on England: Yulia Chistyakova, David. S. Wall, and Stefano Bonino, "The Back-Door Governance of Crime: Confiscating Criminal Assets in the UK," *European Journal on Criminal Policy and Research* (2019):1 // https://doi.org/10.1007/s10610-019-09423-5.

tackling the money of the organized crime – even when no evidence of criminal money laundering offence or any other criminal activity is at hand. In addition, supporters of this position emphasized that the high value of the unexplained assets should be the key criterion for justification of civil confiscation while the level of the sanction for the offence linked to the assets (which describes the seriousness of the offence in the Penal code) should not be decisive. Impressive amounts of illegal money might run through unauthorized companies and companies that employ fraudulent bookkeeping, thus causing serious harm to the important interests of the society even though such activities are not classified as serious offences in the penal law.

However, the inclusion of the vast field of shady businesses into the scope of civil confiscation under the rhetoric that some businesses might be under control of organized crime without even having and requiring for evidence of the links between targeted property and serious criminality carries serious risks which have been already mentioned when discussing the issue with the excessively wide scope of the PUWCM. This may create a highly uncertain legal business environment with risks for massive social negative side effects to occur. Based on mere suspicion in criminal proceedings, devasting harm to the business might be done even before the civil confiscation proceedings would reach their final stage (and many of them might never reach it due to the complexity of investigation). Harm to the reputation, loss of the partners and potential contractors, a freeze of the business assets and the whole business activities for a period of investigation may lead to huge losses or even bankruptcy.[47] That's a serious risk that might be activated by the competitors aiming to ruin the business of their rivals. Moreover, overexpansion of the scope of the civil confiscation poses the risk of the scattering the limited investigational resources and losing the focus on the most serious cases. But in the first place, it is arguable if the application of civil confiscation would be in proportional measure (both in regard of possible severe consequences and legitimacy of the reversed burden of proof) against a defendant who controls property that has no alleged or established links with serious criminality.

At the ECHR there have been no challenges concerning civil confiscation proceedings concerning the property linked to non-serious crimes so far. In three out of four cases where the application of civil confiscation has been challenged, according to the facts of the cases the national courts established links of the property with serious crimes: with corruption in *Gogitidze v. Georgia*, with illicit activities of mafia-type organizations in *Arcuri v. Italy* and with the drug trafficking

[47] See Mathew. R. Lasky, *supra* note 46: 167.

in *Butler v. the United Kingdom.*[48] In all these cases the Court found no violation of the right to enjoy the possessions in the light of proportionality principle. In the fourth case – the aforementioned case *Dimitrovi v. Bulgaria* – no link between the property and any criminal offence was established at all and the Court found a violation of the principle of proportionality. In the former cases, the Court emphasized the seriousness of the crimes linked to the confiscated illicit property as an important criterion for the evaluation of the proportionality of the measure applied: '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'.[49] The Court did not go further beyond the facts of the concrete cases to consider if application of the civil confiscation to the property linked to less serious offences would pass the test of the proportionality and fair proceedings under Art. 1 of the Protocol 1 and Art. 6 of the Convention.

However, in the case *Paulet v. the UK*, where the applicant challenged confiscation of the property related to non-serious crime that has been ordered in the criminal proceedings, the Court gave the indirect signal that it would consider confiscation measures in the light of the principle of proportionality very seriously whenever the measure is applied against the property related to non-serious offences. In the *Paulet v. the UK* ECHR found a violation of the Article 1 of Protocol No. 1 to the Convention, on the grounds that national courts failed to apply proportionality test to the confiscation order despite allegations that the offence linked to the confiscated property was of minor seriousness and harmfulness:

It is clear that in assessing whether or not the confiscation order in the present case was "oppressive" and thus an "abuse of process", the Court of Appeal did ask whether or not the order was in the public interest. However, having decided that it was, they did not go further by exercising their power of review so as to determine "whether the requisite balance was maintained in a manner consonant with the applicant's right to 'the peaceful enjoyment of his possessions', within the meaning of the first sentence of Article 1" (see *Sporrong and Lönnroth v. Sweden*, cited above, § 69).[50]

The Court also repeatedly maintained that the link between the serious offences and the unexplained assets must be established with the concrete facts, but not by mere suspicions or by employing irrebuttable presumptions: in *Arcuri v. Italy*, the Court noted that "the Italian courts were debarred from basing their

[48] *Gogitidze v. Georgia*, supra note 40; *Arcuri v. Italy*, European Court of Human Rights, App. No. 52024/99 (2001); *Butler v. the United Kingdom*, European Court of Human Rights, App. No. 41661/98 (2002).
[49] *Gogitidze v. Georgia*, *supra* note 40, Sec. 105.
[50] *Paulet v. the United Kingdom*, European Court of Human Rights, App. No. 6219/08 (2014), sec. 67.

decisions on mere suspicions. They had to establish and assess objectively the facts submitted by the parties and there is nothing in the file which suggests that they assessed the evidence put before them arbitrarily. On the contrary, the Italian courts based their decision on the evidence adduced against the first applicant."[51] In *Butler v. the UK*, the Court was "satisfied that the domestic courts weighed the evidence before them, assessed it carefully and based the forfeiture order on that evidence. The domestic courts refrained from any automatic reliance on presumptions created in the relevant provisions of the 1994 Act and did not apply them in a manner incompatible with the requirements of a fair hearing."[52] This allows the assumption that UWCM might receive a critical assessment at the Court in every case where the link between the recoverable assets and serious crime was presumed merely from the formal status of the defendant in the criminal proceedings but not examined and established in the civil confiscation proceedings on the basis of the concrete facts.

One category of defendants might be distinguished, where UWCM may pose fewer risks of erroneous or even abusive use of confiscation powers: namely, politically exposed persons. Their legal status narrows the possibilities that their unexplained wealth might be accumulated from the profitable activities other than the ones prohibited by the anti-corruption laws. However, even this category of proceedings may not be considered to be risk-free if started on formal grounds without any substantial evidence of the link between unexplained assets and corrupt conduct. The unexplained assets might have been acquired by the defendant (PEP) before he or she started their term in the political office and thus the range of the sources of their assets might be wide.

5. THE ORDINARY CIVIL CONFISCATION MODEL

In contrast to UWCM, OCCM provides for additional safeguards that are supposed to eliminate the risks posed by the weaknesses of the formal triggers of the proceedings. It is supposed to ensure that civil proceedings would not be applied for a wider scope of property than that related to organized and other serious crimes including corruption. The safeguards are also supposed to prevent the abuse of proceedings and filter out ill-based opportunistic investigations. Besides of the established formal trigger for the proceedings and defendant's failure to explain the origin of the assets, OCCM requires, firstly, that decisions to confiscate unexplained assets would be based on the substantial factual ground, which would allow believing that recoverable unexplained assets are the proceeds

[51] *Arcuri v. Italy*, *supra* note 48.
[52] *Butler v. the UK*, *supra* note 48.

of the criminal conduct[53]. Secondly, the law based on OCCM might provide a very specific aim of the confiscation – prevention of serious, organized criminality and corruption. The specific aim might work as the guideline, that confiscation of the property in the case where no link (direct or indirect) between the property and the serious criminality is established, should be dismissed. OCCM closely resembles the model of extended powers of confiscation, except that it operates in civil but not criminal proceedings and is non-conviction based.

Due to the strong and substantial safeguards, there is good reason to believe that, in general, the OCCM is justifiable from the perspective of the right to peaceful enjoyment of property and principle of proportionality when it is being applied to recover proceeds from serious crime. The existing ECHR jurisprudence confirms it. However, the OCCM is not unproblematic from the perspective of the presumption of innocence. The concerns of risk of violation of the presumption of innocence were the key motive for the President of the Republic of Lithuania to veto the draft of the law on Civil Confiscation, specifically the provision that recoverable assets should be the proceeds from criminal conduct. The President suggested replacing the ground for confiscation with broader definition "assets that could not be explained with legitimate income" and thus, in fact, switching the law concept from OCCM to UWCM.[54]

J. Boucht shares the opinion that confiscation on the ground that assets are proceeds from criminal conduct (or, more specifically, from serious, organized offences or corruption) for which defendant has never been tried creates the tension with the presumption of innocence.[55] It generates a social stigma that the defendant did commit criminal offences.[56] Indeed, if, for example, the civil confiscation proceedings are initiated on the grounds that a defendant has been suspected of taking a bribe of 10,000 EUR, and in the final decision of the

[53] Section 21 of the preamble of the Directive 2014/42/EU explains the concept of the "proceeds from criminal conduct". Thou concept is explained in the framework of extended confiscation, it is perfectly fit also for civil confiscation context: "Extended confiscation should be possible where a court is satisfied that the property in question is derived from criminal conduct. This does not mean that it must be established that the property in question is derived from criminal conduct. Member States may provide that it could, for example, be sufficient for the court to consider on the balance of probabilities, or to reasonably presume that it is substantially more probable, that the property in question has been obtained from criminal conduct than from other activities. In this context, the court has to consider the specific circumstances of the case, including the facts and available evidence-based on which a decision on extended confiscation could be issued. The fact that the property of the person is disproportionate to his lawful income could be among those facts giving rise to a conclusion of the court that the property derives from criminal conduct. Member States could also determine a requirement for a certain period during which the property could be deemed to have originated from criminal conduct."

[54] However, the law still provides another safeguard, which belongs to OCCM. It provides that the aim of the law is the prevention of organized and other criminal offences and corruption. This allows hoping that the courts, despite the change in grounds for confiscation, will still require substantial proof that the recoverable assets are linked with the criminal offences and will not be satisfied with formal grounds for confiscation (like in UWCM).

[55] Johan Boucht, *supra* note 6, 136. J. Boucht makes this remark in the context of extended powers of confiscation in criminal proceedings, but it perfectly fits also non-conviction based confiscation and further he confirms that.

[56] *Ibid*., 136-138.

proceedings the court decides to recover assets worth 500,000 EUR, obtained by the defendant before the suspected bribery took place, providing that that court believes that these assets were proceeds of criminal conduct (corruption), there is no other logical assumption than that the court believes the defendant committed other (undetected) offences of corruption. The assumption that the defendant had been involved in corruption would be bolstered with the fact that the assets recovery measure has been applied with the aim of corruption prevention.[57] The severity of the applied measure, which could be close or even supersede the severity of criminal punishment, would also add weight to the assumption that the measure has been ruled in response to the criminal conduct.

If a defendant is a person who had no direct role in the criminal conduct, for example, a relative of the politician, possessing proceeds of corruption in order to conceal them (relatives of the politician in *Gogitidze v. Georgia*), or an aide carrying money intended for criminal activities (*Butler v. the UK*), the court statement that recoverable assets possessed by the defendant were the proceeds of crime does not imply that defendant has been involved in criminal conduct. If the defendant was the alleged offender him- or herself, for example, a politician in the confiscation proceedings against the proceeds from corruption, then the implication that the defendant has been involved in criminal conduct becomes strong and straightforward.

Does the Convention protect a person from this kind of assumptions made outside the criminal proceedings and based on the reversed burden of proof? If the civil court would be allowed to make decisions that give ground for rather straightforward assumptions that defendant had been involved in criminal conduct, would the right to be presumed innocent still be practical and effective, not theoretical and illusory?[58] This question would be particularly relevant where civil confiscation proceedings were carried out in parallel to criminal prosecution and thus statements in the civil proceedings would risk amounting to prejudicial statements that might have an impact on criminal proceedings where the defendant is being prosecuted or tried for the offences that served as triggers for the civil confiscation proceedings.

The question of how to escape from the tension with the presumption of innocence in the OCCM is not a simple one. A straightforward solution – such as the expansion of the ground for confiscation from "proceeds of criminal conduct" to

[57] See *ibid*., 138.
[58] ECHR has asserted in its jurisprudence multiple times that the guarantees of the Convention must be practical and effective, not theoretical and illusory, see Jurisconsult at the European Court of Human Rights, "Guide on Article 6 of the European Convention on Human Rights, Right to a fair trial (criminal limb)," Council of Europe / European Court of Humn Rights, 2019: 53, 58.

"unlawfully gained assets" or "unexplained assets" – would bring us to the conflict with the principle of proportionality which was discussed earlier.

So far the ECHR in its jurisprudence supported the OCCM and did consider issues of proportionality of the confiscation measures with the scrutiny. It also dismissed allegations that OCCM might violate the right to be presumed innocent. The Court dismissed the claims that Art. 6 (2) that provides the right to be presumed innocent is applicable in civil confiscation proceedings resting on arguments that a) defendants in civil confiscation proceedings are not charged with commission of any criminal offence and b) that recovery of wrongfully acquired assets is not a punitive measure.[59] Although, as far as civil confiscation proceedings follow the restorative aim and target exclusively wrongfully acquired assets, and do not provide imprisonment in case of default of the defendant, I may agree with the Court on both points,[60] the conclusion, that these properties of civil confiscation proceedings eliminate any conflict with the presumption of innocence does not look fully convincing. The argumentation line of the Court looks rather formal. Simonato also observes, that "by denying the applicability of the 'assumption' of innocence beyond the criminal law, individuals are deprived of this protection purely because the measure is not criminal."[61] Arguably, assumptions and statements in non-criminal proceedings which in fact point at the defendant's probable involvement in criminal conduct in some cases do inroad into his or her right to be presumed innocent. However, in civil confiscation proceedings at least three concurring interests meet: 1) general interest to protect security of the society from serious attacks efficiently, which may not work well without reversal of burden of proof, 2) the requirement of proportionality of interference, which requires a solid factual ground that the property is linked with serious crimes to be established, and 3) the presumption of innocence. The Court has no other choice as to balance them. And it gives some priority for the first two over the last one, which looks like a fair balance. A different approach would make the whole civil confiscation concept either tooth-less or disproportional measure.

[59] *Gogitidze v. Georgia*, *supra* note 40; *Butler v. the UK*, *supra* note 48.
[60] The same on legal nature of civil confiscation Johan Boucht, *supra* note 6, 539; F. Mazzacuva also notes, that "the recent evolution of preventive confiscation rather reveals that its nature has always been to 'restore' and 'compensate', in the sense that the objective of confiscation is to recover any asset deriving from the unlawful activity, independently from any evaluation of the dangerousness of the author" (Francesco Mazzacuva, "The Problematic Nature of Asset Recovery Measures: Recent Developments of the Italian Preventive Confiscation": 107; in: Katalin Ligeti and Michele Simonato, eds., *Chasing Criminal Money. Challenges and Perspectives On Asset Recovery in the EU* (Hart Publishing, 2019)).
[61] Michele Simonato, *supra* note 41: 227.

CONCLUSIONS

The patterns for civil confiscation might be classified into three major theoretical models: ordinary civil confiscation, unexplained wealth confiscation, and pure unexplained wealth confiscation. Though UWCM and PUWCM, in comparison to OCCM, are more promising in terms of confiscation effectiveness, they pose a higher risk for erroneous decisions, abuse of power and significant tensions with the requirement of proportionality of interference in the right to enjoy possessions. On the other hand, OCCM has some tensions with the presumption of innocence.

Each of these patterns may be found in the legislature of the European countries.

PUWCM has been already been disapproved by the ECHR in light of the principle of proportionality. OCCM has been repeatedly approved, and claims that it might be problematic regarding the presumption of innocence have been dismissed by the Court. The UWCM, which was introduced in a number of jurisdictions (including Lithuania) recently, still needs to undergo examination by the ECHR. Legislature based on this pattern may pose serious risks such as disproportional, erroneous decisions and even abuse of civil confiscation proceedings.

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