



Република Македонија
МИНИСТЕРСТВО ЗА ПРАВДА



SEIZURE AND CONFISCATION OF PROCEEDS OF CRIME

Sofia, 16-18/11/2009



DOMESTIC LEGAL FRAMEWORK

- **Criminal Code** and the Amendments and Addendum of the Criminal Code from 2009 on extended confiscation (Articles 97-100);
- **Law on criminal procedure** and the Amendments and Addendum of the LCP from 2008 for approximation of the criminal legislation with the international standards on confiscation (Articles 485-494);
- **Law on Management of Seized Property, Property Gains and Objects Seized in Criminal and Misdemeanor procedure** adopted in 2008



DOMESTIC LEGAL FRAMEWORK

- **Term of confiscation** - In the Criminal Code of RM from 2004, confiscation of property and material profits and confiscation of objects is provided as a separate criminal legal measure which consists of seizure of indirect or direct property benefit acquired to a criminal activity.
- **Property that can be confiscated:**
 - money
 - movable and immovable objects of value,
 - any other assets, property or equity, material or immaterial rights



PERSONS FROM WHICH THE PROPERTY CAN BE CONFISCATED

- **Physical persons**
- **Legal entity**
- **Third parties** - to whom it has been transferred without an appropriate compensation, if they did not know, and could know and were obligated to know that it had been acquired through a criminal activity. The cultural heritage and natural rarities, as well as those to which the damaged party is personally attached, shall be confiscated from third persons.

Criminal Code A(98) - the confiscation as a measurement can Be applied towards a third party, who should have all the legal guarantees, if it acted bona fide (UNTOC A12 p.8)



LEGAL ASPECTS OF EXTENDED CONFISCATION

1. Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property;
2. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention) 16.V.2005;
3. United Nations Convention against Corruption 2003;
4. United Nations convention against transnational organized crime Palermo Convention 2000;
5. Criminal Law Convention on Corruption 1999;
6. Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime (Strasbourg Convention) 1990;
7. United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances 1988



LEGAL ASPECTS OF EXTENDED CONFISCATION

applies only to offences stipulated by law:

- From the perpetrator of a crime committed within crime association in which property benefit is realized and for which the prescribed imprisonment is at least 4 years,
- criminal act that is in connection with terrorism (Articles 313, 394-a 394-b 394-v and 419), for which the prescribed imprisonment is 5 years of more, and for
- Offence connected with money laundering for which the prescribed imprisonment is at least 4 years



LEGAL ASPECTS OF EXTENDED CONFISCATION

- **Time period** - no longer than 5 years before the execution of the criminal activity;
- **subject of confiscation** - property that is disproportionate with the legal income of the offender, which may be considered that derives from that offence or similar offences and for which the offender can not prove its lawful origin!
- **Significant amendment - Confiscation from:**
 - Family members of the perpetrator to whom it has been transferred without an appropriate compensation
 - Third party for which is realized with the execution of the criminal act.

(complete transfer of the burden of proof apportionment on the manner of acquisition of property from the offender to the third party)



PROCEDURAL ASPECTS OF EXTENDED CONFISCATION

- **(Transfer of burden of proof from the prosecutor to the defendant)**
- the defendant cannot prove that he has lawfully acquired the assets or property within one year as of the day of the commencement of the main hearing.
- **extended confiscation against a third party** - within two years as of the day of commencement of the specific confiscation procedure, the person cannot prove that he/she has indemnified the asset or property according to their value.



NEW CRIMINAL OFFENCE " UNLAWFUL GAINING AND CONCEALING DISPROPORTIONATE PROPERTY"

- **Harmonization with Article 20 of the United Nations Convention against Corruption**
- **The basic form of this criminal offence consists of two actions:**
 1. The official or responsible person in a public enterprise or public institution contrary to his or her legal obligation to report property status provides false data about his or her incomes,
 2. During the term of office these persons or members of their families have gained property that significantly exceeds his or hers lawful incomes and for which he or she conceals the real sources.
- **The prescribed prison term is** from six months to five years and a fine and from one to eight years and a fine in actions where the property on a large-scale exceeds its legitimate incomes



STATISTICS RECORD

- **2001**- in 13 cases of thief and severe thief 2 on the base of special criminal codes;
- **2002-2004** -Only for cases of thief and severe thief;
- **2008-2009** - out of 278 criminal cases for criminal abuse in the exercise of authority and power and money laundering, only against 6 of them was pronounced measure confiscation of property;
- **2007,2008 and 2009**, out of 27 cases from organized crime and corruption in the years in 8 cases the measure confiscation of moveable, immoveable property and money



CASES

1. **Case “SLAVIJA”**, Misuse of official position and authority (1.600.000 Euro);
2. **Case “BACHILO”**, Misuse of official position and authority, Fraud, Money Laundering (app. 1.987.000 Euro, and real estate of 7240 m² and 178222 m²)
3. **Case “OHIS”**, Misuse of official position and authority (892.812 Euro);
5. **Case “NATIONAL BANK”**, Misuse of official position and authority and assistance in the execution of this crime (17.949.946 Euro)



AGENCY FOR MANAGING WITH CONFISCATED PROPERTY, PROPERTY GAINS AND DEPRIVED OBJECTS IN CRIMINAL AND MISDEMEANOR PROCEDURE

- **August 2008 Law on Management of Seized Property, Property Gains and Objects Seized in Criminal and Misdemeanor procedure adopted;**
- **December 2008 an Agency for managing with confiscated property, property gains and deprived objects in criminal and misdemeanor procedure established**



AGENCY COMPETENCIES

- Management with seized property, profit and seized items,
- In agreement with the court and the authorized body; executes the procedure for seizure of property and profit,
- Implements the procedure for carrying out the confiscation of property and property benefit
- Keeps and stores the seized property,
- Estimates and registers the overall seized property;
- Manages the disposal of the confiscated property and property benefit
- Prepares statistical, financial and other reports on the seized property etc.



PROCEDURAL ASPECTS FOR DISPOSAL OF ASSETS

- **Notification of the Agency for confiscated property with a final decision**
- **Disposal of the deprived objects and confiscated property:**
 - published at least seven days before the public auction in at least one daily newspaper and on the website of the Agency;
 - performed by a Commission established by the Director of the Agency;
 - the obtained funds are paid into the budget of the Republic of Macedonia
- **Disposal of temporally deprived property**
 - movable property; and
 - real estate



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THANK YOU FOR YOUR ATTENTION

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