



The Standard of Proof in the Application of Non-Conviction-Based Confiscation

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DIFFERENT TYPES OF CONFISCATION – DIFFERENT OBJECTS OF CONFISCATION (ACCORDING TO THE ORIGIN OF THE ASSETS) – DIFFERENT STANDARDS OF PROOF

MODELS OF CONFISCATION:

confiscation *in personam* (usually conviction - based) vs confiscation *in rem* (non – conviction - based)

(Boucht 2019 pp. 529– 534; Hryniewicz- Lach 2023; Bikelis and Mikšys, 2018, p. 17.)

STANDARTS OF PROOF:

- **Conviction - based confiscation:**

presumption of innocence – *onus probandi* – beyond reasonable doubt.

- **Non-conviction – based confiscation:**

no presumption of innocence – allocation of the burden of proof – proof on the balance of probabilities, or a high probability of illicit origins combined with the inability of the owner to prove otherwise.

- **The ownerless thing - based confiscation (“quasi confiscation”).**

(Boucht 2019, pp. 529– 534; Bikelis etc.)



SYSTEM OF LEGAL MEASURES OF CONTROLLING UNLAWFUL PROPERTY: LITHUANIA' CASE

- **Measures of a criminal nature:**

such as criminal liability for Money Laundering (Art. 216 of the CC) and criminal liability for Unjust Enrichment (Art. 189¹ of the CC) and “ordinary“ confiscation (Art. 72 of the CC).

- **Measures of a mixed nature:**

in criminal proceedings – Extended Confiscation of Property (Art. 72³ of the CC) and in civil proceedings – Civil Confiscation (Law on Civil Confiscation of Assets).

- **The Civil Institute of Seizure of Ownerless Thing (Art. 4.57 of the CC).**

- **Tax measures:**

tax rates, fines and tax penalties imposed on incomes, which cannot be justified by the taxpayer.

(Bikelis and Mikšys 2018, p. 17.)



EXTENDED CONFISCATION OF PROPERTY (ART. 72³ OF THE CC):

PRINCIPLE OF HIGH PROBABILITY COMBINED WITH THE OWNER'S INABILITY TO PROVE OTHERWISE

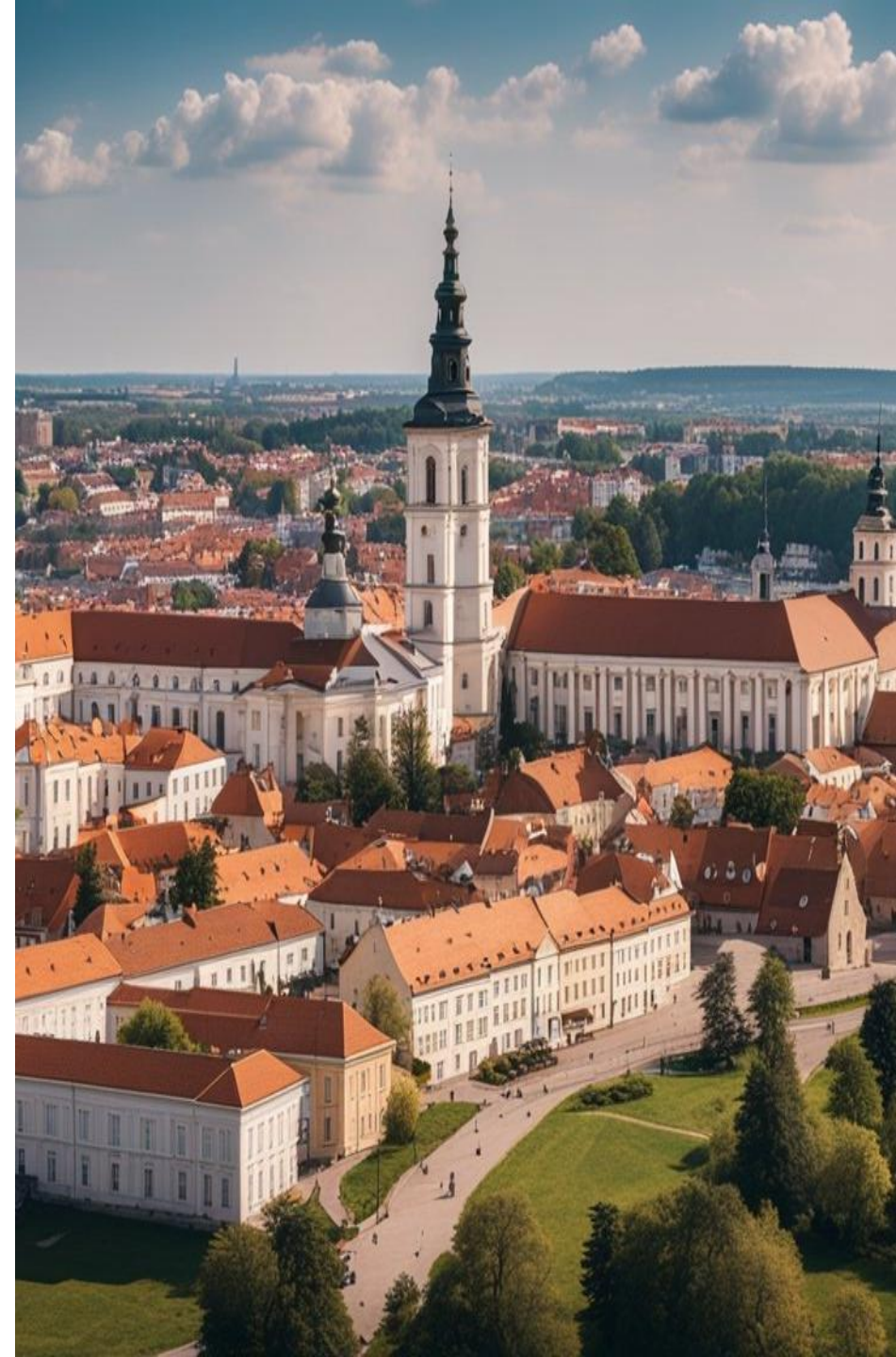
- “The perpetrator [...] has the right to justify (provide) that the property subject to extended confiscation was legally acquired but is not obliged to prove that it was not obtained by criminal means. The fact that the property was obtained by criminal means must first be proven by the prosecutor and [...] assessed by the court” (Ruling of the Constitutional Court of 2023-10-12).
- “When applying an extended confiscation of property, it must be proven that the property was obtained through criminal means, not merely by any illegal means” (*Lithuanian Supreme Court criminal cases No. 2K-245-1073/2018, 2K-295-222/2019, 2K-106-628/2021, 2K-253-648/2023*).
- “Neither criminal law, nor judicial practice [...] requires that a specific amount of money or property of a specific value be obtained by the commission of a specific criminal act. [...] Proof of the unlawful origin of property may also be based on the principle of high probability, combined with the owner's inability to prove otherwise” (*Gogitidze and Others v. Georgia*, para. 107; *Telbis and Viziteu v. Romania*, para. 68; *Lithuanian Supreme Court criminal cases No. 2K-51-788/2021, 2K-253-648/2023, etc.*).



THE CIVIL CONFISCATION OF THE ASSETS: HIGH PROBABILITY, COMBINED WITH THE OWNER'S INABILITY TO PROVE OTHERWISE

- The presumption of unlawfulness of assets, established in the 2 para. of Art. 2 of the Law on Civil Confiscation of Assets – assets are presumed to have been obtained unlawfully if they are owned by persons who cannot justify them by lawful income.
- [...] (the prosecutor defending the public interest) [...] has the burden of proving not only [...] the conditions for the presumption, but also the connection between the assets to be confiscated and the illegal (possibly criminal) activity [...].
- In civil confiscation proceedings, the unlawful origin of the assets [...] is established by applying a less strict standard of proof than in criminal proceedings, not on the basis of a specific crime that is likely to have been committed and from which the assets were obtained and for which the person has not been convicted in criminal proceedings, but on the basis of circumstantial evidence establishing a link between the assets and activities prohibited by criminal law [...].

(Lithuanian Supreme Court Civil case No. e3K-3-15-781/2025)



SEIZURE OF PROPERTY LIKELY TO BE RELATED TO CRIMINAL ACTIVITY AND TRANSFER TO STATE OWNERSHIP WITHOUT ESTABLISHING ITS OWNER:

GENERAL RULES OF CIVIL PROCEDURE FOR THE TAKING OF EVIDENCE UNDER ARTICLE 4.57 OF THE CIVIL CODE (OWNERLESS PROPERTY)

- **If there is no dispute:**

"The applicant has completed all necessary procedures to recognize the property as ownerless in accordance with the Rules, therefore it is considered that there are all grounds to recognize the specified funds as ownerless property and transfer them to state ownership [...]" (*Civil case No. e2YT-16140-1019/2023*).

- **If there is a dispute:**

"[...] the data submitted by the interested party does not refute the circumstances stated in the request that the disputed funds have no owner, bona fide acquirer or lawful possessor, or that they are unknown. The interested party has not submitted reliable and sufficient evidence confirming its right of ownership or possession of the funds for which the State Tax Inspectorate has applied for recognition as ownerless property" (*Civil case No. 2YT-10425-1019/2023*).



SEIZURE OF PROPERTY WHOSE OWNER IS UNKNOWN DURING CRIMINAL PROCEEDINGS

- In this case, it has not been established that the money – EUR 5,155 – seized from E.J. (later convicted of drug dealing) during a search of the apartment is an instrument, means or result of a criminal act and should be confiscated in accordance with the provisions of Art. 72 of the Criminal Code, or that it should be confiscated in accordance with Art. 72³ of the Criminal Code, applying extended confiscation of property. Therefore, this money must be returned to its legitimate owner, and if the owner cannot be identified, it must be transferred to the state in accordance with Art. 94 [...] of the CPC.
- Therefore, [...] the owner of this money has not been identified, and it must therefore be transferred to the State. If there is a dispute about the ownership of the money, it should be resolved in a civil proceeding (*Lithuanian Supreme Court criminal case No. 2K-53-511/2025*).



INSTEAD OF CONCLUSIONS

- **To the legislator:**

Any procedure for confiscation or seizure of criminal assets, whether in criminal or civil law, must correspond the requirements of legal clarity, including the compatibility of different legal institutions (thus preventing abuse by the State).

- **For legal practitioners, including courts:**

When applying non – conviction - based confiscation instruments, the court must generally be satisfied that the property is of criminal origin (in extended confiscation proceedings) or of unlawful origin (in civil confiscation proceedings).

- **Standard of proof (for all parties to the proceedings):**

The criminal origin of assets in non – conviction-based confiscation proceedings is proven according to essentially the same standard - the principle of high probability, combined with the inability of the owner to prove otherwise.



THANK YOU FOR YOUR ATTENTION

