

Country Report – Bulgaria

(Momyana Guneva, Burgas Free University)

Part A:

Analysis of the legal order of the EU Member State

Introductory question:

How is extended confiscation understood in legal order of your EU Member State?

I. Historical understanding of ‘confiscation of property’:

The report on Bulgarian law in force could not be understood without a detailed analysis of the historical roots of confiscation in Bulgaria considered not only as a punishment, but also as a retribution for persons, enriched in an ungrounded art.

The forfeiture of property in Bulgaria has a very long history, the beginning of which can be traced back to the first years after the restoration of the Bulgarian state in 1878. We can say that the first law at that time was The Law on the Persecution of Illegally Enriched Officials.¹

In 1919 a further Law on Confiscation for the Benefit of the State of Illegally Acquired Properties² was adopted. Later, in the period from 1934 to 1939, with a number of decrees the properties of the illicit political parties³ were seized. In 1941 the Law on the Protection of the Nation⁴ allows not only seizure of the properties of certain organizations, but also the possessions of persons of Jewish origin, as well as serious restrictions on the property rights of the last one. Entering into the substantive provisions of these acts is undoubtedly not only interesting, but also instructive, but it represents a serious deviation from the topic that requires us to focus on legislation over the past 50 years.

1. Conviction based confiscation

¹ Durshaven vestnik (DV) - State Gazzete, № 13/18. I. 1896.

² DV № 18/25. IV. 1919.

³ Learn more about the legislation of this period in: **Андреев, М.** История на българската буржоазна държава и право – 1878 – 1917. History of the Bulgarian bourgeois state and law – 1878 – 1917. Sofia, „St. Kliment Ohridski” publ., 1971; **Милкова, Ф.** История на българската буржоазна държава и право в периода 1918 – 1944. The History of the Bulgarian bourgeois state and law in the period 1918 – 1944. Sofia „Science and art” publ, 1967.

⁴ DV № 16/23. I. 1941, repealed: DV № 50/2. III. 1950.

In order to understand the essence of the forfeiture of illegally acquired property, it is necessary to focus on the punishment of "confiscation of existing property" This punishment was introduced by the first Criminal Law of 1896.⁵

In the current legislation, confiscation is an element of the punishment system in Art. 37, § 1, pt. 3 of the Criminal Code (CC)⁶ and is one of the property penalties provided for in the Criminal Code. In Art. 44, § 1 of the Criminal Code (CC), its content is defined as "*compulsory appropriation without compensation of property in favour of the state, of assets belonging to the convict.*"⁷

The text allows a conclusion that the confiscation is applied only in as realization of the criminal responsibility for certain, specifically mentioned in Special Part of the Criminal Code⁸, and is addressed to a possession of the convicted person. As far as, according to the Bulgarian civil legislation is impossible to acquire property rights through criminal offence, the term "*assets belonging to the convict.*", leads to the conclusion that it is about legally acquired property.

The punishment can be directed either to the entire property, to a part of it, or to certain things and cannot be imposed if the culprit does not have property.⁹

2. Non-conviction based confiscation

2.1. Confiscation of property by the Criminal Code

Before the changes from 1989 along with this punishment there are three other principal possibilities for the forfeiture of illegally acquired assets - in Art. 53 of the CC, in Art. 20 and 21 of the Law on Administrative Offenses and Penalties¹⁰ and in the Citizens' Ownership Act.¹¹

The form of seizure, regulated in Art. 53 CC is different in its essence from the punishment "confiscation".¹² The text clearly states that „*notwithstanding the penal responsibility, confiscated in favour of the state shall be: material things belonging to the*

⁵ Criminal Law of Bulgarian Kingdom. DV № 40/ 21. II. 1896 ,repealed DV № 13/13. II. 1951.

⁶ Criminal Code of the Republic of Bulgaria. Promulgated DV № 26/02. IV. 1968, effective 1 May 1968. The translation of provisions of the Bulgarian Criminal Code is based on the translation available on the site www.legislationline.org/documents/section/criminal-codes/country/39 [last visited December 2021].

⁷ The quotations are marked in italic.

⁸ Principally – crimes against property.

⁹ Чл. 44 и чл. 45, ал. 1 НК.

¹⁰ DV № 92 /28. IX. 1969 , last changed DV № 21 /12. III. 2021.

¹¹ DV № 26/30. III. 1973, repealed DV № 19/1. III. 2005.

¹² **Стойнов, Ал.** Наказателно право. Обща част. Второ изд. Criminal Law. General Part. 2 ed. Ciela publ., 2019, p. 498.

*convict, which were intended or have served for the perpetration of intentional crime and material things belonging to the culprit, which were object of the act of an intentional crime - in the cases expressly provided in the Special Part of this Code“.*¹³

In 1982 ¹⁴the text is completed with a new paragraph 2: *„confiscated in favour of the state shall also be articles that have been object of the act or things have served for the perpetration of the crime, the possession of which is forbidden, and objects **acquired** through the crime, if they do not have to be returned or restored. Where the acquired objects are not available or have been disposed of, an equivalent amount shall be adjudged “.*

It is easy to notice that the amendment of Art. 53 of Criminal Code aims not only to the long established in the legislation objects of confiscation - the means of the crime (*instrumentum sceleris*), or the object of crime (*objectum sceleris*), but also to the benefits, acquired from the crime (*fructa sceleris*).

As far as in the text of Art. 53 the legislator points out that the provision applies *„notwithstanding the penal responsibility“*, there is no doubt that the norm of Art. 53 CC is strives to achieve goals different from the goals of punishment in general and specifically- of the confiscation. Deprivation of property under Art. 53 serves, on the one hand, as a means of preventing subsequent crimes (when it comes to withdrawing funds for the commission of a crime, or if it comes to property whose possession is prohibited), and on the other hand - as a means of eliminating the possibility to obtain benefits from the criminal activity.

The application or non - application of the measure under Art. 53 CC is decided within the criminal proceedings.¹⁵ The case-law is adamant that the expression "regardless of the criminal liability“ should be understood in the sense that it refers to cases where criminal liability cannot be implemented due to the death of the offender, expired statute of limitations or a subsequent amnesty.¹⁶ The inapplicability of Art. 53 to the cases is beyond doubt, when a offender is acquitted due to the absence of a crime or on the same basis the criminal case against him was dismissed by the prosecutor.

¹³ Extremely provided in Special Part of the Code are for instance: Art. 234, §. 5, Art. 234g, § 3, Art. 235, §7, Art. 242, § 8, Art. 307a.

¹⁴ DV, № 28/ 9. IV. 1982.

¹⁵Art. 301, § 1, pt. 9 CPC. (Criminal Procedure Code of the Republic of Bulgaria. Promulgated State Gazette № 86/28. X. 2005, effective 1 May 2006.

¹⁶ Except the cases when the possession of certain objects is prohibited.

2.2. Confiscation of properties by Law on Administrative Offences and Penalties (LAOP)

When an administrative offence is committed, together with the provided administrative punishments, the punishing authority can also require a confiscation in favour of the state of properties, belonging to the perpetrator. The premises are - the objects were used for the commitment of an intentional administrative violation, objects, which possession is forbidden, regardless of their quantity and value, as well as the properties, belonging to the violator, which has been an object on the violation.¹⁷

In Art. 21 LAOP is explicitly stated that the things acquired by the criminal because of the violation are to be seized in favour of the state regardless of their quantity and value.

As can be seen, the principle reproduced in the regulation is the one of Art. 53 CC, but two clarifications have to be made. The seizure of benefits, acquired through administrative offence was introduced with the very adoption of LAOP in 1968, but when it comes to crime, it was introduced later, as a supplement to the Criminal Code in 1982.¹⁸ In addition, in Art. 53 CC no reservations are made about the value of the seized items when it comes to the object or the means of the crime. On the contrary, LAOP clearly states that when the value of things - the object or means of violation evidently does not correspond to the nature and severity of the administrative violation, a confiscation is impossible.¹⁹

2.3. Confiscation of properties under the Citizens' Ownership Act (COA)

A great part of the law has been repealed in 1990²⁰ with the motive that its regulations contradict to the constitutionally protected right of property and they are unacceptable for the rules of law. Chapter three "Confiscation of unearned income, received from the citizens"²¹ remained. Chapter Three regulates the procedure of confiscation of two arts of income - "illegal" and "unearned".

COA defines both notions. According to Art. 31 COA "illegal" are: 1. Benefits, received through illegal free usage or usage at lower prices of materials, machines, vehicles, property

¹⁷ Art. 20, § 1, 2 and 3 LAOP.

¹⁸ Amendment and supplement of CC Law.DV, №. 28 /9. IV. 1982.

¹⁹ Art. 20, § 4 LAOP.

²⁰ DV, №. 21/13. III. 1990.

²¹ On Confiscation of properties under the Citizens' Ownership Act, see: Judgment of European Court of Human Rights from 03.03.2015 in case No. 12685/09, Dimitriovi v. Bulgaria.

of the state, state, cooperative or public organizations, as well as their workers and employees.
2. Benefits, because of the acquisition of property by the state, state, cooperative and public organizations at prices, significantly lower than the prices on the day of acquisition.

"Unearned" is defined as „the received benefit or the difference between the prices at which an immovable property is acquired from the state or it is built on state-owned land, with a state credit or built by a public construction organization and was transferred on market-prices even before this law entered into force.²²

Article 34 creates a presumption that until proven otherwise "illegal" or "unearned" income is received, when: 1) the value of the property of a person exceeds the earnings , legitimately received from a person and the members of the household, or 2) spending of a person and his household clearly exceeds his legal earnings.“

Specifically to notice are two rules. Firstly, the provisions of the COA are not applicable to the benefits derived from crimes - the provisions of the Art. 53 CC apply to them and if it goes for unreported for tax purposes income, the special taxation rules apply to them.²³ Secondly, an audit by the order of Art.39 and following does not begin, and the started one shall be dismissed if, prior to the formation of a case on the seizure of property, the person voluntarily declares the "illegal" or "unearned" income received and contributes its equivalence to the state budget income or transfers equivalent real estate to the state.²⁴

It can be concluded that the form of "civil" confiscation is regulated with the COA, as long as the law does not apply to what is acquired by a crime, or by a tax offence.

The most significant drawbacks of this system, first of all, are that the procedure can actually begin on a denunciation, without taking into account that maliciously provided false information can serve as a ground for the start of the audit. Besides, in the law there are no clearly defined prerequisites for the commencement of confiscation procedure. There are no rules about statute limitations, as well as the minimum amount of income received is not pointed out. The audit is actually an investigation, but is carried out by people who are acting under the strict rules referring to the investigative bodies established in the Code of Criminal Procedure. Equally important is the fact that the burden of prove regarding the legality of income lies on the citizens, and advocacy according the law is admissible only in court procedure.

²² Art. 33 COA.

²³ Art. 31, § 2 COA.

²⁴ Art. 45 COA.

These features of the procedure under the third chapter of the COA, as well as the upcoming admission of Bulgaria to the EU, led to the abolition of the COA.²⁵

3. The legislation of 2005

3.1. The first Law on the forfeiture of property, acquired by criminal activity

In 2005 was adopted the Law on forfeiture for the benefit of the State of property acquired from criminal activity (LFBSPACA). The motives for the draft law emphasize that the forfeiture in the order of this law has a "civil character" and is implemented by a special administrative body.

Article 1 of the Law declares the subject of legal regulation. These are *"the conditions and the procedure for the imposing of precautionary measures and the forfeiture in favour of the state of property, acquired directly or indirectly through criminal activity."*²⁶

The aim is to prevent and limit the possibility of obtaining benefits from criminal activity by preventing the possession of criminally acquired property.²⁷

Proceedings on the law is conducted when it is established that a person has acquired property of significant value,²⁸ for which it is possible to make a reasonable assumption that it was acquired by criminal activity, and criminal prosecution has begun against him for a crime under the Criminal Code.²⁹ The type of crime committed is clearly indicated (*numerus clausus*)³⁰ - these are serious crimes against property, crimes against the tax system, money laundering, smuggling, terrorism, drug trafficking.

The law specifies that proceedings can start, and when it is possible to make a reasonable assumption about the acquisition of property by criminal means, but criminal proceedings cannot begin or must be dismissed due to the death of the perpetrator, falling into a state of insanity or subsequent amnesty.³¹ The regulation provides that property acquired by criminal activity is to be seized when the crime is committed abroad and does not fall under the criminal jurisdiction of the Republic of Bulgaria.³² In addition - regardless of whether criminal

²⁵ Repealed by § 11 of Transitional and Conclusive provisions of Law on confiscation for the benefit of the State of property acquired from criminal activity. DV № 19/1. III. 2005.

²⁶ DV № 19/ 1. III. 2005. The law transposes: Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering; Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering; Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism; Commission Regulation (EC) No 745/2003 of 28 April 2003 amending Council Regulation (EC) No 2580/2001 on specific measures directed against certain persons and entities with a view to combating terrorism.

²⁷ Art. 2 LFBSPACA.

²⁸ According to Art. 2 § 1, pt. 1 of Additional provisions to the Law, "significant value" is the amount of over 60 000 BGN.

²⁹ Art. 3 LFBSPACA.

³⁰ Art. 3, § 1, pt 1 LFBSPACA .

³¹ Art. 3, § 2 LFBSPACA.

³² Art. 3, § LFBSPACA.

proceeding against a natural person is possible - the property of legal entities managed or controlled by that person also falls within the scope of the law, including in cases of succession,³³ as well as property transferred to a spouse, relatives in a direct line without restrictions and on close relatives. The law introduces a presumption of guilt. Until proven otherwise, it is considered that property acquired from third parties by his/her spouse and his/her minor children is acquired at the expense of the audited person, when the property has significant value, exceeds the income of these persons during the verified period and no other source of funds can be established.³⁴

All transaction in favour of third parties are declared invalid to the state,³⁵ when they were either gratuitous or compensated, but third parties knew that the property was acquired by criminal activity, or the property was acquired in a simulated manner in order to conceal its illegal origin. The rights of the state under this law extinguish after the expiration of 25 years, which begins from the date of acquisition of the property.³⁶

In procedural terms, the seizure takes place in two stages -the collection of evidence for illegally acquired property by requiring declarations and gathering information from government agencies and individuals accomplished by employees of a specially created Commission.³⁷ The Commission's powers are quite broad,³⁸ which also includes their right to demand from the court the imposition of security measures-prohibitions and redemption in order to limit the possibility of disposing of property and prevent its possible alienation.³⁹

After the expiration of the period established by law for verification, the Commission files a civil lawsuit for the seizure of property, which is considered by the court in accordance with the Civil Procedure Code (CPC).

The main features of the law in question are as follows:

- The only ground for opening of the proceedings is the initiation of criminal prosecution for the committed crime under any of the texts of the Criminal Code specified in the Article 3, § 2 from the Law on forfeiture for the benefit of the State of property acquired from criminal activity ;
- Article 3, § 1 of the Law establishes that aim of actions undertaken is the seizure of property with a significant value, which, as one might assume, is the effect of a crime

³³ Art. 6 LFBSPACA.

³⁴ Art. 9 LFBSPACA.

³⁵ Art. 7, § 1 and 2 LFBSPACA.

³⁶ Art. 11, § 1 and 2 LFBSPACA.

³⁷ In Art. 12 LFBSPACA the Commission is described as „a state authority with specialized powers, created for auditing the properties of certain people...“

³⁸ Arts. 15 – 20 LFBSPACA.

³⁹ Arts. 21 - 27 LFBSPACA.

committed. The wording of the legislative provision, however, does not explicitly link the receipt of benefits with a committed crime from catalogue outlined in Art. 3, § 2. This makes it possible to think that if a charge was brought against any of these crimes, and during the investigation, evidence was collected that the property was extracted from another crime, outside the list, nevertheless proceedings may be initiated. In other words, although the connection between the benefit and a crime committed was indicated, it could be every crime, not necessarily one of the specified in the Law;

- property is seized not only from the perpetrator, but also from third parties-both natural persons and legal entities, for whom a presumption is created they knowingly benefit from criminal activity;

- in order to justify the declared "civil" nature of the procedure under this law, a complex, double procedure is created in which the stage of gathering evidence is implemented by an administrative body, and the decision to withdraw is pronounced by the court according to the rules of the Code of Civil Procedure;

- The estimated statute of limitations for filing a claim by the state significantly exceeds the period provided for in Art. 79 of the Law on Property for the acquisition of property by statute of limitations, which is especially important when applying to third persons or legal entities. At the same time, this long period can significantly complicate the submission of documents on how certain property is acquired;

- The burden of proof was placed on a person who allegedly acquired property as a result of a crime;

- The refusal to declare one's possessions or declaring false or incomplete data creates presumption of criminally acquired benefit;⁴⁰

- It is not explicitly stated that at the stage of collecting evidence, a person has the right to legal defence. In truth, Art. 56 of the Constitution proclaims, "Every citizen has the right to protection when his rights or legitimate interests are violated or threatened. In state institutions, he can also act with a defender," but practically before the commission authorities, the presence of a lawyer is an exception.⁴¹

⁴⁰ Art. 17, § 5 LFBSPACA.

⁴¹ For more details on LFBSPACA from 2005, see: **Владимиров, Р.** Отнемане на имущество в полза на държавата по НК и по закона за отнемане в полза на държавата на имущество, придобито от престъпна дейност. Forfeiture for the benefit of the State by Criminal Code and by Law on forfeiture for the benefit of the State of property acquired from criminal activity //Административно правосъдие, 2008 г. № 1, стр. 1 – 19; **Илкова, Р.** Отнемането в полза на държавата – материалноправни и процесуални аспекти. Forfeiture for the benefit of the State – substantive law and procedural law aspects. С., СУ „Св. Кл. Охридски, 2008 г.

3. Amendment and supplement to the Law on Administrative Offences and Punishments in 2005

In order to increase the effectiveness of the measures established by the new law, an amendment in LAOP provides for the possibility to forfeiture direct or indirect benefits⁴² in favour of the state, acquired by a legal entity. It is possible if a crime is committed by a managing person in the legal entity; or a person representing a legal entity or by a person – member of control or supervisory body of a legal entity, as well as by an employee or employee to whom the legal entity assigned a certain job⁴³. An important specification is that the crime is committed in course of the performance of the work or duties of these persons. The range of crimes that can be committed completely coincides with what is stated in the Art. 3, § 2 LCBSPACA - serious crimes against property, crimes against the taxation, money laundering, smuggling, terrorism, drug trafficking.

It should be noted that the forfeiture accompanies the infliction of a property sanction on the legal entity for 1 000 000 BGN (500,000 EU), which can be imposed regardless of the fact has the legal entity actually benefitted from crime.⁴⁴

Property sanction and forfeiture of the acquired by a legal entity are imposed, even if criminal liability of the natural person cannot be realized, and the criminal case is dismissed or suspended on any of the grounds specified in the Code of Criminal Procedure.⁴⁵

The LAOP provides that the liability of a legal entity be extinguished by statute of limitations after a period equal to the estimated statute of limitations in Art. 81, § 3 of the Criminal Code,⁴⁶ which begins from the date of the commission of the crime from which the legal entity has been enriched. It is worth noting that the law speaks about the possibility of imposing a property sanction, but does not mention the deadline by which a claim against the legal entity may be put in.

In Art. 83g of the LAOP the legislator directly obliges the court to specify whether a legal entity has received an unlawful advantage; is there a connection between the offender and legal entity; whether there is a connection between the crime and the benefit for a legal entity; what is the art of profit and its value.⁴⁷

⁴² Art. 83a, § 6 LAOP.

⁴³ Art. 83a, § 1, points 1, 2, 3, and 4 LAOP.

⁴⁴ Art. 83a, § 1 LAOP.

⁴⁵ Art. 83b, §1, points 1 - 3 LAOP.

⁴⁶ Art. 83a, § 8 LAOP.

⁴⁷ Article 83g, § 6 LAOP

As can be concluded from the above, with these innovations LAOP expands further the range of third parties from which property can be forfeited.

4. The Law on the Forfeiture of Illegally Acquired Property in Favour of the State (LFIAPFS)

In 2012, the LFIAPFS is abolished, and a new law on the forfeiture of funds in favor of the state of illegally acquired property is adopted.⁴⁸ As you can see, the new law transfers almost the same actions as the previous law. The reasoning justifying the adoption is that, as an EU member, the Republic of Bulgaria is obliged to intensify the fight against money laundering and the possibility of financing terrorism, as well as to make more effective procedures for the seizure of property.

Article 1 of the LFIAPFS indicates that it is subject to regulation with the conditions and procedure for alienation in favor of the state of illegally acquired property. In subparagraph 2 of the same Article is defined which property is considered illegal-one for the acquisition of which a legal source has not been established.

As for the aims, Art.3, § 1 it is to protect the interests of society by preventing and limiting the possibilities of illegal acquisition of property and disposal with it.⁴⁹

This makes possible the most significant differences between the law from 2005 and the law adopted in 2012 to be seen. In accordance with the law from 2005 is the regulation of the order in which property acquired by criminal activity is taken away, and its purpose is to limit the possibilities of obtaining benefits from such actions. The new law completely ignores the ways of obtaining any cloud, stating that the alienation is subject to property for the acquisition of which no legal source has been established. In other words, the concept and terminology of the abolished CAO⁵⁰ are being reintroduced - the importance of criminal activity as a source of enrichment is being lost, which is being replaced by an obscure "illegally acquired property". The law goes beyond legal justifications and establishes the origin of taxation - a crime or

⁴⁸ DV, № 38/18. V. 2012, effective - 19. XI. 2012. The law transposes Directive 2001/97/EO of the European Parliament and of the Council of 4 December 2001 for amendments to Directive of Council 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering; Directive of the Council of 10 June 1991 on preventing the use of the financial system for money laundering (abolished); Regulation (EC) № 745/2003 of the Commission of 28 April 2003 for amendment of Regulation (EC) № 2580/2001 of the Council about specific measures directed against certain individuals and legal entities in order to combat terrorism; Regulation (EC) № 2580/2001 of the Council of 27 December 2001 about special restrictive measures to combat terrorism directed against a variety of individuals and businesses.

⁴⁹ Even the purpose of the law is attacked before the Constitutional Court and partially declared unconstitutional (RCC № 13 of 2012 – DV, №82/2012). More details in Section III.

⁵⁰ See I. 2.3.

administrative violation - and enters the sphere of unreasonable presumptions - if the legality of the origin cannot be proved, it follows that the property is illegal.

In order for this approach to be justified in some way, it is pointed out that this permission introduces a new claim *in rem*, since the state's claim is not directed at human behaviour, but at certain of his things or property rights.⁵¹ Based on the idea of "civil confiscation", the legislator attempts to justify his interference in the sphere of property not only of a particular person, but also of third parties associated with him. Further, the amended concept of the law is reasoned by the experience of Ireland and the USA.⁵²

In addition to this major difference between the two laws, some more insignificant differences can be noted. Thus, the amount that is considered a significant discrepancy between the legally received income and the person's property has increased to 250,000 BGN.⁵³ It is worth to notice that the amount has been decreased once again to 150 000 BGN in 2016.⁵⁴ The deadline for conducting an inspection by a specially created commission has been extended to 1 year, this period can be prolonged by another 6 months.⁵⁵ In addition, the court requires the introduction of security measures even before a declaration for possession of the property is requested.⁵⁶ Only after a distraint over property is put on, the affected person is given the opportunity to participate in the proceedings against him⁵⁷ and be represented by a lawyer.⁵⁸ This legislative decision is an insignificant step towards protecting his rights. Besides Art. 91 LFIAPFS provides that a person who has suffered from illegal actions during an inspection by the commission or other administrative bodies has the right to applicate a claim in accordance with the Law on liability of State and municipal for damage.⁵⁹

⁵¹ **G. Atanasov** discusses the problem in detail. **Атанасов, Г.** За „гражданската конфискация, незаконно придобитото имущество и вулгаризацията на правото. On the "civil confiscation", "illegally acquired property" and the vulgarization of the Law (III). // Адвокатски преглед, 2021, № 6, p. 3

⁵² A more exposition on these allegations and their bankruptcy is beyond the scope of the subject of this report, but is thoroughly discussed by **G. Atanasov**.

⁵³ Additional provisions to LFIAPFS, § 7.

⁵⁴ DV, № 103/27. XII. 2016, correction in § 7 of Additional provisions.

⁵⁵ Art. 27, § 1 LFIAPFS.

⁵⁶ Art. 57, § 1 LFIAPFS.

⁵⁷ Art. 60, , § 1 LFIAPFS.

⁵⁸ Art. 60, , § 4 LFIAPFS.

⁵⁹ DV, № 60/5. VIII. 2012, effective 1. I. 1989 last change , DV № 94/29. XI. 2019.

II. Current understanding of ‘extended confiscation’ in Bulgarian law:

1. Conviction-based confiscation

In the Criminal Code, the penalty "confiscation of available property" is not abolished and can be imposed as an additional punishment for the most serious crimes - against the Republic and against the property. The range of claims for which cumulative confiscation is provided, people with imprisonment and life imprisonment, has not been expanded in recent years.⁶⁰

2. Non-conviction-based confiscation

2.1. Confiscation of property under the Criminal Code

The position of Article 53 of the Criminal Code continues to be in force. As noted in I. 2.1. to the current text in 1982, was also added "acquired through crime". Apparently, the need to transfer the EU Directive 2014/42 EU led to a new amendment in 2019⁶¹, despite the existence of special laws. The words "acquired by crime" are replaced by "direct and indirect profit acquired by crime", and in a new paragraph 3 to Article 53 is specified what should be understood by "acquired by crime": *"direct benefit is any economic benefit that occurred as a direct consequence of a crime, and indirect benefit is any economic benefit resulting from the disposal of direct benefit, as well as any property obtained as a result of the subsequent full or partial transformation of direct benefit, including when it is mixed with property obtained from legitimate sources; the forfeiture is subject to property to the value of the included direct benefit along with the increase in property, if they are directly related to the disposal or transformation of direct benefit and the inclusion of direct benefit in the property."*

The conclusion that is required is that this creates a parallel regime of the current law on the deprivation of illegally acquired property.

2.2. The Law on Combating Corruption and Forfeiture of Illegally Acquired Property from 2018 (LCCFIAP)

2.2.1. This is the law in force⁶² adopted with the intention to strengthen the prevention and combating corruption by combining fragmented legislation, including creating a unified and effective system of anti-corruption bodies based on the commission for the seizure of illegally acquired property.

⁶⁰ The main features of the confiscation penalty are indicated in **I. 1.**

⁶¹ DV, № 7/22. I. 2019

⁶² DV, № 7/ 19. I. 2018 , DV, № 12/ 12. II. 2021 г.

In the motives to the bill, it is argued that a civil confiscation regime has been introduced, which does not represent punishment for a person. Despite the fact that in some cases it is difficult to collect relevant evidence sufficient to achieve a verdict in criminal proceedings, unexplained wealth can be found, and its fruits can be traced and taken away. Through civil confiscation - a new institution for the European law - justice is restored in a civil procedure by seizing property for which a legitimate source has not been created. Thanks to this mechanism of forfeiting, the possibility of getting rich from illegal sources is prevented and, in addition, it plays a deterrent role for members of society, because when committing criminal or illegal activities, everyone will be prosecuted once, and in addition, the property illegally acquired by them will be taken away.

2.2.2. In general, chapters Ten and Eleven of the Law, which establish the grounds, the subject of cancellation, the powers of the commission and the procedure, retain the basics of the Law on Confiscation of Property since 2012.

According to Art. 107 proceedings start when it is possible to make a reasonable assumption that the property has been illegally acquired, and such an assumption is always present when, after verification, a significant discrepancy in the property of the verified person is found. The verification begins when a person is accused in a case of committing a serious crime, the list of which has been unchanged since 2005⁶³. If the criminal proceedings should be terminated or suspended, due to one of the grounds set out in the Criminal Procedure Code, the proceedings for the seizure of property may continue (Art. 108, § 2 and § 3 of the LCCFIAP).

The audit is also initiated when an administrative offence is committed, established with an act of an official, which by its nature could create a benefit in the amount of more than 50,000 BGN at the time of its acquisition, and the same cannot be forfeited in a different order.

New grounds are related to the established obligations on the part of persons holding senior public positions to submit an annual statement of incompatibility and property and interests. The persons are listed in the Art. 6, § 1 of the Law in 50 points, starting with the president and vice-president of the State and ending with members of the governing bodies of hunting farms. According to § 2 of Art. 6 all judges, prosecutors and investigators are also required to submit such declarations. Paragraph 2 of the Transitional provisions of the Law supplements the list. To fill a declaration are also obliged employees of the state and local administration, with the exception of employees holding technical positions; representatives of

⁶³ Art. 108, § 1 of the LCCFIAP

the state or municipalities in the management bodies of companies with state or municipal capital participation or legal entities that are not non-profit, when they do not fall under the sphere of Art. 6, § 1; governors and members of management or control bodies of municipal or state enterprises; members of political cabinets of ministers, advisers and experts in political cabinets; mayors of city halls, mayors and secretaries of municipalities; notaries, judges of records and public and private bailiffs.

If there is a discrepancy between the declared property and income received from legitimate sources in the amount of at least 20,000 lv., as if a conflict of interest is officially established, the verification was discovered in accordance with this law.⁶⁴ Verification also begins in cases where the person obliged to submit a declaration has not fulfilled this within the established time limits, except if this conduct is due to reasons for which the person does not respond.⁶⁵

2.2.3. The previous law maintains a difference of 150,000 BGN which is taken as a significant discrepancy in the property of the verified person, as well as a 10-year limitation period for the acquisition of property, after which the right of the state to file a claim for its forfeiture is extinguished.

2.2.4. The provisions of Arts. 141 – 151 describe the object of forfeiture. Particular parts of the property is liable to forfeit,⁶⁶ and when it is not possible to seize a separate property, its monetary equivalent, determined at the market price not at the time of acquisition, but at the time of filing a claim for forfeiture. Article 142, § 2 indicates that the property includes:

- Personal property of the screened person;
- Property, acquired in total by two spouses or persons in actual cohabitation;
- The property of premature adult children, and
- The property of the husband of the screened person, regardless of the fact that the spouses may have chosen the separated property regime;
- The property of the person with whom the screened person is in actual cohabitation.

Object of forfeiture is also the property that a person has transferred during the verified period to a spouse, a person with whom he is in actual cohabitation, an ex-spouse, and relatives in a direct line without restrictions in degrees, relatives in a conditional line -up to the fourth degree inclusive, and by matchmaking -up to the second degree inclusive.⁶⁷ If illegally acquired

⁶⁴ Art. 108, § 5 of the LCCFIAP.

⁶⁵ Art. 108, § 6 of the LCCFIAP.

⁶⁶ Argument from Arts. 141 and 142 of the LCCFIAP.

⁶⁷ Art. 144 of the LCCFIAP.

property is established, it is subject to be taken away from the heirs or testators up to the amount received by them.⁶⁸

Invalid in relation to state are transactions when they were gratuitous -in all cases⁶⁹. What is given to them is subject to cancellation. When there were paid transactions, if the third parties with whom they were concluded knew or could assume that the property is illegally acquired, or they acquired the property in order to conceal its illegal origin or the real rights associated with it, the given or received is subject of forfeiture. It goes also for the property that was acquired by a third party at the expense of a verified person in order to avoid its forfeiture or conceal its origin or actual rights to it.⁷⁰

The property that the audited person has acquired or imported as a non-primary or monetary contribution to the capital of a legal entity, if the persons who manage or control the legal entity know or from the circumstances could possibly assume that the property illegally acquired⁷¹ as property is forfeited and at succession of the legal entity.⁷²

The law also creates a presumption that, until proven otherwise, the moving items and cash of the inspected person are also considered to be those that are found in him, in his apartment or in other premises owned or rented by him, vehicles, boxes or safes.⁷³

2.2.5. In addition to other burdens assigned to the inspected person is to mention the obligation arising of Art. 156, § 6 LCCFIAP. If the defendant in the claim does not provide the court with evidence that he was able to present with the declarations, required of him by the Commission and this evidence has not been gathered, not on Commission's fault, the court may assign the costs of the case entirely or partially to the defendant, regardless of the outcome of the case.

2.2.6.. The most controversial legislative decision is adopted with an amendment and addition to the LCCFIAP.⁷⁴ The reason for this is the interpretative decision of the Supreme Court of Cassation,⁷⁵ with which it is assumed that when proceedings were initiated for the seizure of property due to the accusation of a crime specified in Art. 108, § 1 of the LCCFIAP and the accused is exculpated, the proceedings under the LCCFIAP should also be terminated.

⁶⁸Art. 150 of the LCCFIAP.

⁶⁹Art. 143 of the LCCFIAP.

⁷⁰Art. 146 of the LCCFIAP.

⁷¹Art. 145 of the LCCFIAP.

⁷²Art. 145, § 3 of the LCCFIAP.

⁷³Art. 147 of the LCCFIAP.

⁷⁴The Law on Amendments and Additions to LCCFIAP, DV, № 1/3. I. 2019 r.

⁷⁵ See RT 2.

The legislator recognizes that they are no legal obstacles to the existence and proper exercise of the right to a claim for forfeiture of illegally acquired property.

2.3. Deprivation of property by the LAOP

The issue is discussed in detail in I.3.2. and only for the sake of completeness of the exhibition it should be mentioned that the established regime is not supplemented and does not change and continues to operate.

3. Instruments of similar character to extended confiscation - securing (freezing) of assets

Bulgarian legislation provides for measures similar to extended confiscation, since they have a negative impact on the property interests not only of the directly affected persons, but also on the interests of third parties.

Back in 1998, the transfer of international legal acts⁷⁶ aimed at preventing money laundering, the Law on Measures to Combat Money Laundering (LMCML)⁷⁷ is adopted. Subsequent EU's acts in this direction are accordingly reflected in amendments and additions to the law, which leads to the adoption of a completely new law in 2018 that aligns Bulgarian legal regulation with the requirements of Directive (EU) 2018/843.⁷⁸ It can be argued that in 2018, a package of laws is adopted, with the help of which to be possible to fully resolve the issue of repression aimed at property rights.⁷⁹

Adopted in 2003 The Law on Measures against Financing of Terrorism (LMFT)⁸⁰ is very closely related to both the already repealed and the new LMCML, there are many referrals from one to another legal text and therefore will be considered together. A convincing example

⁷⁶ Directive of the Council of 10 June 1991 on the prevention of the use of the financial system for money laundering; joint action of 3 December 1998 adopted by the Council on the basis of article K.3 of the Treaty on European Union, on money laundering, identification, search, freezing, confiscation and confiscation of funds and taxation of crimes

⁷⁷ DV № 85/4.VII. 1998, repealed DV 27/27. III. 2018

⁷⁸ DV № 27/27. III. 2018 г.

⁷⁹ Simultaneously with the new Law on Money Laundering Measures, the Law on Combating Corruption and the Forfeiture of Illegally Acquired Property is adopted and significant changes are made to the Law on Measures to Finance Terrorism.

⁸⁰ DV № 16/ 18. II. 2003. The law transposes the Council of Europe Convention on countering terrorism. Updated DV № 54/ 2007; International Convention of UNO for the suppression of the financing of terrorism. Updated DV № 11/ 2002.; Convention of Council of Europe on laundering, searching, confiscation and confiscation of the taxation of crime and on the financing of Terrorism. Updated DV №51/ 2013; Directive 2015/849 of the European Parliament and of the Council of the European Union on the prevention of the use of the financial system for money laundering and terrorist financing, as well as Directive 2018/843 amending Directive 2015/849 on the prevention of the use of the financial system for money laundering and terrorist financing.

in this regard is the fact that the concept of "financing of terrorism" was defined 15 years later by the law on amendments and additions to the LMCML.⁸¹

Based on international acts in Bulgarian legislation, three unclear notions „*freezing*“, "*securing*" and "*forfeiture*" are introduced. Besides, still in Art. 3, § 1, point 1 of the LMFT, we meet a new term - "**blocking** of financial funds and other financial assets or economic resources". In the international acts discussed above, such a term does not occur, so it should be expected that the law will define it, but such a definition misses. The term is used in Art. 6, §1, § 3 and § 4, Art. 8, §1 and Art. 11, § 2, but it is not clear from any of them what exactly should be understood by the concept of "**blocking**". Against this background, there is doubt as to whether it corresponds to the term "*freezing*", defined as "*a temporary prohibition on the transfer, transformation, disposal or transfer of property or temporary retention or placement of property under control on the basis of a court decision or order of another competent authority*".

Bulgarian civil law knows two main types of interim measures - foreclosure on immovable and movable property (including money) – Art. 397, § 1, points 1 and 2 of the Civil Proceedings Code, as well as specific actions, such as stopping a vehicle from moving. These methods are also specified in the special chapters "Interim measures" both in the repealed and in the current law on the forfeiture of illegally acquired property. Art. 3, § 3 of the LMFT states that "blocking by § 1 has the effect of foreclosure“, but there are no specified grounds from which one can understand the reason for introduction of this new term.

In both laws, instead of clear definitions, which transactions are subject to control, purely formal monetary values are introduced – Arts. 11-13 of the LMCML:⁸²

- any transaction or transactions that exceed the equivalent of 15,000 EU or their equivalence in another currency, regardless of whether the transaction is carried out by one operation or several related operations;

- when making a random transaction or concluding a random deal for an amount equal to or greater than the left equivalent of 5,000 EU or their equivalent in another currency, when payment is made in cash, regardless of whether the transaction is carried out through one operation, or through several related operations;

The measures of the LMFT go even further, as in Art. 6, § 1 provides for "blocking of all financial funds and other financial assets and economic resources that are a property of the

⁸¹ DV № 94/13. 11. 2018

⁸² Since several cases are described in detail in these measures of the LMCML, along with the values of the transactions, only the main ones are indicated here.

persons mentioned in the Art. 4b, pts. 2 and 3, regardless of who owns them." The same applies to property that is not their own (i.e. they are property of third parties), but are in possession or is controlled by these persons. Thirdly, the property owned by third parties is also "blocked" – if they act on behalf of the persons mentioned in the Art. 4b, pts. 2 and 3, at their expense or at their direction, without specifying what exactly these funds were used for. This solution significantly expands the perceived in Art. 8 of the International Convention against Financing of Terrorism rule that "blocking" and "freezing" are be applied to "funds used or intended for the commission of crimes set in Art. 2 - i.e. terroristic acts. In addition, from the wording of the text concerning third parties acting on behalf of or at the expense of the developer or "acting... according to their instructions", there comes a conclusion about the legal presumption of guilt”.

According to § 4 of Art. 6 blocking is also imposed to all financial assets and other financial assets or economic resources owned, in possession, held or controlled by persons suspected of financing terrorism, as well as persons acting on their behalf and at their expense or at their direction.

Article 7, § 1 of the LMFT introduces a ban for individuals and legal entities or other structures to provide financial resources and other financial assets or economic resources, as well as financial services to persons, suspected of financing terrorism. Article 8 prohibits transactions with blocked financial funds and other financial assets or economic resources of individuals. In § 2 of the same Art. 8 is provided that the given or perceived by the parties in transaction violating the law is to be forfeited in favor of the state. The law, however, admits that third persons who claim independent rights to blocked funds and other financial assets or economic resources may also suffer from these actions, therefore, they are given the opportunity to make claims in a lawsuit, and the burden of proof in the proceedings under the Civil Proceedings Code rests solely on them.⁸³

4. Summary

The review of the legislation in historical terms, as well as an analysis of the norms of current law, draw the following conclusions:

1. Despite the fact that nominally in these regulations and especially in the current law it is supposed the principles and provisions of Directive 2014/42 / EU, to be transposed, the law, including in motives, does not refer to the Directive.

⁸³ Art. 8, § 5 of the LMFT

2. The connection between the committed crime and the acquisition of property has been finally severed, instead the unclear term "illegal" has been introduced. Considering that what is acquired by criminal means can be taken not only on the LCCFIAP, but also on the Criminal Code, and a special procedure is provided for the forfeiture of benefits received from an administrative offense, the question is raised about what content is invested in the word "illegal". An almost unarguable presumption is created that if the origin of the property cannot be proved, it was acquired illegally, and by a crime or violation that has not been established and cannot be proved.

3. If we calculate the approximate number of persons covered by Art. 6, § 1 and 2 and § 2 of the Transitional provisions of the LCCFIAP, it may turn out that this is a significant part of the Bulgarian population, given that the interests of their ascending, descending, spouses and relatives are also affected.

4. The possibility to forfeit property from a legal entity, even if there is a succession, means that the property interests of persons who have no idea about the nature of the actions performed by the previous managers of the legal entity may be affected.⁸⁴ It is worth mentioning that these persons are practically deprived of opportunity to protect themselves.

5. An analysis of the entire legislation clearly shows that there are four independent regimes for the forfeiture of property without conviction, which affect, among other things, third parties. These are Art. 53 of the Criminal Code, discussed in detail in I. 2.1. and II. 2.1., the LAOP regime, set out in I. 2.2., the LCCFIAP regime and the possibility provided in Art. 8 LMFT to forfeit the received in a transaction when there is doubt about the financing of terrorism. Two regimes are based on a committed or presumed crime, no matter is criminal responsibility possible to realize or not - Art. 53 of Criminal Code and LCCFIAP and two – on an administrative offence - LAOP and again LCCFIAP. This leads to confusions in practice due to difficulties in limiting the scope of application of a particular law. Attempts to make a classification and clearly define in which cases which law should be applied are not particularly successful⁸⁵ therefore, it is proposed to legally distinguish the punishment "confiscation" from "civil confiscation", as well as the scope of application of measures under various laws- the CC and the LCCFIAP.⁸⁶

⁸⁴ Art. 145, § 3 LCCFIAP.

⁸⁵ **Илкова, Р.** Forfeiture in favor of the state, p. 8-15; **Кръстева, Здр.** По някои дискуссионни въпроси на неоснованото на присъда отнемане в полза на държавата на незаконно придобито имущество. On some controversial issues of non-conviction forfeiture in favor of the state of illegally acquired property.//Научни изследвания, 2012, № 2. <http://nauchniizsledvania.com/nauchni-statii/view/78>

⁸⁶ **Груев, Л.** Наказването за престъпление. Punishing for a crime. С., БАН, 2020, p. 116 and next.

6. The latest assessment of the effectiveness of the legislation on "civil confiscation" and the activities of the Commission on combating corruption and forfeiture of illegally acquired property is carried out by the Minister of Justice a few weeks ago. According to Nadezhda Yordanova,⁸⁷ one of the largest sources of abuse in the activity of the Commission is voluntary judgments about when there is a significant discrepancy in the property of the audited person and how it is evaluated. She points out that about 62% of all claims are granted by the court, but 38% are rejected. This led to new ideas – to split again the Commission – one to deal with anti-corruption cases and another - for the forfeiture of property. The first one will be afforded of investigative functions, in order to be able to use evidence collected through secret investigative means in court. Now, these views do not find the necessary support.

RT 1: How was adoption of extended confiscation explained in the process of its introduction into domestic legal system of your EU Member State (e.g. by legal amendments):

1.1.before the transposition of Directive 2014/42/EU (if confiscation regulation existed)

As can be seen from the report, Bulgaria has a serious tradition in the forfeiture of "illegally acquired property", so the society can supposedly adopt such legislation. The fact that the report on Bulgaria's progress on the Mechanism of cooperation and verification for 2012 notes that progress in the fight against corruption does not give an additional impetus in this direction. In general, it is noted exclusively in the media that we are implementing a mechanism that is successfully operating in the USA and Ireland, and we are talking about an Institution introduced by foreign legal systems and approved in European law. In general in the last almost 30 years, the Bulgarian legislator doesn't bother himself to develop motives for bills answering the question "why" certain actions are being taken and what is the social and legal validity of this legislative decision.

1.2. in the process of transposition of Directive 2014/42/EU into internal domestic law

After the adoption of Directive 2014/42/EU, amendments are made to the then-in force law on the forfeiture of illegally acquired property in favour of the State in 2012. In the motives to the draft laws on the amendment and addition of the LFIAPFS of 2012, the legislator

⁸⁷ <https://news.lex.bg>

indicates that a new *in rem* lawsuit is being introduced, so there is no need to prove and sanction the offense, which entails the receipt of benefits.

The analysis of the adopted in 2018 LCCFIAP shows that the law has departed too much from Directive 2014/42/EU. It is probably for this reason that the tasks set before the legislation by the National Strategy for the Prevention and Combating of Corruption in the Republic of Bulgaria (2015-2020)⁸⁸ are put forward as motives for the adoption of the law. Another reason for the adoption of the new law is the updated strategy for continuing the reform of the judicial system,⁸⁹ in which prevention and combating corruption is an important point. The priority for the administration in the period 2017-2021, in the "Justice" sector, is the adoption of a new anti-corruption law that will unite fragmented legislation and create a single anti-corruption body based on the Commission for the forfeiture of illegally acquired property. This draft gives legislative expression to these strategic directions and regulates the procedure for the exposure and forfeiture of illegally acquired property as a way to protect the interests of society and restore justice, independent of criminal proceedings against the person being audited or related persons. The Bill, motives declare, is aimed at protecting the interests of society by: effective anti-corruption; establishment of guarantees that persons holding the highest state positions honestly and conscientiously perform their powers or duties in accordance with the Constitution and laws of the country; prevention of the possibility of illegal acquisition of property.

Was (extended) confiscation seen as (un)acceptable under certain (what?) conditions before the transposition of the Directive 2014/42/EU?

In the process of drafting the law of 2012, consultations are held with the Venice Commission, and the opinion on the bill is reflected in Interim Opinion CDL-AD (2010) 027, which clearly states that the Commission has identified some shortcomings, therefore the application of the law may lead to a violation of fundamental rights guaranteed by the Bulgarian Constitution and the European Convention on Human Rights. Later, the final Opinion № 563/2009 CDL-AD (2011)023 states that the project is "contradictory" and should be combined with high-quality substantive and procedural legislation and with a well-developed and effective system of courts and administrative bodies.

The public discussion of this bill also faces serious criticism both in substance and in the quality of specific permits. A round table organized by the Confederation of Employers and

⁸⁸ Adopted by the Council of Ministers by Decision № 230 of 09. IV.2014
<http://pris.government.bg/prin/default.asp>

⁸⁹ Adopted the Council of Ministers by Decision № 825 of the Council of Ministers of 18. XII. 2014

Industrialists in Bulgaria, the Bulgarian Chamber of Commerce and Industry and the Supreme Bar Council, attended by scientists, representatives of non-governmental organizations and ambassadors of EU and US countries believe that the law actually reproduces the one repealed back in 2005 Law on ownership of citizens, due to its contradiction with the Constitution.

Outright rejection of the provisions of the law can also be found in the doctrine.⁹⁰ Not only the terminology of the law, the created presumptions of illegality and guilt of the acquired property and restrictions in the process of proof are disputed, but also the right itself to affect the property in this way and on this basis. Other authors are more tolerant, and disagreement with some legal formulations are filed together with the statement of the fundamental necessity of the laws of 2005 and 2012.⁹¹

RT 2: Is there any case law in your EU Member State relating to confiscation (e.g. of constitutional court, court of appeals), which referred to / ordered / rejected (extended) confiscation or formulated additional criteria / conditions for its admissibility? What are those criteria? Are those criteria met in current extended confiscation regimes?

Special attention should be paid to three decisions – of the Constitutional Court of the Republic of Bulgaria, the European Court of Human Rights and the Court of the European Union, which are related to three "confiscation" laws - from 2005, 2012 and 2018.

2.1. On 13 July 2021, the European Court of Human Rights gives judgement in the case *Todorov and Others v. Bulgaria*, qualified at the first level in importance, in which seven applications are combined for general consideration.⁹² This is the first decision of the ECHR and refers to the incidents that arose with the application of the Law on Forfeiture in favour of the State of Property Acquired by Criminal Activity of 2005.⁹³ Despite the fact of combining the applications, the Court considers each of them separately, applying one main criterion - whether the Bulgarian courts investigated and established any causal relationship between the crime for which the person is accused and the property whose confiscation is required. It is

⁹⁰ **Atanasov, G.** On "the civil confiscation", "illegally acquired property" and vulgarization on the Right, p.17-45.

⁹¹ **Vladimirov, R.** Confiscation of property in favour of the state, p. 3-5; **Николов, Н.** Гражданската конфискация по закона за отнемане в полза на държавата на незаконно придобито имущество. Civil confiscation under the Law on the Fofeiture of illegally Acquired property in favor of the state. С., "Феня", 2012. **Коларов, Т.** Обезпечаването и отнемането на незаконно придобито имущество в гражданския процес. Forfeiture of illegally acquired property in civil proceedings. В., ВСУ "Черноризец Храбър", 2013.

⁹² *Todorov and Others vs. Bulgaria* [50705/11](#), [11340/12](#), [26221/12](#), [71694/12](#), [44845/15](#), [17238/16](#), [63214/16](#).

⁹³ **Margaritova, Sv.** <https://www.pravanachoveka.com/about/> and https://www.capital.bg/politika_i_ikonomika/pravo/2021/07/13/4232261_espch_konfiskuva_se_samo_imushtest_vo_koeto_ima_vruzka/

established that in four complaints the competent courts act on the basis of the presumption that if a crime is committed, then the property is illegally acquired and should be confiscated. In these four cases, the ECHR assumes that the confiscation does not comply with the norms of proportionality of the restrictive measures imposed, which leads to a violation of property rights refers to Article 1 of Protocol № 1 to the Convention.

Based on a review of its practice in a case of a similar nature, the ECHR analyzes the Law of 2005 and assumes that its scope of application is too wide, since it allows to start the procedure for the forfeiture of property for a number of crimes, some of which, given their nature, cannot generate income.

As a serious flaw in the law, ECHR finds the provisions, according to which the law can be applied to assets acquired 25 years before the start of proceedings for confiscation. It is established that the prerequisite set by the law - the presence of a significant discrepancy between legally received income and property, is not observed and proceedings are initiated if there is any discrepancy. A problem also lies in the presumption of the illegal origin of assets, when their lawful acquisition cannot be proved, as well as placing the burden of proof entirely on the person being audited.

The Court recognizes that these shortcomings of the law make the confiscation disproportionate to the legitimate purpose. The confiscation of property should be proportional to the legitimate purpose pursued by law, and the injured persons should be able to effectively protect themselves and not carry excessive cargo.

The general considerations of the court set out in the decision indicate that the model of confiscation proceedings adopted in the law does not correspond to the European standard, including with regard to Directive 2014/42/EU. The law in force, as can be concluded from the above,⁹⁴ further aggravates this problem, which obviously will require changes that are not yet being considered. This systemic human rights problem which provides the so-called civil confiscation, therefore, must lead to corrections within a reasonable period in order to avoid numerous condemnatory decisions by ECHR.

2.2. In 2012 59 deputies referred to the Constitutional Court requesting unconstitutionality and inconsistency with international treaties to which Bulgaria is a party, of the Law on the Forfeiture of Illegally Acquired Property in favor of the State to be declared. The Law is being challenged in full, since petitioners believe that the law contradicts the

⁹⁴ I.3.1. и II.2.2.

constitutional protection of property rights and the inviolability of private property based on Art. 17, § 1-3 of the Constitution and provides an unacceptable exception from Art.17, § 5 of the Constitution with reference to the expropriation of property. They also emphasize that the Law does not comply with Art.1 of Additional Protocol № 1 to The Convention for the Protection of Human Rights and Fundamental Freedom,⁹⁵ as well as with the similar provision of Art. 17, § 1 of the Charter of the Fundamental Rights of the European Union, since it provides for a confiscation that is not compensatory, fair and timely. The introduced procedure for revealing the illegally acquired property by a special commission is also disputed,⁹⁶ since the secret nature of Commission's proceedings is in contradiction with the right to legal defense – Art. 56 of the Constitution. In addition, the procedure creates objective prerequisites for violating the right of citizens to privacy (Art. 32 of the Constitution) and the freedom and confidentiality of correspondence and the other communications (Art. 34 of the Constitution), and in this regard, for violation of the relevant requirements of Art. 8 of the Convention for the Protection of Human Rights.

The parties invited to give an opinion upon the request put forward additional arguments in favor of the inconsistency of the contested law with the principles of the rule of law. They point out the unclear concept of "illegally acquired property", the disproportionality of the means provided to achieve the stated legislative goal and unjustified violation of fundamental human rights. They think that the form of civil confiscation conceals the actual sanctioning character of the law, violation of the right to defense and unequal treatment of the parties in the proceedings for the seizure of illegally acquired property by introducing a number of irrefutable presumptions. The Constitutional Court⁹⁷ practically rejects the petition, declaring unconstitutional some insignificant specific provisions that do not significantly affect the nature of the law and the procedures introduced with it. The main motive is that the acquisition and the corresponding accumulation of property with an illegal source is contradictory to a number of constitutional values, such as justice - highlighted in the preamble of the Constitution, the principle of the rule of law – Art. 4, § 1, the principle of equality of citizens – Art. 6, § 1 and the principle of providing for legal guaranties for economic activity - Art. 19, § 2. The main duty of citizens is to observe and obey the Constitution and the laws, to respect the rights and interests of others.⁹⁸ Persons affected by civil confiscation under the contested law, have

⁹⁵ Promulgated, DV, № 80/2.X.1992, amended and supplemented, № 137/20.11.1998, № 97/9.11.1999, № 38/21.V.2010.

⁹⁶ Art. 21-36 of the LFIAPS

⁹⁷ Decision № 13 of 13 October, 2012 constitutional case № 6/2012. Updated., DV, № 82 /26. X. 2012

⁹⁸ Article 58, §subparagraph 1 of the Constitution

violated this requirement, therefore they cannot receive the protection that the Constitution and the laws owe only to persons legally acquiring property. The proceedings provided for in the Law, are aimed at restoring the status quo, before the illegal acquisition of material values, carried out at the expense of the others and, eventually, the whole society. It is noted that a number of legal systems accept as a prerequisite for the forfeiture of illegally acquired property in favor of the state the presence of a criminal penalty for a certain type of acts related primarily to organized criminality, corruption and serious encroachments on the economic basis of society. Such an approach sometimes can be ineffective. When there is evidence of illegally acquired property, but criminal liability cannot be realized, some states, including members of the Council of Europe and the European Union, have implemented the idea of civil confiscation of property, which is not related to the development of the criminal proceedings and eventual verdict.

As can be seen, for the reasons stated above, the Constitutional Court apprehends legislative decisions entirely and practically refuses to enter into the essence of the law and the procedures established by it, as well as their relation to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

2.3. The latest decision is that of the EU Court⁹⁹ on request of a preliminary ruling concerning the interpretation of Directive 2014/42/EC of the European Parliament and of the Council, as well as Arts. 17 and 48 of the Charter of Fundamental Rights of the European Union.

The request has been made in proceedings between the Commission on the one hand, and certain persons on the other hand, concerning an application for the confiscation of assets obtained illegally by them. In connection with the judicial proceedings on the claim brought by the Commission, the competent court retains some doubts about the correct interpretation of the provisions of Directive 2014/42. That is why the court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

1. Does the confiscation of illegally obtained assets constitute a punitive measure for the purposes of Directive 2014/42 or a measure under civil law if:

- (a) the objective of the confiscation of assets as declared by national law is general prevention, that is to say the prevention of the possibility of obtaining and disposing of assets illegally, whereby confiscation is not conditional on the commission of a crime or other offence or on a direct or indirect connection between the offence and the assets obtained;

⁹⁹ The court decision (Third Chamber) of 28 October, 2021 in the case C-319/19 with the subject of a preliminary ruling on the basis of Art. 267 of the Treaty of Functioning of the EU. ECLI:EU:C: 2021: 883.

- (b) the confiscation threatens not an individual asset, but (i) the total assets of the person under inquiry, (ii) property rights of third persons (natural and legal) acquired by the person under inquiry, whether for consideration or not, and (iii) property rights of the contracting partners of the person under inquiry and of the third parties;
 - (c) the only condition for confiscation is the introduction of an irrebuttable presumption of the unlawfulness of all the assets for which no legal origin has been identified (without a previously established definition of “legal/illegal origin”);
 - (d) in the absence of proof of the origin of the acquisition of assets by the person under inquiry, the law governing the lawfulness of the acquired assets is revised with retroactive effect for a period of 10 years for all the persons concerned (person under inquiry, third parties and their contracting partners in the past), whereby at the time of acquisition of the specific property right there was no statutory obligation to provide such proof?
2. Must the minimum standards of guaranteed rights of owners and third parties contained in Art. 8 of Directive 2014/42 be interpreted as permitting national law and case-law which prescribe confiscation without it being necessary to satisfy the conditions laid down for that purpose in Arts. 4, 5 and 6 of Directive 2014/42 if the criminal proceedings against the person concerned have been terminated (as confirmed by the court) owing to the absence of a criminal offence or the person has been acquitted owing to the absence of a criminal offence?
 3. In particular, must Art. 8 of Directive 2014/42 be interpreted as meaning that the safeguards contained in that provision for the rights of a convicted person whose assets are subject to confiscation are also applicable in a case such as that in the present proceedings which runs in parallel with and independently of the criminal proceedings?
 4. Are the presumption of innocence enshrined in Art. 48, §1 of the Charter, the guarantee of the rights of the defence enshrined in Art. 48 § 2 of the Charter and the principle of effectiveness to be interpreted as allowing national legislation such as that at issue in the main proceedings which:
 - (a) introduces a presumption for the criminal nature of assets of unknown or unproven origin (Art. 1, § 2 of the 2012 Law on the confiscation of assets)
 - (b) introduces a presumption of reasonable suspicion that assets have been obtained illegally (Art. 21 § 2 of the 2012 Law on the confiscation of assets);

- (c)reverses the burden of proof regarding the origin of the assets and the means of acquiring them not only for the person under inquiry, but also for third parties, who must prove the origin not of their assets but of those of their legal predecessor, even in cases where the assets are acquired for no consideration;
 - (d)introduces “asset discrepancy” as the sole and decisive means of proving the existence of illegally obtained assets;
 - (e)reverses the burden of proof for all persons concerned, and not only for the convicted person, even before, or irrespective of, the conviction;
 - (f)allows the application of a methodology for legal and financial investigation and analysis by means of which the suspicion of the illegal nature of the relevant assets and the value of the assets are determined, and that suspicion is binding on the adjudicating court without the latter being able to exercise full judicial control over the content and application of that methodology?
5. Must Article 5, §1 of Directive 2014/42 be interpreted as allowing national law to replace a reasonable suspicion (on the basis of the facts and circumstances gathered in the proceedings and assessed by the court) that the assets were obtained by means of a criminal offence with a suspicion (presumption) of the illegality of the origin of the increase in assets which is based solely on the established circumstance that the increase is higher than a value referred to in the national law (for example, EUR 75000 in 10 years)?
6. Must the right to property, as a general principle of EU law, enshrined in Art. 17 of the Charter, be interpreted as allowing national legislation such as that at issue in the main proceedings which:
- (a)introduces an irrebuttable presumption regarding the content and scope of the illegally obtained assets (Art. 63,§2 of the 2012 Law on the confiscation of assets);
 - (b)introduces an irrebuttable presumption of the invalidity of transactions acquiring or disposing of assets (Art. 65 of the 2012 Law on the confiscation of assets) or
 - (c)restricts the rights of third parties holding or asserting independent rights to assets subject to confiscation by means of the procedure for notifying them of the case, as provided for in Art. 76, §1 of the 2012 Law on the confiscation of assets?

7. Do the provisions of Art. 6, § 2 and Art. 8, § 1 to 10 of Directive 2014/42 have direct effect in so far as they provide guarantees and safeguard clauses for the persons affected by the confiscation or for bona fide third parties?

As can be seen, the issues are of paramount importance in order to reveal the essence of the Bulgarian law and its compliance with the criteria and standards established in European legislation.

After analyzing its practice, as well as the national legal framework, the Court rules that *„Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, must be interpreted as not applying to legislation of a Member State which provides that confiscation of illegally obtained assets is to be ordered by a national court in the context of or following proceedings which do not relate to a finding of one or more criminal offences.“*

Given the answer to the first question, the Court finds that it is not necessary to answer the second, third, fifth and seventh questions. On the fourth and sixth question in connection with the interpretation of Articles 17 and 48 of the Charter, the Court notes that 51, § 1 of the Charter, that its provisions apply to Member States only when they apply the law of the Union. According to the constant judicial practice, the concept of "application of the law of the Union" assumes that there is a connection between the legal act of the Union and the national measure in question, that goes beyond the similarity between the areas under consideration or the indirect impact of one of the areas on the other, taking into account the criteria of judgment established by the Court. In *" present case, the confiscation procedure at issue in the main proceedings does not fall within the scope of Directive 2014/42, with the result that the Bulgarian legislation governing that procedure cannot be regarded as implementing EU law.“*

For the sake of completeness, it is good to point out that the cited decision caused two opposing opinions. The Commission for the Forfeiture of Illegally Acquired Property decided to legitimize its actions and resumed 346 suspended cases of confiscation of property.¹⁰⁰ On the other hand, there are comments that the law is a legal chaos in which the EU court could not navigate and therefore adopted an interpretation that is not based on the opinions of any of the parties to the request. The Bulgarian "civil confiscation" has nothing to do with EU law, since the confiscation of property under European law refers to the means and advantages of crimes, and the national law includes property acquired through crimes in the general concept of "illegally acquired property". The ruling cannot serve to legitimize the compliance of

¹⁰⁰ <https://news.lex.bg/346-> and <https://offnews.bg/temida/vazobnoviavat-346-spreni-dela>

confiscation legislation with EU legislation or with the principles of the Convention on Human Rights or the Charter of Fundamental Rights of the EU.¹⁰¹

RT 3: Is there any specific experience by practitioners in your EU Member State which created a special attitude to (extended) confiscation (e.g. organised crime, terrorism, drug crime, money laundering)? How did it influence the legislation (formulation of legal provisions of) (extended) confiscation?

3.1. The provisions of the confiscation laws cause a lot of disputes and disagreements in practice, which gives rise to three interpretative decisions by the General Assembly of the Civil Collegium (GACC) of the Supreme Court of Cassation.¹⁰²

First is the interpretation of the GACC Interpretative Decision № 7 of 30. VI. 2014 in case № 7/2013. Despite the fact that the question of interpretation raised by the provisions of the 2005 Law on the Forfeiture of Property Acquired by Criminal Activity, that was in force during 2005 - 2012, this decision has not lost its relevance, since the cases of forfeiture of property have been going on for years and are still going on. There are two questions in the interpretation:

- There must be a connection (direct or indirect) between the criminal activity and the acquisition of property and
- Is there a sufficient reason not to establish a legitimate source of income for the acquisition of the property during the investigation period under the LFPACAS (abolished), to assume reasonably that the property is acquired by criminal activity?

Since, according to the 2005 Law, it refers only to property acquired through a crime, the GACC strongly states that it is necessary to have a connection (direct or indirect) between criminal activities under Art. 3, § 1 and the acquisition of property. To decide that a property is forfeited in accordance with Art. 28 of the 2005 Law, it is enough to assume logically a connection between the crime and the benefit, taking into account the circumstances of the case, and also the impossibility to establish a legitimate source in the acquisition of property. 3.2.

The problem about the legal nature of the time period established by law for the

¹⁰¹capital.bg/politika_i_ekonomika/pravo/2021/11/09/4277244_sudut_na_es_se_prepuna_v_ocenkata_na_grajda_nskata/

¹⁰²If there are contradictions in the practice of interpretation and application of a rule, the relevant collegium of the Supreme Court of Cassation (civil, criminal or commercial) shall make an interpretative decision binding on all judicial bodies – Art. 124 of the Administration of Justice Act. Promulgated DV, 64/7. VIII. 2007, last amendment DV, 80/24.IX.2021

Commission to conduct an audit is also subject to interpretation - the Interpretative Decision of the GACC № 1 of 2018 in case № 1/2018.

The question is whether the specified period is instructive or preclusive, i.e. is it permissible to file a claim in court for the forfeiture of property if the verification proceedings carried out by the commission exceeded the time limits established by law. This problem applies to all "confiscation" laws. Referring, to the case law of the ECHR and the European Convention for the Protection of Human Rights and Fundamental Freedoms and Protocol No. 1, to that, the GACC recognizes that indisputable non-compliance with the time limits is a violation of the requirement of a proceeding in reasonable time. Nevertheless, the law does not associate this violation with the lapse of rights for the Commission to conduct proceedings at the administrative stage and then apply to the court. For damage caused to private legal entities, the state is obliged to compensate losses on the terms and in accordance with the Law on the responsibility of the state and municipalities for damage.¹⁰³ In short, the GACC assumes that the term is instructional by nature, and it is permissible to go further with proceedings after this period has expired.

In fact, this decision makes it possible for the inspection to continue for as long as the Commission needs, without practical sanctions, during this period, the interim measures imposed are not cancelled, which could seriously harm the interests of the affected third parties.

3.3. Interpretative Decision № 4 of 2016, case № 4/2016¹⁰⁴ is interesting from the point of view of the impact on the legislation. The interpreted question is: does the termination of criminal proceedings for the crime, specified in Art. 22, §1 of the 2012 Law represent an absolute procedural obstacle to the exercise of the right of claim for the forfeiture of illegally acquired property in favor of the state. This problem is also relevant in connection with the current legislation. In general, the dispute boils down to whether it is an obstacle to the forfeiture of property the fact that the accused person was found not guilty.

The General Meeting of the Civil Collegium assumes that the cases, under which the forfeiture of property is possible, despite the fact that criminal liability cannot be implemented, are expressly specified in the law – the statute of limitations has expired, death, amnesty and suspending of criminal proceedings.¹⁰⁵ Consequently, the procedure is inadmissible if the ground for its conducting has disappeared. Therefore, if the accused person is justified by the crime specified in Art. 22, § 1 of the Law, it is an absolute procedural obstacle to the existence

¹⁰³ DV № 60/5. VIII. 1988, DV № 94/29. XI. 2019 г.

¹⁰⁴ The decision is dated 7. XII. 2018.

¹⁰⁵ II. 2.2.2.

and proper exercise of the right to a claim for the forfeiture of illegally acquired property in favor of the state.

Immediately, the National Assembly reacts to this decision and on 19. XII. 2018, another amendment to the Law on Combating Corruption and Forfeiture of Illegally Acquired Property is adopted.¹⁰⁶ The main addition is the new subparagraph 6 of Article 153:

"Article 153 (6) (New-DV, №1 for 2019). The termination of criminal proceedings or the entry into force of a sentence under which the defendant is found innocent of the crimes specified in Art. 108, §1 of the law are not a legal obstacle to the existence and proper exercise of the right to a claim for the forfeiture of illegally acquired property in favor of the State."

It is unnecessary to comment that in this way the Bulgarian legislator has completely parted with the idea of the forfeiture of criminally acquired property, assuming that the concept of civil confiscation has not only a criminal, but also an economic side. The elimination of the ground to go forth with the procedure is not an obstacle to continuation.¹⁰⁷

3.4. The last so far stated ambiguous application of the law is the reason for the formation of the Case № 4 of 2021. The case is initiated at the request of the Chairman of the Commission, the Prosecutor General and the Minister of Justice. The General Meeting of the Court of Cassation will determine the scope of the concept of "property".

RT 4: What is the legal nature of extensive confiscation in your EU Member State?

- **Is extended confiscation in your EU Member State:**
 - **criminal sanction (accessory or principal criminal penalty)**
 - **preventive measure without nature of criminal sanction (security measure in broad sense, administrative measure adopted within or outside criminal proceedings)?**
 - **precautionary measure on suspect's assets (civil measure *in rem* or a kind of *ante delictum* criminal prevention measure)?**
 - **civil consequence of committing an offense, provided for by criminal law?**
 - **autonomous (*sui generis*) instrument of another kind (e.g. a measure aimed at neutralisation of criminal profit and at removal of illegal proceeds)?**

¹⁰⁶ The Law on Amendments and Additions to LCCFIAP, DV № 1/3. I. 2019.

¹⁰⁷ Nikolaev N. The Supreme Court made a mistake in civil confiscation. 8. I. 2019 <https://trud.bg/>

The analysis of various forms of forfeiture of property leads to the conclusion that various models co-exist in the current Bulgarian legislation.¹⁰⁸

1. First of all, confiscation in the narrow sense of the word understood as an additional punishment for committing particularly serious crimes under the Criminal Code and imposed along with imprisonment or life imprisonment¹⁰⁹ - **accessory criminal penalty** (the first model).

2. Secondly - the forfeiture of things that have served as the subject or means of a crime, things whose possession is prohibited, as well as direct and indirect are subject to a crime under Art. 53 of the CC. To the extent that the text is applied in cases where it is impossible to conduct criminal proceedings, i.e. not based on conviction, we can assume that we are talking about a **kind of *ante delictum* criminal prevention measure**.¹¹⁰ - the fifth model.

3. Thirdly - the forfeiture of profit from an administrative offense in accordance with Art. 21 and 83a of the LAOP.¹¹¹ Here it goes about a preventive measure carried out within the framework of administrative punishment proceedings – **autonomous (*sui generis*) instrument aimed at neutralization of illegal profit, due to an administrative offense** – the second model.

4. Fourthly - the extended confiscation of the LCCFIAP¹¹², which, taking into account the scope of the law, can be considered as a **civil consequence of committing a crime**, and as a **measure aimed at neutralisation of criminal and any illegal profit**.

5. Finally - the legal measures to combat money laundering and the financing of terrorism,¹¹³ which are **precautionary measure on suspect's assets , kind of *ante delictum* criminal prevention measure**.

As it can be seen, the possibilities of forfeiture of economic benefits cover not only cases when they are obtained through a crime or an administrative offense, but also when they have another illegal source or when it comes to a preventive measure in case of suspicion of future commission of a crime.

Is the proof of guilt of the offender required to apply extended confiscation?

¹⁰⁸ For details on the models for forfeiture of property in the countries of the EU; **Rui, J. P., U. Sieber** (Eds.). *Non-Conviction-Based Confiscation in Europe: Possibilities and Limitations on Rules Enabling Confiscation without a Criminal Conviction*. Berlin: Duncker & Humblot, 2015.

¹⁰⁹ I.1. and II.1.

¹¹⁰ I. 2.1. and II. 2.2.

¹¹¹ I. 3. and I. 3.2.

¹¹² II. 2.

¹¹³ II. 2.3.

Proof of guilt is required by conviction-based confiscation. In the situation, encompassed in Art. 153, § 6 of the LCCFIAP,¹¹⁴ the innocence does not exclude the forfeiture of property.

Is reversed burden of proof applied by extended confiscation?

Reversed burden of proof, shifted from authorities to (presumed) owner of property, based on irrefutable presumption of illicit origin of that property, is seen as immanent part of the structure of extended confiscation.

Are there other rules / lowered standards of evidence relating to extended confiscation?

- the above mentioned irrefutable presumptions;¹¹⁵
- the expressions "doubt" and "suspicion" that are used in the Law on Measures to Combat Money Laundering and the Law on Measures to Combat the Financing of Terrorism.¹¹⁶

The adopted legislative technique reduces the standards of proof in comparison with those adopted in the Civil Procedure Code, established for proving other types of claims.

RT 5: What are legal instruments for protection of individual rights in your EU Member State at each stage of confiscation procedure / in substantive legal basis for adjudication?

Are they considered as sufficient to protect individual rights and freedoms?

5.1. Persons who have committed a crime, referred to in Art. 107 of the LCCFIAP against whom charges have been brought, have all the rights provided for by the Criminal Procedure Code. It is considered that the right to defense they enjoy fully complies with accepted European standards.

Third parties -individuals or legal entities that may be affected by the measures under the LCCFIAP, cannot participate in criminal proceedings.

5.2. In the proceedings for the forfeiture of property, all remedies provided for by the Civil Procedure Code are applicable - the person can be represented and defended by a lawyer and has the right to appeal the decision in a general manner. Both the person being screened and all third parties who are affected have the right to familiarize themselves with the collected materials after taking interim measures object and provide evidence.¹¹⁷

¹¹⁴ RT 3.3.

¹¹⁵ II.2.2.

¹¹⁶ II.3.

¹¹⁷ Art. 138 of the LCCFIAP.

Refusal to submit a declaration on the property owned and the means of acquiring it by the person being screened and his family members cannot be the basis for conclusions about their harm.¹¹⁸

The explanations and statements given by the person being audited, submitted by him and interested third parties, cannot be the ground for initiating a criminal prosecution against persons and are not evidence of support for the prosecution.¹¹⁹

Persons representing legal entities according to the law or according to entities' rules represent them before the commission. When there is no rule of representation, a legal entity is represented by two members of its managing board. In proceedings before the commission and in court, a legal entity may be represented by a lawyer in accordance with the Civil Procedure Code with a written power of attorney.¹²⁰

If third bona fide persons claim independent rights to blocked funds and other financial assets or economic resources, they have the opportunity to present their claims in a lawsuit, and the burden of proof in the proceedings under the CCP lies solely on them.¹²¹

It can be considered that the right to protection of persons at the trial stage is quite effective, given that a significant part of the claims are rejected.¹²²

RT 6: Does – in your opinion based on answers of the above mentioned questions / other data / jurisdiction or literature in your EU Member States – extended confiscation comply with the principles of / the right to:

- **legality?** No, extended confiscation creates *de facto* a new type of crime: simple possession of proceeds derived from illegal activities with significantly lowered standard of evidence¹²³.

legal specificity of statute? As in Art. 44 and Art. 53 of the Criminal Code the "confiscation" laws speak of "goods" and "property". The concept of "property" is defined in pt. 4 of § 1 of the Additional provisions of the LCCFIAP in the most extensible way, which makes the provision unclear - "any type of property, tangible or intangible, movable or immovable, limited property rights, as well as legal documents confirming ownership or other rights to it." This

¹¹⁸ Art. 139 of the LCCFIAP.

¹¹⁹ Article 138, subparagraph 5 of the LCCFIAP

¹²⁰ Article 138, subparagraphs 3 and 4 of the LCCFIAP

¹²¹ Article 8, subparagraph 8 of the LMFT

¹²² Jordanova, N. <https://news.lex.bg>

¹²³ See **Atanasov, G.** For "civil confiscation", "illegally acquired property" and vulgarization of the law (II). // Lawyer's Review, 2020, № 3-4, p. 19-89.

leads to difficulties in practice and is the basis for requesting interpretation by the Supreme Court of Cassation.

- **proportionality?** **No**, in practice, the breakdown of relations between Directive 2014/42/EU and the current provisions of the LCCFIAP does not allow the court to judge whether the measures are proportional.

- **non-retroactivity of /more severe/ statute?** **No**, extended confiscation since its introduction into Bulgarian law, has the opposite effect, explicitly indicating that it affects property acquired before the law came into force, and covers long periods back in time – initially 25, currently 10 years.

- **protection of citizen's trust in state and law?** Although the motives for the LCCFIAP and as the purpose of the law indicate the restoration of citizens' trust to justice, it is difficult to assert that this can be achieved by these means, arbitrarily applied.

- **private property?** **No**, The Constitution (Art. 17, § 5) does not specify confiscation as a ground for encroachment on property rights. It should be thought that its use may be legal when it relates to punishment or as the removal of benefits of especially serious crimes, but this is not the only option under the LCCFIAP.

- **defence?** The answer is not unambiguous. At least **not** in the stage when the Commission is gathering evidence. In the first phase of the procedure, neither the audited person nor the third parties are entitled to legal defence. **Yes** - after the imposition of protective measures: natural and legal persons are notified and have the right to legal protection and all other procedural rights provided for in the Civil Procedure Code.

- **to fair trial?** It is difficult to answer this question unequivocally. Despite the fact that nominally affected persons are provided with every opportunity to defend themselves in court, the very repressive nature of the legal provisions and the measures provided, as well as the idea that the interests of the State are protected in this way, create prejudices that are difficult to overcome.

- **presumption of innocence?** **No** – the presumption of innocence is fully valid in criminal proceedings, but in the proceedings for the forfeiture of property, in all cases, there are presumptions of the illegal nature of the acquired property and its transfer for fraudulent purposes for hiding.

- **right to privacy?** **No** – in the procedure for the forfeiture of property, the Commission has the right to disclose not only the banking, commercial, insurance and insurance secrets of the affected persons, and also to gain access to all other information. To what extent this is justified, when it is not a question of a committed crime, is very controversial.

- **other relevant rights / principles?** Yes, questioned may be the right to a trial within a reasonable time. The decision of the HCCJ that the right to bring a claim by the Commission does not preclude when the statutory deadlines expire in practice means that the proceedings and related restrictions can continue for a period exceeding the reasonable and necessary to prove the State's claim.