

COUNTRY REPORT ROMANIA

Extended confiscation in scope of the fundamental rights and general principles of EU

Introductory question: How is the extended confiscation understood in legal order of your EU Member State?

In Romania, confiscation is regulation through several means, the bulk of the legislation being in the Criminal Code. There are thus several types of confiscation in the national legal system, respectively criminal confiscation, extended confiscation, and non-conviction-based confiscation.

• RT 1: How was the adoption of extended confiscation explained in the process of its introduction into the internal legal system in your EU Member State:

Extended confiscation was rooted in Romania based on Framework Decision 2005/212/JAI, and it was further regulated by Directive 2014/42/EU – both implemented. In the national legal framework, the institution was regulated at first by Law no. 63/2012 on amending and supplementing the Criminal Code and Law no. 286/2009 on the Criminal Code, with the purpose of transposing the EU legislation mentioned before.

Law 63/2012 was drafted, *inter alia*, to amend and supplement the Criminal Code. According to the statement of reasons, the sole purpose of the draft law was the transposition of art. 3 of the Framework Decision no. 2005/212/JAI which regulated in its initial form extended confiscation. In the parliamentary note, it was stated that the partial transposition was due to the controversial effects of extended confiscation, namely with relation to the constitutional principle of the presumption of the lawful acquisition of wealth, an aspect which, in the view of the initiator of the draft law - the Government of Romania from 2012, the new law will solve - through a strict regulation and in full accordance with the demands of the Union and the constitutional requirements. The law referred to the modification of the in force Criminal Code of 1969, and the future – now in force, Criminal Code. The only difference at the time was the severity of the triggering offence. In the now old Code - crimes for which the concrete punishment established by the court is 5 years, while in the New Criminal Code, this limit had in mind a concrete punishment established by 4 years. It was also specified in the content of art. III and art. IV of Law 63/2012 that whenever special laws, the Criminal Code or the Code of Criminal Procedure refer to art. 112 or 118 – special confiscation, the referral will be deemed to be made to extended confiscation as well.

The version enacted in 2021 remained in force in this form until recently. However, the institution was adapted by the provisions of Law 228/2020, which aimed, on the one hand, to transpose art. 4 para. (2), art. 5-7, art. 8 para. 1 and 6, art. 9 and art. 11 of Directive 2014/42/EU on the freezing and confiscation of instruments and proceeds of crimes committed in the European Union and, on the other hand, transpose art. 8 para. 4 of Directive 2016/343/EU on

strengthening certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings.

Regarding the substantial changes, the 2020 reform covered both the scope of the measure and the disposition conditions. Thus, extended confiscation would be applicable to any crimes, if the facts are likely to procure a material benefit and if the maximum sentence prescribed by law for these crimes is at least 4 years. Thus, now confiscation can also be ordered regarding crimes that until now could not be triggering offense, although it was somewhat natural to be so - for example embezzlement (art. 295 C.C), illegal obtaining of funds (art. 306 para. 1 C.C), trafficking in toxic products or substances (art. 359 para. 1 C.C), etc.

• RT 2: is there any case law in your EU Member State relating to confiscation (e.g. of constitutional court, court of appeals), which:

Constitutional Court Decisions

Regarding the constitutionality of extended confiscation, several claims were raised in relation to the text within the Criminal Code. They concerned, on the one hand, art. 118¹ para. 2 lit. a) CC 1969, and on the other hand, the text of art. 112¹ CC. A series of decisions are relevant: CCR Decision no. 78 of February 11, 2014¹, CCR decision no. 356 of June 24, 2014², and CCR Decision no. 11 of January 15, 2015³.

Decision 78 of February 11, 2014, came into existence following the referral to the Constitutional Court by the Oradea Court, as a result of raising an exception of unconstitutionality which concerned, on the one hand, the provisions of art. 2 lit. e) and art. 16 of Law 194/2001 on combating operations with products likely to have psychoactive effects, and on the other hand, the provisions of para. 2 of art. 118¹ CC 1969. In relation to the institution of extended confiscation, the author of the exception considered that the institution violates art. 16 paragraph (1) regarding the equality of citizens before the law and art. 15 para. (2) regarding the retroactivity of the criminal law as well as the provisions of art. 7 of the European Convention on Human Rights – no punishment without law. It was considered so because before the entry into force of law 63/2012, extended confiscation could not be ordered and thus the people who, for various reasons, had the chance to find themselves under the influence of the previous regulation, were in a more favourable situation, but discriminatory, compared to those who were judged after the entry into force of this law.

Regarding the criticism regarding art. 7 of the ECHR, the Court established *ab initio* that there is no question of any violation, considering that the guarantee contained in art. 7 is not incidental to the application of extended confiscation. In its reasoning, the Court invoked its own jurisprudence and assessed that the security measure of confiscation is not a punishment in the sense assigned by art. 53 of the Criminal Code. Moreover, *mutandis mutatis*, it was appreciated that the security measure of confiscation is not likely to defeat the presumption of innocence either - a constitutional guarantee that applies in relation to the individual freedom

¹ Publicată în Monitorul Oficial nr. 273 din 14 aprilie 2014

² Publicată în Monitorul Oficial nr. 691 din 22 septembrie 2014

³ Publicată în Monitorul Oficial nr. 102 din 9 februarie 2015

of the person, respectively in terms of detention and arrest. According to the reasoning of the judges, the measure of extended confiscation aims, like the other safety measures, to remove a state of danger and prevent the commission of criminal acts, without in any way affecting the right of the person against whom it is ordered to benefit from the presumption of innocence throughout the entire criminal process, until the conviction remains final.

Regarding the criticism of the application in time in the sense of non-compliance with art. 15 para. 2 of the Constitution, the Court unequivocally held that the institution of extended confiscation is an institution of substantial criminal law and therefore the principles of the application of criminal law in time and the prohibition of retroactivity are applicable. It was stated that the institution of extended confiscation is nothing more than a variation of criminal confiscation and as such, the key to the analysis will be in the sense of assessing whether the regulatory method affects the principle of the application of the more favourable criminal law and the equality of citizens before the law by retroactively being applicable discriminating against acts committed under the empire of the old law.

Therefore, the conclusion that emerged from all the arguments presented above was that the provisions regarding extended confiscation are constitutional to the extent that they apply only to acts committed after the entry into force of Law 63/2012 by which the institution was firstly regulated.

Decision 356 of June 24, 2014, appeared as a result of the referral to the Constitutional Court by the Timiș Court, following the formulation of an exception of unconstitutionality by a natural person in relation to the provisions of art. 118¹ CC 1969. The main criticisms concern the violation of several constitutional provisions, respectively art. 16 para. 1 regarding the equality of citizens before the law, art. 44 para. 8 regarding the presumption of legality of the property and art. 15 para. 2 regarding the retroactivity of the more favourable criminal law, all in the context in which, according to the author of the exception, extended confiscation in his case would be ordered for goods and deeds done before the entry into force of law 63/2012 by which the institution was first regulated.

The Court reiterated the fact that the criticized provisions come to establish the measure of extended confiscation in the case of conviction for committing certain categories of crimes that are serious in nature, presenting a relevant social danger and the commission of which allows the accumulation of assets whose value clearly exceeds the legally obtained income, and the judge is convinced that the assets come from the commission of the same type of crimes. Strictly related to criticism based on art. 16 para. 1, the Court removed the *prima facie* argument ruling that there can be no discrimination in his case - as established in Decision 78 pronounced 2 months previously, given that the facts were committed after the entry into force of Law 63/2012, the argument being superfluous - that those judged before the legislation are in a different situation compared to those judged afterwards.

In relation to the criticisms made regarding the violation of the presumption of legality of wealth, it is important to mention that it is for the first time since the entry into force of Law 63/2012 that the Constitutional Court rules on it. According to the author of the exception, para. 2 of art. 118¹ violates the presumption, enshrining a reversal of the burden of proof and an implicit violation of the right to a fair trial. In the view of the Court, it ruled that the purpose of the analysis is to check whether extended confiscation meets the constitutional requirements of art. 44 para. 8, whether or not emptying the content of the presumption. Invoking the doctrine

of the living right, the Court explained that the right to private property is a relative right, which can be restricted by law, establishing the limits of its exercise, an operation that combines the individual interest of the owner and the collective interest. The presumption of lawful acquisition was appreciated as a guarantee of the relative right to property following its regime. In addition, it was stated that the presumption is not an absolute one, its relative nature not determining a reversal of the burden of proof, *the actori incumbit probatio* principle being fully applicable. Getting to the heart of the matter, it has been held that the essence is to establish what is the standard of proof required to rebut the presumption.

Returning to the nature of extended confiscation, the Court held that it is only a form of the institution of criminal confiscation and by no means a different institution. As such, this is a criminal law sanction and not a punishment, being framed as a safety measure. In justification, the judges emphasized what is already known, namely the fact that safety measures are intended to prevent the commission of other criminal acts by removing the dangerous conditions that caused them to be taken. In relation to the disposition conditions, again, the Court recalled the fact that they can only be ordered against persons who have committed criminal acts, even if no penalty is applied, according to art. 107 para. 2 Criminal Code 1969.

In relation to the criticism of the author of the exception according to which extended confiscation provisions violate art. 15 par. 2 of the Constitution, as long as it applies to assets acquired prior to the entry into force of Law 63/2012, the Court ruled that the institution cannot retroactively apply for assets acquired before its entry into force, regardless of whether the crimes for which the conviction was ordered are committed before or after.

Decision 11 of January 15, 2015, was the last, up to the time of writing this paper, which concerned the unconstitutionality of the institution of extended confiscation. Unlike the rest of the decisions, this one was provoked by raising the exception of unconstitutionality by the People's Advocate himself. According to the author of the exception, it was assessed that the institution, regulated in art. 112¹ of the New Criminal Code violates the provisions of art. 15 paragraph 2 of the Constitution in the sense that a legal subject cannot be held liable for conduct prior to the entry into force of Law 63/2012, both with regard to the moment of acquisition of the goods subject to confiscation and with regard to the facts that constitute the predicate offence.

The Court ruled that there are differences both with regard to Decision no. 365 of June 25, 2014, but also with regard to Decision 78 of February 11, 2014. However, regardless of when the crime was committed or when the assets were acquired - before or after the 2012 regulation, or the way the criticisms were formulated, it was appreciated that the rationale must be unified. Thus, without bringing arguments in addition to those already presented, the Court concluded that the regulation of the institution of extended confiscation is constitutional to the extent that both the predicate offense and the goods that were acquired and represent the object of the measure are obtained or committed after entering force of Law 63/2012.

• 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)

No specific experience of practitioners influenced the introduction of the regulation on extended confiscation. The original version of extended confiscation was influenced by the Framework Decision referenced before and the one introduced afterwards by Directive 2014/42/EU.

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

Extended confiscation⁵ is defined by most authors as a security measure, nature wise, in the Romanian legal framework. It is considered so given the place the institution is regulated within the legislation, respectively the Criminal Code – historically also. As such, the institution is regulated in the General Part, in Title IV, being listed in art. 108 lit. e) - category of safety measures, and its regime is regulated in art. 112¹ C.C.

Generally, for security measures, the rule is that they can be ordered against persons who have committed acts provided for by criminal law, even if no personal guilt exists and not sentence is rendered in the sense of conviction. The only supplementary conditions are that a state of danger needs to justify the measure, coupled with the fear of committing it in the future new acts provided by the criminal law and which cannot be removed only by applying a punishment, but also by applying a safety measure.

Per the specific case of extended confiscation, alongside the above-mentioned rules, it is compulsory that the person targeted by the measure be convicted for a specific offence. Thus, objective, and subjective criminal liability must be proven beyond any reasonable doubt (conviction). Moreover, not any offence can be deemed as triggering offences for the purpose of extended confiscation. Initially there was a list of offences, but now there is only a gravity criterion and a scope criterion. To conclude for this point, as a *per a contrario* rationale, it is impossible to have non-conviction-based confiscation in tandem with extended confiscation, as provided by Directive 2014/ 42/EU.

In comparison, criminal confiscation requires only two elements that are common to the ordering of any security measure, as provided in article 107 of the Criminal Code. Thus, (1) the

-
- ⁴ Is extended confiscation in your EU Member State: **(preventive measure)**
 - a criminal sanction (accessory or principal criminal penalty)?
 - a preventive measure without the nature of criminal sanction (security measure in a broad sense, administrative measure adopted within or outside criminal proceedings)?
 - a precautionary measure on a suspect's assets (civil measure *in rem* or a kind of *ante delictum* criminal prevention measure)?
 - a civil consequence of committing an offense, provided for by criminal law?
 - an autonomous (*sui generis*) instrument of another kind (e.g. a measure aiming at neutralisation of criminal profit and at the removal of illegal proceed)?
 - Is there only one type of extended confiscation or are there in fact several different instruments with a common name? **(one)**
 - Does a non-conviction-confiscation exist in your EU Member State? **(yes)**
 - Is the proof of guilt of the offender required to apply extensive confiscation? **(yes - conviction)**
 - Is a reversed burden of proof applied by extended confiscation? **(yes)**
 - Are there any other evidence rules / lowered standards of evidence relating to extended confiscation? **(yes- considering the link with the assets)**

⁵ C. Sima, *Măsurile de siguranță în dreptul penal contemporan*, ed. All Beck, București, 1999, p. 153, A. Posdarie, *Măsura de siguranță a confiscării speciale*, ed. Waldpress, Timișoara, 2000, D. Hoffman, *Confiscarea specială în dreptul penal. Teorie și practică judiciară*, ed. Hamangiu, București, 2008, p. 144, M. Vasile, *Confiscarea și expulzarea în dreptul penal român*, ed. Universul Juridic, București, 2012, p. 73

perpetrator must commit an act provided by criminal law and (2) the act must be performed unjustifiably, respectively without the application of any of the justifiable causes provided by law. If these two simple conditions are met, coupled with identifying an asset as requested by art. 112¹, the Court must order criminal confiscation, regardless of any conviction solutions or other procedural finality. As examples, criminal confiscation may be ordered even if the prosecutor drops the charges due to an acquittal motive or a termination of the criminal procedure during trial given statute of limitations.

As per the rules enshrined in art. 112¹, the following conditions must be met so as to order extended confiscation⁶: (1) the offender must commit a triggering offense. (2) the offense must be likely to procure a material benefit. (3) the solution for the commission of the offense must be a conviction; (4) the value of the assets in the property of the convicted persons must clearly exceed the revenues obtained lawfully in a period of maximum 5 years (proportionality); and (5) the court must be convinced that the difference in value originated from criminal activities like the ones for which conviction was decided.

Regarding the triggering offenses, the person that will finally be convicted must commit an offense (any offense) for which the penalty provided by law is at least 4 years and it must be likely to procure a material benefit. Thus, the judge of the case must simply note if the triggering offense fulfils these two limitations, taking into consideration the particularities of the national system.

Turning towards these, on the one hand, the Criminal Code defines a punishment provided by law in art. 187 of the Criminal Code and states that by punishment provided by law, one should understand the penalty stipulated by the legal text, not considering the circumstances for the aggravation or mitigation of the penalty. On the other hand, regarding the likelihood to procure a material benefit, this is understood as the ability of committing the offense to give rise to material benefits even if set materials benefits were not realised *in concreto*.

⁶ (1) Assets other than those provided for in art. are subject to confiscation. 112, when a person is ordered to be sentenced for an act likely to procure him a material benefit and for which the penalty provided by law is imprisonment of 4 years or more, the court forms its conviction that the assets in question come from criminal activities. The court's conviction can also be based on the disproportion between the legal income and the person's wealth.

(2) The extended confiscation is ordered on the assets acquired by the convicted person in a period of 5 years before and, if necessary, after the time of the commission of the crime, until the date of issuance of the act of referral to the court. Extended confiscation can also be ordered on assets transferred to third parties, if they knew or should have known that the purpose of the transfer was to avoid confiscation.

(3) For the application of the provisions of para. (2) the value of the assets transferred by the convicted person or by a third party to a family member or a legal entity over which the convicted person has control will also be taken into account.

(4) By goods, according to this article, we also understand the sums of money.

(5) When determining the difference between the lawful income and the value of the assets acquired, the value of the assets at the date of their acquisition and the expenses incurred by the convicted person and his family members will be taken into account.

(6) If the goods subject to confiscation are not found, money and goods are confiscated in their place up to the competition of their value.

(7) Assets and money obtained from the exploitation or use of the assets subject to confiscation, as well as the assets produced by them, are also confiscated.

(8) The confiscation cannot exceed the value of the goods acquired during the period provided for in paragraph (2), which exceeds the level of lawful income of the convicted person.

Concerning the notion of conviction, the procedural solutions that meet this requirement are (1) the conviction by which the court orders the execution of the penalty (life imprisonment, imprisonment, or a fine) and (2) the conviction by which the court suspends the service of the sentence under supervision. Both are valid solutions that allow the ordering of extended confiscation, but in the case of the suspension of service of the sentence, the penalty applied in concrete must be imprisonment in a term of maximum 3 years. In the case of (1) acquittal, (2) the postponement of penalty enforcement and (3) the waiver of sentence enforcement, extended confiscation cannot be ordered.

Turning towards the material implications, one should clarify the meaning of an asset in the context of extended confiscation. Assets will be considered any movable or immovable property that pertained to the defendant, any sums of money, services paid for or offered free of charge, as well as any other means of economic value (credit titles, company shares, etc). Assets that are to be returned to the victim are not available for confiscation, as well as any other property that were removed beforehand given prior convictions.

The 5-year period calculated before and, if necessary, after the commission of the offense until the indictment was criticized by legal doctrine⁷, stating that it is unclear⁸. Several opinions were formulated in the sense that the term is a regressive one that must be calculated having a starting point the time of indictment, while others stated that the reference should be the commission of the offense⁹. From our standpoint the commission of the offence should be the reference period, any other interpretation rendering the institution useless.

Concerning the standard of proof, respectively that the court must be convinced that the difference in value originated from criminal activities like the ones for which conviction was rendered, the system in place is one of presumptions. Per the legal texts, according to article 103 of the Code of Criminal Procedure, *(1) Pieces of evidence do not have a value pre-established by law and are subject to the free discretion of the judicial bodies, based on the assessment of all pieces of evidence produced in a case. (2) In deciding the existence of an offense and on a defendant's guilt, the court decides, on a justified basis, based on all the assessed pieces of evidence. Conviction is ordered only when the court is convinced that the charge was proven **beyond any reasonable doubt**.* In the same sense, according to article 99 of the Code of Criminal Procedure *(1) In a criminal action, the burden of proof rests primarily with the prosecutor, while in a civil action it rests with the civil party or, as applicable, upon the prosecutor initiating the civil action. (2) A suspect or defendant benefits from the presumption of innocence, has no obligation to prove their innocence, and has the right not to contribute to their own incrimination.* Concerning the production of evidence, it is stated in article 100 of the Code of Criminal Procedure that *(1) During the criminal investigation, criminal investigation bodies gather and produce evidence both in favor and against a suspect or a defendant, ex officio or upon request. (2) During the trial, the court produces evidence upon request by the prosecutor, the victim, or the parties and, subsidiarily, ex officio, when it deems it necessary for the creation of its own conviction.*

⁷ M. Hotca, *Neconstituționalitatea și inutilitatea dispozițiilor care reglementează confiscarea extinsă*, published online at <https://www.juridice.ro/199507/neconstituionalitatea-si-inutilitatea-dispozitiilor-care-reglementeaza-confiscarea-extinsa.html>.

⁸ F. Stretianu, *Considerații privind confiscarea extinsă*, CDP, nr. 2/2012, pp. 22-23

⁹ A.A. Danciu, *Confiscarea extinsă*, CDP, nr. 4/2013, p. 89

Corroborating the legal text, one can state that the standard of proof must be met in the case of extended confiscation and the burden of proof rests with the prosecutor, the representative of the State having the duty to gather evidence both in favor and against the defendant. However, this rule cannot be applied, the reason relating to practicality. Thus, one should have to prove ties to criminal activities that were not adjudicated, and which were committed in the past. As shown in other articles¹⁰ and by several other authors¹¹:

*the belief of the court, as a condition to order extended confiscation, must bring into consideration both the way in which the belief is realized, as well as the way in which set belief is related to the presumption of the licit character of fortune. It was deemed as well that in this context, the problem of equality of arms must be respected per the evidence that can be requested so as to overturn the evidence brought forward by the prosecutors. The conclusion was that the two opposing presumptions that work in this situation are: (1) the legal presumption of the licit character of fortune and (2) the judiciary presumption that the assets in the case of extended confiscation originate from offenses similar to those provided in the list for which the person was convicted. The solution, with which we agree, was reached for plain purposes. As such, if the standard of proof would be the same as in regular proceedings (beyond all reasonable doubt), the normal consequence would be to order criminal confiscation and convict. But the issue is that this was exactly the reason for which extended confiscation was introduced – so as to give the possibility to confiscate in situations that beforehand, it would have been impossible. Having set the context, **the standard of proof must be that of balance of probabilities**. It must be proved that it is more likely for the assets in question to originate from criminal activities and not from licit gains – reasons for which the use of presumptions is mandatory.*

In this context, as it was stated by legal doctrine¹² a link needs to be established between similar offences and the offence or offences that triggered the conviction in the context of which is it desired to confiscate. The plain and only solution is to asses on an balance of probabilities that similar offenses did take place taking into account elements such as *the way in which the assets were obtained, the existence of signed contracts, the identity of the parties to the verbal or written contracts, the relationship between offenders, the existence of prior convictions, the financial situation of the defendant before and after, the financial profile, the frequency of prior convictions and the frequency of the obtaining of assets*.

Limitation wise, the only extremely important one is that a judicial presumption cannot be built on another judicial presumption. Therefore, several objective elements need to be proven so as to be able to create the judicial presumption that the assets that are to be confiscated were obtained through crimes similar to the ones for which conviction will be rendered. The presumption system works at the present time using the similar offences to the predicate offense as indications and points of refence¹³.

¹⁰ D. Moroșan, F. Streteanu, D. Nițu, *op. cit.*, în A. Bernardi, F. Rossi, *op. cit.*, Napoli, 2019, pp. 476 și următoarele

¹¹ L. Lefterache, *Confiscarea extinsă*, Curierul Judiciar, nr. 7/2015, pp. 389-390

¹² *Ibidem*

¹³ F. Streteanu, *Considerații privind confiscarea extinsă*, CDP, nr. 2/2012, pp. 28

- **RT 5:** What are the legal instruments for the protection of individual rights in your EU Member State?¹⁴

Procedural rights – ordinary CCP procedure

In Romania, extended confiscation is ordered at the end of a criminal trial that finalises with a conviction. Therefore, all the required guarantees offered by the Criminal Code of Procure are applicable. In this sense, there is a right to appeal, to non-incrimination, statutory elements, etc. However, as it was stated beforehand, the standard of proof and the presumption of innocence are elements over which debate still exists on whether they are fully respected or not.

ANABI

As a supplementary mechanism, Romania has implemented the French model of AGRASAC, respectively by Law no. 318/2015. According to the legislation in force, the agency has the following functions:

- facilitating the tracking and identification of assets resulting from the commission of crimes and other assets related to crimes and which could be the subject of an order of non-disposal, seizure or confiscation issued by a competent judicial authority during criminal proceedings;
- of simple administration, in the cases provided for by this law, of movable assets made unavailable during the criminal process;
- of capitalization, in the cases provided by law, of movable assets seized in the criminal process;
- management of the integrated national IT system for recording debts arising from crimes;
- to support, under the law, the judicial bodies for the use of the best practices in the matter of identification and administration of goods that may be subject to the measures of unavailability and confiscation in the criminal process;
- of coordination, assessment and monitoring at national level of the application and compliance with legal procedures in the field of recovery of debts arising from crimes.

- **RT 6:** Does – in your opinion based on the answer of the above mentioned questions / the literature in your EU Member States – extended confiscation comply with the principles of:

¹⁴ * at each stage of the confiscation procedure?

* in the substantive legal basis for adjudication?

Are considered as sufficient to protect individual rights and freedoms?

- LEGALITY

The principle of legality is respected since the measure is provided by law in a clear and unequivocal manner, all facets of the principle being respected: *lex scripta, certa, praevia and stricta*.

- PROPORTIONALITY

The principle of proportionality is as well respected, both in the dimension of abstract proportionality and concrete proportionality. In this sense, the legal text has a limit, as shown above, concerning the maximum value of assets that might be confiscated. As well, the judge has a large margin of appreciation, being able, on a case-by-case basis and in line with the evidence, to confiscate more or less until reaching the maxim limit set by law.

- NON-RETROACTIVITY

The principle is respected in the sense that extended confiscation is a substantial institution of criminal law, being bound by the principle applicable to all substantial institutions such as the elements of the crime, statute of limitations, impunity causes and so on.

- RIGHT TO PRIVATE PROPERTY

As shown before, the topic was discussed and presently settled by the Constitutional Court. In its current form, extended confiscation is deemed to respect the right to private property and the constitutional presumption of the legality of wealth.

- RIGHT TO A FAIR TRIAL

The right to a fair trial is respected, all guarantees provided for the ordinary criminal procedure being applicable in the case of extended confiscation.

- PRESUMPTION OF INNOCENCE

The presumption of innocence principle is possibly the only debatable one – if it is truly respected or not. In this sense, in the case of extended confiscation, there is a precondition that the person – owner of the assets, be convicted – as such the arguments fade. However, it is important to mention that there is no need to prove a direct causal link between the assets that are to be confiscated and the offense – and here the debate is still ongoing.

Part B – Common / Comprehensive Analysis of the Research Team on the basis of the outcomes of Part A

- **RT 7:** How does the extended confiscation relate to the fundamental rights and general principles of EU law guaranteed by the Charter of Fundamental Rights and constitutional orders of EU Member States?
- **RT 8:** What are the limits of acceptable (not infringing on their essence) interference of instruments of crime prevention like extended confiscation with fundamental rights and general principles of EU law and constitutional orders of EU Member States?