

Research Questionnaire (proposal):

The Netherlands

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Part A – Analysis by each Member of the Research Team of the legal order of their EU Member State

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

According to Dutch law and the Dutch legislator extended confiscation refers to the confiscation of assets/gains which consist of one of the three following situations:

- 1) have (possibly) not been obtained through the offence for which the offender has been convicted, but stem from another offence,
- 2) can be considered gain/profit generated from illegally obtained gains. The legislator calls this *vervolgprofijt*, which can be translated with “consequential profit”.
- 3) other economic gains where it can be assumed that it has been obtained through a criminal behaviour.¹

- **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 (e.g. by legal amendments):
 - before the transposition of Directive 2014/42/EU (if compensation regulation existed)?
 - in the transposition procedure into the internal domestic law ?Was (extended) confiscation seen as unacceptable / acceptable under certain (what?) conditions before the transposition of the Directive 2014/42/EU?

The Dutch legislator broadened the possibilities for (extended) confiscation in 1992 and subsequently in 2011.² In 1992 the legislator inter alia argued that confiscation had to become a more central aspect of criminal justice, as it could fulfil an important general preventive and restitution function. The aim of the expansion in 2011 was primarily linked to the fight against organized crime and the wish to better equip public prosecutors and law enforcement authorities to deal with organized crime.³

The implementation of Directive 2014/42 did not lead to any discussion in the Dutch legal system. Rules for (extended) confiscation were already in place and therefore Dutch law was considered to already be in line with the Directive.⁴

The Dutch approach to confiscation:

The confiscation of proceeds of crime in the Dutch legal system can be imposed on two legal bases, ie. Articles 33 et seq. and Article 36e of the Dutch Criminal Code (DCC).

¹ See: Staatscourant (2015) Nr. 11370.

² Bleichrodt and Vegter, Sanctierecht (2016) pp. 365-367.

³ Kamerstukken II 2009/10, 32194, nr 3, p. 1. Bleichrodt and Vegter, Sanctierecht (2017) pp. 366.

⁴ Staatscourant (2015) Nr. 11370.

1. Confiscation according to Article 33 et seq. DCC

Pursuant to the DCC, confiscation on the basis of Articles 33 et seq. is seen as additional punishment.⁵ It can be imposed in case three conditions are fulfilled. First, confiscation can only be imposed in case of conviction for a punishable offence. As confiscation pursuant to Article 33 DCC is a sentence, the underlying offence must have been proven and it must be established that the accused is also liable to punishment.⁶ Secondly, a link must exist between the punishable offence and the confiscated object. This condition is reflected in the list provided in Article 33a(1) of the Criminal Code (see further below). Finally, it must be determined to whom the object belongs (the 'requirement of belonging to a party'). Article 33 DCC also declares the "ability to pay principle" applicable to confiscation, with the result that the severity of the offence as well as the financial situation of the perpetrator must be taken into consideration when imposing confiscation.⁷

Article 33a DCC contains a list of objects which may be confiscated. Pursuant to paragraph 4 the term 'objects' means "any form of property, whether corporeal or incorporeal". This includes moveable property, claims (e.g., bank balances), immovable property (e.g., a shed in which drugs are produced commercially), registered property, bearer rights or rights to order, shares and registered securities.⁸ According to Article 33a(1)(f) DCC, real rights on or personal rights in respect of the objects referred to in (a) to (e) of Article 33a(1) may also be confiscated. As a result, a mortgage right on a home may be confiscated.⁹

According to Article 33a (1)(a) DCC, objects belonging to the perpetrator or that the perpetrator can use fully or partly for his/her own benefit and that were obtained entirely or largely by means of the punishable offence may also be confiscated. The focus lies on the proceeds of the punishable offence. This includes, for instance, banknotes forged by a money forger or the 'remuneration' for a serious offence.¹⁰

Objects that have not directly been obtained through the punishable offence but that have been financed by the proceeds of the offence, such as a car purchased with stolen money, are likewise liable to confiscation. If no objects were obtained as a direct result of a serious offence but other objects that are more loosely related to the offence are identified, the deprivation measure of Article 36e DCC, dealing with extended confiscation may be applied.¹¹ There is no requirement that the objects must be owned exclusively by the perpetrator. It suffices if the perpetrator is able to use the property.¹² An object belonging to another person may also be confiscated if this person was aware of the illegal origin or intended use or could reasonably suspect this.¹³

⁵ Article 9(1)(b)(2°) of the Criminal Code. Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 348.

⁶ See also Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 347.

⁷ Schuyt, *T&C Strafrecht* (Kluwer 2017), comments to Article 33 of the Criminal Code, note 1.

⁸ Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 349.

⁹ Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 349.

¹⁰ Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 351.

¹¹ R.M. Vennix, *Boef en beslag. De strafvorderlijke inbeslagneming van voorwerpen* (Nijmegen: AAlibri 1998), p. 96.

¹² Parliamentary Documents II 1989/90, 21504, no. 3, p. 18.

¹³ Parliamentary Documents II 1989/90, 21504, no. 3, p. 17.

Article 33a (1)(b) holds that objects used to commit the offence (*corpora delicti*), such as the operating capital used in drug trade¹⁴ or smuggled goods, may be confiscated. Furthermore, objects used to commit or prepare the offence (*instrumenta delicta*) may also be confiscated.¹⁵ Thus, the objects must have been used in the preparation or execution of the offence, such as equipment used to print counterfeit money, a knife used to kill or injure someone and the operating capital used in drug trade.¹⁶

Moreover, objects used to obstruct the investigation or objects manufactured or intended for the commission of the serious offence may be confiscated.¹⁷ This is interpreted broadly, as a merely subjective intended use will be sufficient. Finally, Article 33a (1)(f) DCC creates the possibility to confiscate real rights on or personal rights in respect of any of the aforementioned objects.

In praxis, the most important requirement is that it can be explicitly established that the confiscated object belonged to the perpetrator. The term 'belong to' refers in this context to a legal relationship in which an object is part of a person's assets. The person to whom the object belongs may, as the rightholder, enforce their right to the object. Corporeal property belongs to the owner, the usufruct belongs to the usufructuary and the claim belongs to the creditor.¹⁸

While the term 'belong to' is often equated with 'ownership', in practice,¹⁹ a broader conception of the term has been accepted in case law. In a pertinent decision, the Supreme Court ruled for instance that a natural person possessing (de facto) control over a ship owned by a private company could be equated with ownership.²⁰ As a result, an object may belong to a party even if there is no formal ownership. Security interests created in objects do not preclude confiscation, either.²¹

In case the object(s) to be confiscated belong to a third party, the requirements of Article 33a(2) DCC must be met for confiscation to be possible. In this case, it must be established that the third person acted in bad faith, which will be the case if this person was aware of the acquisition of the objects by means of the offence. Similarly, bad faith will be assumed if the third person could reasonably have suspected such acquisition.²² If it cannot be established to whom an object belongs, confiscation is nevertheless possible. If a rightholder asserts rights after the confiscation, this person may file a complaint pursuant to Article 552b of the Code of Criminal Procedure.

¹⁴ Supreme Court, 8 October 1996, NJ 1997, 92.

¹⁵ Article 33a (1) (c).

¹⁶ Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 352.

¹⁷ Article 33a (1) (d) and (e).

¹⁸ Parliamentary Documents II 1989/90, 21504, 3, p. 18.

¹⁹ Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 350.

²⁰ Supreme Court, 28 September 1999, NJ 1999/803.

²¹ Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 350.

²² See Article 33a(2)(a) of the Dutch Criminal Code and Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 350.

2. (Extended) confiscation pursuant to Article 36e DCC (Measure of deprivation of unlawfully obtained gains)

Next to Article 33 et seq. DCC, confiscation can furthermore take place on the basis of Article 36e DCC. Article 36e DCC is categorized in Dutch criminal law as a measure (not a punishment). This distinction is important as measures (maatregelen) do not require a finding of guilt. In case a person has been convicted of a criminal offence, the public prosecutor may request the initiation of separate proceedings (deprivation proceedings) in which the deprivation of unlawfully obtained proceeds may be ordered by judicial decision.

Dutch law distinguishes three situations in which confiscation of unlawfully obtained gains is possible. Two variations have been enshrined in Article 36e(2) DCC and the third variant can be found in Article 36e(3) DCC. These Articles (also) cover situations that are generally referred to as “extended confiscation” and are considered to give effect to Article 5 of Directive 2014/42 in Dutch law.²³

First, confiscation may be ordered in case the perpetrator has obtained gains by means of or from the proceeds of the punishable offences of which they have been convicted. Accordingly, a conviction of a punishable offence is a prerequisite for this form of confiscation.²⁴ One pertinent example here relates to the theft of a sum of money, of which the perpetrator has been convicted and which is subsequently confiscated.²⁵

Furthermore, confiscation is possible if gains have been obtained by means of or from the proceeds of other punishable offences regarding which sufficient indications exist that the perpetrator has committed them. Accordingly, gains or profit may be confiscated in response to ‘punishable offences other than’ the offence of which the person concerned has been convicted.²⁶ As a result, a conviction for drug offence X may be a basis for confiscating gains obtained from drug offence Y. However, Article 36e(2) DCC requires in this context that sufficient indications exist that the person concerned has committed the other offence(s). In any case, the initial offence for which the offender has been convicted does not necessarily need to have generated any profit. As a result, a conviction for intimidation or harassment may form the basis for extended confiscation pursuant to Article 36e(2) DCC, if there are sufficient indications that the perpetrator committed another punishable offence (e.g., a drug offence) that generated gains. The required level of proof in this context is not stringent, as it is sufficient for the court to consider it likely that the perpetrator has committed the other offence.

Finally, pursuant to Article 36(3) DCC extended confiscation may be imposed if it is likely that the commission of an offence has generated unlawful profits and the perpetrator has been convicted of a serious offence for which a fine of the fifth category may be imposed.²⁷ Thus, this relates to gains originating from other punishable offences (irrespective of who

²³ Staatscourant (2015) Nr. 11370.

²⁴ Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 368.

²⁵ See also S.S. Buisman et al., *Inbeslagneming en confiscatie van crimineel vermogen* (Boom juridisch uitgever 2018), p. 17.

²⁶ S.S. Buisman et al., *Inbeslagneming en confiscatie van crimineel vermogen* (Boom juridisch uitgever 2018), p. 17.

²⁷ S.S. Buisman et al., *Inbeslagneming en confiscatie van crimineel vermogen* (Boom juridisch uitgever 2018), p. 17.

committed the offence where, when or how). If, for instance, the person concerned has been found guilty of participation in a criminal organisation and received gains generated by other members, these gains may be confiscated pursuant to Article 36(3) DCC.²⁸

To make proof of this third form of confiscation possible, Article 36e(3) DCC contains an optional evidentiary assumption that expenses and objects acquired up to six years prior to the commission of the offence represent unlawfully obtained gains. As already mentioned, the rule is optional and there accordingly exists no obligation for courts to rely on it.²⁹ According to Article 36e(3) DCC, the evidentiary presumption pertains to:

- a) expenses that the perpetrator incurred in a period of six years (or any shorter period that the court may determine in accordance with paragraph 4) prior to the commission of that serious offence, unless it is likely that these expenses were paid through a legal source of income; or
- b) objects that became the perpetrator's property in a period of six years prior to the commission of the underlying serious offence (or any shorter period that the court may determine in accordance with paragraph 4), unless it is likely that these objects were obtained from a legal source.³⁰

In accordance with Article 36e(5) DCC, the court estimates the amount of the unlawfully obtained gains. In practice, the extent of the gains are estimated on the basis of a report from the Financial Support Bureau, also referred to as the 'deprivation report'.³¹ The market value at the time of the decision determines the estimate of the value. Costs that were reasonably incurred must also be taken into account. Costs that are not directly related to the commission of offences underlying the calculation of unlawfully obtained gains are not deductible.³²

- **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 (extended) confiscation?
 - applied do (extended) confiscation?
 - rejected the (extended) confiscation?
 - formulate any additional criteria / conditions for the admissibility of (extended) confiscation? What are those criteria? Are those criteria are met in the current extended confiscation regimes?

With regard to extended confiscation, the question arose whether gain generated by an offence for which the perpetrator was prosecuted, but ultimately acquitted can be the basis for (extended) confiscation. The Dutch Supreme Court was in its earlier decisions of the opinion that a (partial) acquittal was no obstacle to confiscating gain generated by the crime for which the perpetrator had been acquitted. This was however found to violate the

²⁸ S.S. Buisman et al., *Inbeslagneming en confiscatie van crimineel vermogen* (Boom juridisch uitgever 2018), p. 17.

²⁹ Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 370.

³⁰ Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 370.

³¹ Bleichrodt and Vegter, *Sanctiewet* (Kluwer 2017), p. 370.

³² Supreme Court, 8 July 1998, NJ 1998, 841.

presumption of innocence as enshrined in Article 6 ECHR.³³ Accordingly, it cannot, following an acquittal, be assumed that there were nevertheless sufficient indications that the person has committed the offence for the purpose of confiscation proceedings. The Supreme Court had therefore to adjust its case law and now holds that offences for which an acquittal has been handed down cannot form the basis for imposing confiscation measures,³⁴ even if for another indicted offence a conviction was reached.³⁵

• **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?

The fight against organized crime, drug offences and money laundering ranks high on the agenda of the Dutch legislator. The desire to “hit organized criminal networks where it hurts” has certainly influenced the willingness of the legislator to continue broadening the scope of confiscation measures. However, the hopes and expectations put into confiscation do not match reality. It appears that it is quite difficult to confiscate in practice. The Court of Auditors recently published a critical report on the matter.³⁶ It also criticised that the justification for further staff and resources is very weak, adding even the cynical comment that much seeds have been planted (by the legislator), but that there was little to harvest (veel gezaaid, maar weinig geoogst). Additionally, once cross-border assistance is required, many efforts become futile as the confiscation tools, even within the European Union are quite diverse.³⁷ As a result of this, it is often difficult to cooperate.

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

- Is extended confiscation in your EU Member State:
 - 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?

³³ Geerings vs The Netherlands, Application number: 30810/03.

³⁴ HR 29 March 2022, ECLI:NL:HR:2022:365.

³⁵ HR 10 april 2007, ECLI:NL:HR:2007:AY6714, HR 20 april 2010 ECLI:NL:HR:2010:BL3178.

³⁶ Algemene Rekenkamer, Strafrechtelijk afpakken van crimineel vermogen, veel gezaaid en weinig geoogst, juni 2022, Kamerstukken II 2021-2022, 29911, nr. 352.

³⁷ Johannes Keiler and André Klip, The sentence is Only the Beginning: Hiccups in the Cross-Border Execution of Judgments in the Euregion Meuse-Rhine, 29 European Journal of Crime, Criminal Law and Criminal Justice 2021, p. 189-217. See also: R. Hofmann and H. Nelen, (2019). Recommendation ensuing from the process evaluation in Belgium, the Netherlands and North Rhine-Westphalia. In Cross Border Execution of Sentences: Closing the enforcement Gap (pp. 34-46). On the need to give adequate information to convicts. Available at: https://cris.maastrichtuniversity.nl/ws/portalfiles/portal/52688676/4. Aanbevelingen_CrossBES_EN.pdf

- 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)?

See above. Forms of extended confiscation are categorised as a measure aimed at the deprivation of unlawfully obtained gain in Dutch criminal law. Regular confiscation, on the other hand is seen as a form of punishment.

- Is there only one type of extended confiscation or are there in fact several different instruments with a common name?

See above. There are essentially three variations of extended confiscation enshrined in Article 36e DCC.

- Does a non-conviction-confiscation exist in your EU Member State?

In the past, the Dutch penal system did not know non-conviction-confiscation. However, as of 1 July 2022,³⁸ new regulations to fight organized crime have been adopted, which now also make non-conviction based confiscation possible.³⁹ The main innovation is that several powers of investigation that could be used for investigations into crime with a view to clarification and prosecution, which cannot be used post-trial and conviction can now be used for that stage as well. New Article 6:4:22 Code of Criminal Procedure now allows for a further investigation into the resources and wealth of a convicted person. The triggering mechanism is that the convicted person does not pay the fine or repayment of unlawfully obtained goods or compensation to the victim within the period indicated in the judgement. The prosecutor will request the investigation which must be granted by the examining magistrate. Article 6:4:22, paragraph 3 states that a reason to do so is that the convicted person possesses over objects that are available for confiscation. If the examining magistrates grants the further investigation to the prosecution this is valid for six months. It may be extended, but no longer than two years in total. It also ends when the convicted person pays the money. In essence, the new legislation complies with the principle of legality in criminal investigations, meaning that all powers of investigation must have a basis in the law.

- Is the proof of guilt of the offender required to apply extensive confiscation?

See above. In order to invoke to special procedure pursuant to Article 36e DCC, the perpetrator must have been convicted of a criminal offence.

- Is a reversed burden of proof applied by extended confiscation?

See above. The low evidentiary threshold, i.e. likelihood that the person concerned has committed other punishable offences and the optional evidentiary assumptions enshrined in Article 36e (3) DCC may have such an effect in practice. In essence, it comes down to the fact

³⁸ Wet van 4 november 2021 tot wijziging van het Wetboek van Strafrecht en het Wetboek van Strafvordering en enige andere wetten in verband met versterking van de strafrechtelijke aanpak van ondermijnende criminaliteit (versterking strafrechtelijke aanpak ondermijnende criminaliteit), Stb. 2021, 544, entering into force on 1 July 2022.

³⁹ See: [Versterking strafrechtelijke aanpak ondermijnende criminaliteit \(35.564\) - Eerste Kamer der Staten-Generaal](#)

that an individual who has been convicted for a criminal offence has valuables that cannot be explained by his/her legal income.

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

See above and also the previous answer. In the new legislation, the police and the Public Prosecution Office have been given powers of investigation similar to those available for investigation offences (Articles 6:4:23 – 6:4:29). This does include search and seizure as well as interception of telecommunication.

Earlier this year the Supreme Court stated in a rather cryptic way “that if the court assesses that there are *sufficient indications* that the person has committed other offences in the meaning of Article 36e (2) Penal Code, that assessment in the confiscation procedure must be in compliance with the presumption of innocence. The existence of sufficient indications may therefore not be accepted by the court unless it can be established beyond reasonable doubt that these facts were committed by the person.”⁴⁰

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

- at each stage of the confiscation procedure?
- in the substantive legal basis for adjudication?

Are considered as sufficient to protect individual rights and freedoms?

The procedure to confiscate is separate from the criminal proceedings. The Code of Criminal Procedure provides a procedure for the court that convicted the person (Article 511b – 511i CCP).⁴¹ Most articles of the Code applicable to proceedings on the accusation and finding of guilt are equally applicable to this procedure. This does include appeal against the decision (Article 511g).

• **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:

- legality?
- legal specificity of a statute?

⁴⁰ Supreme Court 11 January 2022, ECLI:NL:HR:2022:4, par. 2.5.2: „Als de rechter in de ontnemingsprocedure oordeelt dat “voldoende aanwijzingen” bestaan dat de betrokkene andere feiten in de zin van artikel 36e lid 2 Sr, dan wel soortgelijke feiten en/of feiten waarvoor een geldboete van de vijfde categorie kan worden opgelegd, in de zin van artikel 36e lid 2 (oud) Sr, heeft begaan, moet (de totstandkoming van) dat oordeel voor het bewijs in de ontnemingsprocedure in overeenstemming zijn met de onschuldpresumptie. De in artikel 36e lid 2 Sr bedoelde “voldoende aanwijzingen” mogen daarom niet door de rechter worden aangenomen indien niet buiten redelijke twijfel kan worden vastgesteld dat de betreffende feiten door de betrokkene zijn begaan. (Vgl. HR 29 september 2020, ECLI:NL:HR:2020:1523.)”

⁴¹ In practice, it means that the proceedings are often pending at the same time and that the court will on the hearing days first deal with the case on the accusation and then with the case on the confiscation. The latter becomes moot, if there is eventually no finding of guilt. So when concluding the two procedures, the court will first finalise the case on the accusation. If that is a conviction, it will also take a decision in the confiscation case.

- proportionality?
- non-retroactivity of the /more severe/ statute?
- protection of the citizen's trust in the state and law?
- the right to private property?
- the rights to defence?
- the rights to a fair trial?
- the presumption of innocence?
- the right to privacy?
- and others relevant rights – what sort of?

Apart from some defence counsel there is very little criticism concerning the confiscation procedures in the Netherlands. It is our assessment that this mainly relates to the fact that it is a measure (maatregel) not a penalty (straf). This formally removes the stigma of punishment as well as the feeling that something unfavourable happens to the citizen because of an offence he committed. As a result, all objections related to the principle of legality become mute.

Another explanation may be that the measure only applies to persons who are irrevocably convicted for other offences. In other words, those that have never been convicted cannot be subjected to the confiscation procedure. The proceedings as such are similar to the regular (criminal) proceedings, which means that the defence has the same possibilities to challenge the prosecutions' allegations. However, one major difference can be found in the fact that the basic assessment is often linked to and directed at valuables that are thought to belong to the defendant but which do not correspond to and cannot be explained by his legal income. Whilst there is no formal obligation to make statements for the defendant, he is nevertheless invited to explain his wealth. This in fact, does force him to come forward with a convincing explanation, because absence of such an explanation may lead to confiscation.

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?

The extended confiscation tries to find a solution to evidentiary problems that may exist when somebody is convicted of a crime and possesses valuables of which the causal link with the offences for which he has been convicted cannot be proven. The presumption then is, that there is such a link and the convicted person is given the chance to explain the legal origin of the gains. This leads to numerous convicts claiming to have inherited valuables, to have worked illegally, to have committed tax evasion, to have won illegal lotteries or gambling bets, or otherwise have not complied with an obligation to report an activity or fact that would (if reported) have made the origin legal and explainable.

- **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?

In the Dutch context, there is a limitation to those that have been convicted of an offence (as well as a time limit of six years after the offence). Whilst it does limit the scope of application to a specific category of citizens, it does not take away the fact that a prior conviction is the basis for the procedure. It does create a presumption that a convicted person with values most likely obtained this as a result of criminal activity.

We think that extended forms of confiscation raise the question of whether there is an obligation for all citizens to be able to explain all their wealth at any time they. Reading Article 1 of Protocol No. 1 ECHR it seems to us that it does not require such an explanation. We read this safeguard as providing a protection of possession and that it is upon the state to prove that the valuables were not legally obtained.