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## RECOMMENDATIONS

### NATIONAL CONVENTION ON THE EUROPEAN UNION IN THE REPUBLIC OF NORTH MACEDONIA (WEB: [nkeu.mk](http://nkeu.mk))

#### **Ninth session of Working Group 3 – Judiciary and fundamental Rights:**

Skopje, 10 November (Wednesday) 2021, 09:30 – 13:00 h.

#### ***"NEW REPORT OF THE EUROPEAN COMMISSION - OLD PROBLEMS: HOW TO BE MORE EFFICIENT IN PRONOUNCING AND EXECUTING THE MEASURE OF CONFISCATION OF PROPERTY?"***

The following recommendations of NCEU-MK seek to encourage the focus of the criminal justice system towards the promotion of a clear, widely recognized, and sustainable policy of complete confiscation of illegally acquired property originating from a crime, for which "following the money" is crucial as a guiding principle in the coordinated action by the relevant institutions. In other words, it is the task of the police, financial and other services, as well as of prosecutors and judges, to follow the path of illegal income and to take all necessary actions depending on the stage of the procedure and their competencies in each of those stages - from the activity (criminal offense) from which the illegally acquired property originates until its final seizure (confiscation).

Based on the aforementioned, the following recommendations have been conceived and developed:

1. It is recommended to improve the existing legal framework for confiscation, by unifying and harmonizing the solutions to this issue from the Criminal Code with the Law on Criminal Procedure, in order to regulate various (separate) procedures in the Law on Criminal Procedure for all forms of confiscation provided by the Criminal Code and for all entities (procedures for natural persons and procedures for legal persons).

(Institution: *Ministry of Justice, Criminal Code and Criminal Procedure Law Working Groups*).

2. It is recommended to revise the relevant provisions of the Criminal Code in relation to the following:
  - the definition of the term "proceeds of crime";
  - defining the terms "other persons", "third parties" and "family members" in terms of confiscation provisions;
  - defining the term "gross confiscation", i.e., "gross principle";
  - clarification of the expression "the injured party is personally connected";



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- redefining the institute of "extended confiscation" - especially the catalog of crimes for which it can be pronounced (according to EU Directive 42 of 2014 as a minimum standard);
- clarification of the phrase "reasonably convinced" - what this standard exactly means for the trial court;
- furthermore, to determine the role of accomplices and the property confiscation from them;
- to review the institute of statute of limitations in context of property confiscation, etc.

(Institution: *Ministry of Justice, Criminal Code Working Group*)

3. The Law on Criminal Procedure contains over 20 provisions that regulate the handling of property acquired in a criminal manner (Art. 194-204 temporary confiscation and securing of property, and Art. 530-541 - confiscation of property). Therefore, there is a need to clearly define/determine the different terms used in it: "confiscation", "taking away", "freezing" and "seizure"; in context of terminological compliance, it is recommended to consult the FATF Recommendations and their Glossary.

(Institution: *Ministry of Justice, Criminal Code Working Group*)

4. The Law on Criminal Procedure should omit the solution, for example, for securing the property to be connected with the first instance verdict; in other words, all actions concerning the property and objects that are subject to securing, and which are undertaken after the submission of the request of the public prosecutor have no legal force as such - and not to have it only after the decision of the court.

(Institution: *Ministry of Justice, Law on Criminal Procedure Working Group*)

5. Adoption of a by-law legal framework (rulebook, guidelines), which will regulate financial investigations in terms of determining in which criminal proceedings conducting of financial investigations is mandatory, which checks are mandatory within the financial investigations, which body will be entrusted with the conducting of financial investigations, etc. For example, the Public Prosecutor of the Republic of North Macedonia could issue a general instruction that would regulate these issues. Both the Minister of Finance and the Minister of Interior could adopt special rulebooks. One of the issues that needs special attention is the coordination of the institutions, in order to avoid duplication of financial investigations.

(Institution: *Public Prosecutor's Office, Ministry of Interior, Ministry of Finance*)





6. The Ministry of Justice to consider the possibility for creation of a mechanism for greater coordination and equalization of the methodology used by the relevant institutions in collecting and processing data in the proceedings involving the measure of confiscation of illegally acquired property, especially with regard to criminal and financial investigations. This will then enable proper monitoring and following of the application of confiscation and temporary securing of objects in the same case through all stages of the procedure (investigation procedure, court procedure, procedure for execution of confiscation, and then procedure for sale or use of confiscated property). Furthermore, in terms of different methodologies, it would be good to consider the Methodology of FATF (Methodology for assessing technical compliance with the FATF Recommendations and the effectiveness of AML / CFT systems) and of the World Bank (World Bank Risk Assessment Support for Money Laundering / Terrorist Financing / Risk Assessment Tool).
7. Weakness in the procedures and decisions in the application of the measure of confiscation of illegally acquired property, is detected by the absence of a detailed description of the property that (should be) is the subject to confiscation (in many cases, only an abstract reference to the "dry" provisions of the Criminal Code is detected). The Public Prosecutor's Office (together with other relevant institutions), should take initiatives to introduce a legal obligation in indictments (and in verdicts), to provide a description of the property subject to confiscation, including its value and specifications.
8. The Ministry of Justice (together with representatives of all relevant institutions), should initiate expert debates to resolve the dilemma: who is the one that really has priority in the execution of claims when the property to be confiscated has been previously encumbered (pre-bankruptcy or bankruptcy proceedings, bank mortgages, or other forms of encumbrance).
9. The Ministry of Justice (Criminal Procedure Law Working Group), should consider the issue of the duration (length of time) of measures for temporary seizure and securing of property, according to the decisions of comparative law. More precisely - for how long it would be useful to reconsider their appositeness and the need for their extension, and in that direction, then, to make changes in the Law on Criminal Procedure.
10. All relevant institutions in charge of conducting financial investigations have a shortage of specialists for financial investigations. It is recommended that forensic accountants or other economically trained persons be employed in the investigation centers to analyze the documentation provided in the financial investigations, as well as persons who would be in charge of providing information and operational data from the field.  
  
(Institution: All relevant institutions).
11. The Academy for Judges and Public Prosecutors needs to initiate organizing training for judges and public prosecutors in order to ensure uniform handling of confiscation





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proceedings. It is especially recommended that this type of trainings also include representatives of the so-called judicial police (police, customs officers, financial police, etc.), that is, representatives of all institutions involved in financial investigations and court proceedings. Such activities need to be planned and based on the principle of exchange of experiences and good practices presented by experts from the countries in the region and beyond (especially EUROJUST, EUROPOL, and so on).

12. The Ministry of Justice should initiate the drafting of an instruction or a similar act/document, which will facilitate the actions of judges and public prosecutors in criminal proceedings that involve property confiscation, by providing clear guidelines and order of action during the pre-investigation, investigation, and court proceedings. The instruction should include guidelines for securing of the property that is reasonably suspected to have been acquired as a result of a crime at the earliest stage of the procedure, provide evidence of the chronology of acquisition and ownership of the property in question, and guidelines for court action and pronouncing of a confiscation sentence.



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