

The Dark Side of the Fight against Organised Crime

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Abstract : As is well known, UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) was a landmark regarding the seizure of proceeds of crime. Depriving criminals of the profits from their activity became a priority at an international level in the fight against organised crime. Enabling confiscation of proceeds of illicit traffic in narcotic drugs and psychotropic substances, criminalising money laundering and confiscating the proceeds thereof are the three measures taken in order to achieve that purpose. The beginning of 21st century brought the declaration of war on corruption and on the illicit enjoyment of the profits thereof onto the international scene. According to the UN Convention against Transnational Organised Crime (2000), States Parties should adopt the necessary measures to enable the confiscation of proceeds of crime derived from offences (or property of equivalent value) and property, equipment and other instrumentalities used in offences covered by that Convention. The UN Convention against Corruption (2003) states asset recovery explicitly as a fundamental principle and sets forth measures aiming at the direct recovery of property through international cooperation in confiscation. Furthermore, European legislation has made many significant strides forward in less than twenty years concerning money laundering, confiscation, and asset recovery. Crime does not pay, let there be no doubt about it. Nevertheless, we must be very careful not to sing out of tune with individual rights and legal guarantees. On the one hand, innocent individuals and businesses must be protected, since they should not pay for the guilty ones' faults. On the other hand, the rule of law must be preserved and not be tossed aside regarding those who have carried out criminal activities. An in-depth analysis of judicial decisions on money laundering and confiscation of proceeds of crime issued by European national courts and by the European Court of Human Rights in the last decade has been carried out from a human rights, legal guarantees and criminal law basic principles' perspective. The undertaken study has revealed the violation of the right to property, of the proportionality principle legal and the infringement of basic principles of states' domestic substantive and procedural criminal law systems. The most relevant ones have to do with the punishment of money laundering committed through negligence, non-conviction based confiscation and a too-far reaching interpretation of the notion of 'proceeds of crime'. Almost everything in life has a bright and a dark side. Confiscation of criminal proceeds and asset recovery are not an exception to this rule.

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