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Development of Extended Confiscation in the Republic of Croatia and Its Relationship with Other Forms of Confiscation

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ABSTRACT
The paper explores the historical and legal evolution of property confiscation in Croatia, emphasising the ideological and political motives behind its use during the Second World War and in post-war Yugoslavia and its transformation in the contemporary legal framework. Confiscation is a legal term whose meaning has changed across different historical periods and legal systems, making it interpretatively complex. Legal irregularities, vague definitions of crimes, and the broad scope of confiscated assets characterised confiscation as a sanction. In 2006, extended confiscation was introduced into Croatian criminal legislation as a special measure distinct from and outside the system of criminal sanctions. However, its punitive elements raise concerns about its compatibility with fundamental legal principles, including the presumption of innocence and the principle of guilt. While ordinary confiscation aims to restore property obtained through specific and determined crimes, extended confiscation targets the broader property of perpetrators, reflecting one of the key similarities with confiscation penalty from former Yugoslavia. The study highlights the need for clear legal definitions and alignment with constitutional safeguards. It questions whether extended confiscation risks undermining the rule of law, drawing parallels with the controversial confiscation penalties of former Yugoslavia.
KEYWORDS
Confiscation, ordinary confiscation, extended confiscation, proceeds of crime, criminal law evolution.

Dezvoltarea confiscării extinse în Republica Croația și relația acesteia cu alte forme de confiscare

REZUMAT
Lucrarea explorează evoluția istorică și juridică a confiscării proprietății în Croația, punând accent pe motivele ideologice și politice din spatele utilizării acesteia în timpul celui de-al >>

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>> Doilea Război Mondial și în Iugoslavia postbelică, precum și pe transformarea sa în cadrul juridic contemporan. Confiscarea este un termen juridic a cărui semnificație s-a schimbat de-a lungul diferitelor perioade istorice și sisteme de drept, ceea ce o face complexă din punct de vedere interpretativ. Neregularitățile juridice, definițiile vagi ale infracțiunilor și amploarea largă a bunurilor confiscate au caracterizat confiscarea ca sancțiune. În 2006, confiscarea extinsă a fost introdusă în legislația penală croată ca o măsură specială, distinctă de și în afara sistemului sancțiunilor penale. Totuși, elementele sale punitive ridică îngrijorări privind compatibilitatea sa cu principiile juridice fundamentale, inclusiv prezumția de nevinovăție și principiul vinovăției. În timp ce confiscarea obișnuită urmărește restituirea bunurilor obținute prin infracțiuni specifice și determinate, confiscarea extinsă vizează proprietățile mai largi ale făptuitorilor, reflectând una dintre asemănările cheie cu sancțiunea de confiscare din fosta Iugoslavie. Studiul subliniază necesitatea unor definiții juridice clare și a alinierii cu garanțiile constituționale. De asemenea, se ridică întrebarea dacă confiscarea extinsă riscă să submineze statul de drept, realizând paralele cu controversatele sancțiuni de confiscare din fosta Iugoslavie.
CUVINTE CHEIE
Confiscare, confiscare obișnuită, confiscare extinsă, bunuri obținute prin infracțiuni, evoluția dreptului penal.

I. INTRODUCTION

The principle that no one can retain proceeds of crime obtained through a criminal offence is one of the fundamental principles of criminal law. The current Croatian legal framework governing asset confiscation results from the evolution of legal thought and legislation over the past 80 years. This development, influenced in part by international criminal law, has progressed from wartime and post-war confiscation of proceeds of crime as a form of punishment to extended confiscation as a *sui generis* measure, distinct from the system of criminal sanctions. Confiscation from the period of the former Yugoslavia[2] serves as a precursor to the measure of extended confiscation.

All of these criminal law instruments—confiscation prescribed as a punishment, ordinary confiscation, previously categorized as a security measure within the framework of criminal sanctions distinct from penalties but later reclassified as a *sui generis* measure distinct from criminal sanctions, and the more recent extended confiscation, also a *sui generis* measure—share the characteristic of state intervention into the property of perpetrators and, in some cases, other individuals.

For this paper, the term "confiscation" will be used to denote the historic penalty of taking away all or part of the perpetrator's property, sometimes even from his family members, regardless of the (lawful) origin of that property. "Ordinary confiscation" refers to the measure of taking away the proceeds of crime that the perpetrator obtained through the criminal offence for himself/herself or others. "Extended confiscation" is a measure of taking away property or part of the property of a perpetrator or other individuals when

2 For this paper, the term "former Yugoslavia" will be used to denote the Yugoslav state colloquially referred to as the Second, Socialist, or Tito's Yugoslavia, with particular emphasis on the period of the Second World War and the immediate post-war years, as the punishment of confiscation was most commonly imposed during that period.

that property was not acquired through the specific criminal offence, but under legally prescribed conditions, it can be presumed to have been obtained through the commission of other criminal offences that are not the subject of prosecution.

Ordinary and extended confiscation share a common denominator, which will be referred to in this paper as "asset confiscation".

II. EXTENDED CONFISCATION IN CONTEMPORARY CROATIAN CRIMINAL LAW

1. The notion and nature of extended confiscation

Extended confiscation is a *sui generis* measure introduced in Croatian criminal legislation in 2006.[3] In Croatian legal theory, it is noted that the measure was actually reintroduced in 2006, considering the confiscation of property from the era of former Yugoslavia as its precursor. Substantive legal norms of this institute are provided in the Croatian Penal Code,[4] while the procedural norms are sustained in the Code of Criminal Procedure.[5] Substantive regulation of this type of asset confiscation is provided in Article 78 of the Penal Code, located in Chapter IV, which regulates the asset confiscation, the confiscation of objects, and the public announcement of the verdict.

The measure of extended confiscation is regulated outside the framework of criminal sanctions and, as such, does not constitute a punishment, at least nominally. However, its predominantly punitive nature brings it closer to a concealed penalty, which raises the question of respecting the principle of guilt.[6] This is also one of the reasons why the legal nature and conceptual definition of asset confiscation in general, and these two types of asset confiscation, are essential.[7] It is essential to define

3 Article 13 of the Act on Amendments to the Penal Code (Official Gazette of the Republic of Croatia, *Narodne novine*: number 71/06), which entered into force on 1 October 2006, added a new paragraph 2 to Article 82 of the Criminal Code (pertaining to the confiscation of property benefits obtained through criminal offences). The new paragraph reads: "[p]roceeds of crime referred to in paragraph 1 of this Article shall also include those benefits obtained by a group of people or a criminal organisation that are temporally connected with the committed criminal offence and for which it can be reasonably assumed to originate from that offence, as their lawful origin cannot be established."

4 The current Croatian Penal Code was published in the Official Gazette of the Republic of Croatia, *Narodne novine*: numbers 125/11, 144/12, 56/15, 61/15 (correction), 101/17, 118/18, 126/19, 84/21, 114/22, 114/23, and 36/24.

5 The current Criminal Procedure Act was published in the Official Gazette of the Republic of Croatia, *Narodne novine*: numbers 152/08, 76/09, 80/11, 121/11 (consolidated text), 91/12 (Decision of the Constitutional Court of the Republic of Croatia), 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 80/22, 36/24, and 72/25.

6 The principle of guilt is a fundamental principle of criminal law, which states that no one can be punished unless they are guilty of a criminal offence. Article 4 of the Penal Code.

7 Many studies on extended confiscation fall into the trap of basing their conclusions on the rules of ordinary confiscation. Although they stem from the same underlying principle, they

and classify asset confiscation properly, especially extended confiscation, because different classifications result in different scopes of guarantees of perpetrators' rights in criminal proceedings. Despite the position taken by the Supreme Court and the prevailing opinion of criminal law theorists regarding the legal nature of ordinary and extended confiscation, classifying them as *sui generis* measures, the legal nature of extended confiscation and its placement outside the criminal sanctions should be redefined.[8]

Extended confiscation, "given the scope of confiscation, also contains certain punitive elements, as the object of confiscation can include the perpetrator's entire property, making it resemble the confiscation",[9] by which it is meant when confiscation was, in previous times, regulated as a criminal sanction, more accurately as a punishment. Under the extended confiscation, there is no proven link to the commission of any criminal offence, which is presumed.[10]

Not only has the perpetrator not been convicted for the criminal offences whose commission is presumed under the institute of extended confiscation, but it is not even possible to prove the commission of those presumed criminal offences. If it were possible to prove that some property of the perpetrator is obtained through the criminal offence, that property would have and could have been confiscated under the ordinary confiscation based on conviction for that criminal offence.

Allowing extended confiscation basically avoids the struggles of conducting criminal proceedings and actually having to prove and judge the perpetrator for those presumed criminal offences, justifying it by saying that they are very hard to prove. Moreover, for some of these presumed criminal offences, there may have been obstacles to criminal prosecution (for example, the statute of limitations), and certain unlawful acts may constitute misdemeanours rather than criminal offences.

should be regarded as distinct and separate legal institutes. To ensure analytical clarity, statistical data should be reported separately for ordinary and extended confiscation, which currently is not the case. For statistical data on asset confiscation, see more in: Ivan Turudić (2025): *Izvješće Glavnog državnog odvjetnika Republike Hrvatske o radu državnih odvjetništava u 2024. Godini*, DORH, Zagreb.

8 "Re-examining the legal nature of the measure of asset confiscation is necessary, especially in the light of the new measure of extended confiscation. It is certainly not possible to insist on the special restorative legal nature of this type of measure, as extended confiscation, given its fundamental characteristics, undoubtedly has a punitive character towards the perpetrator." Elizabeta Ivičević Karas: Utvrđivanje imovinske koristi stečene kaznenim djelom primjenom bruto ili neto načela s obzirom na pravnu prirodu mjere (proširenog) oduzimanja imovinske koristi, *Hrvatski ljetopis za kazneno pravo i praksu,* 1/2010, pp. 191–210, p. 93.

9 Dražen Tripalo, Tomislav Brđanović (2022): *Imovinskopravni zahtjev, oduzimanje imovinske koristi i privremene mjere osiguranja – teorijski i praktični aspekti za suce i državne odvjetnike – Priručnik za polaznike/ce*, Pravosudna akademija, Zagreb, p. 32.

10 "In other words, extended confiscation can also cover economic advantage obtained from 'ordinary' criminal offences, the commission of which does not necessarily have to be established in criminal proceedings, and even property that was not acquired through illegal activities, provided that the defendant fails to demonstrate the lawful origin of such property." Ivičević Karas (2010): p. 204.

Under the institute of extended confiscation, the principle of guilt and the presumption of innocence apply only regarding the predicate criminal offence, but since the presumed criminal offence is completely non-determined, the principle of guilt regarding that abstract criminal offence is completely annulled. The extended confiscation regulation is justified mostly for pragmatic reasons. But on a theoretical (doctrinal) level, it is very hard to find (appropriate) justification for imposing (any kind of) measure under the criminal law for alleged criminal behaviour described in abstract terms, treating it as a (non-determined) criminal offence.

Regarding the principle of guilt, it is important to note that the current Penal Code limits the principle of guilt only to penalties by prescribing in Article 4, "no one can be punished unless they are guilty of the committed criminal offence", which, unlike the previous Penal Code from 1997,[11] no longer prescribes guilt as a prerequisite for other types of criminal law sanctions[12]—security measures.[13]

Similarly, proceeds of crime cannot be confiscated outside the framework of criminal proceedings, nor can they be confiscated if the perpetrator has been acquitted or the charges have been dismissed. In those cases, extended confiscation can only occur through a court decision establishing that an unlawful act was committed, which is equivalent to a conviction.[14] Therefore, in this sense, guilt is a condition or prerequisite for both a conviction, which imposes a penalty on the perpetrator, and the decision on the confiscation of proceeds of crime.

Is it justifiable to confiscate assets based on a presumption of their illicit origin (whether they are most probably deriving from criminal activities or because the perpetrator simply failed in proving otherwise, i.e. legal origin)[15] because it is proclaimed as an effective tool in combating organised crime? And is it even effective?[16]

11 Which prescribed in its Article 4: "[n]o one can be punished, nor can any other criminal sanction be applied to them, unless they are guilty of the committed act."

12 However, the current regulation of the principle of guilt overlooks the fact that security measures cannot be imposed outside criminal proceedings, nor if the perpetrator has been acquitted or if the charges against them have been dismissed (i.e. if the proceedings do not conclude with a conviction). This is because, outside criminal proceedings, the question of an individual's danger is irrelevant and cannot, by itself, serve as the basis for imposing any criminal sanction. Therefore, although guilt is not the foundation of security measures, it should—in the author's view—be a prerequisite or condition for their imposition, as was prescribed in the Penal Code from 1997.

13 Finally, even a mentally incapacitated person can be subjected to a security measure only if it is undoubtedly established that they have committed an unlawful act. Therefore, the commission of such an act is not presumed even in the case of a mentally incapacitated person. As a result, the presumption of innocence and the rules regarding the burden of proof apply to them in the same way as they do to a perpetrator of a criminal offence.

14 Exceptions include the "declaratory" judgment rendered against a mentally incapacitated perpetrator who has committed an unlawful act (in legal theory, different views are expressed regarding this issue; see more in footnote 35) and the "declaratory" judgment issued in an *in rem* proceeding. However, in the latter case, the question of the perpetrator's guilt is determined as a preliminary issue, and the proof of such guilt is a prerequisite for rendering such a judgment.

15 "[T]rivially put, chocolate for which the defendant does not have a receipt." Mario Hrupec (2019): *Oduzimanje i prošireno oduzimanje imovinske koristi stečene kaznenim djelom: diplomski rad*, p. 22.

16 Extended confiscation was primarily adopted and regulated as a supplementary form for ordinary confiscation concerning criminal offences committed by criminal organisations.

Although no right or principle is absolute in its nature, regulation of extended confiscation is in contradiction with the principle of guilt and the presumption of innocence, which are enshrined in the Constitution,[17] in the Penal Code,[18] in the Criminal Proceeding Act,[19] and in the European Convention on Human Rights[20] and are also considered to be fundamental principles of criminal law in every state that proudly strives to respect and promote rule of law, and to be regarded as such.

2. Asset confiscation—Differentiating extended and ordinary confiscation

To understand the extended confiscation of unlawfully obtained assets and to properly regulate it legally, it is essential to understand and to highlight its relation to the institute of ordinary confiscation, which is regulated with a single substantive provision of the Penal Code as well (Article 77). Ordinary confiscation was explicitly introduced into Croatian criminal legislation within the Socialist Federal Republic of Yugoslavia in 1959,[21] and before its introduction, the question of criminal economic advantage acquired through specific criminal offence was "resolved through the analogous application of civil law principles, primarily based on the rules concerning the obligation to return unjust enrichment",[22] which is based on the institute of civil law—*condictio sine causa*.[23]

According to Europol data, criminal organisations generate revenues estimated at a minimum of 139 billion EUR annually, and it is estimated that only two per cent is recovered. See more in Ioannis Androulakis: Recovery of Proceeds from Crime – Time to Upgrade the Existing European Standards?, *Focus: The Protection of the Financial Interests in a Changing Context*, 4/2023, pp. 360–365.

17 Everyone is innocent, and no one can be considered guilty of a criminal offence until their guilt is established by a final court verdict: Art. 28 of the Croatian Constitution.

18 No one can be punished unless they are guilty of committing a criminal offence: Art. 4 of the Penal Code.

19 Everyone is innocent, and no one can be considered guilty of a criminal offence until their guilt is established by a final court verdict: Art. 3 of the Criminal Proceedings Act.

20 Additionally, the right to a fair trial, as guaranteed by the European Convention on Human Rights, includes the right of every person charged with a criminal offence to be presumed innocent until proven guilty according to law.

21 For the first time, ordinary confiscation was introduced into the General Part of the Criminal Code of 1947 by the 1959 Amendment (which came into force in 1961), placing ordinary confiscation within security measures, which are a type of criminal sanctions.

22 Franjo Bačić, Ljubo Bavcon, Miroslav Đorđević, Božidar Kraus, Ljubiša Lazarević, Miomir Lutovac, Nikola Srzentić, Aleksandar Stajić (1982): *Komentar Krivičnog zakona Socijalističke Federativne Republike Jugoslavije*, Savremena administracija, Beograd, p. 330.

23 Some authors argue that before introducing ordinary confiscation in 1959, "[t]he principle that no one may retain material gain acquired through a criminal offence was respected, but this principle was implemented based on special regulations for individual criminal offences or through the imposition of a security measure involving the confiscation of items, which also included the confiscation of items obtained as a reward for committing a criminal offence." Damir Kos: Problematika oduzimanja imovinske koristi, *Hrvatski ljetopis za kazneno pravo i praksu*, 2/1998, pp. 753–759, p. 754.

In Croatian legal theory, it is also considered that ordinary confiscation has a primarily restorative function, and that it is an expression of the broader principle of justice.[24]

> *Namely, due to its in rem[25] nature, it does not have a punitive character, and its purpose is restorative: through the confiscation of economic advantage, it aims to restore the property-legal state to what it was before the commission of the criminal act by which that economic advantage was obtained. In doing so, it also upholds the broader principle of justice.*[26]

In this context, it is particularly emphasised that the purpose of introducing this measure is not for the state to gain wealth but primarily to prevent the perpetrator of a criminal offence from profiting from committing a crime.[27]

The Supreme Court expressed its opinion regarding ordinary confiscation, stating,

> *confiscation of proceeds of crime acquired through criminal offence has primarily a restorative function, which is why it does not constitute a type of sanction but rather a specific so-called in rem measure, which follows the object or the form of benefit that has been obtained.*[28]

Novoselec and Martinović stated a different opinion regarding the nature of asset confiscation: "[a]sset confiscation is a *sui generis* sanction, which, due to its importance, is placed among the fundamental provisions."[29] On the contrary, asset confiscation in general and at least nominally is a measure, not a criminal sanction, because the Penal Code itself places it outside the system of criminal law sanctions. Its nature is *dual*,[30] restorative, and punitive, and depending on whether it is an

24 "Confiscation of assets in comparative law has a varied legal nature; it can be a criminal sanction (punishment, security measure, or special criminal law sanction), a specific consequence of a judgment, or a special measure of a restorative nature." Ivičević Karas (2010): p. 192.

25 *In rem* means it is following an object, i.e. economic advantage, in whose possessions it is, and under certain conditions, this benefit can be confiscated from a third person, not only from the perpetrator.

26 Elizabeta Ivičević Karas: Kaznenopravno oduzimanje nezakonito stečene imovinske koristi, *Hrvatski ljetopis za kazneno pravo i praksu*, 2/2007, pp. 673–694, p. 674.

27 "The Penal Code does not prescribe the confiscation of assets with the aim of enabling the state to gain profit, but rather to ensure that the assets do not remain in the hands of the perpetrator of the criminal offence." Zorislav Kaleb: Novo uređenje instituta oduzimanja imovinske koristi prema noveli kaznenog zakona s osvrtom na dosadašnju sudsku praksu – Usporedba s odlukom o imovinskopravnom zahtjevu, *Hrvatski ljetopis za kazneno pravo i praksu,* 2/2003, pp. 449–478, p. 455.

28 VSRH, I Kž 378/06-6 from April 8, 2009.

29 Petar Novoselec, Igor Martinović (2019): *Komentar čl. 77. i 78. Kaznenog zakona – ulomak iz Komentara Kaznenog zakona,* p. 2.

30 "The confiscation of proceeds of crime is a dual measure *sui generis*." Tripalo, Brđanović (2022): p. 32.

ordinary or extended one, it has a restorative or punitive character.[31] Today, asset confiscation in Croatian criminal legislation, practice, and among the majority of academics is certainly not perceived as a sanction (more accurately as a punishment), at least nominally, but it undoubtedly possesses the characteristics of a sanction due to its punitive nature.[32]

Given everything stated so far, it is necessary to emphasise that the legal nature of ordinary confiscation is neither controversial nor ambiguous, since the perpetrator, through a specifically determined criminal offence for which he/she is convicted (or an established unlawful act in the case of an incapacitated perpetrator), has acquired a precisely defined economic gain, which is confiscated from him/her by that judgment. In this way, even if ordinary confiscation were regulated and defined as a punishment, neither the principle of guilt nor the presumption of innocence would be violated.

On the other hand, the same logic cannot be applied to extended confiscation. The main issue with extended confiscation is that it applies to a criminal offence defined in abstract terms and for which the perpetrator has neither been charged nor convicted.

The institute of extended confiscation differs from the institute of ordinary confiscation in a practical sense, primarily due to the scope of the state intervention in the perpetrator's property.[33]

Not only that, but difference is considerable furthermore in conditions under which those two types of asset confiscation can be applied,[34] confiscation from the third parties and in the *bona* or *mala fide* of third parties (if the benefits have been transferred to them), the court's authority to impose a measure (in)dependently of the public prosecutor's proposal,[35] given the commission of a criminal offence or an

31 "Although the asset confiscation as a criminal law measure inevitably contains a certain degree of repression, it primarily has a restorative rather than a punitive character, which justifies its qualification as a special measure regulated outside the framework of criminal sanctions to which the principle of guilt applies." Ivičević Karas (2010): pp. 192–193.

32 "Asset confiscation is not a criminal law sanction, but it does have some of its characteristics, such as legality, personal nature, proportionality, and reversibility (revocability)." Željko Horvatić (2002): *Rječnik kaznenog prava*, Masmedia, Zagreb, p. 349.

33 "In Croatian legislation, the asset confiscation can be distinguished by the scope of intervention in the perpetrator's property: ('ordinary' and extended)." Vanja Marušić, Marija Vučko, Mirta Kuštan: Oduzimanje imovinske koristi i privremene mjere osiguranja s posebnim osvrtom na trajanja mjere i poteškoće u praksi, *Hrvatski ljetopis za kaznene znanosti i praksu*, 2/2020, pp. 471–496, p. 476.

34 A condition for ordinary confiscation is that an economic advantage has been obtained through the criminal offence for which the perpetrator is being prosecuted or through an unlawful act in a case of an incapacitated perpetrator. In contrast, for the application of extended confiscation, in addition to the requirement that an economic advantage has been obtained through the criminal offence for which the perpetrator is being prosecuted and convicted, the public prosecutor is also required to prove a disproportion between the perpetrator's property and its lawful income.

35 In the case of ordinary confiscation, the court has the authority to seize economic advantage regardless of whether the public prosecutor has failed to propose their confiscation. However,

unlawful act,[36] criminal offences that trigger application of those two types of confiscation institutes[37] and especially regarding burden of proof.[38]

Namely, while ordinary confiscation involves confiscating the proceeds of crime obtained through a specifically determined criminal act, the object of extended confiscation can be the entirety of the perpetrator's property. It is important to emphasise that extended confiscation is not a replacement for the ordinary confiscation.[39] Both forms of this measure can (and should) be applied if the (different) conditions for their imposition are met.

In conclusion, although both institutes derive from the same fundamental principle, their differences are significant and should be carefully considered during their regulation. Namely, the purpose of ordinary confiscation is not to reduce the perpetrator's assets (unlike a fine) but rather to restore the financial state of the individual who unlawfully obtained some economic gain to what it was before the acquisition, thus serving a restorative function. On the other hand, the same line of argument cannot be applied to extended confiscation, which encompasses all assets of the perpetrator—and, in some cases, even those of third parties—for which the perpetrator is unable to demonstrate the lawful origin. In such circumstances, extended confiscation becomes the sole response of society and the state to criminal offences that are not proven but

in the case of extended confiscation, the court cannot do so, especially considering the distribution of the burden of proof.

36 In Croatian legal theory, there are opposing views on whether extended confiscation can be applied to a mentally incapacitated perpetrator. Novoselec and Martinović criticise the fact that ordinary confiscation can seize economic benefits derived from an unlawful act, while extended confiscation can only be applied in cases of conviction for a criminal offence, which means it cannot be applied to an incapacitated perpetrator. Novoselec, Martinović (2019). Similarly, Mrčela and Vuletić identify a conviction for the predicate offence as the first precondition for the application of extended confiscation; see more in Marin Mrčela, Igor Vuletić (2021): *Komentar Kaznenog zakona, Opći dio,* Libertin naklada, Rijeka. Compare: Lucija Sokanović (2025): Extended Confiscation in Croatia, in Elżbieta Hryniewicz-Lach (ed.): *Extended Confiscation of Illicit Assets and the Criminal Law: National and EU Perspectives*, Routledge, New York.

37 The application of ordinary confiscation is possible in relation to any criminal offence through which an economic advantage is acquired, as only that specific benefit is subject to confiscation. In contrast, extended confiscation is possible only if economic advantage is obtained through one of the four types of criminal offences listed in the catalogue. This activates the presumption that the perpetrator's entire property was acquired through any other criminal offences which are not the subject of the indictment.

38 Within ordinary confiscation, the burden of proof lies with the public prosecutor to prove the guilt of the accused for the criminal offence, as well as the acquisition of economic advantage through that offence. In the case of extended confiscation, however, the public prosecutor is required to prove the disproportion of the economic advantages, which then triggers a rebuttable presumption regarding the unlawful origin of the offender's entire property. The burden of proof then shifts to the perpetrator, who must prove the lawful origin of his/her individual assets.

39 "Extended confiscation does not replace but rather complements ordinary confiscation." Hrupec (2019): p. 22.

merely presumed, thereby making it resemble a form of punishment rather than a preventive measure.

Namely, the Penal Code prescribes the assumption that the perpetrator of one criminal offence acquired all of their assets through other criminal offences, which are neither charged against them nor proven. Moreover, the burden of proving the lawful acquisition of these assets shifts to the perpetrator, placing him/her in a position where he/she must prove his/her innocence, which contradicts the presumption of innocence, as well as the principle that the prosecution bears the burden of proving guilt, which is derived from this presumption. The fact that the perpetrator, in criminal proceedings concerning one offence, fails to prove the lawful origin of all or part of his/her assets, even if their acquisition is unrelated to the charged offence, does not necessarily mean that these assets were acquired through a criminal offence. In this way, extended confiscation diverges from the restorative function of asset confiscation and moves closer to a punishment, resembling the confiscation of property, which was historically used to legalise the seizure of even lawful assets from a convicted person.

Owing to this resemblance of extended confiscation to a form of punishment, this institute, in the author's view, also undermines the principle of guilt, as it attributes responsibility to the perpetrator not only for the criminal offence that has been established but also for other unproven and merely presumed criminal acts that have not even been formally charged and in respect of which the perpetrator is unable to exercise the right to defence. Even though no formal punishment is imposed for these presumed acts, the confiscation effectively punishes the perpetrator despite his/her guilt for those acts not being determined.

3. Evolution in the regulation of extended confiscation

When this measure was first introduced into Croatian criminal legislation in 2006, extended confiscation was prescribed only for criminal offences under the jurisdiction of the Office for the Suppression of Corruption and Organised Crime[40] (further USKOK), modelled on certain foreign legislations and considering international legal documents[41]

40 USKOK is a specialised prosecutor's office that fights against organised crime and corruption, and whose jurisdiction is prescribed with a special Act for the entire territory of the Republic of Croatia. The legal basis for its organisation is the Act on the Office for the Suppression of Corruption and Organised Crime.

41 "Therefore, in recent years, international legal documents and comparative criminal law have increasingly provided for special forms of measures known as extended confiscation of assets acquired through criminal offences, which approach is specifically applied in cases of organised crime, where regular, non-extended forms of confiscation measures have proven to be inadequate or ineffective in practice." Ivičević Karas (2007): p. 674. The United Nations Convention against Transnational Organised Crime, called The Palermo Convention of 2001, which Croatia ratified in 2002, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and others.

as well as European Union regulations.[42] Even before the introduction of extended confiscation, positions were taken within Croatian criminal law theory emphasising the need to introduce its extended form in order to combat organised crime effectively.[43] Namely, in the fight against various forms of organised crime, ordinary confiscation was not sufficient.[44] The reason behind this is the nature and ever-evolving characteristics of criminal organisations and organised crime.[45]

The initial regulation was characterized[46] by a failure to satisfy the principle of legality in terms of *lex certa*, mainly because of the "undefined category of the temporal connection between the acquired proceeds of crime and the commission of the criminal offence".[47] According to the literal interpretation of legal provision in the initial regulation of this institute, "extended confiscation could only be applied to the proceeds of crime derived from the offence for which the perpetrator was being tried, and not for any other criminal offences",[48] which brings to the question the point and purpose of the institute of extended confiscation.

Initially, the regulation of this institute was designed to provide for a division of the burden of proof, meaning that the public prosecutor was required to establish a certain degree of probability that the perpetrator's property derives from a criminal offence. By proving the lawful origin of their property, the perpetrator could avoid extended confiscation.

With the subsequent amendment to the Penal Code in 2008, an inversion of the burden of proof was introduced, replacing the aforementioned division of the burden of proof:

42 Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing, and confiscation of instrumentalities and the proceeds of crime. Council Framework Decision 2005/212/JHA of 24 February 2005 on confiscation of crime-related proceeds, instrumentalities, and property. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders.

43 "It is believed that the effective fight against organised crime largely depends on the development and expansion of this institute, which has not significantly progressed beyond its original provision." Kaleb (2003): p. 449.

44 "The growing expansion of various forms of crime has recently brought increased attention to the institute of confiscation of economic advantage as a special measure that has existed in our legislation for 43 years. However, even after the latest amendments concerning the mandatory judicial consequences of illegal acquisition, particularly the confiscation of illegal profits gained through organised crime, these measures have proven to be insufficient." Kaleb (2003): p. 450.

45 Imprisonment sentences for convicted members of organised crime groups are often ineffective in combating and suppressing organised crime because the strength of organised crime does not lie in its membership but in the illegally acquired assets that provide a financial foundation for expanding criminal activities.

46 For a detailed critique from the perspective of *lex certa*, see Igor Bojanić: Promjene u općem dijelu Kaznenog zakona prema Prijedlogu zakona o izmjenama i dopunama Kaznenog zakona iz 2005, *Hrvatski ljetopis za kazneno pravo i praksu*, 2/2005, p. 338.

47 Ivičević Karas (2010): p.203.

48 Ivičević Karas (2010): p.203.

> *[i]f a criminal offence under the jurisdiction of the Office for the Suppression of Corruption and Organised Crime has been committed, it is presumed that the perpetrator's total property was acquired as proceeds of crime from the criminal offence, unless the perpetrator makes it probable that its origin is lawful.*[49]

Therefore, the public prosecutor was not required either to prove the temporal connection between the acquisition of assets and the committed criminal offence or to make their unlawful origin probable. However, the perpetrator could demonstrate the lawful origin of their assets. This situation involves a shifting of the burden of proof.

This amendment also expanded the scope of extended confiscation, as it could also encompass proceeds of crime acquired not only from the criminal offence under USKOK's jurisdiction for which the perpetrator was convicted but also from other criminal offences.[50] Therefore, this was the first real implementation of this institute.

The new Penal Code, which entered into force on 1 January 2013,[51] reinstated the division of the burden of proof by stipulating:

> *[i]f the perpetrator of a criminal offence referred to in paragraph 1 of this Article (under the jurisdiction of USKOK) possesses or has possessed assets disproportionate to their lawful income, it is presumed that such assets represent proceeds from a criminal offence unless the perpetrator makes it probable that their origin is lawful. (Article 78, paragraph 2)*

In this way, it remains possible to confiscate assets presumed to have been acquired through any criminal offence, not solely those under the jurisdiction of USKOK.

Subsequent amendments to the Penal Code have expanded the application of extended confiscation beyond USKOK's jurisdiction to include other criminal offences. Today extended confiscation is applicable for 4 categories of criminal offences, called predicate criminal offences (criminal offences that are the basis for triggering the application of extended confiscation): (a) under the jurisdiction of the Office

49 Article 2 of the Act on Amendments to the Criminal Code (Official Gazette of the Republic of Croatia, *Narodne novine*: number 152/08) came into force on 1 January 2009.

50 "In other words, extended confiscation can encompass economic advantage acquired from 'ordinary' criminal offences, whose commission may not be established in criminal proceedings, and even property not obtained through illegal activities, provided that the defendant does not make the lawful origin of such property plausible. This significantly expanded the potential for encroachment upon the perpetrator's property, thereby emphasising the punitive nature of the measure, which, in certain aspects, resembles confiscation as a criminal sanction—a concept considered a relic in modern criminal law." Ivičević Karas (2010): p. 204.

51 Official Gazette of the Republic of Croatia, *Narodne novine*: numbers 125/11 and 144/12.

for the Suppression of Corruption and Organized Crime,[52] (b) criminal offences of sexual abuse and sexual exploitation of children,[53] (c) criminal offences concerning computer systems, programs, and data,[54] and (d) criminal offences of unauthorized production and trafficking of drugs (Art. 190) and unauthorized production and trafficking of substances prohibited in sports (Art. 191.a).[55] A general prerequisite of extended confiscation is that the predicate criminal offence resulted in an economic advantage.

Some Croatian criminal law theorists rightfully point out the significant detrimental impact of economic crimes[56] and emphasise the need to expand the application of extended confiscation to these types of criminal offences, especially when a substantial economic advantage is acquired.

There is no logical reasoning to propose that the catalogue of criminal offences expands and includes criminal offences that do not aim to acquire economic advantage (such as crimes against humanity and human dignity, especially genocide, crime of aggression, or war crime), as some authors have questioned.[57] Considering that those serious crimes are not offences aimed at obtaining illicit economic advantage (unlike criminal offences related to war profiteering), they cannot and should not be subjected to extended confiscation.

The same reasoning is demonstrated through the criminal offence of giving[58] and receiving[59] a bribe. Namely, the perpetrator of the criminal offence who gives a bribe does not obtain any economic advantage by committing that crime.[60] That is why it is

52 Offences under USKOK's jurisdiction are proscribed in Art. 21, Act on the Office for the Suppression of Corruption and Organised Crime.

53 From Chapter XVII of the Penal Code.

54 From Chapter XXV of the Penal Code. With the implementation of the Directive (EU) 2014/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation into the Croatian criminal justice system in 2015, extended confiscation was enabled for criminal offences of sexual abuse and exploitation of children, as well as criminal offences against computer systems. "In this way, extended confiscation is no longer limited to organised crime and corruption, which was its original purpose." Novoselec, Martinović (2019).

55 From Chapter XIX of the Penal Code. This catalogue expansion made in 2024 was motivated by the recognition that such offences can yield significant financial gains even when not committed as part of a criminal organisation.

56 Sunčana Roksandić Vidlička, Marta Šamota Galjer: Političko-gospodarski kriminalitet i prošireno oduzimanje imovinske koristi, Quo vadis, Hrvatska?, *Hrvatski ljetopis za kazneno pravo i praksu,* 2/2015, pp. 523–557, p. 537.

57 Sunčana Roksandić Vidlička, Marta Dragičević Prtenjača: Does the Crime Pay Off – (Un) efficiency of Confiscation in Croatia – New Proposals for Its 60th Birthday, *EU and Comparative Law Issues and Challenges Series (ECLIC),* 3/2019, pp. 549–582, p. 551.

58 The criminal offence of active corruption.

59 The criminal offence of passive corruption.

60 In line with the teleological interpretation and application of the principles that no one can retain assets derived from criminal offence, from which these confiscation institutes derived, the following straightforward examples demonstrate the unjustifiability of extended confiscation, as well as the absence of conditions for ordinary confiscation, in cases where no economic advantage has been obtained through the criminal offence: a student bribing a

illogical that the entirety of the perpetrator's property could be confiscated through the application of extended confiscation. A different situation is if a perpetrator who gave a bribe profited in some kind of property/financial benefit because of giving a bribe.[61] A completely different logic and reasoning apply to a perpetrator of the criminal offence of receiving a bribe.[62] Namely, the bribe itself could and should be confiscated through ordinary confiscation (simply because that bribe is an economic advantage that was obtained through the commission of a criminal offence of receiving a bribe). Furthermore, since this criminal offence falls into the first category of the aforementioned catalogue (under the USKOK jurisdiction) and if disproportion of perpetrator's assets and income is determined, and if the perpetrator fails to prove the lawful origin of his/her property, his/her entire property could be confiscated through the application of the extended confiscation.[63] This shows us that the passive corruption crime falls under both ordinary and extended confiscation, while the active corruption crime, *per se*, does not.

These examples demonstrate the importance of interpreting any principle—such as the principle that no one should retain unlawfully obtained assets—teleologically. This involves examining its purpose and relationship with the current regulation of confiscation institutes, which is one of the main questions addressed in this paper. Consequently, this underscores the importance of having appropriate and adequate justification and reasoning for any legal regulation which has a significant impact not only on the realisation but also on the limitation of certain fundamental rights, especially in criminal law.

professor to pass an exam or a party in a legal proceeding bribing a judge to rule in their favour. In these scenarios, the active parties in the corruption (the student or the litigant/defendant or any other participant, depending on the nature of legal proceedings) differ significantly from the passive parties (the professor or the judge receiving the bribe) concerning the aforementioned principle. What is the logical justification for presuming that all the assets of a student or a party in a legal proceeding were acquired through criminal activities?

61 For instance, if an individual bribes a judge to perform a criminal act that results in the acquisition of an illicit economic advantage for the briber, it can be reasonably concluded that the briber has obtained an economic advantage through that new criminal offence of the bribed person. In that case, that economic advantage can be confiscated under ordinary confiscation. And by profiting from that crime (if it is also under the jurisdiction of USKOK) in terms of acquiring economic advantage, extended confiscation could also be applied in this case against the person giving a bribe.

62 Unless it concerns a bribe that constitutes a non-material benefit, as non-material benefits are encompassed by the term "bribe" according to Article 87, paragraph 24 of the Penal Code.

63 Thus, in the judgment of the County Court in Zagreb, I Kž Us 23/2020-6 dated 10 June 2021: "[f]rom the defendant M. M., economic advantage was confiscated, as it was established that the total monetary amount of 5,912,092.49 HRK represents the economic advantage obtained by the defendant M. M., partly from one criminal offence of accepting a bribe in the amount of 13,194.84 HRK and two criminal offences of abuse of position and authority in the amount of 160,000.00 HRK, while it is presumed that property amounting to 5,738,897.65 HRK represent economic advantage derived from criminal activities." Consequently, in this case, from the person who committed the criminal offences of accepting bribes and abuse of position and authority, a total of 173,194.84 HRK (22,986.91 EUR) was confiscated through ordinary confiscation, while an additional 5,738,897. 65 HRK (761,682.61 EUR) was confiscated under extended confiscation.

III. CONFISCATION AS A PENALTY DURING THE WARTIME AND POST-WAR PERIOD

1. Ideological basis of confiscation and coexistence of different legal systems

The coexistence of different legal systems characterised the history of Croatian criminal law during the Second World War. On one side, the Independent State of Croatia[64] (hereinafter as NDH) established its legal framework, which largely relied on the laws of the Kingdom of Yugoslavia. On the other side, the anti-fascist forces, the Yugoslav Partisans led by the Communist Party of Yugoslavia, established their own legal system in territories liberated from the NDH authorities, which was not based on the legal traditions of the Kingdom of Yugoslavia.

The confiscation of property in Croatia during and immediately after the Second World War took place within the framework of drastic political changes that characterised this period, and they were driven by the ideological and political objectives of the ruling powers.[65]

"The system of sanctions fulfils the functions of the criminal law of a state and expresses the fundamental principles of that law and criminal policy."[66] Considering that, it is important to emphasise the role of criminal law in establishing the power of the Yugoslav Partisans as the leading anti-fascist force.

> *Criminal law was supposed to be an instrument of the revolution. [...] A new criminal law had to be created. The goals and needs of the revolution were the primary source and main inspiration for substantive criminal law, for determining what and how to punish.*[67]

People's Liberation Committees were key governing bodies established during the National Liberation Struggle[68] in the Second World War on the territory of Yugoslavia. They had a dual role: to ensure the political control of the Communist Party of Yugoslavia and to organise daily life in the areas liberated from the Ustaša regime. They were created in response to the need to establish governance that would enable the effective administration of areas liberated from occupying forces

64 The NDH was established on 10 April 1941 and dissolved on 4 May 1945.

65 This paper will not analyse confiscation regulated as a penalty under the Ustaša regime but will instead focus on confiscation carried out in former Yugoslavia in the period of the Second World War and the immediate post-war years.

66 Anita Kurtović: Zakonska rješenja u svjetlu primjene mjera upozorenja, sigurnosnih mjera i oduzimanja imovinske koristi, *Hrvatski ljetopis za kazneno pravo i praksu*, 2/2000, pp. 349–379, p. 377.

67 Franjo Bačić (1980): *Krivično pravo, opći dio*, Informator, Zagreb, p. 81.

68 The National Liberation Struggle was part of the anti-Nazi and anti-fascist fight in the territory of occupied Yugoslavia, led by the Communist Party of Yugoslavia.

and their collaborators, and they operated under the direct influence and control of the Communist Party of Yugoslavia.[69] Their role in implementing confiscation was significant.

2. Legal basis for confiscation

> *With the adoption of the Foča Regulations[70] in February 1942, it was determined that all property of the Kingdom of Yugoslavia in the liberated areas would be declared national property, and the property of "enemies of the people", based on military court rulings, would be confiscated and placed under the administration of the People's Liberation Committees (NOOs).*[71]

This decision marked the beginning of a systematic approach to property confiscation, justified under the disguise of revolutionary justice. By transferring ownership to the state, the new authorities sought to consolidate their power and ensure that material resources were exclusively in their hands.

> *NOOs, as bodies of popular authority, carried out the seizure and confiscation of property belonging to all "enemies of the people": Ustaše, spies, traitors, etc., whenever the military authorities or courts made a decision based on a proposal by the NOO or ex officio.*[72]
> *The retribution did not affect only members of the NDH apparatus, Ustaše, Četniks, wealthy individuals, intellectuals, Nazis, and fascists, but, for example, in Istria and Slavonia, it also targeted Germans and Italians in general. The retribution had war-related, revolutionary, national, and personal motives.*[73]

In some cases, entire communities were labelled as collaborators, leading to mass confiscations, disregarding individual responsibility. These measures not only aimed at punishing perceived enemies but also served as a tool to reshape the demographic and economic structure of the regions.

"Property was confiscated in a manipulative manner, under the pretext that it was being taken from owners due to their collaboration with the occupiers."[74] This is also the reason why the penalty of confiscation was in practice mostly imposed during the Second World War and the immediate post-war period even though it was later regulated as a sanction in former Yugoslavia.

69 See more about their role and activities in Tomislav Anić: Normativni okvir podržavljenja imovine u Hrvatskoj/Jugoslaviji 1944.–1946., *Časopis za suvremenu povijest*, 1/2007, pp. 25–62.
70 The Foča Regulations fall within the context of the early attempts by the Partisan movement to establish a legal framework for the new socialist regime, which directly links them to the later confiscations of property and nationalisations that took place after the Second World War—author's remark.
71 Filip Benić (2019): *Konfiskacija imovine u Slavonskom Brodu od 1945. do 1948.: diplomski rad*, p. 36.
72 Anić (2007): p. 32.
73 Zdenko Radelić (2006): *Hrvatska u Jugoslaviji 1945.–1991.: od zajedništva do razlaza*, Školska knjiga, Zagreb, p. 66.
74 Radelić (2006): p. 178.

> *Before the enactment of the Act on the Confiscation of Property and the Execution of Confiscation, that is, during the war, two types of confiscation were distinguished: partial and complete. Partial confiscation applied to cases where one family member was marked as a "people's enemy" due to their actions, while the others were not. In such cases, property was seized only from the individual declared a "people's enemy", leaving the property of other family members untouched. Complete confiscation involved the seizure of all property, and in such cases, all family members had to be declared "people's enemies". Confiscation was applied to all property rights.*[75]

Confiscation as a secondary punishment was regularly imposed alongside any other sentence handed down.[76] Thus, it is evident that numerous verdicts were rendered solely to enable the confiscation of the convict's property. This was particularly facilitated by the broad definition and interpretation of the terms "crime" and "enemy of the people".[77]

It can be concluded that during this period authorities used criminal law as a means to eliminate political opponents and suppress social groups they perceived as threats to their ideological stability while simultaneously confiscating their property. Individuals were often convicted without actual evidence for acts that, if described at all, were portrayed in a vague and imprecise manner.

Significant in this regard is the verdict of the District Court in Dvor na Uni from 1946, which confiscates "the entire movable and immovable property of all residents of the village of Zrinj, enemies of the people, regardless of where such property is located".[78] The confiscation, as stated in the reasoning of the verdict, was ordered against "all residents of the village of Zrinj as war criminals and enemies of the people, even against who were executed, killed, died, or had to flee during the war". The justification for such a verdict, which today would be considered irregular and unlawful for multiple reasons, is expressed as follows:

> *Since the village of Zrinj was destroyed due to battles, all archives of local institutions and authorities were destroyed, so it is impossible to determine which families or individuals were present in the village during the battles fought against the People's Liberation Army, nor who fled, it was necessary to issue a collective verdict for all residents of the respective village.*

Undoubtedly, such reasoning is nowadays irreconcilable with the fundamental principles of criminal law.

75 Anić (2007): p. 39.

76 Similarly, "it almost became a rule that every punishment was accompanied by the confiscation of property." Radelić (2006).

77 The General Part of the Criminal Code, adopted in 1947, although proclaiming the principle of legality, allowed for analogy, thereby significantly weakening the principle of legality itself. Specifically, the Criminal Code stipulated that criminal responsibility existed for an act that was socially dangerous, even if it was not explicitly defined in the law, as long as its characteristics were similar to those of a criminal act explicitly prescribed by the law.

78 Vladimir Geiger, Mate Rupić, Mario Kevo, Egon Kraljević, Zvonimir Despot (2008): *Partizanska i komunistička represija i zločini u Hrvatskoj 1944.–1946.: dokumenti. Knjiga 3: Zagreb i središnja Hrvatska*, Hrvatski institut za povijest, Zagreb, p. 799.

> *The highest communist leaders were aware that, for the goals of the revolution, they had to use false accusations of treason, as it turned out that there were too few real traitors among class enemies. The first immediate goal was to punish war criminals and enemies of the people, the second goal was to nationalize private property by dispossessing all those who were or could potentially be obstacles to revolutionary objectives, and the third goal was to create political conditions for securing election outcomes in their favour—both local elections and those for the Constituent Assembly—by revoking the voting rights of dissenters. These three goals could be achieved through accusations of treason against national or state interests, according to the Communist Party's criteria.*[79]

An intriguing aspect of this period is that Croatian criminal legislation simultaneously recognised, as criminal law sanctions, the confiscation of property as a punishment, the institution of ordinary confiscation, and monetary fines.

> *Yet, the most fundamental aspect is not evident—what is the function and purpose of this penalty in our criminal law? Why is such a property-related penalty necessary alongside monetary fines and measures of asset confiscation? A satisfactory answer to this question is not apparent, which raises doubts about the justification of this penalty.*[80]

Today, confiscation carries a negative connotation and is considered to be an unacceptable relic of the past.[81] "The majority of criminal law systems have abolished the sanction of confiscation of the perpetrator's entire personal property due to its abuses under totalitarian regimes, and therefore it no longer exists in Croatian legislation."[82]

IV. CONCLUSIONS

Even prior to the introduction of criminal-law measures addressing illicit economic gain through the institute of ordinary confiscation, the criminal law of the former Yugoslavia had already recognised the need for its deprivation, which was achieved through the civil-law institute of unjust enrichment. The principle that no one should profit from crime had neither been explicitly formulated nor sufficiently acknowledged, even in international instruments of that period. Ordinary and extended confiscation, grounded in this principle, have different purposes, objectives, and regulatory

79 Radelić (2006): p. 61.
80 Bačić (1980): p. 426.
81 In the dictionary of criminal law, confiscation (from the Latin *confisco*: to collect, seize for the state treasury, fiscus) is defined as a "criminal sanction applied historically from ancient times to the present, consisting of the seizure of all movable and immovable property of a person convicted of certain criminal offences. It is important to note that this does not refer to property acquired through the criminal act for which the person was convicted but rather to property acquired in any other lawful manner." Horvatić (2002): p. 191.
82 Anita Kurtović, Velinka Grozdanić: Kaznenopravne mjere oduzimanja dobiti kao odgovor na organizirani kriminal, *Zbornik radova Pravnog fakulteta u Splitu*, 1–2/1999, pp. 163–174, p. 169.

frameworks. Nevertheless, while ordinary confiscation is not problematic, extended confiscation is.

The confiscation carried out during the Second World War and in the immediate post-war period under the newly formed regime was presented as a key instrument for transforming society towards the socialist model, alongside other nationalisation measures that were not punitive in nature and did not form part of criminal law. However, in reality, the determination and implementation of confiscation measures were often marked by legal irregularities and deficiencies, primarily due to deliberately broad and vague formulations and definitions of criminal offences and penalties. These were particularly conducive to achieving the goals of such an ideology, which in turn caused significant injustices.

Additionally, the particular severity of confiscation was reflected in the fact that it generally involved the seizure of the entire property of the person against whom it was imposed, without any compensation for the confiscated property. This aspect is especially emphasised in the theory of criminal law, as precisely this characteristic distinguishes confiscation from other bases by which the state could (then and now) acquire ownership of the property of private and legal entities.

Although the nature of a legal institute does not depend on its designation or terminology, in the case of confiscation, it is crucial to devote particular attention to its regulation and the terminology used, because European states that belonged to the socialist system recognised and regulated confiscation as a penalty, whereas other states did not conceptualise it in such a manner.

There is no doubt that confiscation in former Yugoslavia, particularly in the early years of its existence, was imposed without regard for the fundamental principles of criminal law and was instead aligned with the instrumental purpose that criminal law served at the time.

The broad scope of property subject to confiscation demonstrates an undeniable similarity to today's measure of extended confiscation, which is why some Croatian legal theorists consider confiscation to be a precursor to extended confiscation.

Furthermore, similarities between extended confiscation and a penalty raise significant concerns regarding the principle of guilt and presumption of innocence. In Croatian legal theory, the institute of extended confiscation has been insufficiently and infrequently problematized and criticised, particularly concerning its relationship with the abovementioned basic principles of criminal law. EU law tends towards further expanding the scope of extended confiscation. However, it is up to the Member States, when implementing these provisions, to adapt this institute to their legal traditions and the fundamental principles of criminal law.

Has extended confiscation, at least in practice, justified its introduction into national legislations and become an effective (or at least a more effective) tool in combating organised crime? Is it necessary to redefine this institute and propose appropriate and legitimate solutions for its regulation and application?

Extended confiscation blurs the line between preventive measures and punitive sanctions by shifting the burden of proof onto the perpetrator and disregarding the requirement for a conviction regarding presumed but not proved criminal offences. Although no formal penalty is imposed for these presumed offences, the extended

confiscation has a punitive function, penalising the individual without a legally established guilt.

There are ongoing debates in comparative theory about the balance between the rights of the perpetrator and the need for society to reclaim assets obtained through presumed criminal activities.

In the author's opinion, extended confiscation is primarily justified on pragmatic grounds, as it remains theoretically challenging to provide a sound doctrinal basis for applying criminal law measures similar to punishment to vaguely defined, abstract criminal conduct.

All of these questions are both pertinent and worthy of thorough consideration, particularly in the light of the continuous expansion of the scope of extended confiscation in EU law; however, addressing them falls beyond the scope of this article.