



Modern Strategies For Tackling Proceeds From Organized Crime And Corruption – Lithuanian Experience

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Modern Confiscation Strategies

Extended confiscation

Confiscation of illegal assets at lower std. of proof

Confiscation as punishment

Confiscation of **legal** and illegal assets

Illicit enrichment

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Civil forfeiture

Confiscation of illegal assets without conviction, or even without criminal proceedings

Punitive taxes

Principle of tax neutrality

Modern CS in 20 EU MS (in 2013)

<i>Extended confiscation</i>	<i>Civil forfeiture</i>	<i>Confiscation as punishment</i>	<i>Criminal liability for illicit enrichment</i>
		Czech Republic	
	Slovenia		
	Bulgaria, Slovakia		
England, Ireland, Italy, Romania			
Latvia		Latvia	
France		France	
Lithuania			Lithuania
The Netherlands, Denmark, Sweden, Finland, Estonia, Poland, Germany, Austria, Greece			



Extended powers of confiscation in Lithuania

Extended confiscation and crime of illicit enrichment introduced into Penal code in December 2010

Art. 72(3) Extended confiscation

Art. 189(1) Illicit enrichment

Promoted by the President of the Republic as special measures against **organized crime** and **corruption**

Lithuanian Penal Code on illicit enrichment

	Art. 189(1) Lithuanian PC
1. Liable persons	1. Anyone
2. Disproportionality	2. Value of property disproportionate to legal income by 18825 EUR
3. Source of the property	3. Court establishes by the evidence of the case that property could not be obtained from legal activities
4. Guilt	4. Intention or negligence regarding origin of assets



Lithuanian Penal Code on illicit enrichment

Proportionality

Vague/wide definition of the source of the property, without any indications for

- organized crime related
- corruption related
- criminal

origin of the property

Presumption of innocence

Difficult task to meet the standard of proof beyond reasonable doubt



Implementation in 2011-2014 (Lithuania)

Collapse of the great expectations

Strategic Plan of the Prosecutor General for completed cases on illicit enrichment

2013 - 16 2014 - 20 2015 - 25 2016 - 29

Criminal cases on illicit enrichment

4 cases heard by the Supreme Court

4 acquittals

Extended confiscation

0 cases



Illicit enrichment cases at the Supreme Court of Lithuania

(1) 2K-48/2014:

lack of the evidences for illicit origin of the assets

(2) 2K-P-93/2014:

validity of law in time,

lack of the evidences for illicit origin of the assets,
fictitious transactions and possession of the
property of other people

(3) 2K-75/2014:

fake transactions with fictitious assets

lack of the evidences for illicit origin of the assets

(4) 2K-226/2014:

Non bis in idem, culpability



Illicit enrichment cases at the Supreme Court of Lithuania (1)

Case No. 2K-48/2014:

Convicted for three offences of illegal disposition of strong alcoholic beverages

Unexplained 21600 EUR in cash found during the search (threshold for illicit enrichment crime is 18825 EUR)

Lack of Evidence (no proof beyond reasonable doubt)

- Age 68, long work experience
- Widower, some of assets may have been earned by the spouse
- Income prior to 1994 not included into investigation
- Undeclared income not included into investigation
- Doubtful method of „standard expenditure“ for establishment of net income; elderly age of suspect and rural living location



Illicit enrichment cases at the Supreme Court of Lithuania (2)

Case No 2K-P-93/2014

Property (a house) registered fictitiously in the name of the other person (the accused) in order to hide the property during process of divorce

Validity of law in time (next slide)

Evidence: disproportion of unexplained property does not prove criminal origin of assets

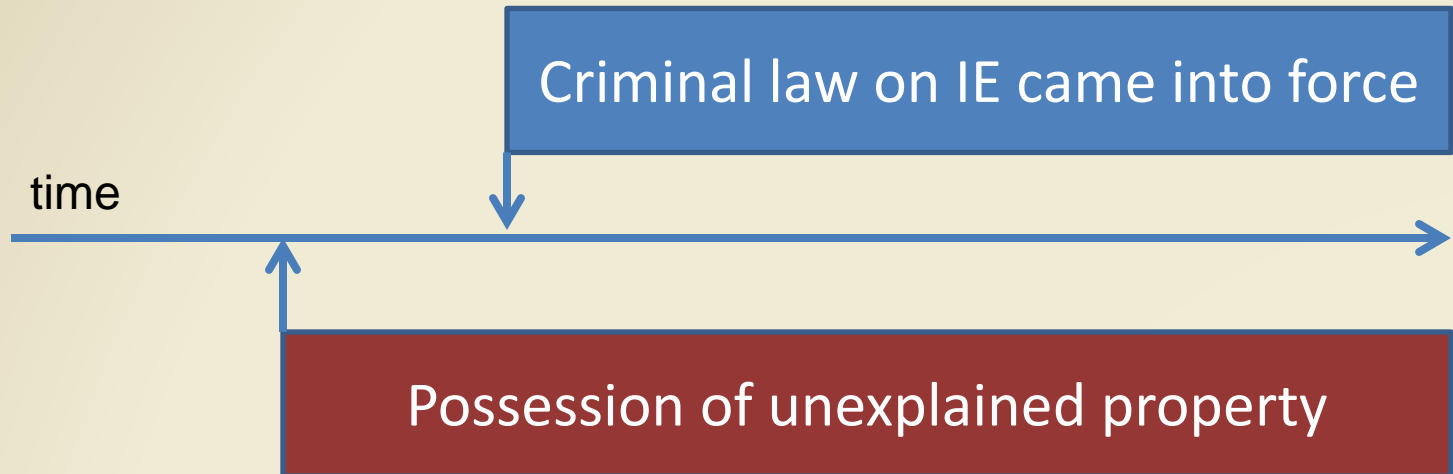
Guilt: no guilt in regard of criminal origin of assets established

Formal (fictitious) possession assets (of other people) may be defined as illicit enrichment

Illicit enrichment cases at the Supreme Court of Lithuania (2)

Case No 2K-P-93/2014

Moment of commission of crime and validity of law in time



The relevant law is the law which has been in force **at the moment of possession**, not **at the moment of acquisition** of property.

However criminal liability for possession of assets which have been acquired before the Law came into force may rise only if the **criminal origin** of the assets has been established in the case.



Illicit enrichment cases at the Supreme Court of Lithuania (3)

Case No 2K-75/2014:

Fake loan of ~100 000 EUR for accused in year 2008

No evidence that accused received 100 000 EUR

Apart from the fake contract no other evidence that assets of the accused increased



Illicit enrichment cases at the Supreme Court of Lithuania (4)

Case No 2K-226/2014:

Accused acquired unexplained property of value appr. 220 000 EUR in year 2004-2007

State tax inspectorate recovered income tax, tax interest and imposed a **fine** under tax law

(1) Non bis in idem: a) criminal prosecution after the tax proceedings is not allowed for the same act, it constitutes absolute ground for immediate termination of the criminal proceedings (???)

In contrary:

- *ECHR Zolotukhin v. Russia (2009)*
- *ECHR Sciukina v. Lithuania (2006)*



Illicit enrichment cases at the Supreme Court of Lithuania (4)

Case No 2K-226/2014:

(1) Non bis in idem: b) Illicit enrichment and tax evasion – *bis?*

(2) No guilt: the Accused assumed that his property became legal after the tax proceedings (???)

Principle of tax neutrality denies any relationship between taxes and legality of assets (income)



Thank You for Attention!

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