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EXTENDED CONFISCATION FROM OPERATION OF A CRIMINAL ASSOCIATION IN CROATIA: REVOLVING THE FIRST DECISION IN THE CASE OF *J. B. AND OTHERS**

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ABSTRACT

Extended confiscation is sui generis measure reintroduced in Croatian Criminal Code in 2006. After a general prohibition of retaining the material gain acquired by criminal offence, the legislator prescribed a legal presumption of illegal material gain entailing a benefit acquired by a group of people or a criminal organization temporally connected with the committed criminal offence and which can reasonably be considered to originate from that offence, because its lawful origin cannot be determined. With the amendments to the Criminal Code from 2008, a broader reach into the offender's assets was enabled, allowing for the confiscation of material gain that can reasonably be considered to originate from other (undetermined) criminal offences, and not only from the offence for which the offender is currently being prosecuted. The reason for reacquaintance of the measure in a contemporary manner was found in the urge to compliance with European standards as Croatia was candidate for the accession to European Union. Additional reason was more effectiveness in combating organized crime. The first case in Croatia including criminal association in which decision on extended confiscation was issued was the case against J. B. and others for association for the commission of criminal

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offences from Article 333 Paras 1 and 3, forgery of documents from Article 311 and fraud from Article 224 Para 4 in connection to Para 1 of the Criminal Code. The aim of the article is to assess legality and fairness of the decision on extended confiscation in convictions of the County Court in Zagreb as well as contribution of the Croatian Supreme Court in achieving the final decision. In addition, particular issues concerning association for the commission of criminal offences are addressed as: assessment of the period of involvement in a criminal association, significance of the organizational awareness and finally individual roles of association members.

Keywords: Criminal association, Criminal offence, Extended confiscation, Material gain, Legal presumption

1. INTRODUCTION

Extended confiscation was as *sui generis* measure reintroduced in Croatian Criminal Code in 2006 by adding special provision to the Article 82 regulating “Confiscation of material gain”.¹ After a general prohibition of retaining the material gain acquired by criminal offence, the legislator prescribed the legal presumption of illegal material gain entailing a benefit acquired by a group of people or a criminal organization temporally connected with the committed criminal offence and which can reasonably be considered to originate from that offence, because its lawful origin cannot be determined.² The original regulation of this institute was criticized in legal theory due to deficiencies in the statutory wording and text.³ Only with the amendments to the Criminal Code in 2008 was it made possible to confiscate assets as material gain presumed to originate from other criminal offences (and not only from the one for which the perpetrator is currently being tried), which was the actual and intended purpose of this institute. The reasons for reacquaintance of the measure in a contemporary manner were found in the urge to compliance with European standards as Croatia was candidate for the accession to European Union since 2004 as well as more effectiveness in combating organized crime.⁴

The first case in Croatia in which decision on extended confiscation included criminal association was issued was the case against *J. B. and others*.⁵ The County Court in Zagreb, acting as the court of first instance, found in judgment K-US-78/09 of 13 December 2011 J. B. and five other accused persons guilty of criminal

¹ Article 13 of Amendments to the Criminal Code, Official Journal, No 71/2006.

² *Ibid.*

³ *Infra* footnote 10.

⁴ In accordance with contemporary international and comparative law trends as stated by Ivičević Karas, E., *Komentar Zakona o postupku oduzimanja imovinske koristi ostvarene kaznenim djelom i prekršajem*, Narodne novine, Zagreb, 2011, p. 8.

⁵ The first judgment ordering extended confiscation was judgement of the County Court in Zagreb VII K-US-27/09 of 3 November 2009 in the case against Z. M., R. V. and Ž. S. for receiving a bribe.

offences against public order; association for the commission of criminal offences from Article 333 Paras 1 and 3, offences against the authenticity of documents; forgery of documents from Article 311 Para 1, and offences against property; fraud from Article 224 Para 4 in connection to Para 1 of the Criminal Code.⁶ Additionally, the sixth accused was found guilty of an offence against the authenticity of documents by producing, acquiring, possessing, selling, or making available instruments for forgery. The factual circumstances of the case included a well-organized criminal association in which all participants carried out their particular roles. Namely, they offered for sale real estate owned by the City of Zagreb: municipal flats, construction land, garages, and buildings during the period from 2005 to 2009, based on forged documentation purportedly issued by the City of Zagreb as the seller. They misrepresented themselves to the injured persons and collected money under the pretense of property purchase payments, issuing false confirmations of payment, thereby unlawfully acquiring material gain, which they distributed among themselves, whereby the first accused J. B. rewarded the others with part of the proceeds.

As a result of conviction, by applying the institute of ordinary confiscation of unlawful material gain under Article 82 Para 1 of the CC/97, the Court confiscated an amount of HRK 4,950,622.90 from the J. B., and further HRK 1,348,486.00 from other convicts.⁷ Applying the institute of extended confiscation under Article 82 Para 3 in conjunction with Para 1 of the CC/97, the Court also confiscated unlawful material gain from other persons – namely, from the children of the first accused J. B.: from her son in the amount of HRK 1,110,406.00 and from her daughter in the amount of HRK 681,401.10. In the reasoning of the first-instance judgment, the Court stated that the convicted persons obtained a total material gain of HRK 26,045,808.00 committing incriminated offences.⁸

The aim of the article is to assess legality and fairness of the decision on extended confiscation in convictions of the County Court in Zagreb as well as contribution of the Croatian Supreme Court in achieving the final decision. In addition, particular issues concerning association for the commission of criminal offences are addressed as: assessment of the period of involvement in a criminal association,

⁶ Criminal Code, Official Journal, No. 110/1997, 27/1998, 50/2000, 129/2000, 51/2001, 111/2003-Decision of the Constitutional Court, 105/2004, 84/2005, 71/2006, 110/2007, 152/2008 and 57/2011, further in the text: CC/97. CC/97 was in Croatia in force until 2013.

⁷ The Croatian kuna with abbreviation HRK was the official monetary currency of the Republic of Croatia from 30 May 1994 to 31 December 2022. The kuna was replaced by the euro on 1 January 2023 after satisfying prerequisites.

⁸ The County Court in Zagreb, Judgement XII K-US-78/09 of 13 December 2011, p. 132.

significance of the organizational awareness and finally individual roles of association members.

2. EXTENDED CONFISCATION

As stated in introduction, Croatian legislator reintroduced extended confiscation in 2006 prescribing the legal presumption of illegal material gain entailing a benefit acquired by a group of people or a criminal organization temporally connected with the committed criminal offence and which can reasonably be considered to originate from that offence, because its lawful origin cannot be determined.⁹ In 2008 new amendments were added to the CC/97 transforming the legal presumption in new directions.¹⁰ As first, unlawfulness of the material gain acquired by criminal offence has been enlarged to the total assets of the perpetrator of criminal offences under the jurisdiction of the Office for the Suppression of Corruption and Organized Crime, unless he makes probable its legal origins.¹¹ As second, extended confiscation was prescribed for the material gain in the possession, on any legal basis, of the perpetrator's spouse or partner, close relative, adoptive parent or adoptee.¹² The current framework for extended confiscation was largely introduced into the Criminal Code in 2011.¹³ Namely, the legislator established a legal presumption for a perpetrator of listed criminal offence(s) who owns or owned property disproportionate to their legitimate income: it is presumed that such

⁹ Sokanović, L., *Extended confiscation in Croatia* in: Hryniewicz-Lach, E. (ed.), *Extended Confiscation of Illicit Assets and the Criminal Law: National and EU Perspective*, Routledge, 2025, p. 23. On EU insufficient competence to legislate, the lack of reliable data that would justify EU legislative activity and the problematic concept of effectiveness in EU legislation in relation to confiscation see: Hryniewicz-Lach, E., *Confiscation of assets in the EU – legal or (just) effective?* Archives of Criminology, Vol. 45, No. 2, 2023, pp. 43-66.

¹⁰ Amendments to the Criminal Code, Article 2, Official Journal, No. 152/2008. On the criticisms of the first solution see Bojanić, I., *Promjene u općem dijelu Kaznenog zakona prema Prijedlogu zakona o izmjenama i dopunama Kaznenog zakona iz 2005.*, Croatian Annual for Criminal Law and Practice, Vol. 12, No. 2, 2005, p. 338, and Pavišić, B.; Pleić, V.; Veić, P., *Komentar Kaznenog zakona*, Narodne novine, Zagreb, 2008, p. 266.

¹¹ Law on the Office for the Suppression of Corruption and Organized Crime, Official Journal, No. 76/2009, 116/2010, 145/2010, 57/2011, 136/2012, 148/2013, 70/2017. The Office is a special state attorney's office, specialized in the prosecution of corruption and organized crime, headquartered in Zagreb, and is competent for the entire territory of the Republic of Croatia.

¹² See Roksandić Vidlička, S.; Dragičević Prtenjača, M., *Does the crime pay off – (in)efficiency of confiscation in Croatia - new proposals for the 60th anniversary*, ECLIC 3 - International Scientific Conference "EU and Member States – legal and economic issues" in: Duić, D.; Petrašević, T. (eds.), University Josip Juraj Strossmayer of Osijek Faculty of Law Osijek, Osijek, Vol. 3, 2019, p. 599.

¹³ Criminal Code, Official Journal, No. 125/2011, 144/2012, 56/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022, 114/2023, 36/2024, 136/2025, further in the text: CC. Currently in force in Croatia.

property constitutes proceeds of crime unless they demonstrate the legitimate origin of the property to be probable (Article 78 Para 2 CC). Extended confiscation can be ordered only for criminal offences under the jurisdiction of the Office for the Suppression of Corruption and Organized Crime, criminal offences of sexual abuse and sexual exploitation of children (Chapter XVII CC) and criminal offences concerning computer systems, programmes and data (Chapter XXV CC).¹⁴ The 2024 Amendments to the Criminal Code prescribed the application of this institute also to the criminal offences of unauthorised manufacture and trafficking of narcotic drugs (Article 190) and unauthorised manufacture and trafficking of substances prohibited in sport (Article 191a) of Chapter XIX CC. The conditions and procedure for confiscation are set out in Article 77 of the Criminal Code, which regulates ordinary confiscation of material gain, and this article also applies to extended confiscation of material gain unless otherwise is prescribed by the provisions governing extended confiscation (Article 78 of the Criminal Code).¹⁵ If material gain originating from a criminal offence have been merged into legitimately acquired property, the entire property shall be subject to confiscation up to the estimated value of the material gain of the offence. The same manner of confiscation and the same *ratio* applies to the material gain generated by property with which the legitimately acquired assets were merged (Article 78 Para 3 CC.). Extended confiscation shall be ordered against a family member of the perpetrator, irrespective of the legal basis on which they possess it and regardless of whether they live in a shared household with the perpetrator (Article 78 Para 4 CC). Extended confiscation shall be ordered against another person irrespective of the legal basis on which it is acquired, unless the person demonstrates acquisition in good faith and at a reasonable price to be probable.¹⁶ Previously quoted provisions from Article 78 Paras 4 and 5 CC suggest that Croatian legislator opted for different conditions for confiscating material gain acquired by family members compared to those for confiscating material gain acquired by other persons. In addition, Criminal Code distinguishes between the conditions for ordinary and extended confiscation of material gain from family members, since in extended confiscation it prescribes an irrebuttable presumption that family members did

¹⁴ Sokanović, L., *op. cit.*, note 9, p. 25. In 2015, only the title of the provision was changed and the criminal offences of sexual abuse and sexual exploitation of children as well as criminal offences relating to computer systems, programmes and data were added as offences for commission of which extended confiscation may be imposed. At the same time, an additional condition was introduced, requiring that any offence within these categories result in material gain as a prerequisite for the application of extended confiscation. Compare Roksandić Vidlička, A.; Šamota Galjer, M., *Political Economic Crime and Extended Confiscation of Pecuniary Gain: Quo vadis Croatia?* Croatian Annual of Criminal Sciences and Practice, Vol. 22, No. 2, 2015, p. 536.

¹⁵ Article 8 of Amendments to the Criminal Code, Official Journal, No 36/2024.

¹⁶ Article 78, para 5 CC.

not acquire the material gain in good faith—a presumption that does not exist in cases of ordinary confiscation.¹⁷ This is because, in ordinary confiscation, Criminal Code does not distinguish at all between confiscation of material gain from family members and from other persons, so family members are equally able to prove their good faith, just like any other persons. Such regulation is in opinion of some Croatian scholars unjustified and has therefore been criticized.¹⁸ If a person against whom criminal proceedings have been instituted dies, the material gain from an unlawful act may be confiscated from their successors (Article 78 Para 6 CC).

Finally, it may be concluded that there are three varieties of extended confiscation in Croatia: conviction-based confiscation (which is based on a conviction and, as such, represents the rule for the application of extended confiscation), non-conviction based confiscation (which, according to the explicit wording of Article 78 Para 6, refers to the situation in the event of the defendant's death, in which the court is unable to render a conviction, and therefore, pursuant to the rules of the Criminal Procedure Act, issues a declaratory judgment establishing that the defendant, who died during the criminal proceedings, obtained material gain through unlawful conduct, which is then confiscated from his successors)¹⁹ and confiscation from other persons (with a differentiation regarding confiscation from family members and other persons different to family members).²⁰

¹⁷ Compare Mrčela, M; Vuletić, I., *Komentar Kaznenog zakona, Opći dio*, Libertin naklada, Rijeka, 2021, pp. 479-480 and Ivičević Karas, E., *Establishing the Pecuniary Gain acquired through a Criminal Offence through the Application of the Gross or the Net Principle regarding the Legal Nature of the (Extended) Confiscation of Pecuniary Gain*, Croatian Annual of Criminal Sciences and Practice, Vol. 17, No. 1, 2010, p. 209.

¹⁸ Martinović I.; Novoselec P., *Komentar Kaznenog zakona, I. knjiga: Opći dio*, Narodne novine, Zagreb, 2019, p. 480.

¹⁹ The regulation of this form of extended confiscation is from substantive perspective incomplete. Namely, the Criminal Code does not provide substantive legal basis for all of the situations in which non-conviction based confiscation procedure can be conducted. In legal theory, this type of confiscation is more often referred to by its procedural equivalent, the “*in rem* procedure”. Substantive legal basis for an *in rem* procedure is expressly prescribed only for extended confiscation, and only in the case of the defendant's death, while procedural criminal law extends the conduct of an *in rem* procedure to cases of permanent incapacity to stand trial and permanent unavailability of the defendant. For more on “*in rem* procedure” see: Tripalo, S., *Croatia and Serbia: A Comparative Overview of the Extended Asset Confiscation Framework*, in Škulić, M.; Jokić, I.; Janković, A. (eds.), *Challenges of International Criminal Law and Criminal Law: Book of Proceedings of the International Scientific Conference*, Vol. 2, International Criminal Law Association – Faculty of Law, Belgrade, 2025, pp. 625-642.

²⁰ Sokanović, L., *op. cit.*, note 9, p. 25. The third variety is in comparative legal systems usually referred to as “confiscation from the third parties”. On non-conviction based confiscation see: Boucht, J., *Non-conviction based confiscation and the second aspect of the presumption of innocence under Article 6(2) ECHR*, New Journal of European Criminal Law, Vol. 16, Issue 4, 2025, pp. 426-448.

It is necessary here to emphasize diversity of terms of substantive and procedural criminal legislation related to confiscation. In cases of ordinary confiscation, the Criminal Code uses the term “the person to whom the gain has been transferred” (Article 77 Para 1) which in fact denotes another person distinct from the defendant. In the context of extended confiscation, Criminal Code uses the notion of “another person” which is divided into family members and all other persons who are not family members (Article 78 Para 4 and 5). On the other hand, the Criminal Procedure Act,²¹ with regard to proceedings for the confiscation, uses the following terms: “person to whom the gain has been transferred” (Article 558 Para 1) and “another person to whom the gain has been transferred” (Article 557.a Para 1b).²² In addition, the Criminal Procedure Act introduces another term: “third person” as a person claiming a right to the material assets that prevents the application of the provisions of Chapter XXVIII *i.e.* “Procedure for confiscation of objects and material gain”. In criminal procedural terminology, a “third person” is not equivalent to a person to whom the gain has been transferred (that is, another person).²³ EU legislation further contributes to the terminological complexity in this area. Namely, Directive on the freezing and confiscation of instrumentalities and proceeds of crime²⁴ as well as Directive on asset recovery and confiscation²⁵ use the term “confiscation from a third party”. Confiscation from a third party in Article 13 of the Directive on asset recovery and confiscation implies: “the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person. The confiscation of proceeds or other property shall be possible where a national court has established, based on the concrete facts and circumstances of a case, that the relevant third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation. Such facts and circumstances include: (a) the transfer or acquisition was carried out free of charge or in exchange for an amount which is clearly disproportionate to the market value of the property; or (b) the property was transferred to closely related parties while

²¹ Criminal Procedural Act, Official Journal, No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 130/20, 80/22, 36/24, 72/25.

²² The term another person to whom the proceeds have been transferred is used also in Article 557.b Para 2, Article 557.d, Article 557.e Paras 4 and 5, Article 557.g Para 3, Article 560 Para 2, Article 560.a Para 5.

²³ Compare Martinović I.; Novoselec P., *op. cit.*, note 18, p. 471.

²⁴ Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, [2014] OJ L 127, pp. 39–50. See Article 6.

²⁵ Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, OJ L, [2024] 2024/1260.

remaining under the effective control of the suspected or accused person.” In conclusion, “a third party” from Directives largely correspond to the Croatian term of another person. Reluctance to use the term “a third party” in case of transfer or acquisition by a suspected or accused person to another person derives from Croatian legal system in which criminal proceeding involve only two parties: prosecutor and perpetrator or the accused.²⁶ All other persons potentially included in the criminal proceedings as victims or injured persons are considered participants, not parties.²⁷ Based on foregoing considerations, and given that this paper analyses confiscation from the defendant’s children, who asserted and demonstrated that they had acquired the property from their father rather than from their mother and thus claiming a right to the property that prevents confiscation, the term “extended confiscation from third persons” will be used in relation to the present case in further text.

2.1. First Instance Ruling on Extended Confiscation from the Children of the First Accused

During the proceedings, the prosecutor - Office for the Suppression of Corruption and Organized Crime - requested the confiscation of property from the children of the first accused J. B., alleging that she had transferred the unlawful material gain acquired through the commission of the incriminated offences to her son and daughter T. and A. B. The County court in Zagreb confiscated in its judgment the material gain from the son T. B. in the amount of HKR 1.110.406,00 and from daughter A. B. in the amount of HKR 681.401,10 which amounts were partly procured by a temporary measure²⁸ and a prohibition of alienation of real estates owned by T. and A. B.²⁹ Specifically, the real estates included three apartments, a house, an office and a field. In the reasoning of the judgment, the Court noted that it has been established in the criminal proceeding that the children of the first accused “could not have acquired property which, whether formally or

²⁶ Tomičić, Z.; Novokmet, A., *Plea Bargaining of Parties in Criminal Procedure – Achievements and Perspectives*, Pravni vjesnik, Vol. 28, No. 3-4, 2012, p. 150. Compare Ivičević Karas, E.; Novokmet, A.; Martinović, I., *Judgment based on agreement of the parties in Croatian law: a critical analysis from the comparative legal perspective*, Pravni vjesnik, Vol. 37, No. 1, 2021, pp. 11-34.

²⁷ Tomašević, G.; Pajčić, M., *Subjects in the Criminal Procedure: The Legal Position of Victim and Injured Person in the New Croatian Criminal Procedure*, Croatian Annual of Criminal Sciences and Practice, Vol. 15, No. 2, 2008, p. 817. See also: Novokmet, A.; Tripalo, D., *Opseg sudske kontrole sporazuma stranaka*, Croatian Annual of Criminal Sciences and Practice, Vol. 28, No. 2, 2021, pp. 211-213.

²⁸ On the issue of temporary measures, see Marušić, V.; Vučko, M.; Kuštan, M., *Confiscation of Proceeds of Crime and Temporary Measures with Special Reference to the Duration of the Measures and Difficulties in Practice*, Croatian Annual of Criminal Sciences and Practice, Vol. 27, No. 2, 2020, pp. 471 – 496.

²⁹ The County Court in Zagreb, Judgement XII K-US-78/09 of 13 December 2011, p. 14.

informally, is registered as their ownership.”³⁰ The Court based this conclusion on the fact that the first accused had no property registered in her name and had obtained significant unlawful gain committing the incriminated offences, making it sole logical that she transferred such gain to her children, who then used the funds to purchase real estates. Furthermore, the Court concluded that the children could not have acted in good faith regarding the origin of the money for buying the properties, considering that their mother was unemployed during the relevant period and had no regular income.³¹ Reversed burden of proof is a distinctive feature of extended confiscation, which is based on a rebuttable legal presumption of illicit origin of the perpetrator’s property and the requirement to demonstrate the legitimate origin to be probable lies with the perpetrator.³² While the prosecutor has to prove disproportionality of assets and legal income to a degree of certainty, a lower standard of proof applies to the perpetrator, who must only demonstrate the legal origin of the assets to be probable.³³ For the family members of the perpetrator, the irrebuttable presumption of *mala fide* in acquiring the assets from the perpetrator is applied, while other person only have to demonstrate acquisition of the relevant assets in good faith and at a reasonable price to be probable.³⁴

The only witness questioned about this issue was V. B., ex-husband of the first accused and father of T. and A. B. In his testimony, he stated that he had transferred his business, initially a sole proprietorship of his company ten years ago to the children, and that the profits from its operations enabled them to purchase real estates, which claim the Court evaluated as unreliable as well as the statement that he used to donate them cash.³⁵ Based on information from the competent tax authority and the Croatian Pension Insurance Institute, the Court established that the business mostly operated at a loss and thus the income from the business was insufficient for the children to purchase properties. The value of the properties was estimated by the competent tax authority at totally HRK 1.781.907,10. Finally, the Court concluded that “T. and A. B. acquired the property in bad faith from

³⁰ *Ibid.*, p. 132. The extended confiscation cases are classified basically as cases in criminal matters, due to their relation to assets derived from criminal activity as stated in Maugeri, A.M., *Regulation (EU) 2018/1805: mutual recognition of freezing and confiscation orders between efficiency and safeguards*, “*Proceedings in criminal matters*” and *non-conviction based confiscation*, New Journal of European Criminal Law, Vol. 15, No. 2, 2024, p. 195.

³¹ *Ibid.*

³² Sokanović, L., *op. cit.*, note 9 p. 28. See also Galiot, M., *Confiscation of Pecuniary Gain in the Context of International Regulations and Combating Bribery*, Collected Papers of the Faculty of Law of the University of Rijeka, Vol. 38, No. 1, 2017, p. 564.

³³ Tripalo, D.; Brđanović, T., *Pecuniary claim, confiscation of pecuniary gain and interim insurance measures*, Legal Academy, Zagreb, 2023, p. 42.

³⁴ *Ibid.*, p. 43.

³⁵ The County Court in Zagreb, Judgement XII K-US-78/09 of 13 December 2011, p. 132.

the assets donated by the first accused” and have committed them to pay HRK 1.781.907,10 to the state budget at the account of illegally acquired property. The same property has been freezed by a temporary measure to secure this payment.

Deciding on the appeal of the parties, the Supreme Court of the Republic of Croatia found that the first-instance court committed a substantial procedural violation due to inconsistencies in the verdict’s ruling.³⁶ Namely, decision on extended confiscation was made without giving the opportunity to the third persons – children of the first accused to participate in the criminal proceedings contrary to the Article 465 of the Criminal Procedural Act.³⁷ Moreover, the children of the first accused were not invited to the hearing, nor was the judgment delivered to them.³⁸ The Court emphasized that the children as third persons had the right to prove legality of origin of their property, the right to participate in the hearing, as well as all other rights resulting from the correct application of Article 471 including the right to appeal the judgement on confiscation.³⁹ Indeed, when extended confiscation is applied against third persons, they have certain rights guaranteed.⁴⁰ In proceedings concerning a predicate offence, a third person is summoned for questioning, to a session of the indictment panel, to a preparatory hearing and to a hearing at trial.⁴¹ But the absence of a correctly summoned third person does not prevent the hearing from being held. The third persons are exempted from the obligation to testify about the method of acquiring the assets. The third person has the right to a representative, to present evidence and to examine the defendant,

³⁶ The Supreme Court of the Republic of Croatia, Ruling I Kž-Us-11/12 of 23 January 2013.

³⁷ Criminal Procedural Act, Official Journal, No. 110/1997, 27/1998, 58/1999, 112/1999, 58/2002, 143/2002, 62/2003 and 115/2006, further in the text: CPC/97.

³⁸ On development of procedural rights see: Vojvoda, N., „Jezgra“ i „periferija“ kaznenog prava u praksi *Europskog suda za ljudska prava*, Croatian Annual of Criminal Sciences and Practice, Vol. 30, No. 1, 2023, pp. 73 – 95.

³⁹ The Supreme Court of the Republic of Croatia, Ruling I Kž-Us-11/12 of 23 January 2013, p. 7. More on some fundamental right problems concerning confiscation, see Kilchling, M., *Beyond Freezing? The EU’s Targeted Sanctions against Russia’s Political and Economic Elites, and their Implementation and Further Tightening in Germany*, Eu crim, Vol. 2, 2022, p. 143.

⁴⁰ For the right of defence see Ivičević Karas, E.; Burić, Z.; Bonačić, M., *The right of defence in different stages of the Croatian criminal procedure: Results of practical studies*, Croatian Annual of Criminal Sciences and Practice, Vol. 23, No. 2, 2016, pp. 509 – 545. See also Hrupec, M., *Confiscation and Extended Confiscation of Pecuniary Gain Acquired through a Criminal offence*, Faculty of Law – University of Zagreb, Zagreb, 2019, pp. 16 – 17, and Pleić, M., *Procedural rights of suspects and accused persons during pretrial detention – impact of detention conditions on efficient exercise of defence rights*, EU and Comparative Law Issues and Challenges Series: EU 2020 – Lessons from the past and solutions for the future in: Duić, D.; Petrašević, T. (eds.), Osijek: Faculty of Law, Josip Juraj Strossmayer University of Osijek, Vol. 4, 2020, pp. 517-523.

⁴¹ Sokanović, L., *op. cit.*, note 9, p. 28.

witness or court expert.⁴² A written judgment must be delivered to the third person, and the third person is entitled to appeal against it.⁴³

Consequently, the Supreme Court annulled the first-instance judgment and remanded the case for retrial. It specifically indicated that the first-instance court failed to consider the subsidiary nature of confiscation of material gain in relation to upheld property claims. The Court instructed the first-instance court to correctly apply procedural rules concerning extended confiscation. Additionally, the Supreme Court directed the first-instance court to rectify the stated deficiencies and to clearly and unequivocally determine the amount of material gain both in ordinary and extended confiscation, also pointing out the issue of overlap between upheld property claims and confiscation of material gain.⁴⁴

2.2. Final Ruling

In the repeated proceedings, the Court acted in accordance with the instructions of the Supreme Court; conducted evidentiary proceedings and heard testimonies of the children of the first accused regarding the origin of their property.⁴⁵ Court found that the children had received the money to purchase the real estates from their father i.e., the ex-husband of the first accused in 2005 or 2006.⁴⁶ The statements provided by V., T. and A. B. were consistent and corroborated, and the son of the first accused presented material evidence.⁴⁷ It was also established that the money provided by their father in 2006 and 2007 for the purchase of property originated from loans, apartment sales, and the operation of the sole proprietorship (later a company). Besides submitted documentation, three key arguments were pointed out by the Court in reasoning of rebuttal of extended confiscation. First, great significance was given to the special dynamics of personal relationships of the first accused family. The Court emphasized that the first accused did not live in the family community in 2005 and 2006, i.e. the period of the acquisition of the real estates which were object of the extended confiscation. Not only that, according to the son of the first accused she has never lived with her children in the family community.⁴⁸ The Court found as particularly impressive and convinc-

⁴² Tripalo, D.; Brđanović, T., *op. cit.*, note 33, p. 45.

⁴³ *Ibid.*

⁴⁴ The Supreme Court of the Republic of Croatia, Ruling I Kž-US-11/12 of 23 January 2013, p. 7.

⁴⁵ The County Court in Zagreb, Judgement 2K-US-6/13 of 27 June 2013.

⁴⁶ *Ibid.*, p. 139.

⁴⁷ On reversed burden of proof see: Hryniewicz-Lach, E., *Evidentiary proceedings in extended confiscation cases: where to draw the line?* ERA Forum, Vol. 26, 2025, pp. 9-11.

⁴⁸ *Ibid.* The same was stated by the daughter of the first accused.

ing part of the testimony of T. B. his statement that the first accused was “only as a woman who gave birth of him, his biological mother”. Having in mind obviously disturbed family relationships, no life logic and probability could suggest that the first accused would donate such amounts of money to her children. Even less probable would be to conclude that she would transfer them illegally acquired assets.⁴⁹ Secondly, from the fact that all real estates were acquired by the children of the first accused in the period between October 2006 and April 2007, while the period of the commission of the crimes of the whole criminal association was from 2005 to April 2009, the Court concluded that the vast majority of the acts described in the indictment were committed after the acquisition of the real estates, thus reducing the probability that J. B. transferred illegal material assets to them to the lowest possible extant.⁵⁰ Finally, the Court held irrelevant whether in the specific case V. B., the ex-husband of the first accused acquired the money donated to his children legally or illegally, after establishing that he had not acquired the money from the first accused and, for that reason, could not be regarded as another person, that is, as a person to whom the first accused had transferred the proceeds of crime. Furthermore, quoting the decision to increase the share capital of V. B. from 1999 by entering its claims for short-term loans recorded in the business books of his company, the Court suggested that V. B. was extracting profit from his company, while relativizing whether it was legally or illegally. The Court concluded that the only relevant is whether the first accused “transferred her unlawfully acquired material assets, obtained solely and exclusively through the criminal offences in this indictment, to her son and daughter.”⁵¹ Therefore, in the repeated proceedings, the Court did not issue a decision on the extended confiscation against the children of the first accused.

All accused as well as the Office for the Suppression of Corruption and Organized Crime lodged appeals against this judgment. The Office for the Suppression of Corruption and Organized Crime appealed against the imposed criminal sanctions against all the accused and the absence of a decision on extended confiscation against the children of the first accused. In its appeal, the Office for the Suppression of Corruption and Organized Crime argued that the documents provided by the children of the first accused did not constitute adequate evidence of the lawfulness of their income. The Supreme Court of the Republic of Croatia dismissed these appeals as unfounded. However, by judgment I Kž-Us-138/13 of 25 January 2016, the Supreme Court amended the contested judgment due to a significant procedural violation concerning the incorrect description of part of the

⁴⁹ *Ibid.*, p. 139.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

facts underlying the charges. Part of the appeal regarding the confiscation decision was assessed as an appeal concerning erroneously established facts and rejected as unfounded, accepting the court's findings. Still, it is important to note that the Supreme Court evaluated part of the first-instance court's reasoning as excessive and another as irrelevant for deciding on extended confiscation from the third persons, while upholding the remaining arguments of the first-instance court as well-founded grounds for rejecting the proposal for such confiscation.⁵² Namely, the first-instance court's thesis that the owners of the companies could have extracted profits in various ways was exaggerated, but it did not compromise the essence of the evidence, according to which V. B. operated as the owner of a trade for a number of years, then converted it into a trading company. When converting the company, he increased the capital, which was followed by a positive audit report. Given that the capital increase was based on the entry of V. B.'s claims for short-term loans to the company, this information, in connection with the multiple loans taken out (some of which were guaranteed by T. B., who continued to repay them after his father's death), but also with the inheritance decisions from which it is evident that V. B.'s mother, regardless of the fact that she did not have any significant income, owned certain real estate, provided an acceptable factual basis for the conclusion about the legality of the income on the basis of which the property whose seizure was proposed under the Office for the Suppression of Corruption and Organized Crime was acquired.⁵³ The argument about the disrupted family relations between the mother, the accused J. B., and her children A. B. and T. B. was regarded inconclusive for the viability of the thesis on which Office's for the Suppression of Corruption and Organized Crime proposal for the confiscation of material assets from third parties was based.⁵⁴

The County Court in Zagreb took in the first instance judgment progressively steps forward in urge to apply newly reinforced institute of extended confiscation in order to fully punish the perpetrators of the criminal offences for which they were found guilty. It included confiscation from the third persons – children of the first accused. As for the family members of the perpetrator, the irrebuttable presumption of *mala fide* in acquiring the assets from the perpetrator was applied, but undisputable mistake was made in failure to observe and apply procedural rights guaranteed to the third persons. They were not summoned to the hearing, nor was the judgement delivered to them. Following the instructions of the Supreme Court of the Republic of Croatia, the County Court in Zagreb paid respect to the procedural guarantees of the third persons and in its second judgement

⁵² The Supreme Court of the Republic of Croatia, Judgment I Kž-Us-138/13 of 25 January 2016.

⁵³ *Ibid.*, p. 24.

⁵⁴ *Ibid.*, p. 25.

refused to issue decision on the extended confiscation from the third persons. In fact, the Court was satisfied that the third persons proved probability of legal origin of their assets. Namely, the assets which were previously object of extended confiscation originated from their father in general and not from their mother, the first accused. So, this important factual circumstance directed the correct application of the law. In the following procedure, the Supreme Court made another active and affirmative role in achieving a legal and fair final decision. Regardless of appeals of the convicts as well as the prosecutor, it upheld decision on rejection of extended confiscation and reasoned its decision meticulously; both factual and legal thus providing its legal obligation to ensure the uniform application of law and equality of all in its application.

3. THE RELATIONSHIP BETWEEN CONFISCATION AND PROPERTY CLAIM OF THE VICTIMS

The first instance court established that J. B. acquired total HRK 20.133.844,00 of the illegal material gain for the sale of city real estate. She rewarded other defendants from that amount. Following that decision, the same court decided to confiscate material gain according to Article 82 Para 1 in the manner that the amount of HRK 4.950.622,90 was confiscated from J. B., and HRK 1.348.486,00 from each remaining defendant, which made a total of HRK 11.693.052. Furthermore, as stated *infra* 2.1, a total of HRK 1.791.807,10 was object of extended confiscation from the third persons. Finally, the Court ordered all defendants to jointly and severally pay the property claims i.e. material compensation to the injured persons.⁵⁵ Precisely, they were ordered to pay the principal in the amount of HRK 12.538.060,00 with the corresponding statutory default interest. But the court made a mistake in adding up the amounts of confiscated gain and awarded property claims. Namely, the sum of the above amounts is HRK 26,022,920.00, so it exceeds the illegal material gain established by the first instance court for almost six million. The mistake made a contradiction in the operative part of the contested judgment and amounted to the significant violation of criminal procedure provisions according to Article 367 Para 1 Item 11 of the CPC/97 resulting in

⁵⁵ In proceedings for criminal offences for which a fine or imprisonment of up to five years is prescribed, the court may not impose a more severe penalty on a defendant who has pleaded guilty and agreed to the type and measure of the proposed penalty and other measures prescribed by criminal law, nor may it impose a different type of penalty or other measures prescribed by criminal law. However, this restriction does not apply only to the measure of confiscation of property benefits. See Martinović, I.; Radić, I., *Priznanje na raspravi i prihvaćanje predloženih kazni i mjera kao oblik sporazuma: Prijedlozi za jačanje uloge suda i osiguranje odgovarajuće obaviještenosti optuženika*, in Bonačić, M. *et al.*, Sustavni pristup modelima konsenzualne pravde u hrvatskom kaznenom postupku: Prijedlozi za rekonstrukciju normativnog okvira, Sveučilište u Zagrebu Pravni fakultet, 2024, p. 77.

wrong and incompletely determined factual situation. Although the defendants' lawyers filed appeals, as well as the Office for the Suppression of Corruption and Organized Crime, the Supreme Court of the Republic of Croatia when examining the contested decision *ex officio* found that the first instance court made the significant violation of criminal procedure provisions.

In the retrial, the County court concluded that it was not possible to unequivocally determine the proportions in which the defendants shared the material gain. The Court concluded that it would entail disproportionate difficulties in exact determination and decided on a free assessment the amounts of material benefit relating to individual defendants according to Article 466 CPC/97.⁵⁶ Taking into account all the circumstances of the actions established and explained in detail in the verdict, the number of actions and injured parties associated with each defendant, the role and significance of each defendant, the court confiscated the material gain according to the following formula: the first defendant retained 50% of the unlawful material gain, and divided the remaining 50% among the other defendants, but not in equal parts.⁵⁷ She gave the sixth accused 50% of the remaining amount, the fourth accused 20%, the fifth accused 20%, the second and third accused 5% each. Appreciating the principle of monetary nominalism, the court expressed the sums in both HRK and Euros and was guided by the middle exchange rate of the Croatian National Bank on the day of the judgment on 20 June 2013.⁵⁸ When deciding on confiscation, the Court previously deducted the amount of the awarded property claims from the total acquired material gain, obliging all defendants, in accordance with the mandatory provision of Article 132 Paras 1 and 2, to jointly and severally pay the awarded amounts to the injured parties listed in the operative part of the judgement. The remaining part of the total amount obtained, however, was confiscated from each defendant as his material gain pursuant to Article 82 Para 1 of the CC/97. Indeed, if the injured person or persons have been awarded material compensation, which by its nature and contents correspond to the material gain, only the gain exceeding the awarded material compensation shall be confiscated, as prescribed for ordinary confiscation.⁵⁹ So, according to legal provisions in Croatia, material compensation has priority over confiscation of a material gain.⁶⁰

The Supreme Court of the Republic of Croatia was satisfied with the reasoning of the method of calculating these amounts. It was considered justified to take

⁵⁶ See Marušić; Vučko; Kuštan, *op. cit.*, note 28, p. 478.

⁵⁷ The County Court in Zagreb, Judgement 2K-US-6/13 of 27 June 2013., p. 137.

⁵⁸ *Ibid.*, p. 138.

⁵⁹ Sokanović, L., *op. cit.*, note 9, p. 24.

⁶⁰ Tripalo, D.; Brđanović, T., *op. cit.*, note 33, p. 6. The same is stated by Hrupec, M., *op. cit.*, note 40, p. 18 and Galiot, *op. cit.*, note 32, p. 564.

into account each defendant's contribution to achieving the group's objectives, as well as the nature and complexity of the activities performed by individual defendants, and the criminal intent and commitment they demonstrated through those activities.⁶¹ But, as the Supreme court reversed the first-instance judgement, the total amount of the confiscated property gain from the first-instance judgment should have been reduced by the sum of the amounts of the property gain from the omitted indents. The same procedure was followed in relation to the material compensation.

4. CRIMINAL ASSOCIATION

The Criminal Code in the Republic of Croatia distinguishes between an agreement to commit a criminal offence and criminal association as crimes against the public order. An agreement to commit a criminal offence from Article 327 is committed by whoever agrees with another to commit a criminal offence for which a prison sentence of more than three years may be imposed by law.⁶² A criminal association from Article 328 Para 4 consists of at least three persons who joined together with the common goal of committing one or more criminal offences, for which a prison sentence of three years or more may be imposed, and which does not include an association consisting of persons accidentally connected for the immediate commission of one criminal offence.⁶³ While a person who organizes or leads a criminal association may be punished by imprisonment from six months to five years, the very participation in the criminal association is punishable by imprisonment even if a person has not yet committed a single crime for the association or if he or she undertakes an action that is not a criminal offence but for which action he or she knows that it contributes to the achievement of the goal of the criminal association, or financially supports or in another way supports the criminal association.

4.1. Period of Involvement in the Association

At the time of commission of the criminal offences for which the perpetrators were convicted, association for the commission of criminal offences was incrimi-

⁶¹ The Supreme Court of the Republic of Croatia, Judgment I Kž-Us-138/13 of 25 January 2016, p. 24.

⁶² See more in Vukušić, I., *Dogovor za počinjenje u kaznenom pravu* in Kurtović Mišić, A. *et al.* (eds.), *Zbornik radova s međunarodnog znanstvenog savjetovanja "Europeizacija kaznenog prava i zaštita ljudskih prava u kaznenom postupku i postupku izvršenja kaznenopravnih sankcija"*, Faculty of Law – University of Split, 2017, pp. 47 – 70.

⁶³ See more in Mušić, A., *Oblici zločinačkog udruživanja u hrvatskom i poredbenom kaznenom zakonodavstvu*, Faculty of Law – University in Zagreb, 2023.

nated in Article 333 Paras 1 and 3 of the CC/97. Para 1 implied criminalization of a person who organizes a group of people or otherwise connects three or more persons in joint action with the aim of committing criminal offences for which the law may impose three years of imprisonment or a more severe punishment. Para 3 incriminated the participation in the group. Unlike the criminal group from Article 333 Paras 1 and 3, CC/97 specifically criminalized organizing as well as leading of criminal organization in Article 333 Para 2 and participation in criminal organization in Article 333 Para 4.

In the judgment following the retrial, the County Court in Zagreb established that the factual part of the incrimination has a so-called preamble in which the participation and role of each of the perpetrators and their joint criminal activity were generally mentioned in the entire period of criminal activity, followed by individual paragraphs in which the particular actions of individual perpetrator related to certain injured parties were specifically noted, and finalized with an overall portrayal of the subdivision of the loot achieved through that overall joint activity.⁶⁴ *Actus reus* was in that way neither unclear nor contradictory, and the generally covered activity of the entire group was then individualized in paragraphs that precisely indicated the period of the specific criminal activity of each individual participant - perpetrator.⁶⁵

Indeed, the preamble states that the first accused falsely presented herself to a large number of citizens interested in purchasing real estate owned by the City of Zagreb as “Jasna”, a highly positioned employee in the City of Zagreb administration with the ability to obtain properties for citizens at below-market prices. The misrepresentation included the period from 2005 to April 2009 and was committed with the intention of acquiring significant unlawful material gain.⁶⁶ Using forged documents, she misrepresented to citizens that they could purchase city-owned properties and, in doing so, received money from them as advance payments for the purchase of these properties, even though she had neither the legal authority nor the ability to provide the promised ownership of the properties.⁶⁷ She participated in creating forged documents of the City of Zagreb, falsely presenting herself as a seller, and handed such documents over to citizens in exchange for money given in advance for the alleged property purchases. To facilitate this, she engaged a male individual who introduced himself as Ivan, and she also involved second accused A. G., third accused K. V., fourth accused M. M., fifth accused M.

⁶⁴ The Supreme Court of the Republic of Croatia, Judgment I Kž-US-138/13 of 25 January 2016, p. 7.

⁶⁵ *Ibid.*

⁶⁶ The County Court in Zagreb, Judgement 2K-US-6/13 of 27 June 2013., p. 2.

⁶⁷ *Ibid.*

D. and sixth accused K. M., who, through their involvement, contacted citizens interested in purchasing property. The sixth accused K.M. had the specific role of collecting information about the properties that were being falsely offered to citizens for purchase.

Criminal associations are certainly not initiated with formal agreements precisely regulating participants, period of involvement and strict terms of committing particular crimes, distribution of roles and a refined reward system.⁶⁸ Therefore, the period of involvement in a criminal association is difficult to exactly determine, but at the same time, it is extremely necessary and important because it is a part of factual basis of the incriminations as well as correct legal designation of a criminal offence. So, only possible solution for the prosecutors in the cases of organized crime is to use, as in this case the preamble in which the participation and role of each of the perpetrators and their joint criminal activity are generally mentioned in the entire period of criminal activity, followed by individual paragraphs in which the particular actions of individual perpetrator related to certain injured parties or victims are specifically noted. Only in this way *actus reus* remains clear and devoid of contradiction.

4.2. Roles of the Association Members

The Court concluded that it was the first accused who misrepresented herself in the contacts with other person: injured persons, intermediaries as well as with third and fifth accused as “J” or “J. D.” and “J. D. V.”, which was the name of a real person employed in the City administration. Based on the content of the supervised telephone conversations with the injured persons and their testimonies and after assessing other evidence, the Court concluded that the first accused was a person at the top of the pyramid structure for committing criminal offences of fraud through the sale of city apartments that were not on the market and forgery of documents (all documentation presenting the sale as real).⁶⁹ The first accused always acted from a position of authority towards members of the group (for example towards G. V., K. M. and M. D. whom she was in daily contact with, controlling and supervising them in that way, giving them specific instructions and orders, taking over the money from them and submitting forged documents). The same position of authority was used towards intermediaries, whom she gave instructions on how to proceed and act, as well as towards the injured persons with whom she personally contacted when they became impatient and untrust-

⁶⁸ On criminal agreement see: Katyal, N. K., *Conspiracy Theory*, The Yale Law Journal, Vol. 112, 2003, pp. 1315-1316.

⁶⁹ The Supreme Court of the Republic of Croatia, Judgment I Kž-Us-138/13 of 25 January 2016, p. 16.

worthy.⁷⁰ The purport of all of these contact reveals the functioning of particular members of the group as well as organized and planned defrauding of citizens.

A. G. and K. V. point out in their appeals that, although they admitted to committing the crimes they were accused of, they were not aware that what they had done was forbidden, nor did they know that they participate in association activities. They maintained that they believed the documentation to be authentic and credible and the business to be a legitimate legal operation. But such claims were in the first-instance judgment justifiably assessed as incredible and unacceptable.⁷¹ The Supreme Court found that many circumstances compromise such claims of A. G. and K. V. Namely, both of them knew that the first defendant was using a false name “J.”, which circumstance empirically implies that these were not transparent transactions. Further, K. V. was presenting herself as “M.” without providing a reasonable and convincing explanation. Both defendants accepted money from the injured parties purportedly on behalf of the City of Zagreb but did not remit those funds to the City authorities, thereby knowingly creating the false impression that they were acting for the City government. They obtained the documentation from the first accused outside the City administration building and immediately delivered it to the injured parties upon receiving the money. This circumstance further undermines the plausibility of their defence. The described procedures, in correlation with the number of actions undertaken and contacts they undertook, not only with the injured parties and mediators, but also with the first defendant and K.M., lead to the only logical and viable conclusion, i.e. that they were well aware of what they were participating in (namely, that it was a case of fraud accompanied by the submission of falsified documentation, and that this organized operation was taking place as part of an association of which they were participants), and that they wanted it.⁷²

M. was also suggesting that the presented evidence does not provide an adequate factual basis for the conclusion that he participated in the association, noting that none of the co-defendants or witnesses know him.⁷³ This was also supported by his poor financial situation, because otherwise he would certainly have had more significant financial benefits. But the first instance court, as well as the Supreme Court noted it was not essential for the commission of the offence from Article 333 Para 3 that M. M. contacted with other defendants or witnesses except with

⁷⁰ *Ibid.*

⁷¹ The County Court in Zagreb, Judgement 2K-US-6/13 of 27 June 2013., p. 130.

⁷² The Supreme Court of the Republic of Croatia, Judgment I Kž-Us-138/13 of 25 January 2016, p. 16.

⁷³ *Ibid.*, p. 17.

the first accused.⁷⁴ By searching the computers found at M. M. files were found in which the second page of the pre-contract form on the purchase and sale of real estate was scanned, which in appearance and content completely matched the pre-contract forms handed over to the injured persons. Neither the first accused nor M. M. explained the origin of such a file.

5. CONCLUSION

The County Court in Zagreb took in the first instance judgment progressively steps forward in urge to apply newly reinforced institute of extended confiscation in order to fully punish the perpetrators of the criminal offences for which they were found guilty. It included confiscation from the third persons – children of the first accused. As for the family members of the perpetrator, the irrebuttable presumption of *mala fide* in acquiring the assets from the perpetrator was applied. But, irrebuttable presumption concerns only assets acquired from the perpetrator. Family members though impeach the right to prove that their assets derive from some other sources other than the perpetrator. In addition, undisputable mistake was made in failure to observe and apply procedural rights guaranteed to the third persons. They were not summoned to the hearing, nor was the judgement delivered to them. Following the instructions of the Supreme Court of the Republic of Croatia, the County Court in Zagreb paid respect to the procedural guarantees of the third persons and in its second judgement refused to issue decision on the extended confiscation from the third persons. In fact, the Court was satisfied that the third persons proved probability of legal origin of their assets. Namely, the assets which were previously object of extended confiscation originated from their father in general and not from their mother, the first accused. So, this important factual circumstance directed the correct application of the law. In the following procedure, the Supreme Court made another active and affirmative role in achieving a legal and fair final decision. Regardless of appeals of the convicts as well as the prosecutor, it upheld decision on rejection of extended confiscation and reasoned its decision meticulously; both factual and legal thus providing its legal obligation to ensure the uniform application of law and equality of all in its application.

In this case, material gain acquired by committing incriminated offences was deprived from the perpetrators partly in awarding the material compensation to the injured persons, partly in applying the measure of confiscation. If the injured person or persons have been awarded material compensation, which by its nature and contents correspond to the material gain, only the gain exceeding the awarded

⁷⁴ *Ibid.*

material compensation shall be confiscated. So, according to legal provisions in Croatia, material compensation has priority over confiscation of a material gain. As it was not possible to unequivocally determine the proportions in which the defendants shared the material gain, the Court lawfully decided on a free assessment the amounts of material gain relating to individual perpetrator.

Criminal associations are certainly not initiated with formal agreements precisely regulating participants, period of involvement and strict terms of committing particular crimes, distribution of roles and a refined reward system. Therefore, the period of involvement in a criminal association is difficult to exactly determine, but at the same time, it is extremely necessary and important because it is a part of factual basis of the incriminations as well as correct legal designation of a criminal offence. So, only possible solution for the prosecutors in the cases of organized crime is to use, as in this case the preamble in which the participation and role of each of the perpetrators and their joint criminal activity are generally mentioned in the entire period of criminal activity, followed by individual paragraphs in which the particular actions of individual perpetrator related to certain injured persons or victims are specifically noted. Only in this way *actus reus* remains clear and devoid of contradiction.

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EU LAW

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3. The Supreme Court of the Republic of Croatia, Ruling I Kž-Us-11/12 of 23 January 2013
4. The Supreme Court of the Republic of Croatia, Judgment I Kž-Us-138/13 of 25 January 2016