Extended Confiscation – *Sui generis* Measure!

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Abstract

Even though it is a theoretical question, determining the juridical nature of a juridical institute is in many situations of practical importance. Even so, when this question is being asked regarding the extended confiscation measure – the answer is not easy to be given. More, it seems that all the problems concerning the juridical regulation of this measure start with the above-mentioned determination of its nature.

The answer to the question why the juridical nature of this institute is so controversial hides within the numerous specific points that characterize this measure, for how debatable this measure is can be best observed when a comparative analysis of national legislations is being made and by observing the different places this institution occupies within their legal systems. In some jurisdictions, like in the case of Romania and Germany, the seizure of propriety measure has the character of a security measure, in others, like Republic of Serbia and Switzerland it is a sui generis measure, in Denmark is regarded as a specific legal consequence of the crime, while the Austrian Criminal Code includes it under supplementary sentences.

The present paper shall make a short analysis of the way "extended confiscation" is being regulated by the Romanian and Serbian legislation.

Being guided by the idea of improving the current legislation, the theory is the one that should exercise a positive influence over the legislator, and while wishing in this way to "encourage" the Rumanian legislator to follow the Serbian one on this matter, the accent shall be put on the juridical nature of this judicial instrument, by trying in this way to justify that such a measure must, within the criminal law, be a sui generis one, for which special norms will be applicable, permitting in this sense and assuring a more severe applicability in a more "painful" mode.

Keywords: *extended confiscation, seizing of goods coming from criminal acts, juridical nature, Republic of Serbia's law concerning seizure of goods coming from criminal acts, New Romanian Criminal Procedure Code, organized crime.*

1. Introduction – short considerations concerning "extended confiscation"

„It is without a doubt that in modern life, and especially in the "world of crime" there are numerous possibilities presented daily to acquire illegal assets. This is especially noticeable in the sphere of organized crime[1], one of the most complex and the

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[1] „Organized crime represents those activities carried out by a group, organized for a long period of time out of three or more persons, that have corruptive liaisons or of any other nature with state's authorities and are predisposed to use violence and other ways of intimidation, having as final purpose to obtain profits and/or power by committing crimes for which the legislation provides punishment

most dangerous kinds of modern crime, whose basic motive of existence is exactly to acquire (illegal) property gain."[2] „Organized crime is a real scourge of our modern society, seeking to expand its area in order to obtain new sources of income."[3] As such, organized criminal groups persevere precisely due to the financial power that they have, and not due to the individuals that they consist of, as the members of these groups are, as a rule, "easily replaceable".

Therefore, the reactions of the traditional systems of criminal justice that, before all, serve to deliver prison sentences for the perpetrators of criminal acts, cannot give the desired results. Besides, conditioned by such a legal reaction, the benefits of criminal acts most often remain at the disposal to their perpetrators after serving their prison sentences, which is *a priori* a sufficient motivation for them to risk their freedom and commit certain "profitable" criminal acts.

For these reasons, „modern countries were forced to focus their legislative activity in the direction of finding and applying new legal instruments and mechanisms that would influence more efficiently the removal of the very motive to engage in organized crime. In other words, in today's condition of the state, the legislative bodies competent for the suppression of crime are more focused on the issue of property gain acquired through criminal acts, which has proven to be a much more efficient manner of combating organized crime and other forms of high financial crime."[4] The hit given to its exponent's wealth, is of course the hardest hit organized crime could receive and as such the success the fight against this social harm is hiding behind this measure of seizure of the person's fortune – the source of their power and "engine" of their criminal activities.

The former penal reaction regarding the illegal acts based on which it was generally acted relating to the material benefices, consisted in fines, seizure of goods by applying assuring measures and seizure of the the crime's object as well as damages reparation caused by the committed crime. Anyway, the sudden rise of the economical crime's number as well as the appearance of new forms of criminality constitutes a major problem for the current social community. Consequently, it become more evident that those penal solutions are not enough anymore, neither complete nor efficient for solving the problem of illegally obtained wealth. Accordingly, finding some special juridical measures on this matter has been considered necessary so that the, illegally obtained goods could be seized in a more extended and intense way.

In this sense by the end of last century and the beginning of this one, in most European countries the tendency to simplify the mechanisms for freezing and seizing the assets was made visible. "Principally the simplification aimed the proving

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with prison of minimum four years, by the group members that have précised and clearly determined assignments." – Darian Rakitovan, Raluca Colojoară, Ligia-Valentina Mirişan, „Organized Crime and Similar Terminological Concepts. A Problem in Defining the Notion of Organized Crime", in *Journal of Eastern-European Criminal Law*, no. 1/2015, Law Faculties of the West University of Timişoara and the University of Pécs, Universul Juridic Publishing House, 2015, p. 179.

[2] Darian Rakitovan, „Extended Confiscation in Romanian Criminal Law", in *International Scientific Conference „Archibald Reiss Days, Tematic Conference Proceedings of International Significance*, Vol. I, Belgrade, Academy of Criminalistics and Police Studies, 2016, p. 306.

[3] Laura Stănilă, „New Fields of Action for Organized Crime: Trafficking in Human Cells, Tissues and Embryos. New Challenges for Romania", in *Suprotstavljanje savremenim oblicima kriminaliteta – analiza stanja, evropski standardi i mere za unapređenje, zbornik radova sa Naučno-stručnog skupa sa međunarodnim učešćem*, Vol. II, Tara, Beograd, Kriminalističko-policijska akademija i Fondacija „Hans Zajdel", 2015, p. 299.

[4] Darian Rakitovan, *op.cit.*., p. 306.

mechanism, by giving up on the proof of certainty in favour of presumptions. At the same time, in this field the burden of proof has been reversed, in the sense that this one will fall back on the one sought out by the action."[5] Therefore, "in the fight against organized crime it was given up on the classic seizing instruments in favour of some more sophisticated ones, like the extended confiscation. (…)"[6]

Of the essence of "extended confiscation" is that the latter is a juridical instrument by means of which goods obtained by means of "criminogenic activities" are being seized, goods that do not fall under the category of those that could be seized through other "common" juridical means. Its field of applicability is larger than the one of the measures through which goods proven to come from crimes are being seized. In this sense, extensive confiscation is applicable on a larger scale and concerns goods thought to resort out of criminogenic activities. By taking this measure the entire financial situation of a suspected person of obtaining the goods through illegal means, is being investigated, offering the possibility that all the goods of criminogenic origin to be confiscated, even in the case where against the person no criminal charges for each criminal act could be carried on. By taking this measure such goods are being seized and returned to their rightful owners or are being handled in any other lawful way.

The use of this measure has in fact a double function: on one hand, it aims the eradication of organized criminality through the direct "attack" over the organized criminal group's financial pillar destabilizing in this way the power conglomerate found in the hands of its leaders, and on the other hand, a restorative function, because by applying the general penal principal of law – that no one can get rich through criminal activities, this measure will assure patrimonial lawfulness that is being disrupted by illegally acquiring the goods.

The most important and essential characteristic of the procedure of seizing goods achieved by criminal activities, "the power" of this measure, consists in the fact that, in comparison with the classical criminal procedure where the accused has the benefit of the doubt, and only the prosecutor has the *onus probandi,* in the case of extended confiscation this obligation could (partially) be transferred to the person against which this procedure is being conducted, and as such in order for the owner of the goods to protect its goods he/she must prove that the prosecutor's allegations are false.

This is the so-called standard of "*reverse proof obligation*". However, this term should not be understood in his literal sense because (usually) it is not about "displacing the burden of proof from the prosecution to the defence the moment a simple assertion is being issued by the prosecution. In the absence of the existence of an evidence for such an assertion, the accused is not obliged to bring prove against it." [7]

Ratio legis for introducing the "reverse" burden of proof is that "in practice is has been established that proving the criminal origin of the perpetrator's propriety is in many cases very difficult, even impossible"[8], and because of this reason in case of the most serious forms of criminality it is necessary for a "lighter" standard of proof to be

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[5] Ioana-Celina Paşca, *Criminalitatea organizată în perspectiva legislaţiilor europene*, Bucureşti, Universul Juridic, 2015, p. 158.

[6] *Ibidem.*

[7] Flaviu Ciopec, *Confiscarea extinsă: între de ce şi cât de mult?,* Editura C. H. Beck, Bucureşti, 2015, p. 51.

[8] Robert Golobinek, „Finansijske istrage i oduzimanje imovine stečene krivičnim djelima", in *Priručnik za pripadnike policije i pravosuđa*, CARPO projekat, Savet Evrope 2007, p. 37.

established, standard that would authorize the state to deprive the "big" perpetrators of their huge financial power.

However, on the other hand, it is clear that, a partial or total invert of the burden of proof (from the prosecutor to the accused), is questionable from the point of view of the protection of fundamental human rights and liberties, because these raise the problem of interference with the right to propriety and negates the general principles established by criminal law – threatens the fundamental right to defence, breaches the right to a fair trial and the presumption to innocence.

On the other hand, one of the most important international institutions that handles with the protection of human rights and liberties, the European Court of Human Rights, has established throughout its jurisprudence[9] that such a change in the burden of proof, does not in itself break the guaranteed fundamental human rights and liberties and that these are protected if the accused is being assured with a fair trial where he has the possibility to overturn the premise of criminogenic provenience sustained by the prosecution.

Several international documents are providing with the legal standards for the reverse burden (the split one), recommending its adaptation to the general procedural norms and juridical principels of national law.

Thus, Art. 12 para. (7) of the Palermo Convention against Transnational Organized Crime and the Protocols thereto states as follows, "States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings."[10]

Art. 5 para. 7 of United Nations Convention against Illicit Traffic in Narcotic, Drugs and Psychotropic Substances from 1988 states that: „ Each Party may consider ensuring that the onus of proof be reversed regarding the lawful origin of alleged proceeds or other property liable to confiscation, to the extent that such action is consistent with the principles of its domestic law and with the nature of the judicial and other proceedings."[11]

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw, 16 May 2005, provides in Art. 3 para. 4 that, "Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law."[12]

Art. 31 para. 8 of the United Nations Convention against Corruption, from New York adopted 31 October 2003, state that: „ States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is

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[9] CEDO cases: *Salabiaku v. France,* Decision of 7 October 1998; *Grayson & Barnham v. United Kingdom*, Decision of 23 September 2008; *Philips v. United Kingdom*, Decision of 12 December 2001.

[10] https://www.unodc.org/documents/middleeastandnorthafrica/organised-crime/UNITED_NATIONS_CONVENTION_AGAINST_TRANSNATIONAL_ORGANIZED_CRIME_AND_THE_PROTOCOLS_THERETO.pdf.

[11] https://www.unodc.org/pdf/convention_1988_en.pdf.

[12] https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=0900001680083 71f.

consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings."[13]

At its turn, the Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, at point 5 of the Preamble suggests that: „... an examination should be made of the possible need for an instrument which, taking into account best practice in the Member States and with due respect for fundamental legal principles, introduces the possibility of mitigating, under criminal, civil or fiscal law, as appropriate, the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime".

Hence, for the "heavy" criminality to be efficiently fought as well as prevented, currently, in most of the democratic states "legal solutions are being developed through which the creation of a new adequate juridical framework is being created in order, for the perpetrators to be deprived of their illegally obtained profits, by respecting the human rights standards"[14]. All these are targeting the discovery, freezing, seizing and confiscating the products that are linked to the crime.

Nonetheless, it is more than clear that in this field there are many big differences between the national legislations. These fundamental differences and particularities are, first the product of the legislator's free choice, concerning the way the confiscation of the product resulted from the criminal act is being solved and the determination of this measure. How different the way this juridical mechanism is being legally legislated can be observed based on the example of two neighbouring countries – Republic of Serbia and Romania, that we took as a model for the current paper.

2. Short observations on the juridical legislation of "extended confiscation" in Republic of Serbia and Romania

On one hand, there is the Serbian criminal justice system.

Because of the real needs and the situation in the country, it was concluded that the classic methods of fighting against criminality were not efficient enough for the problems with which the country is dealing with to be solved, since the democratic changes of 2000. Adopting new regulations concerning the identification, seizing and confiscating goods illegally obtained has become inevitable.

In this sense, by adopting a special law – *Law on seizing goods resulting of crimes* [15], adopted by the Serbian Parliament on 23 October 2008, in force from 4 November 2008, and applicable from 1th of March 2009, a new penal measure, already existing in several other European countries, has been introduced within the Serbian juridical system – *the measure of seizing goods resulting of crimes.*

By adopting this law, the Republic of Serbia has in a reformed way solved the problem of propriety resulting of crimes. The Serbian legislator has not included the measure of "extended confiscation" in the "classical" measure within the Criminal Code, respectively did not regulate it as an "usual" measure of criminal law to which general norms of criminal law are applicable, but has included them as a *sui generis* measure to

[13] http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf.

[14] Oliver Lajić, „Uporedni pregled sistema za istraživanje i oduzimanje imovine stečene kriminalom", in *Zbornik radova Pravnog fakulteta*, vol. 46, no. 2, Novi Sad, Pravni fakultet Novi Sad, 2012, p. 208.

[15] Published in the Republic of Serbia's Official Monitor, No. 97/08.

which certain special rules are applicable. For this reason, next to this new penal measure, the Law concerning the confiscation of goods out of crimes is regulating a special procedure for the Law's implementation is substantially different from the "usual" criminal procedure and that is applied in parallel or after the criminal procedure.

Because initially for the implementation of this specific measure the necessary conditions have not been created and because the Law was introduced without a previous adequate preparation within the legal Serbian system and without such a preparation for the persons responsible for its implementation, in the beginning this juridical mechanism was not, many times, accessed by the Serbian judiciary authorities. This procedure was used in a small number of cases, and their duration was bigger than the one envisaged by law. Another major problem was represented by its ambiguity, inaccuracy and even the existing contradictions within the text of the law conducting to a non-uniform judicial practice concerning its applicability. All this lead to a small number of cases successfully solved. These factor's consequences lead for the law not to reach the desired and accepted results.

Four years after the implementation of the above-mentioned law, on 8th of April 2013 *a new law with the same name*[16] has been adopted. The intention of this law was to improve the applicability of this measure in practice, to rectify the legal deficiencies from the legal text as well as that this *lex specialis* to be harmonized with the newly adopted Criminal Procedure Code (*lex generalis* regarding the Law concerning the confiscation of goods coming out of crimes) and with the modifications of the Criminal Code. The decision to adopt a new law[17] (*hereinafter* ZOIPKD[18]), and not to modify the old one was taken because of the big number of changes brought to the old one, changes that were of a more "technical" character then an essential one.

This law is regulating the conditions, procedures and authority's competences for the discovery, seizure and managing from private or juridical person's goods resulted out of crimes.[19]

ZOIPKD contains 84 article, split in a systematic manner in 6 unities, as follows: 1) general provisions, 2) competent authorities, 3) procedure, 4) managing of the seized goods, 5) international cooperation and 6) transitional and final dispositions.

Based on this law, the propriety that results out of crimes could be seized almost without any restriction. As such, in conformity with ZOIPKD, for this to be applicable it is sufficient that a person was convicted for the execution for any grave crime precisely specified in Art. 2 of the ZOIPKD, that there are circumstances that indicate the fact that the income results from (any) crime, that the obtained material gain exceeded the

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[16] It must be underlined that we agree with the in the doctrine presented opinion that „the name of this law does not correspond in totality with what it regulates, because the confiscation does not refer to goods proven to come out of crimes (what could be done before this Law was adopted as well), but to goods that it was not proven that they were obtained in a legal way" (Đorđe Ignjatović, Milan Škulić, *op. cit.*, p. 388), because if it was sure that those were obtained from crimes, these could be seized by applying the general rules of criminal law, for example, by applying the measure of confiscating the material benefices stipulated in Chapter VII of the Serbian Criminal Code, and there would have been no need for a new legal mechanism to be introduced. As such, we believe the name of the new law to be changed in for example, "*Law on the confiscation of goods resulting out of criminogenic activities*."

[17] Published in the Republic of Serbia's Official Monitor, No. 32/2013

[18] Shortcut taken out of the serbian language, composed out of the first letters of each word composing the name of the Law. (*Zakon o oduzimanju imovine proistekle iz krivičnog dela*).

[19] Art. 1 of the ZOIPKD.

amount of one million five hundred dinars, and that there is an evident difference between the total actives and the legal incomes obtained by the accused.

So, the confiscation procedure of goods resulting out of crimes is, within the Serbian legislation, of a special criminal procedure nature, and the special rules that are applicable to it are significantly derogating from the "classical" rules of criminal procedure.

Concerning the burden of proof, the Serbian legislator has not "totally" inverted it but has decided that in the procedure of seizing goods criminally obtained the burden of proof to be "split" between the parties. In this way, for these procedures, the principle of "split" burden of proof is introduced in the Serbian judicial system, principle that does not create a direct legal presumption of the criminogenic nature of the propriety, but requires a certain activity from the side of the prosecution. We consider this option to be the most suitable one first by taking in account the existence of a real threat that this measure could have for the right to a fair trial and the accused's right to a fair trial and on the other hand the real necessity for the efficient and effective applicability of the procedure for confiscating the goods obtained by means of crimes and the achievement of its scope.

The standard for the "split" proof adopted by the ZOIPKD is characterized by the following:

In conformity with the provisions of Article 43 para. (2) of ZOIPKD, the prosecutor is obliged to present the court with proof on the propriety held by the accused or the collaborator, his legal revenues and the circumstances indicating that there is an evident disproportion between the propriety and the legally obtained revenues. Consequently, the prosecutor's role is to prove the obvious disproportion between the actives detained by the accused and its legitim revenue, these being the primary reason and one of the conditions for the confiscation procedure to be initiated. The prosecution's role in this case is an easier one, as he or she must provide and prove only the gathered evidence concerning the accused's propriety and his or her legitim revenues. Any other ulterior evidence is in favour of the accused. This one has, on the other hand, to succeed to reverse the prosecutor's accusations should offer evidence to justify its property, that he or she is not the owner of the goods the prosecution sustains the contrary and/or to prove that his/her legitim revenue is bigger than as asserted by the prosecution and that the difference between those revenues and the accused's property does not exist or is not as evident as asserted.

As such, a big part of the burden of proof is being transferred to the accused, as the evidence presented by the prosecution could be "incomplete". How big each party's role will be depends on how much evidence is being provided, based on which the instance could determine if the accused's goods resulted or not from criminal activities, respectively based on which the existence or inexistence of a significant disproportion within its propriety could be established, this being *questio facti*, evaluated on a case by case bases. In any case, it is certain that the accused's probational activity has a major influence on the evidentiary concerning the procedure on seizing goods resulted from criminal activity, taking in account that the goods that are not covered by evidence that would prove the legitimacy of their provenience will be considered as goods resulted from criminal acts and will be seized for good.

The solution given by the Romanian New Criminal Code is different[20].

[20] See: Darian Rakitovan, *op.cit.*, p. 306-317.

The *extended confiscation*, as a new institution has been introduced within the Romanian Criminal Code in 2012, after sharp political and public polemics[21], through Law No. 63/2012 for the modification and completion of the Criminal Code and Law No. 286/2009 concerning the Criminal Code[22], modifying in this way the „old" criminal code from 1969 by introducing art. 118[2]. These have implemented within the Romanian national law Art. 3 of the Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property. With some modifications, this criminal law institution is being retained by the Romanian New Criminal Code, in force since 1th of February 2014, currently being regulated under article 112[1].

In conformity with article 108 of the New Criminal Code, extended confiscation is a safety measure together with a) obligation to medical treatment; b) medical confinement; c) interdiction to occupy a public function or exercising a profession and d) special confiscation.

As such, the Romanian legislator has decided to introduce the *extended confiscation* institution within the *"classical" safety measures* of the Criminal Code. This introduction is of great importance, because in this way this juridical mechanism is introduced within the "classical" institutions of criminal law, to which general rules of criminal law are applicable. Consequently, in the Romanian system this measure, in comparison with the Serbian, could not be retroactively applicable. This means in fact that, by applying this measure, goods illegally acquired before 21 April 2012, respectively before the entrance into force of Law 286/2009, when this measure was introduced within the Romanian system, cannot be seized. More, the article of the New Criminal Code regulating the extended confiscation determines a five years' term "before and if necessary, after the commission of the crime"[23] so that the source of the goods acquired by the convicted person is being verified, limiting more in this way the field of this measure's applicability.

As it has been already shown, the Romanian Criminal Code envisages two forms of confiscation as safety measures: *special confiscation* and *extended confiscation*.

Distinctively from the safety measure of the special confiscation, that can be ordered only in case a material benefit of which provenience was established to be of criminal acts, respectively that it has an etiological connection with the act, while by applying the extended confiscation, goods are being seized from the person that has been convicted for certain crimes of a certain kind, goods for which it has not been shown that their provenience is of that crime for which the person was convicted, there was no etiological connection between the crime, the conviction and the goods, but their illegal acquire was proven.

Consequently, the *extended* confiscation of "criminogenic" goods, respectively "their illegal acquisition" is called within the Romanian law, *extended*, because this one is not only applicable to goods for which a judicial judgement was issued establishing that they result from a concrete crime, but other goods belonging to the convicted, for which there is a reasonable assumption that these result from other crimes committed by the

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[21] See: Adrian Neacşu, *Confiscarea extinsa a averilor ilicite. De ce abia acum?*, available at: http://www.juridice.ro/ 155598/confiscarea-extinsa-a-averilor-ilicite-de-ce-abia-acum.html.

[22] Published in the Official Monitor of Romania No. 258 from 19 April 2012.

[23] Art. 112[1] para. (2) lett. a) New Criminal Code.

perpetrator in his "criminal carrier", respectively good for which the convicted has not succeeded to prove their legal provenience.

"After the entering into force of the provisions concerning the extended confiscation, the legal practice was confronted with several legal matters on the transposal into practice of the new regulations in this matter."[24] Because of this, the Romanian Constitutional Court has been addressed several times to solve some exceptions of non-constitutionality of the norms that regulate the extended confiscation. Hereinafter we will present some of the decisions issued by the Constitutional Court of a primordial importance for the legal practice as well as for a better understanding of this measure in the Romanian criminal law.

As we already mentioned, the Romanian legislator has regulated the extended confiscation measure in Tittle IV of the New Criminal Code, named "Safety measures" including it in the "classical" safety measures, that in conformity with Article 2 of the New Criminal Code, together with the punishments and educative measures are in the sphere of criminal law. As such, the extended confiscation is enclosed in the "classical" institutions of criminal law (sanctions – safety measures), to which general rules of criminal law are applicable. For this reason, in the Romanian legal system, this measure is not retroactively applicable (*tempus regit actum*).

„In the decisions[25] delivered in this matter the Constitutional Court held that the norms of Criminal Code on extended confiscation are constitutional insofar they are not applied to acts committed and to assets acquired before the entry in force of Law no. 63/2012 amending and supplementing the Romanian Criminal Code and Law no. 286/2009 on the Criminal Code."[26]

As such, in conformity with article 15 of the Romanian Constitution, where retroactivity of the criminal law is prohibited, the extended confiscation measure can be imposed only to those crimes committed after its entry into force of Law 63/2012 introducing for the first time this measure within criminal law. Explicitly, this measure can be imposed only after 21 of April 2012[27]. This rule applies to the crimes for which conviction is the punishment as well as for the acts from which the goods, object of the extended confiscation, are resulting of.

While regulating the extended confiscation, sharp polemics have been conducted on the necessity of modifying the Romanian Constitution, by abolishing article 44 paras. (8) second Thesis which states that "*the licit character of obtaining the goods is presumed*"

Referring to the right to propriety, the Constitutional Court has considered that, "by definition, based on the content and the extend of its attributes, the right to propriety is limited, being configurated by the legal dispositions that establish the limits under

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[24] Mihai Adrian Hotca, *Câteva repere privind aplicarea dispozi□iilor relative la confiscarea extinsă*, available at: http://www.juridice.ro/377105/cateva-repere-privind-aplicarea-dispozitiilor-relative-la-confiscarea-extinsa.html

[25] *n.a.* Decision No. 356 from 25 June 2014, published Official Monitor of Romania No. 691 of 22 September 2014; Decision No. 11 from 15 January 2015, published Official Monitor of Romania No. 102 from 9 February 2015.

[26] Tudorel Toader, Marieta Safta, „The Constitutionality of Safeguards on Extended Confiscation", in *Journal of Eastern-European Criminal Law*, no. 1/2015, Law Faculties of the West University of Timişoara and the University of Pécs, Universul Juridic Publishing House, 2015, p. 9.

[27] Law No. 63/2012 Published in the Romanian Official Monitor, Part I, No. 258 on 19 April 2012, and in conformity with art. 78 of the Romanian Constitution, in force 3 days after it was published.

which it could be exercised and constitutes the expression of combining the owner's individual interest with the collective or general."[28]

„(…) by establishing that the presumption of the legal character is not an absolute one, as such the relative character of this presumption does not determine that the burden of proof had been overthrown, the *actori incumbit probation* continuing to be applicable, the Constitutional Court will establish the required standard of proof for overthrowing the relative standard of proof.

The Court notices that the legal presumptions, from their proving point of view can be relative (*iuris tantum)* and absolute *(iuris et de iure).* The relative presumptions do not establish categoric truths, that could elude any discussion possibility, of correction or information, being possible to be contended through contrary prove. The absolute presumptions on the other hand, by not admitting the possibility for them to be overcome, create the image of absolute truth, immutable, achieved once and for all and imposed to everyone throughout a legislative pronunciation."[29]

In this sense, by asserting on the law project for the constitutional review, the Constitutional Court has decided that by regulating the presumption of legal obtainment of the wealth does not prevent an investigation on the illicit character of its obtainment, the burden of proof being on the one invoking it.

In case it is being proven that the fortune has been obtained, in whole or in part, illegally, if the legal requirements are fulfilled, confiscation could be imposed for the illegally obtained part.[30] As such, because in the Romanian criminal law, the prosecution has the obligation to reverse the presumption of legal obtainment of goods, "which, even though constitutional, from the probational point of view it will remain a relative presumption *(juris tantum),* showing the opposite being always possible*."* [31]

„In the doctrine it is being shown that the burden of proof in the confiscation field has specific threads, concerning the proof of the specific facts or acts of the nature as those that have drawn the conviction, as such, an "ease" could be observed, and on the other hand, a "division" of the burden of proof, the subject being able to prove the legal character of the goods he or she possesses. The Court maintains though that this "ease" concerns only the proving of the facts or acts that attracted the conviction (…) establishing that the court must be convinced that the goods are a result of criminal activities, not being necessary that a conviction on those facts had been rendered, and in no case, that this "ease" would refer to proving the illicit character of the obtained goods."[32]

„(…) On the standard of proof the Constitutional Court retains that it should not be started from the premise that the presumption of legal obtainment of wealth could be overturned just by evidence, respectively by proving the fact that the goods were obtained by committing an offence. If this would be the case, the extended confiscation

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[28] Decision No. 492 of 21 November 2013, Published in the Romanian Official Monitor No. 54 of 22 January 2014.

[29] Decision No. 356 of 25 june2014, Published in the Romanian Official Monitor No. 691 of 22 September 2014.

[30] Constitutional Court, Decision No. 799/2011 of 17 June 2011, Published in the Romanian Official Monitor No. 440 of 23 June 2011.

[31] Viorel Paşca, *Curs de drept penal. Parte generală*, Ediţia a II-a, Universul Juridic, Bucureşti, 2012, p. 511.

[32] Decision No. 356 of 25 June 2014, Published in the Romanian Official Monitor, No. 691 of 22 September 2014.

would lack its rationality of existence, because, if every criminal act would be proven of which certain goods resulted then it would result to a conviction of the person for such acts, leading to the special confiscation as well, and therefore the extended confiscation would not find its utility anymore. Accordingly, a relative legal presumption, could be overthrown not only through evidence but as well through simple presumptions."[33]

In conclusion in the Romanian criminal law, the extended confiscation is just a safety measure, applicable only to those criminal acts committed and to the goods so obtained after 21 April 2012, the moment Law 63/2012 entered into force, the presumption of legal obtainment of wealth established by the Romanian Constitution to which this measure is referring is not of an absolute character, being able to be overruled through counterprove by the interested party, and the "relaxation" concerning the burden of proof consists of the fact that there is no need for a judgement of conviction for proving the facts and acts of the nature such as those that have drown the a conviction, are of the nature as the facts or acts for which the conviction was entered, being sufficient that the court was convinced that the respective goods resulted out of those criminal activities.

The difference between the "power" this measure has within the Serbian law in comparison with the possibilities offered by it in conformity with the Romanian criminal law, is more than evident.

Considering that the establishment of the measure's juridical nature is the main "at fault" for the limitations of opportunities that the "extended confiscation" could offer, further on we will try to justify that this measure must be (and why it is) a *sui generis* measure within criminal law, for which special norms are applicable, substantially different from the "classical" rules of criminal law, and as such, to "encourage" the Romanian legislator, when it comes to extended confiscation, to follow the Serbian legislator's way, to permit and assure, in practice, the applicability of this measure in a more "painful" and sever way.

3. "Extended confiscation's" juridical nature

Even though determining the juridical nature of this juridical institution seems more of a theoretical question, on many occasions it has proven to be of a great practical importance, and when, this question is being asked concerning the "extended confiscation" it seems that all the problems surround it start with determining its juridical nature.

In our opinion, this measure must be prescribed as a *sui generis* measure of criminal law, because by establishing it, specific juridical norms that fall outside the classical and ridged assumptions of criminal law, have proven to have been essential in practice for an efficient combat of severe crimes, can be applicable. We are referring here first at its possible retroactive application and secondly at the possibility to establish a special probational standard with the process of its application.

To justify this point of view, first it must be clarified that, because of its particularities and scope desired to be achieved by the measure's application, it cannot be assimilated with the criminal sanctions or with other legal measures, with which it

[33] Decision No. 356 of 25th of June 2014, Published in the Official Monitor of Romania, No. 691 of 22 September 2014.

has, of course, some similitudes. Unfortunately, in some national legislations this happens and very often this measure is being classified as a penal sanction.

The crime and generally criminality, is a behaviour that inflicts the society and to the individual a greater harm. For the joint and individual values to be protected, the society must respond, concerning this negative behaviours, through adequate measures, that will combat and prevent the commission of such criminal acts. The measures that need to be applied to perpetrators or other persons that have committed acts provided by criminal law are known in criminal law as, *penal sanctions*.

Penal sanctions are, as indicated above, penal measures imposed by the court after the criminal process was finalized, on criminals or person that have committed an act provided by the criminal law. Through these, by being imposed on persons or forcibly executed, some are deprived of or certain rights are restrained.

Penal sanctions "represent a fundamental institution of criminal law. Without them penal law would be an unfinished *chef-d-oeuvre*, a regulation that would have no sense, voided of any finality. The penal sanction is the one that distinguishes, from the formal point of view, the penal illicit from any other juridical illicit. "[34]

Their final and unique scope is – the protection against criminality. As such, the dispositions of article 4 paragraph 2 of the Serbian Criminal Code states that the general scope for the prevention and the prescribed penal sanctions is to suppress the acts that infringe or endanger the by the penal legislation protected values (this nomenclature through which dispositions are introduced that exclusively refer to the general or specific scope of the penal sanctions is not to be found in the Romanian Criminal Code).

Next to this mutual objective these have other specific objectives, depending on the type of the penal sanction.

The sanctioning system established by the Romanian penal legislation consists of: punishments (New Criminal Code Title III), safety measures (New Criminal Code Title IV) and educative measures (New Criminal Code Title V)

The Serbian sanctioning system consists out of these three juridical institutions as well. The Punishments are envisaged by Title IV of the Serbian Criminal Code and the safety measures in Title VI, while part II of the Code on underanged delinquents and the penal protection of minors[35], regulate the educative measures. In any case, the Serbian penal sanctioning system is a little bit more ample comprising next to the three juridical institutions in Title V of the Serbian Criminal Code, warning measures (in the Romanian New Criminal Code the measures that in penal law are defined as penal sanctions being envisaged in Chapter V "Individualisation of the punishment" Section 3, "Renunciation of sentence infliction").

Hereinafter, each of these sanctions and measures will be shortly presented, by emphasising on their special scope, taking in account that, their juridical nature and their place within the penal law system could be determined in function of the scope desired to be achieved through their disposal, while taking in account their other characteristics. At the same time, we are aware that the juridical nature of the penal sanctions and measures, as well as their place in the national legislative systematization varies in function of the respective country's juridical system, of its specific needs, time, circumstances and conditions of their appearance as well as out of the political will for

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[34] Viorel Paşca, *op. cit.*, p. 401.

[35] *Zakona o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica*, Published in the Republic of Serbia's Official Monitor, no. 85/2005.

their introduction, even though the scope wished to be attaint by most of the countries is very similar. That is why, taking this initial base in account we will try to prove the fact that the "extended confiscation's" classification within any penal sanctions is not adequate and that it cannot be identified with any other measure within the penal law.

"The punishments are the main category of penal sanctions with autonomous character, being able to be applied as unique sanctions, with a coercion and re-education function, being conditional upon their applicability of the perpetrator's guilt."[36]

As the fundamental and main penal sanction by adapting it to the country's state and concrete needs, the punishments are stipulated by all juridical systems.

The Serbian penal code expressly stipulates in article 42 the punishments' specific functions: "Within the general scope of the penal sanctions (article 4 paragraph (2) of the Penal Code), the punishments' scope is: 1) the prevention of the perpetrator from the commission of criminal acts and its influence over him or her to abstain from committing the offences; 2) its influence over others not to commit offences; 3) the expression of the social judgement for the commission of the crimes, moral consolidation and the consolidation of the respect for rule of law".

From the above mentioned the following, clear conclusions, concerning punishments could be drawn. These have "a repressive character as well (prevention of the perpetrator to commit crimes), as well as a preventive character, concerning the specific prevention directed towards the perpetrator for him to abstain from committing crimes (influence over the perpetrator not to commit crimes), as well as concerning the general prevention, meaning the influence it could have over other potential criminals for them to abstain from committing crimes (stating the social condemnation for criminal crimes, moral consolidation and the consolidation of the respect for rule of law)"[37]

It is certain that the main scope of punishments is the repressive one and is realized towards the person that committed the crime, by taking away or restricting some rights, creating a suffering for him or her as a repercussion of the committed offences. Taking these characteristics in account, even though similar with the ones of the punishments we cannot agree with the alignment of the extended confiscation measure with the former because of its character. The latter is not part of such a category because its scope is not to punish. The extended confiscation has first a retributing character consisting of re-establishing the disrupted equilibria of the propriety and to ensure in this way the "material lawfulness". Because of the illicit origin, the goods seized through this measure do not belong to the person (in comparison with for example, fines, through which the wealth, in legal propriety of the perpetrator is shrunken). For this, the repressive character of confiscation cannot be sustained.

On the other hand, like punishments, the extended confiscation measure has a preventive character. Nevertheless, the message sent by this measure to the potential crimes is of a different kind then the one of punishments. While the punishment sends the message that any person that commits a crime will be punished in an adequate way by being deprived of liberty or the interdiction of exercising certain rights, the extended confiscation measure transmits that, through criminality no one can nor will get rich, even in the case when they decide to scarify their liberty to have material gain, because this would be useless, because all the goods illegally obtained will be seized in the end.

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[36] Viorel Paşca, *op. cit.*, p. 402.

[37] Miroslav Đorđević, Đorđe Đorđević, *Krivično pravo sa osnovama privrednoprestupnog i prekršajnog prava*, *šesto izmenjeno i dopunjeno izdanje*, Beograd, Projuris, 2012, p. 90.

Next to the scope desired to be attaint by their establishment, between punishments and the extended confiscation there are other important differences that are linked to the conditions and the procedures through which these are taken. As such, for example, in conformity with the generally accepted penal law norms, the punishment can be applied only for the direct perpetrator for the by law established crimes, based on judgements rendered after a lawful criminal procedure. On the other hand, the measure in discussion is not exclusively bounded to the perpetrator, but it could be extended over his or her legal successors, the condemned inheritors and third parties.

Even though, establishing the perpetrator's guilt is a necessary condition for this measure to be imposed, this is not the "central problem", because in this case, the accent is put on the author's propriety and its interrogation. More, in almost all the penal justice systems, the punishment is being imposed when the criminal trial is finished, while on the other hand, concerning the extended confiscation, no international document envisages that the measure needs to be imposed exclusively in a strict criminal procedure, and a comparative analysis of the national legislations show very clearly that it could be imposed in the case of special procedures to which different rules then the classical criminal procedure are applicable. A good example for this is exactly the ZOIPKD of the Republic of Serbia.

From the above mentioned, it can be clearly concluded that the extended confiscation measure of goods cannot in no case be classified in the punishment mainframe, and because of this there is no need for a more detailed explanation concerning the differences between the two.

The advisory measures are those types of penal sanctions within Serbia's penal law, that, in the by law alleged conditions could replace the punishment. The Serbian Criminal Code envisages two advisory measures, respectively: the suspended sentence and the judicial admonition. In the case of the general scope of penal sanctions (article 4 para (2) Serbian Penal Code) the scope of suspended punishment and judicial admonition is that concerning the perpetrator of the crime of a lesser gravity the punishment will not be applied when it could expected that the threat with punishment (suspended) or just an advisory (judicial admonition) would have a sufficient effect on the perpetrator not to commit other crimes".[38]

A such, it could be said that the advisory measures are some sort of "lighter punishments", and everything that was said before for punishments can be referred to these measures as well. In other words, because of all reasons for which the extended confiscation measure cannot be considered a punishment it cannot be classified as an advisory measure either.

"The *educative measures* are as well autonomous penal measures, that, next to some sort of a coercive function have mainly and preponderantly an educative function, being applicable only to minors that can bear criminal responsibility".[39]

The law concerning minor delinquents and penal protection of minors specify within its dispositions which is the scope of the penal sanctions it regulates. A such, article 10 envisages that: within the general scope of penal sanctions (article 4 of the Criminal Code of the Republic of Serbia), the scope of the penal sanctions for minors is that, through control, protection and assistance, as well as assured professional and

[38] Art. 64 para. (2) Criminal Code of the Republic of Serbia.

[39] Miroslav Đorđević, Đorđe Đorđević, *op. cit.*, p. 90.

general preparation, the education and adequate development of the minor's personality to be influenced in order for the minors to be reintegrated within the community.

It is certain that the extended confiscation cannot be put in the "same basket" with educative measures.

In the end, we arrived to the penal sanction of *safety measure* with which the extended confiscation measure has the most in common in many legislations where it is encompassed, including in the Romanian.

Serbian Criminal Code presents in article 79 paragraph (1) the safety measures:

1) compulsory psychiatric treatment and confinement in a medical institution;
2) compulsory psychiatric treatment while at liberty;
3) compulsory drug addiction treatment;
4) compulsory alcohol addiction treatment;
5) prohibition from practising a profession, activity or duty;
6) prohibition to operate a motor vehicle;
7) confiscation of objects; 8) expulsion of a foreign nationals from the country;
9) publication of the judgement;
10) restraining orders prohibiting physical proximity and communication with aggrieved parties;
11) bans on attending specific sports events.

In conformity with the same articles paragraph (2) provisions state that "under the conditions prescribed by this Code, certain security measures may be imposed on a mentally incompetent person who committed unlawful act provided by law as a criminal offence" act envisaged by the criminal law he or she could not be aware of his acts or he or she could not control them" measures like compulsory, Obligation to psychiatric treatment and confinement in a medical institution and compulsory psychiatric treatment while at liberty, which could be taken independently and together with these, Prohibition from practising a profession, activity or duty; Prohibition to operate a motor vehicle; and Confiscation of objects[40].

In conformity with the provisions of article 108 of the Romanian New Criminal Code the safety measures are:

a) obligation to medical treatment
b) medical confinement;
c) interdiction to occupy a function or exercising a profession;
d) special confiscation;
e) extended confiscation.

"Within the general purpose of criminal sanctions (Art. 4 parag. (2) Criminal Code of the Republic of Serbia), the purpose of security measures is to eliminate circumstances or conditions that may have influence on an offender committing criminal offences in future"[41]

Different from the nomenclature used by other penal sanctions, the Romanian Criminal Code expressively envisages the scope of the safety measures:

„(1) The safety measures have as purpose to eliminate a state of danger and the prevention for the commission of other acts as envisaged by the penal law.

(2) The safety measure can be taken by a person that has committed an unjustified act envisaged by the penal law.

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[40] Art. 80 para. (2) Criminal Code of the Republic of Serbia.
[41] Art. 78 Criminal Code of the Republic of Serbia.

(3) The safety measures can be taken against a person against whom no punishment was applied"

Accordingly, these are a special kind of penal sanctions with a purely preventive character and can be imposed on criminally responsible persons as well as on those irresponsible.

"The safety measures have been conceived by the penal doctrine and foreseen by the lawmaker as a supplementary fighting mechanism against crime and are applicable next to and in complementary with the punishments and educative measures. The fact that these are applicable without the need of a punishment or educative measures to be imposed as well, does not negate their character as a supplementary measure, replacing in these cases the punishments that cannot be imposed because the act envisaged by the criminal law does not meet the constitutive elements of a crime."[42]

Their main scope is to eliminate the danger of crime commission, respectively to eliminate all the causes that brought to the commission of the crime, of the by the criminal law envisaged act. Hence, their main scope is to ensure the special prevention, the individual one.

Albeit, the accomplishment of the special prevention is one of the extended confiscation's objectives, in this case it's about a secondary one and not a primary. Therefore, the extended confiscation measure is different from the safety measures because of its primary and fundamental scope it wishes to achieve.

More, the measure of seizing goods originated out of offences "does not have one of the main characteristics of a penal sanction – the material content, so that by its application some rights and liberties of the perpetrator would be impaired; when the perpetrator's, by the committed offence obtained goods are seized, he or she is not impaired or restricted of its rights."[43].

An important difference consists in the fact that this measure "can be imposed to a person that was not engaged in the commission of the criminal offence, not possible in the case of other penal sanctions"[44].

For these reasons, we consider that the extended confiscation measure has significantly different main characteristics from the general ones of the safety measures, and that the differences between them are too big and as such, the extended confiscation must not and cannot be classified as a safety measure.

Conclusions

It is well known that each country has its own criminal justice system, adopted to the needs of the country, and accordingly the determination of the place of this institute at a universal, respectively general level is not "recommended"

Nonetheless, generally analysed, irrespective of the way the penal justice system is conceived, identifying the extended confiscation sanction with other sanctions or already existent penal measures, respectively its classification in one of the existing groups is not a good solution. We base our opinion on the several features that characterise this special measure regarding all the other penal law institutions, analysed

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[42] Miroslav Đorđević, Đorđe Đorđević, *op. cit.*, 90.

[43] Ljubiša Lazarević, *Komentar Krivičnog zakonika RS*, Beograd, Savremena administracija, 2006, p. 286.

[44] *ibidem.*

above, on the special scope aimed to be achieved, and first of all on its objective – to rebut the grievous patrimonial criminality.

„The expansion of international crime, especially organized crime, is a perpetual scourge that affects most of the world states and concerns the international public opinion."[45] The fact that the fight against the grievous forms of criminality, especially of the organised one, cannot be carried through conventional measure of criminal law used in the fight against "classical" criminality, is incontestable, and that for this to succeed, special measures must be applied for which special norms exists.

In this sense the "power" and exceptionality of the special measure lies with this divergence from the "common" criminal procedural rules and from the fundamental principles of criminal law.

Classifying the special confiscation measure in the "traditional" penal measures category hinders the possibility that by its disposal some special rules are applied, making the existence of the special measures meaningless.

When we concretely discuss about the extended confiscation measure, its "power" relies on its possibility to circumvent the evidence's strict form, applicable to a penal procedure and to circumvent the principle of nonretroactivity in criminal law. It is clear, that these avoids could not be achieved in case the measure would be classified within the "common" penal law institutions, like in Romanian law, where the extended confiscation measure is classified under the "common" safety measures.

We are of the opinion that the two possibilities offered by the "extended confiscation" measure in the Serbian legal system is of great importance for the fight against organised forms and other forms of grievous criminality. For this reasons we believe that each democratic country affected by this social harm in a way or another, should in any case find a modality to define this measure as a *sui generis* criminal law measure and in this way to include it within the national penal system. Hereby, the countries could, on this matter, profit of all the possibilities offered by the adopted and ratified international instruments.

Which legislative technic for the regulation of this measure will be used, if it would be regulated within an already existing *lex generalis*, or a new *lex specialis* will be adopted, totally dedicated to this measure, or the norms regulating it will be included both in a *lex generalis* and in a *lex specialis*, is left at the free choice of the country.

In the legislation of Republic of Serbia the seizure of goods resulting out of criminal acts is regulated by a complete and special law – ZOIPKD. Accordingly, this was not embedded in some of the already existing general rules of penal law of this country (like the Criminal Code, that regulates the penal sanction system and other penal measures or in the Procedural Criminal Code). Nonetheless this mnemotechnic has caused some nebulosity in the Serbian doctrine. Hence "a doubt appears if the legislator's intention was to define the measure of seizing the goods resulting of crimes as a procedural institute or as a material penal law institute that is inevitably accompanied by procedural dispositions."[46] Škulić underlines the fact that it is about a "legal mechanism pretty "slippery", for which it is not very clear if it belongs in a dominant way to the

[45] Magdalena Roibu, „Organized Crime in the United States and its Modern Challenges", in *Journal of Eastern-European Criminal Law*, no. 1/2015, Law Faculties of the West University of Timişoara and the University of Pécs, Universul Juridic Publishing House, 2015, p. 88.

[46] Aleksandar Trešnjev, „O radnoj verziji Nacrta Zakona o oduzimanju imovine proistekle iz krivičnog dela", in *Revija za bezbednost*, no. 7/2008, p. 21.

sphere of criminal material law or the procedural one (…). Not contesting that the classical penal measure of seizing the material gain (envisaged in Chapter VII of the Serbian Criminal Code) is not a penal sanction, neither can the confiscation of goods resulted out of criminal offences be considered as a penal sanction, therewith, it could not be contested that the dispositions of this law represents a mixture of material penal law and procedural criminal law, though which only the definitive seizure of propriety, achieved under certain conditions, could have the character of a material penal measure, irrespective of the fact that it is formally regulated by the dispositions of the Criminal Code, our main material law source."[47].

Nonetheless, even though regulating the seizure of goods resulting of crimes ("extended confiscation) within the Criminal Code would facilitate the elimination of the existing theoretical issue, would consolidate its position with the country's juridical system, we believe this would create a series of contradictions in relation with the fundamental principles of criminal law.

On the other hand, relating to the field of the norms of criminal procedure that regulate the procedure by which the measure of confiscating the goods resulting of crimes/extended confiscation, we are of the opinion that it would have been difficult to regulate them in the Criminal Procedural Code, because of numerous differences mentioned above, between the procedural of its enactment and the classical criminal procedure, for the reason that in this way a series of exceptions, applicable only to this measure would have been implemented within the Criminal Procedural Code.

For these reasons, we believe that regulating it within a special law while referring, in case of lack of special dispositions, to the Criminal Procedural Code as *lex specialis,* would be a more optimal solution

At the same time, it must be underlined the fact that we are not of the opinion that the Serbian law – ZOIPKD is a perfect one, and we do not suggest its complete take over, we are just supporting the idea on which this law is based upon. All in all, even in the case when all this law's deficiencies would be corrected, we are not sure that such a law would be totally adequate for Romania, by taking in account the general social conditions, the juridical opinions and the country's juridical tradition. Nevertheless, without any reservations we consider that the idea that the "extended confiscation" to be defined as a *sui generis* measure and as such to be regulated by a special penal law (*lex specialis*), is a very good one, because only in this way its retroactive applicability would be assured as well as the applicability of the "split/divided" burden of proof, all together offering a good base for a successful fight against organized crime.

On the other hand, irrespective of the way the national legislator has decided to implement the extended confiscation within its juridical system, it is important this not to be seen as a special distinctive and new penal measure, but it must be regarded as part of the complete mechanism against grievous crimes. "The legislation on organized crime must be a complete and well organized set of norms conceived out of different branches of law, penal material law of course, as well as of criminal procedural law rules, administrative law, norms on the instance's organisation and governmental organisms, norms on penal sanctions and fiscal law, and so on and so forth."[48]

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[47] Milan Škulić, *Organizovani kriminalitet – Pojam, pojavni oblici krivična dela i krivični postupak*, Beograd, Službeni glasnik, 2015, p. 612.

[48] Michele Papa, Introduction in: Robert Sepi, et al., *Borba protiv organizovanog kriminala u Srbiji: od postojećeg zakonodavstva do sveobuhvatnog predloga reforme*, UNICRI, Beograd, 2008., p. 26.

Finally, we would like to underling the fact that, even though, extended confiscation is an extremely "preferable instrument, through which (partial) reparation justice could be achieved"[49], care must be taken this institute not to be abused, because, it could happen that out of a "preferable mean for fighting against and controlling criminality, it would degenerate in a phenomenon that becomes scope and justification itself." [50]

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[49] Oliver Lajić, „Ima li alternativu oduzimanje imovine stečene kriminalom koje se sprovodi u krivičnom postupku?" in *Zbornik radova Pravnog fakulteta*, vol. 47, no. 2, Novi Sad, p. 345.

[50] *ibidem*, p. 346.

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