

CONFISCATION OF CRIMINAL PROCEEDS THROUGH CRIMINAL LAW

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Abstract: This article presents a critical analysis of the Czech system of criminal sanctions targeting ownership. It addresses the deprivation of assets derived from criminal activity in a broader sense, that is, not only in terms of forfeiture or seizure, but as encompassing any transfer of assets from the offender to the state, including, for example, through the imposition of a monetary penalty. The system of such sanctions comprises both penalties and protective measures, namely the penalties of forfeiture of assets, monetary penalty, and forfeiture of things, as well as the protective measures of seizure of things and seizure of part of the assets. In particular, the regulation of the monetary penalty has recently undergone a fundamental transformation, one that is likely to give rise to substantial developments in the future. The author evaluates the Czech legal framework and its practical application from the perspective of effectiveness and proportionality, as these two values are decisive for the fulfilment of the fundamental functions of criminal law and for the administration of criminal justice in accordance with the concept of human rights and the principle of humanism. Further, in its *de lege ferenda* assessment, the article refers to a broad range of foreign legal systems.

Keywords: confiscation; property penalties; property criminal sanctions; extended confiscation; forfeiture of assets; forfeiture of things; monetary penalty; seizure of things; seizure of part of the assets

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1. INTRODUCTION TO THE SUBJECT OF ENQUIRY

The confiscation of proceeds derived from criminal activity has, by now, become a relatively well-established topic within contemporary discourse. The present text approaches this issue in a broader sense, encompassing not only confiscation in the strict sense of forfeiture or seizure, but also other legal mechanisms by which assets are transferred from the offender to the state, including, for instance, the imposition of a monetary penalty. In Czech legal terminology, this phenomenon is expressed by the relatively expansive notion of the “draining” or “extraction” of proceeds (in Czech “*odčerpávání výnosů*”), a term for which no direct and fully equivalent expression exists in English legal usage. Any benefit derived from property acquired through criminal activity, regardless of the nature of such activity, is contrary to the principle of justice. Illegally acquired funds create an imbalance in society, particularly by disrupting

economic relations. The issue of criminal proceeds is of particular importance for the investigation and prosecution of organised crime. In particular, the identification and confiscation of criminal proceeds plays a fundamental role in establishing criminal liability in cases involving mafia-type groups and terrorist organisations.

Criminal groups often respond to the confiscation of criminal proceeds through activities referred to in international expert discourse as money laundering. In the Czech and Slovak contexts, the incorrect term “legalisation of proceeds of crime” has traditionally been used. Money laundering thus represents a kind of counterpoint to the instruments used for the confiscation of criminal proceeds.

The recognition of the importance of money laundering for the continued existence of criminal activity historically led to the adoption of legislation aimed at combatting money laundering. The confiscation of criminal proceeds traditionally takes place in the course of criminal proceedings, that is, through criminal sanctions. In professional discussions, the idea is increasingly emerging that confiscation should also occur through non-criminal legal means, or through instruments within criminal law which nevertheless undermine certain traditional principles of criminal procedure, in particular those relating to the standard of proof.¹ This trend has recently been reinforced by European legislation on asset recovery and confiscation, which, in the context of organised criminal activity, refers to the confiscation of unexplained wealth, in which the link between proven criminal conduct and the imposition of asset confiscation is weakened.² Nonetheless, the link between the ongoing criminal proceedings and confiscation is still maintained.

Although confiscation of proceeds derived from criminal activity without a link to ongoing criminal proceedings is relatively rare, it can be found both in Anglo-American legal culture and on the European continent. For example, the concept of “civil forfeiture” exists in the United States, while Italy recognises the concept of preventive confiscation within its anti-mafia legislation. Whereas regulation in the United States is dispersed across a number of statutory instruments, Italian regulation is focussed within the “Anti-Mafia Code” (*Codice delle leggi antimafia e delle misure di prevenzione*), a body of law whose origins date back to the early 1980s.³ Both regulatory frameworks share the characteristic that confiscation may be imposed irrespective of whether criminal proceedings are pending.

In the United States, assets are seized within the framework known as civil forfeiture by specialised law enforcement authorities, such as the DEA in cases of serious drug related crime or the FBI in cases of large scale fraud. For such seizure to take place, a probable cause must exist. If the interested party does not lodge an objection to such a measure (which is not the case in the majority of instances), the assets are forfeited to the state. If an objection is filed, the assets may be seized only in subsequent judicial

¹ For a discussion of these possibilities in the Czech Republic, see VONDROUŠKA, F. – ZÁRUBA, J. – TREŠLOVÁ, L. *Odčerpávání majetku pocházejícího z nelegitímních zdrojů mimotrestními prostředky* [Confiscation of Assets Derived from Illegitimate Sources Through Non-Criminal Means]. Prague: Scientia, 2010.

² This concerns Article 16 of Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation, which is to be implemented by 23 November 2026.

³ This article reflects the state of Czech law as of 15 April 2026.

(civil) proceedings, which, unlike criminal proceedings, are not conducted against a person (*in personam*), but against the property itself (*in rem*). What is not established is the guilt of the person, but rather the “guilt” of the asset. In Italy, so-called preventive proceedings are likewise conducted by law-enforcement authorities; however, confiscation may occur only on the basis of a judicial decision. In both countries, the standard of proof resembles that applied in civil proceedings and is thus lower than the standard required in criminal proceedings. Although in Italy the range of assets to which preventive confiscation may apply has been progressively expanding,⁴ in the United States the link to the commission of criminal activity may be considerably looser,⁵ and contesting such confiscation is very difficult for the interested party.⁶

In the Czech Republic, no comparable form of non-criminal confiscation of proceeds of crime exists, and Czech laws (as in the case in the majority of European states) are limited to the confiscation of proceeds of crime in the course of criminal proceedings. Some authors perceive regulation relating to the proof of the origin of assets as such an instrument.⁷ That regulation, however, is of a different nature, as it constitutes a limited tool serving primarily the fight against tax crime, namely through the taxation of unproven income or the imposition of a tax sanction (penalty) within tax proceedings.⁸

Despite these tendencies, I am of the opinion that the core of the confiscation of proceeds derived from criminal activity will always lie within the domain of criminal law. This is because it is dependent on the success of law enforcement authorities in tracing and proving the origin of assets derived from criminal activity.

The subject of my research is Czech criminal-law property sanctions⁹ whose purpose is, *inter alia*, the confiscation of proceeds of crime, including not only direct proceeds [Section 135b(2) of the Czech Criminal Code, (hereafter also “Czech CC”)], but also

⁴ See Article 24 of the Anti-Mafia Code. For a detailed discussion of the Italian legal framework, see COSTANTINI, A. *La confisca nel diritto della prevenzione: Ibridazione di modelli a limiti di legittimità* [Confiscation Under the Law of Preventive Measures: Hybridisation of Models and Limits of Legitimacy]. Torino: Giappichelli, 2022.

⁵ For a more detailed comparison of the American and Italian legal regulation, see TRINCHERA, T. *Fighting Crime in Non-Criminal Proceedings: A Comparative Study of American Civil Forfeiture and Italian Preventive Confiscation*. *The American Journal of Comparative Law*. 2025, Vol. 73, No. 3, pp. 579–625.

⁶ For comparison, see the current report of the non-profit organisation Institute for Justice: KNEPPER, L. – TIEZZI, J. – WEST, M. P. – POHL, E. – MENJOU, M. *Policing for Profit: The Abuse of Civil Asset Forfeiture* [online]. 4th ed. Arlington: 2026 [cit. 2026-04-15]. Available at: <https://ij.org/report/policing-for-profit-4/>.

⁷ Act No. 321/2016 Sb., amending certain acts in connection with the proof of the origin of assets (in Czech “zákon č. 321/2016 Sb., kterým se mění některé zákony v souvislosti s prokazováním původu majetku”), introduced into the Income Taxes Act a special procedure allowing for the taxation of previously untaxed income, that is, to a significant extent, income derived from criminal activity, and at the same time tightened in the Criminal Code the penalty (from a statutory maximum of “up to two years” to a range of “six months to three years”) for the offence of Breach of the Obligation to Make a Truthful Declaration of Assets under Section 227 of the Czech CC.

⁸ For a more detailed discussion of the proof of the origin of assets, see especially BELANOVÁ, P. *Novela zákona o daních z příjmů v souvislosti s prokazováním původu majetku* [Amendment to the Income Taxes Act in Connection with the Proof of the Origin of Assets]. *Právní rozhledy* [Legal Perspectives]. 2017, Vol. 25, No. 9, p. 305 et seq.; or PELC, V. – PELC, V. *Prokazování původu majetku a daňové trestné činy* [Proof of the Origin of Assets and Tax Crimes]. Olomouc: ANAG, 2017.

⁹ This article reflects the state of Czech law as of 15 April 2026.

indirect proceeds [Section 135b(3) Czech CC]. The system of these sanctions consists of penalties and protective measures (Section 36 Czech CC). These include the penalty of forfeiture of assets (Section 66 Czech CC), monetary penalty (Sections 67–69 Czech CC) and forfeiture of things (Sections 70–72 Czech CC), as well as protective measures in the form of seizure of things (Sections 101, 102, and 103 Czech CC) and seizure of part of the assets (Section 102a Czech CC). I also include the monetary penalty among the sanctions serving to target the proceeds of crime, even though a direct link to the ascertained proceeds is absent, since in practice it is precisely illegal (concealed) proceeds that are often used to satisfy a monetary penalty.

The aim of this article is not merely to analyse the current Czech system of criminal sanctions and protective measures designed to deprive offenders of criminal proceeds, but primarily to assess whether that system, viewed as a whole, satisfies the requirements of effectiveness and proportionality. These two values are decisive for the fulfilment of the fundamental functions of criminal law (protective, repressive and preventive) and for ensuring the administration of criminal justice in conformity with the concept of human rights and the principle of humanism. To that end, the article addresses two research questions: (i) whether the current legal framework establishes an adequate, coherent and effective system for the confiscation of criminal proceeds, and (ii) whether that system complies with the requirements arising from the principle of proportionality and respects the fundamental rights of the persons concerned.

The nature of the foregoing aims necessarily shapes the methodological orientation of the present study. The article is situated within the tradition of doctrinal legal scholarship and is principally concerned with the analysis of the legal framework governing the confiscation of criminal proceeds under Czech criminal law, as interpreted and developed in the relevant case law. Particular attention is paid to the internal coherence of the legal framework and to the normative principles upon which it rests.

The analysis is further supplemented by a comparative examination of selected foreign jurisdictions. The comparative material serves to place the Czech model in a broader legal context and to provide a framework for evaluating its conceptual foundations, structural characteristics, and implications. By drawing attention to alternative legislative techniques and the values that underlie them, the comparative analysis facilitates a critical assessment of the existing legal framework from the perspective of effectiveness, proportionality, and respect for fundamental rights. On that basis, the paper seeks not merely to describe the current state of the law, but also to evaluate its underlying premises and to consider whether the existing framework strikes an appropriate balance between the effective deprivation of criminal proceeds and the protection of individual rights.

Structurally, I proceed from penalties to protective measures, following the order established by the structure of the Czech CC. This approach is not only logical but also, in a certain sense, chronological, as it begins with an archaic penalty (forfeiture of assets) and concludes with the most recent protective measure (seizure of part of the assets). The text proceeds in accordance with the sequence in which sanctions are regulated by the Czech CC, subject to a single exception in that the analysis of the penalty

of forfeiture of things under Sections 70–72 of the Czech CC (Chapter 2.2) precedes the analysis of the monetary penalty (Chapter 2.3).

2. PROPERTY PENALTIES

2.1 THE PENALTY OF FORFEITURE OF ASSETS

Contemporary Czech criminal law¹⁰ allows for the imposition of the penalty of *forfeiture of assets* [Section 52(1)(d) and Section 66 of the Czech CC; Sections 15(1)(b) and 17 of the Act on Criminal Liability of Legal Persons], which affects either the entire property of the person concerned or such part thereof as is determined by the court. The forfeiture of property was already permitted during the period of the First Czechoslovak Republic under the Act on the Protection of the Republic of 1923, which served various governing regimes, both democratic and non-democratic. It existed under criminal-law statutes throughout the entire period of socialism. The Criminal Code of 1950 contained the penalty of forfeiture of assets, which could be imposed even for relatively less serious criminal offences.¹¹ The Criminal Code of 1961, which was effective until the end of 2009, likewise contained the penalty of forfeiture of assets. With certain modifications, this penalty was subsequently incorporated into the current Criminal Code.

The introductory provision governing the penalty of forfeiture of assets [Section 66(1) of the CC] stipulates that, with regard to the circumstances of the criminal offence and the personal circumstances of the offender, the court may impose the penalty of forfeiture of assets if it sentences the offender to an exceptional punishment,¹² or if it convicts the offender of a particularly serious felony through which the offender obtained,¹³ or sought to obtain, a pecuniary benefit for themselves or for another. In the case of legal persons, their nature stipulates that only the criterion of pecuniary benefit is relevant [see Section 17(1) CLLP]. Particularly serious felonies are all intentional criminal offences with an upper limit of the statutory penalty of at least ten years [Section 14(3) of the Czech CC], such as, for example, theft, embezzlement, fraud, or tax evasion in an amount of at least CZK 10 million (approximately EUR 400,000). Moreover, the requirement of a pecuniary benefit is formulated in a markedly hypothetical manner, in that even the mere proof of an attempt to obtain a pecuniary benefit is sufficient.

¹⁰ The Criminal Code and Act No. 418/2011 Sb., on the Criminal Liability of Legal Persons and Proceedings against Them (hereafter also “CLLP”).

¹¹ It could be imposed where the court sentenced the offender either to the death penalty or, for an intentional criminal offence, to a term of imprisonment exceeding two years (Section 47 of the Criminal Code of 1950).

¹² An exceptional punishment is understood to mean either a term of imprisonment exceeding twenty years up to thirty years, or life imprisonment [Section 54(1) of the Czech CC].

¹³ A particularly serious felony is an intentional criminal offence for which the Criminal Code provides for a term of imprisonment with an upper limit of at least ten years [Section 14(3) of the Czech CC].

The subsequent provision [Section 66(2) of the Czech CC] further allows the penalty of forfeiture of assets to be imposed in relation to a number of felonies for which the Criminal Code expressly lists this penalty in the Special Part under the specific criminal offence, and this even independently, without the conditions set out in paragraph (1) being fulfilled. The provision in question has a twofold effect. Firstly, it means that, in the case of those particularly serious felonies in respect of which this penalty is expressly provided for, the conditions laid down in paragraph (1) need not be satisfied at all. Secondly, it allows this penalty to be imposed also for a felony in general. Felonies are understood as those intentional criminal offences for which the upper limit of the statutory penalty exceeds five years [Section 14(3) of the Czech CC]. The Czech Criminal Code also provides for the penalty of forfeiture of assets in respect of five misdemeanours, which is, however, clearly a legislative error.¹⁴

The assets that are subject to forfeiture accrue to the state. With effect from 1 January 2023, it finally applies that the Czech Republic does not automatically “dispossess” persons holding a security interest in forfeited assets. Prior to that date, security interests encumbering forfeited assets likewise ceased to exist (see in more detail Chapter 2.2. concerning the penalty of forfeiture of things).

The penalty of forfeiture of assets does not exist as a criminal penalty in the majority of European states, as it has been regarded as inhumane ever since the period following the French Revolution.¹⁵ Due to their shared historical tradition, Slovakia likewise retains the penalty of forfeiture of assets (Sections 58 and 59 of the Slovak CC). In recent years, however, the Slovak regulation has undergone significant changes following intervention by the Constitutional Court.¹⁶ The amended Slovak legal framework expressly emphasises the principle of proportionality [Section 58(2), first sentence, of the Slovak CC]. Although the penalty of forfeiture of assets may still be imposed where the offender merely sought to obtain a pecuniary benefit of a substantial extent through the commission of a felony, or where the offender caused extensive damage [Section 58(1) of the Slovak CC],¹⁷ the legislation at least contains an express prohibition on imposing the penalty of forfeiture of assets, in particular where the offender has fully compensated the damage caused or has surrendered the entire benefit obtained, including any fruits and proceeds thereof [Section 58(2), second sentence, of the Slovak CC].

The penalty of forfeiture of assets *stricto sensu* no longer exists even in Russia, where it was abolished at the end of 2003 as part of the liberalisation and humanisation of criminal law.¹⁸ Subsequently, in 2006, so-called confiscation of assets was introduced

¹⁴ See Sections 165(3), 190(3), 340(2), 341(3), 342(5) of the Czech CC.

¹⁵ Article XVII of the Declaration of the Rights of Man and of the Citizen characterised property as sacred and inviolable, providing that deprivation thereof could occur only on grounds of where “*public necessity [...] shall clearly demand it*”.

¹⁶ In its judgment of 23 September 2023, No. PL. ÚS 1/2021-164, published as No. 402/2023 Sb., the Constitutional Court declared Sections 58(2) and 58(3), as then in force, unconstitutional. On this issue, see also the judgment of the Slovak Constitutional Court of 3 July 2024, No. PL. ÚS 3/2024-112, paragraphs 3, 6, and 112.

¹⁷ Extensive damage is understood as damage exceeding EUR 650,000, the same criterion being applicable to the determination of the amount of the pecuniary benefit [see Section 125(1) of the Slovak CC].

¹⁸ This was effected by Federal Law No. 162-FZ of 8 December 2003.

by anti-terrorism legislation; however, this does not constitute classic forfeiture of assets, but rather a measure of a criminal-law nature taking the form of extended confiscation, similar to that known from other Western foreign legal systems. It therefore differs in nature from the penalty of forfeiture of assets as understood under Czech and Slovak law.

Terminological inconsistency, differing legislative techniques, and confusion as to the substance of individual legal institutes are sometimes the cause of erroneous conclusions in comparative analysis, which is one of the most demanding disciplines within the field of criminal law. For this reason, some Czech sources incorrectly state that the penalty of forfeiture of assets exists, for example, in France¹⁹ or in Germany.²⁰

Although some authors deny this,²¹ in my view the penalty of forfeiture of assets, in any of its forms, is incompatible with fundamental constitutional values, in particular the principles of humanism and the right to property. The form in which this penalty exists in the Czech Republic constitutes an outright rarity in comparative perspective and, in terms of its degree of unconstitutionality, even exceeds the Slovak legal framework. As early as the 1970s, the twentieth-century classic of Czech-Slovak criminal law, Professor Solnař, drawing on French classical authors (Bouzat, P., Vidal, G., Magnol, J., and Ortolan, J.), summarised the principal objections to the very existence of the penalty of forfeiture of assets. At the same time, however, he rather paradoxically argued that a certain degree of humanism was reflected in the fact that forfeiture did not extend to funds or items indispensable for satisfying the basic living needs of the convicted person or of those whom the convicted person is legally obliged to support or raise [cf. Section 66(3) of the Czech CC].²²

¹⁹ See, *inter alia*, VANDUCHOVÁ, M. in: SOLNAŘ, V. – FENYK, J. – CÍSAŘOVÁ, D. – VANDUCHOVÁ, M. *Systém českého trestního práva: III. Tresty a ochranná opatření* [System of Czech Criminal Law: Vol. III. Penalties and Protective Measures]. Prague: Novatrix, 2009, p. 132.

²⁰ In the following study, for example, the German concept of extended forfeiture of things is translated as “*extended forfeiture of assets as a penalty*”, which does not correspond to reality. Moreover, the use of the attribute “extended” in relation to the forfeiture of (entire) assets constitutes a *contradictio in adiecto*. MYLKOVÁ, P. *Postihování praní špinavých peněz – obrácení důkazního břemene* [Combating Money Laundering – Reversal of the Burden of Proof] [online]. Srovnávací studie [Comparative study] No. 5.320. Prague: Parlamentní institut, 2011, p. 5 et seq. [cit. 2026-04-15]. Available at: <https://www.psp.cz/sqw/text/orig2.sqw?idd=74093>.

²¹ In this context, attention may be drawn to a view expressed in the commentary on the Charter of Fundamental Rights and Freedoms, according to which the case law of the Constitutional Court suggests that forfeiture extending to assets acquired without a connection to criminal conduct is not unconstitutional. Leaving aside the fact that the Constitutional Court decisions relied upon primarily concern the institute of securing asset in criminal proceedings (albeit for the purpose of safeguarding the enforcement of a potential penalty of forfeiture of assets), as well as the reasoning given in prosecutorial decisions on such securing of assets, I take the view that the arguments indicating the incompatibility of the penalty of forfeiture of assets with the constitutional order are ultimately more persuasive. See BAŇOUCH, H. in: WAGNEROVÁ, E. – ŠIMÍČEK, V. – LANGÁŠEK, T. – POSPÍŠIL, I. *Listina základních práv a svobod: komentář* [Charter of Fundamental Rights and Freedoms: Commentary]. Prague: Wolters Kluwer ČR, 2012, p. 807.

²² See SOLNAŘ, V. *Systém československého trestního práva: tresty a ochranná opatření* [System of Czechoslovak Criminal Law: Penalties and Protective Measures]. Prague: Academia, 1979, p. 106.

The reason for the unconstitutionality of this penalty lies in the fact that it is capable of interfering with the right to assets in an exceptionally intensive manner,²³ both in relation to natural persons and to legal persons. In the case of legal persons, it is commonly stated that, following the penalty of dissolution of a legal person, forfeiture of assets constitutes the second most severe criminal sanction.²⁴ In reality, however, from the perspective of natural persons associated with the legal person in question (in particular shareholders or partners), it may constitute the most severe penalty, since the dissolution of a legal person leads to its liquidation, in which context the shareholders are entitled to a share in the liquidation surplus.²⁵

In addition to its incompatibility with the principle of humanism, which in the field of punishment under Czech law is expressed in Article 7(2) of the Charter of Fundamental Rights and Freedoms (“*no one shall be subjected to inhuman punishment*”) and in Section 37 of the Czech Criminal Code (“*no excessive criminal sanctions may be imposed on the offender*”), the Czech criminal-law regulation of the penalty of forfeiture of assets tends towards a denial of the very rationale of just punishment, which presupposes sanctions that are adequate to the criminal offence committed. In light of the foregoing, I am of the opinion that, although the penalty of forfeiture of assets is not applied particularly frequently in Czech practice,²⁶ it should be abolished for its incompatibility with the principle of humanism, the principle of *nulla poena sine lege certa*, and the very function of just punishment as such.

2.2 THE PENALTY OF FORFEITURE OF THINGS

The penalty of forfeiture of things represents the most typical sanction serving the direct confiscation of proceeds of crime. Traditionally, however, this penalty is also applied to any other criminally relevant objects, commonly classified as *scelere quaesita* (proceeds of crime), *producta sceleris* (objects created or produced by the commission of a criminal offence), and *instrumenta sceleris* (instruments used to commit a criminal offence, sometimes further distinguished into actual and potential instruments).²⁷ The forfeiture of things is sometimes confused with the forfeiture of assets; however, the fundamental distinction lies in the specificity of the forfeiture of things,

²³ Practice nevertheless reveals cases in which the public prosecutor sought forfeiture of the offender’s entire property, far exceeding the amount of the bribe received, even though it was entirely undisputed that the accused had acquired the assets by inheritance (see the widely reported case of the former Czech Member of Parliament David Rath).

²⁴ JELÍNEK, J. – HERCZEG, J. *Zákon o trestní odpovědnosti právnických osob: komentář s judikaturou* [Act on the Criminal Liability of Legal Persons: Commentary with Case Law]. 2nd ed. Prague: Leges, 2013, p. 131.

²⁵ With regard to business corporations, see Sections 37 et seq. of the Act on Business Corporations.

²⁶ At the time this article was finalised (15 May 2026), judicial statistics were available up to 2024, in which a total of 16 sentences of forfeiture of assets were imposed. During the “last” twenty years (i.e., between 2005 and 2024), a total of 338 sentences of forfeiture of assets were imposed, representing an average of fewer than 17 such sentences annually.

²⁷ See *inter alia* FASTNER, J. *Poznámky k judikatuře o propadnutí věci* [Notes on the Case Law Concerning the Forfeiture of Things]. *Soudní rozhledy* [Judicial Perspectives]. 2004, Vol. 9, No. 10, p. 403.

which, in the traditional conception of this penalty, must not only belong to the offender but must also be directly linked to the criminal offence committed. As of 1 January 2026, the scope of forfeiture of things extends beyond proceeds of crime and instruments thereof to include objects subject to international sanctions [Section 70(2)(c) of the Czech CC].

This conceptual approach is also reflected in the Czech Criminal Code, which provides for the penalty of forfeiture of things, as a mandatory penalty, without exception, in relation to immediate (direct) proceeds of crime [Section 70(1) of the Czech CC]. With respect to indirect proceeds, the penalty is constructed as discretionary and, moreover, only on the condition that the value of the immediate proceeds is not negligible in relation to the indirect proceeds [Section 70(2)(b) of the Czech CC].

A fundamental prerequisite for the imposition of the penalty of forfeiture of things is that the object in question belongs to the offender [Section 70(3) of the CC]. A forfeited thing accrues to the state [Section 70(6) of the CC] and constitutes revenue of the state budget. As already noted above in relation to the penalty of forfeiture of assets, the legislation governing the forfeiture of things was likewise amended after many decades so as to abolish an unconstitutional framework under which security interests encumbering a forfeited object were extinguished without compensation. Such a consequence was manifestly incompatible with the right to property and the principle of the presumption of innocence, as it was based on an unfounded assumption that the security interest had been established solely for ulterior purposes. This consequence followed from Sections 13 and 41 of Act No. 219/2000 Sb., on the Property of the Czech Republic and Its Representation in Legal Relations, pursuant to which liabilities of the previous owner do not pass to the state where the state acquires property by certain means.²⁸ Although this issue has not been examined in greater detail in Czech legal scholarship, it in fact constituted a form of so-called extended confiscation.

In comparative European perspective, no equivalent legal framework could be identified, not even in Slovakia, which shares common historical foundations with the Czech legal order. In principle, the legislature had two possible options for addressing the situation in question. Firstly, to protect all rights *in rem* acquired in good faith, which is the approach adopted in the majority of European jurisdictions. Secondly, to permit the extinction of rights *in rem*, while at the same time providing for a right to compensation corresponding to the market value of the extinguished right.

It should be noted that the level of protection afforded under the prevailing approach of protecting rights acquired in good faith varies considerably. A particularly high degree of respect for the rights *in rem* of third parties may be found, for example, in the French Criminal Code, under which confiscated things remain encumbered by real rights duly established in favour of third parties (Article 131-21 of the French CC).

²⁸ Only following the amendment to the Criminal Code effective as of 1 January 2023 did the Constitutional Court address the constitutionality of Section 41 of Act No. 219/2000 Sb., on the Property of the Czech Republic and Its Representation in Legal Relations, declaring unconstitutional the provision stipulating that security interests in assets acquired in this manner are extinguished. Cf. the judgment of 28 May 2024, No. PL. ÚS 31/21, published under No. 221/2024 Sb.

The principle that the rights *in rem* of third parties do not cease to exist is likewise enshrined in the German Code of Criminal Procedure [Section 75(2), first sentence, of the German CCP].²⁹ This principle is, however, subject to several exceptions permitting the extinction of rights *in rem* either against compensation or, in exceptional circumstances, even without compensation, for example where the holder of such a right negligently contributed to the use of the property as an instrument of a criminal offence (Section 74b of the German Criminal Code).³⁰ The German model therefore represents a form of mixed approach, albeit one displaying a clear preference for the protection of third-party rights.

Second model is adopted, with respect to security interests and mortgages, by the Polish Code of Criminal Procedure, which provides that pledges and mortgages are extinguished, whereas other rights *in rem* generally remain unaffected. In relation to extinguished real rights, the entitled person is then entitled to satisfaction (cf. Article 190 of the Polish Code of Criminal Procedure). The Polish model therefore represents a combination of both approaches, albeit in a different sense from the German model, since the decisive factor is the nature of the right *in rem* rather than the manner in which it was acquired.

The Czech legal framework opted for the first variant, although in an inconsistent manner.

With effect from 1 January 2023, the Criminal Code introduced an exception to the rule that liabilities do not pass to the state, by providing that security interests in forfeited things do not cease to exist [Section 70(6), second sentence, of the Czech CC]. In this manner, the Czech legislature remedied the unconstitutional state of affairs, although not in its entirety, as the exception refers exclusively to security interests and not to other real rights that may encumber the thing.

The enforceability of the penalty of forfeiture of things is reinforced by two related legal institutes. The first is the prohibition of any disposition aimed at frustrating the enforcement of the penalty after the delivery of a conviction but prior to it becoming final [cf. Section 70(5) of the Czech CC]. The second is the forfeiture of substitute value, which addresses situations in which the offender frustrates forfeiture prior to the imposition of the penalty, for example by damaging, alienating, or consuming the thing (§ 71 Czech CC). Where the conditions for forfeiture of things or forfeiture of substitute value are not met, the object may nevertheless be subjected to a protective measure in the form of seizure of things (cf. Section 101 et seq. of the Czech CC). The penalty of forfeiture of things also applies to live animals, which, under the Civil Code of 2012 (effective as of 1 January 2014), are no longer regarded as “mere” things, as well as to processed and separated parts of the human body (see Section 134 of the Czech CC).

²⁹ German legal scholarship explains this approach both as an expression of the protection of property guaranteed by Article 14 of the German Basic Law and as a manifestation of the principle of procedural economy, which requires that the participation of third parties in criminal proceedings be kept to an absolute minimum. See further KINDHÄUSER, U. – NEUMANN, U. – PAEFFGEN, H. *Strafgesetzbuch: NomosKommentar* [German Criminal Code: Commentary (Nomos Series)]. Baden-Baden: Nomos, 2023, Commentary to § 75.

³⁰ These are cases of so-called quasi-aiding or quasi-assistance. See VON HEINTSCHEL-HEINEGG, B. – KUDLICH, H. (eds.). *Strafgesetzbuch: Kommentar* [German Criminal Code: Commentary]. München: C. H. Beck, 2025, Commentary to § 74a.

The same legal framework governing the penalty of forfeiture of things applies to both natural persons and legal persons (see Section 19 CLLP).

With effect from 1 February 2019, the Czech legal framework has attempted to provide a statutory definition of the concepts of an instrument of crime and proceeds of crime. An instrument of crime is defined as a thing that was intended for or used in the commission of a criminal offence, including its fruits and proceeds (Section 135a of the Czech CC). More problematic, however, is the definition of proceeds of crime. Proceeds of crime are defined as any economic (!) advantage derived from a criminal offence [Section 135b(1) of the Czech CC]. Immediate proceeds are understood not only as a thing obtained directly through the commission of a criminal offence, but also as a thing obtained as a reward for it, including its fruits and proceeds [Section 135b(2) of the Czech CC]. Indirect proceeds are then understood as things that were acquired, even only in part, by means of a thing constituting immediate proceeds of crime [Section 135b(3)(a) of the Czech CC]; things into which things constituting immediate proceeds of crime were transformed, even only in part [Section 135b(3)(b) of the Czech CC]; or things whose appreciation resulted, even only in part, from a thing constituting immediate proceeds of crime [Section 135b(3)(c) of the Czech CC].

The fundamental purpose of the penalty of forfeiture of things may be inferred from the object against which its enforcement is directed. Its purpose is thus to deprive the offender of the possibility of disposing of a thing that could serve for the further commission of criminal activity, thereby making the continuation of criminal conduct more difficult (individual prevention), and to deprive the offender of the proceeds of crime.

Generally speaking, doctrines within continental European legal systems are not unified in their assessment of whether forfeiture of things should be regarded as a penalty or as another form of sanction, such as a protective measure. For example, the French Criminal Code classifies various forms of forfeiture of things as penalties, whereas the Polish statutes refer to them as criminal measures (cf. Article 39). Some criminal codes (for example, the German CC) establish a kind of third category by referring to secondary legal consequences of an offence (cf. Sections 73 et seq. and Sections 74 et seq. of the German CC), with the legal nature of this sanction remaining contested in German doctrine. In light of the purpose of forfeiture of things, I am of the view that the Czech Criminal Code rightly classifies such forfeiture as a penalty. Given that it does not constitute the forfeiture of things which would be referred to as “extended”, as known from many Western criminal codes,³¹ its designation as a penalty is entirely appropriate.

Unlike the penalty of forfeiture of assets discussed above, the penalty of forfeiture of things complies in most respects with the fundamental principles of criminal law and, with the exception of the problematic issue concerning the possible extinction of real rights other than security interests, also with the requirements of the constitutional order of the Czech Republic. The rule requiring a link between forfeited objects and the criminal offence does not hinder the effective administration of criminal justice in relation to proceeds of crime that have been commingled with other assets or that no longer belong to the offender, as the penalty of forfeiture of things

³¹ See *inter alia* Section 20b of the Austrian CC.

is complemented by the protective measure consisting in the possibility of seizure of part of the assets (cf. Chapter 3.2).

2.3 MONETARY PENALTY

The concept of the monetary penalty in the Czech Republic has undergone a fundamental transformation with effect from 1 January 2026. This penalty has partly assumed the character of a universal sanction, which is appropriate given the nature of money as a general equivalent. It is commonly noted that the monetary penalty constitutes a suitable instrument for combatting profit-driven criminal behaviour.³²

A long-standing deficiency of the Czech regulation of the monetary penalty has been its considerable indeterminacy and the very broad discretion afforded in determining its amount, based solely on general criteria. This issue was addressed in the drafting of the current Criminal Code of 2009, which adopted the concept of day fines (daily rates),³³ known in some European criminal codes since the first half of the twentieth century.³⁴ Since that time, the amount of a single daily rate has been determined with regard to the personal and economic circumstances of the offender (with the primary criterion being the actual or potential level of net income), while the number of daily rates reflects the nature and seriousness of the criminal offence [Section 68(3) of the Czech CC]. Unfortunately, the amendment effective as of the beginning of this year has further exacerbated the problem.

The most serious shortcomings of the current regulation concern the determination of the daily rate and its linkage to imprisonment. The minimum number of daily rates is 20, while the amount of a single daily rate ranges from CZK 100³⁵ to CZK 50,000 in the case of natural persons [Section 68(2) of the Czech CC], and from CZK 1,000 to CZK 2,000,000 in the case of legal persons. As of 1 January 2026, the maximum number of daily rates (previously 730) has been abolished, and the maximum amount of the daily rate is now determined by reference to the statutory upper limit of imprisonment, with one day of imprisonment corresponding to one daily rate. Whereas until the end of 2025 the monetary penalty ranged, in the case of natural persons, from CZK 2,000 to CZK 36,500,000 and, in the case of legal persons, from CZK 20,000 to CZK 1,460,000,000, the current upper limits are in practice virtually unlimited and thus incompatible with the principle of *nulla poena sine lege certa*.

³² SOLNAŘ, V. in: SOLNAŘ – FENYK – ČÍSAŘOVÁ, c. d., p. 136.

³³ Daily rates were first introduced in the Czech Republic in relation to the monetary measure applicable to juveniles under Section 27(2) of Act No. 218/2003 Sb., on the Responsibility of Juveniles for Unlawful Acts and on Juvenile Justice and on Amendments to Certain Acts (the Juvenile Justice Act).

³⁴ The literature indicates that the system of day fines was first introduced in the Nordic countries: Finland in the 1920s, and Sweden and Denmark in the 1930s. See DOLCINI, E. – PALIERO, C. E. Alternativen zur kurzen Freiheitsstrafen in Italien und im Ausland [Alternatives to Short-Term Imprisonment in Italy and Abroad]. *Zeitschrift für die gesamte Strafrechtswissenschaft* [Journal of Criminal Law Studies]. 1990, Jhrg. 102, Nr. 1, p. 223 et seq.

³⁵ The long-term average exchange rate of the Czech crown against the euro is approximately CZK 25 to EUR 1.

This can be illustrated by reference to two misdemeanours: defamation under Section 184(1) of the Czech CC and fraud under Section 209(2) of the Czech CC.³⁶ In the case of the offence of defamation, the statutory maximum term of imprisonment is one year, while the maximum monetary penalty amounts to CZK 18,250,000 for natural persons and CZK 730,000,000 for legal persons. In the case of the second offence (fraud causing damage of at least CZK 100,000), the penalty of imprisonment ranges from one year to five years (with an unconditional custodial sentence being, as a rule, unlikely), while the range of the monetary penalty, if imposed as a standalone sanction, extends from CZK 36,500 to CZK 91,250,000 in the case of natural persons, and from CZK 365,000 to CZK 3.65 billion in the case of legal persons.

De lege ferenda, reform will be necessary. In particular, the reintroduction of a maximum limit for the monetary penalty is required. In general, I would be inclined to strengthen the universal character of the monetary penalty, while at the same time further refining the permissible ranges of its assessment. I would certainly not advocate a return to the pre-2010 model without daily rates, as exists, for example, in Slovakia (see Sections 56 and 57 of the Slovak CC), even though systems without daily rates may nevertheless ensure a fully predictable range of monetary penalties (as is the case, for instance, in Italy).³⁷ Within the Germanic legal tradition, however, a system based on day fines is characteristic (for example in Germany,³⁸ Austria,³⁹ and Switzerland⁴⁰).

There are numerous ways in which greater determinacy of legal norms in this area could be achieved. The range of the monetary penalty could be differentiated according to categories of criminal offences, such as misdemeanours, felonies, and particularly serious felonies. A further, more nuanced option would be to link the number of daily rates to the length of the custodial sentence, as is the case in Poland (cf. Article 44 of the Polish CC). A comparatively sophisticated system exists in Spain, where the General Part

³⁶ Under Czech law, criminal offences are divided into misdemeanours and felonies [Section 14(1) of the Czech CC]. Misdemeanours are either negligent criminal offences or intentional criminal offences punishable by a term of imprisonment with an upper limit not exceeding five years [cf. Section 14(2) of the Czech CC]. All other criminal offences are classified as felonies, with those punishable by a statutory maximum of at least ten years being designated as particularly serious felonies [Section 14(3) of the Czech CC].

³⁷ The Italian Criminal Code distinguishes, in Articles 24 and 26, even the designation of the monetary sanction (*pena pecuniaria*) depending on whether it is imposed for a (more serious) offence (*delitto*) in the form of a *multa*, ranging from EUR 50 to EUR 50,000, or for a (less serious) offence (*contravvenzione*) in the form of an *ammenda*, ranging from EUR 20 to EUR 10,000. The Italian system is not based on day fines, but rather on the determination, within the Special Part of the Criminal Code, of a statutory range for the monetary sanction, within which the judge also takes into account the offender's economic circumstances. In Italy, however, a system of day fines has been partially introduced in relation to the criminal liability of legal persons (entities). On this point, see PULITANÒ, D. *Diritto penale* [Criminal Law]. 4a ed. Turin: Giappichelli, 2011, p. 541.

³⁸ Cf. Articles 40 to 43 of the German CC.

³⁹ Cf. the general provision of Section 19 of the Austrian CC, which lays down the minimum number of daily rates, as well as provisions concerning certain specific criminal offences establishing the maximum number of daily rates (for example Sections 115, 141, 146, and 149 of the Austrian CC). For a detailed discussion of the Austrian legal framework in Czech language literature, see ŠČERBA, F. *Alternativní tresty a opatření v nové právní úpravě* [Alternative Penalties and Measures in the New Legal Regulation]. 2nd ed. Prague: Leges, 2014, pp. 287–294.

⁴⁰ Cf. Article 34 et seq. of the Swiss CC.

of the Criminal Code determines the amount of a single daily rate [cf. Article 50(3)] as well as its maximum duration [Article 50(2)], while the Special Part lays down specific ranges for the “duration” of the monetary penalty, that is, in effect, the number of daily rates. Alongside this, Spanish law also provides for a “proportional fine”, reflecting the value of the object, benefit, or damage involved (cf. Article 52 of the Spanish CC).

Personally, I would favour a model establishing a maximum range for the number of daily rates (for example, from 20 to 360, and in exceptional cases up to 720), combined with the determination, for selected offence definitions (including distinctions between basic and qualified forms), of specific upper limits expressed as the maximum number of daily rates.

3. PROTECTIVE MEASURES

3.1 SEIZURE OF THINGS

Seizure of things constitutes a traditional protective measure whose purpose is to target *scelere quaesita* (proceeds of crime), *producta sceleris* (objects created or produced by the commission of a criminal offence), and *instrumenta sceleris* (instruments used to commit a criminal offence). It thus complements the penalty of forfeiture of things in situations in which such a penalty cannot be imposed on the offender in respect of a thing,⁴¹ constituting an instrument of crime or an object subject to international sanctions [Section 101(1) of the Czech CC], or a thing representing proceeds of crime [Section 101(2) of the Czech CC]. In relation to the penalty of forfeiture of things, seizure constitutes a subsidiary institute (sanction) pursuing the same objective, namely, to ensure that no one derives an unjustified economic benefit from criminal activity.

The Czech regulation of seizure of things is noteworthy in that it allows for a flexible response to various situations that may arise in practice, as it also provides for seizure of substitute value where the person from whom the thing was to be seized has, prior to the decision, destroyed, damaged, or otherwise diminished its value, alienated it, rendered it unusable, removed it, consumed it, or otherwise frustrated its seizure (Section 102 of the Czech CC). In an effort to preserve the value of things (*neminem laedere*), the legislature further allows seizure to be replaced by an obligation to modify the object, remove its markings, or restrict or otherwise alter the manner in which it may be disposed of [Section 101(4) and (5) of the Czech CC]. The Criminal Code of 2009 also introduced a specific form of the protective measure of seizure of things consisting in the seizure of files and equipment (Section 103 of the Czech CC).

In comparison with certain foreign legal systems, Czech law does not place sufficient emphasis on the protection of third parties who, for example, acquired proceeds of crime in good faith. *De lege ferenda*, such an approach should be expressly prohibited, or it should be specified that seizure applies only to property transferred to another person free

⁴¹ This may occur, for example, where the offender cannot be prosecuted or convicted, where the court waives punishment, where guilt is not pronounced due to the offender’s insanity, or where the offender has transferred the object to another person or into a trust or investment fund.

of charge, under manifestly disadvantageous conditions, or where the transferee knew that the property was transferred to them in order to avert the risk of forfeiture or seizure.

Where seizure is ordered in respect of a person other than the accused, such a person has the status of an interested party and is therefore a party to the criminal proceedings with full procedural rights. An interested party is a person whose thing or part of whose assets has been seized or is proposed to be seized (Section 42 of the Czech Code of Criminal Procedure). From a *de lege ferenda* perspective, the definition of an interested party ought to be amended so as to include any person whose property is subject to securing measures, in order to prevent situations in which law enforcement authorities do not allow such persons to effectively contest seizure.

3.2 SEIZURE OF PART OF THE ASSETS

The most recent criminal-law sanction serving (directly) to deprive offenders of the proceeds of crime is the seizure of part of the assets under Section 102a of the Czech CC. This institute has been in force since 18 March 2017 and implements the earlier confiscation directive of 2014.⁴² It constitutes an instrument referred to as extended confiscation, which may also be applied in relation to assets in respect of which it has not been proven that they constitute instruments or proceeds of a specific criminal offence.

Although the seizure of part of the assets might evoke an association with the penalty of forfeiture of assets, it is in fact a protective measure conceptually closer to the penalty of forfeiture of things, since the court must, when imposing it, determine specific items that are to be confiscated. Seizure of part of the assets may be imposed either on the convicted offender or on a person who must have the status of an interested party, which may be either a natural or a legal person (but not a trust fund, which lacks legal personality under Czech law), namely a person to whom the assets were transferred [Section 102a(2) of the Czech CC].

This is a discretionary measure which the court may impose where the offender has been found guilty of an intentional criminal offence punishable by a statutory maximum term of imprisonment of at least four years or of one of the expressly listed offences, and where the court is at the same time of the view that a certain part of the assets originates from criminal activity, given that the value of assets acquired by the offender or transferred to another person within the five years preceding the commission of the offence is in gross disproportion to the offender's lawful income [Section 102a(1) of the Czech CC]. Unlike the seizure of things, the regulation of the seizure of part of the assets provides partial protection for assets acquired in good faith.⁴³

This institute entails a *de facto* shift in the burden of proof and a certain interference with the principle of the presumption of innocence, as the interested person may be

⁴² 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.

⁴³ In the case of an interested party, the statute specifies, for example, that this concerns a thing transferred to that person free of charge or under manifestly disadvantageous conditions [Section 102a(2)(a) and (c) of the Czech CC].

required to demonstrate that no significant disproportion exists between lawful income and the value of their assets.

Some authors take the view that the institute of seizure of part of the assets allows for the confiscation of assets in respect of which it has not been proven that they originate from criminal activity. This interpretation is reflected in a substantial part of the commentary literature.⁴⁴ While such an approach is permitted under the earlier confiscation directive, it does not apply under Czech law. The statute requires the court to be satisfied that a certain part of the assets originates from criminal activity [Section 102a(1) of the Czech CC]. Such (necessarily subjective) conviction, however, can only be formed on the basis of certain objective circumstances. One such circumstance expressly prescribed by the law is the demonstration of a gross disproportion between the value of the offender's assets and their lawful income. Another circumstance constituting a prerequisite for the imposition of this protective measure, and at the same time increasing the likelihood that the assets originate from criminal activity, is the fact that the person has been convicted of one of the criminal offences enumerated in Section 102a(1) of the Czech CC. It may therefore be concluded that, with respect to the seizure of part of the assets, the standard of proof falls below that of "beyond any reasonable doubt",⁴⁵ yet the measure may be imposed only in respect of assets that, with a higher degree of probability, originate from criminal activity.

4. CONCLUSION

Against that background, several conclusions may be drawn. With regard to the questions identified in the introduction, the article demonstrates that the current Czech legal framework provides a relatively broad range of instruments capable of depriving offenders of criminal proceeds and may be regarded as an effective system in principle. The individual sanctions designed to target unlawful assets are interlinked – most notably the penalty of forfeiture of things and the related protective measures of seizure of things and seizure of part of the assets – and are constructed in a manner that enables law-enforcement authorities to combat the presence of criminal proceeds in society with a considerable degree of effectiveness, although certain aspects of their mutual relationship and practical application remain problematic.

While most of the mechanisms examined are capable of operating in conformity with constitutional requirements and the principle of proportionality, this conclusion cannot be extended to all elements of the existing framework.

⁴⁴ See JELÍNEK, J. et al. *Trestní zákoník a trestní řád s poznámkami a judikaturou* [The Criminal Code and the Code of Criminal Procedure with Notes and Case Law]. 9th ed. Prague: Leges, 2022, p. 175; or KALVODOVÁ, V. § 102a. In: ŠČERBA, F. et al. *Trestní zákoník: komentář* [Criminal Code: Commentary]. 1st ed. (3rd updated ed.). Prague: C. H. Beck, 2024.

⁴⁵ Such position is also adopted by the Constitutional Court, which holds that criminal proceedings in which seizure of part of the assets may be ordered presuppose a proper evidentiary process. Cf. the judgment of 28 January 2022, File No. II. ÚS 1026/21, published under No. 11/2022 Collections of Decisions of the Constitutional Court.

In the application of protective measures, greater attention must in practice be paid not only to the rights of accused persons (offenders), but also to those of interested parties, who are often entirely unconnected with the underlying criminal activity. Such persons must be afforded the opportunity to challenge interferences with their rights through fully adversarial proceedings. Both protective measures – including the relatively recent institute of seizure of part of the assets, which constitutes an instrument referred to as extended confiscation – are capable of being interpreted in a constitutionally compliant manner. In particular, strict adherence must be maintained to the fundamental principles of evidence-taking and to a standard of proof which, although lower than that required for a finding of guilt, nevertheless permits seizure of part of the assets only where the property in question originates from criminal activity with a higher degree of probability.

By contrast, little can be said in praise of the penalty of forfeiture of assets, which constitutes a significant interference with constitutional rights and has no close parallel in other European legal systems. This penalty is moreover incompatible with a fundamental principle of substantive criminal law – the principle of humanism – and should therefore be abolished without replacement.

From the perspective of effectiveness and proportionality, the revised concept of the monetary penalty likewise warrants significant criticism. The current regulation fails to provide courts with sufficient guidance to ensure its fair and consistent imposition. The upper limits of the monetary penalty are unclear and, similarly to the penalty of forfeiture of property, are incompatible with the constitutional order, both in terms of the principle of humanism and the right to property, and with regard to the requirement of determinacy of criminal-law norms (*nullum crimen sine lege certa*). A reintroduction of an upper limit on the number of daily rates is therefore necessary, with the preferable solution being the specification of concrete ranges or maximum amounts for individual offence definitions. Such an approach would, on the one hand, strengthen legal certainty – long a persistent weakness of the Czech regulation of monetary penalties – and, on the other hand, reinforce the monetary penalty in its role as a universal sanction.

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