

# LAW ON SEIZURE AND CONFISCATION OF MATERIAL BENEFIT DERIVED FROM CRIMINAL ACTIVITY

## DISCLAIMER

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Pursuant to Article 82 paragraph 1 item 2 of the Constitution of Montenegro and Amendment IV paragraph 1 to the Constitution of Montenegro, the Parliament of Montenegro of the 25th convocation, at the sitting of the fifth extraordinary session in 2015, on 23 September 2015, has passed the:

## LAW ON SEIZURE AND CONFISCATION OF MATERIAL BENEFIT DERIVED FROM CRIMINAL ACTIVITY<sup>1</sup>

### I. BASIC PROVISIONS

#### Subject Matter Article 1

This Law shall govern the conditions for seizure and confiscation of material benefit derived from criminal activities, seizure and confiscation procedure and other matters of importance for the seizure and confiscation of such material benefit, as well as the management of seized and confiscated material benefit derived from criminal activities and seized and confiscated material benefit acquired by a criminal offence (hereinafter referred to as "the seized material benefit"), of instrumentalities of crime and items seized in criminal and misdemeanour proceedings, as well as of property pledged to the court as bail.

<sup>1</sup> Official Gazette of Montenegro No. 058/15 of 09.10.2015, 047/19 of 12.08.2019.

## **Conditions and the Manner of Confiscation of Material Benefit Derived from Criminal Activities**

### **Article 2**

Material benefit may be confiscated from the perpetrator where well-founded suspicion exists that such material benefit has been derived from criminal activities, whereby the perpetrator fails to make plausible the legal origin of such material benefit (extended confiscation) and if the perpetrator was convicted by a final judgment for a crime laid down in the Criminal Code of Montenegro, as follows:

- 1) abduction referred to in Article 164;
- 2) criminal offences against sexual freedom referred to in Articles 206, 208, 209, 210, 211, 211a and 211b;
- 3) criminal offences against property referred to in Articles 240, 241, 242, 243, 244, 244a; 249, 250, 251, 252;
- 4) criminal offences against payment transactions and business operations referred to in Art. 258, 259, 260, 261, 262, 263, 264, 265, 268, 270, 272, 273, 274, 276, 276a, 276b, 281 and 281a;
- 5) unauthorized production, possession and release into circulation of narcotic drugs referred to in Art. 300;
- 6) criminal offences against environment and spatial planning referred to in Articles 303, 305 and 307;
- 7) criminal offences against security of computer data referred to in Articles 350, 352, 353 and 354;
- 8) criminal offences against public law and order referred to in Articles 401, 401a, 402, 404 and 405;
- 9) criminal offences against legal procedures referred to in Articles 412, 413 and 414;
- 10) criminal offences against official duty referred to in Articles 416, 419, 420, 422, 422a, 423 and 424;
- 11) criminal offences against humanity and other values guaranteed by international law referred to in Articles 444, 445, 446, 447, 447a, 447b, 447c, 447d, 449, 449a and 449b.

The material benefit referred to in para. 1 of this Article shall also be seized and confiscated from legal predecessors, legal successors and family members of the perpetrator referred to in para. 1 of this Article, as well as from third persons.

If the material benefit was derived from criminal activities for another person, that material benefit shall be confiscated as well.

Provided that the confiscation referred to in paragraph 1 of this Article is not possible, the value that shall be confiscated will be equal to the value of the material benefit derived from criminal activities.

## **Definitions**

### **Article 3**

Material benefit derived from criminal activities means each increase or prevention of decrease of criminal assets, as well as revenues or other benefit acquired directly or indirectly from criminal activities, as well as the estate it has been converted into or merged with.

Property implies property rights of all types, irrespective of whether they relate to assets of tangible or intangible nature, movable or immovable, securities and other documents which serve to prove property rights.

#### **Material Benefit Seizure and Confiscation Procedures Article 4**

The procedures of seizure and confiscation of material benefit derived from criminal activities may be conducted before, during and after the finalization of criminal procedure.

The seizure and confiscation of material benefit derived from criminal activities shall be deemed to mean seizure of such material benefit (Provisional Measures to Secure Assets and seizure of movables) or confiscation of such material benefit.

The procedure of seizure and confiscation of material benefit derived from criminal activities shall be conducted in accordance with this Law and with the Criminal Procedure Code.

#### **Competent Authorities Article 5**

Courts shall decide on the seizure and confiscation of material benefit derived from criminal activities.

The tasks of tracing material benefit derived from criminal activities shall be performed by the state prosecutor's office and the administrative authority in charge of police affairs (hereinafter referred to as: the police).

The tasks of management of seized and confiscated material benefit, instrumentalities of crime and items seized in criminal and misdemeanour proceedings, as well as of property pledged to the court as bail shall be performed by the administrative body in charge of state property management (hereinafter "the competent body").

The competence of the state prosecutor's office and of the court in proceedings referred to in paras. 1 and 2 of this Article shall be determined according to the competence for conducting procedure for the criminal offence referred to in Article 2 para. 1 of this Law.

The authorities referred to in paras. 1 and 2 of this Article shall act urgently.

#### **Use of Gender-Sensitive Language Article 6**

The terms used in this Law for natural persons in the masculine gender shall imply the same terms of the female gender.

## **Definitions Article 7**

The terms used in this Law shall have the following meanings:

- 1) instrumentality of a crime is the actual item which was used or intended for use, fully or partially, in the commission of a criminal offence;
- 2) accused person means a suspect, a person against whom criminal proceedings have been instituted or a person convicted of a crime under Article 2 para. 1 of this Law;
- 3) holder is the accused person, legal predecessor, legal successor or family member of the accused person or a third person;
- 4) third party means a natural or a legal person to whom material benefit derived from criminal activities has been transferred without remuneration or for remuneration which manifestly does not correspond to the real value of the material benefit or a person who knew or could have known that the material benefit has been derived from criminal activities;
- 5) legal predecessor is a natural or legal person whose property rights have been transferred to the holder;
- 6) legal successor is heir of the accused person, of a third person or his heirs, or a natural or a legal person to whom property rights have been transferred by means of a legal transaction;
- 7) injured party means the person whose personal or property right was infringed or threatened by the criminal offence;
- 8) defence attorney means the attorney who represents the accused person in the material benefit seizure and confiscation procedures;
- 9) proxy means the lawyer who is authorized to represent the testator, legal successor, accused person's family member or a third party;
- 10) bona fide third party means the person who claims to have a right in relation to the material benefit subject to seizure or confiscation which prevents the seizure or confiscation of material benefit or who at the time of acquisition of such rights did not know or was not obliged to know that the material benefit has been derived from criminal activities.

## **II. SEIZURE AND CONFISCATION OF MATERIAL BENEFIT DERIVED FROM CRIMINAL ACTIVITIES**

### **Material Benefit Seizure from the Perpetrator Article 8**

Material benefit derived from criminal activities may be seized and confiscated from the perpetrator referred to in Article 2 para. 1 of this Law if it was obtained in the period before and/or after the commission of the crime referred to in Article 2 para. 1 of this Law until the finality of the judgment, when the court finds that there is a temporal

correlation between the time of acquisition of material benefit and other circumstances of the case justifying property seizure or confiscation.

Well-founded suspicion that material benefit was derived from criminal activities exists if the property of the perpetrator referred to in Article 2 paragraph 1 of this Law is manifestly disproportionate to his lawful income.

If the material benefit derived from criminal activities was merged with lawful assets, the total property of the perpetrator referred to in Article 2 paragraph 1 of this Law will be subject to confiscation up to the level of assessed value of material benefit derived from criminal activities.

### **Seizure and Confiscation from Family Members Article 9**

Material benefit derived from criminal activities shall be confiscated from the perpetrator's family member referred to in Article 2 paragraph 1 of this Law, irrespective of whether he lives in a joint household with the perpetrator.

A family member referred to in para. 1 of this Article shall be deemed to mean a spouse or a common-law-marriage partner of the perpetrator referred to in Article 2 para. 1 of this Law, his direct blood relative onto any degree, collateral relative onto the fourth degree of kinship or a relative by marriage ending with the second degree of kinship.

### **Non-Conviction Based Confiscation Article 10**

If the person against whom criminal procedure has been instituted of a criminal offence referred to in Article 2 para. 1 of this Law dies or when instituted proceedings cannot be continued due to existence of circumstances which permanently preclude prosecution, material benefit derived from criminal activities shall be confiscated in the material benefit confiscation procedure pursuant to this Law.

In case of death of person against whom criminal proceedings were instituted of an offence under Article 2 para. 1 of this Law, material benefit derived from criminal activities shall be confiscated from his successors or from the person against whom criminal procedure may not be continued due to existence of circumstances which permanently preclude prosecution.

In cases referred to in paras. 1 and 2 of this Article, material benefit derived from criminal activities may be confiscated if it is probable, on the merit of evidence that instituted proceedings would have ended in a conviction had the person not died or had the circumstances permanently precluding prosecution not arisen.

## **III. FINANCIAL INVESTIGATION**

## **Initiating Financial Investigations**

### **Article 11**

*(Law amending the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity, Official Gazette of Montenegro 047/209, Article 1)*

Financial investigations may be instituted under an order of the state prosecutor, provided the following exists:

- 1) well-founded suspicion that material benefit was derived from criminal activities; and
- 2) reasonable suspicion that the criminal offence referred to in Article 2 para. 1 of this Law has been committed.

The order referred to in paragraph 1 of this Article shall designate a person against whom financial investigation is to be conducted.

## **Purpose and Scope of Financial Investigation**

### **Article 12**

Data and evidence of property, lawful income and costs of living of the holder, which the state prosecutor needs to submit a motion to confiscate material benefit shall be collected during the financial investigation, as follows:

- 1) data and evidence of the holder's property or of the holder's lawful income after the deduction of taxes and other dues paid and data and evidence of the relation between the holder's income and property;
- 2) data and evidence on the property transferred to third parties or to the legal successor and on the manner of acquiring and transferring property;
- 3) other data and evidence of importance for confiscating material benefit derived from criminal activities.

At the request of the state prosecutor, the investigative judge may issue an order obliging a bank or another financial institution to deliver data necessary to detect and identify material benefit derived from criminal activities.

In cases of failure to act upon the order referred to in para. 2 of this Article, the investigative judge may punish the person responsible within a bank or another financial institution with a fine amounting up to EUR 5,000 and the bank or another financial institution itself up to EUR 50,000.

Should the bank or another financial institution fail to enforce the order of the investigative judge even after the imposition of the fine referred to in para. 3 of this Article, the person responsible within a bank or another financial institution may be imposed a prison term until the enforcement of the order, and at the longest for two months.

Should the bank or another financial institution not enforce the order of the investigative judge even after imposing a prison term referred to in para. 4 of this Article, the investigative judge shall enforce the order referred to in para. 2 of this Article coercively.

An appeal may be lodged against the order referred to in paras. 2, 3, 4 and 5 of this Article within 48 hours as of the moment of receiving it.

The appeal referred to in para. 6 of this Article shall be decided by the panel of the competent court referred to in Art. 24 para. 7 of the Criminal Procedure Code. An appeal against the decision imposing a prison term shall not stay enforcement of the order.

### **Managing Financial Investigations Article 13**

Financial investigations shall be managed by state prosecutors.

The state prosecutor shall issue orders and personally manage the financial investigation thus directing the actions of the police, military police, administrative bodies in charge of taxation, customs, and prevention of money laundering and terrorist financing, as well as of other authorities performing tasks they are competent for, in order to trace material benefit derived from criminal activities and prove that material benefit has been obtained through criminal activity.

### **Taking Measures and Actions to Trace and Identify Property Derived from Criminal Activities Article 14**

The police shall take measures and actions of their own initiative or under an order of the state prosecutor aimed at tracing and identifying material benefit derived from criminal activities.

State authorities, public administrative authorities, local self-government authorities and other legal entities exercising public authorizations and other entities shall deliver to the police without delay the requested data for tracing and identifying material benefit derived from criminal activities.

### **Financial Investigations Team Article 15**

For the financial investigation needs the state prosecutor may establish a financial investigations team by virtue of his office or at the proposal of the authorities referred to in Article 13 paragraph 2 of this Law.

In addition to the state prosecutor, the financial investigations team may also comprise civil servants employed in bodies referred to in Art. 13 para. 2 of this Law.

The financial investigations team shall compile a written report and deliver it to the state prosecutor together with the collected data and evidence within the time-limit designated by the state prosecutor.

## **Collecting Evidence Article 16**

Financial investigations shall be conducted in accordance with this Law and the Criminal Procedure Code.

Evidence collected in criminal proceedings on account of a crime referred to in Article 2 para. 1 of this Law may be used for the needs of the financial investigation.

Evidence collected during a financial investigation in accordance with paragraph 1 of this Article may be used in criminal proceedings.

## **Extension of Financial Investigation Article 17**

If the data and evidence collected within financial investigations indicate to reasonable suspicion that material benefit derived from criminal activities has been transferred to another person that is not covered by the order to conduct an investigation, the state prosecutor shall order to extend the financial investigation and to conduct it against that person as well.

## **Finalization of Financial Investigation Article 18**

The state prosecutor shall finalize the financial investigation when he has established that the situation has been clarified sufficiently to file a motion for confiscation of material benefit or to discontinue the financial investigation.

The state prosecutor shall issue an order to discontinue the financial investigation if he finds during the financial investigation or after its finalization that the conditions to file a motion to confiscate material benefit are not fulfilled.

## **III. PROVISIONAL MEASURES TO SECURE ASSETS AND SEIZURE OF MOVABLES**

### **Types of Provisional Measures to Secure Assets Article 19**

In view of preserving material benefit derived from criminal activities and in view of a possible subsequent confiscation of such material benefit, the state prosecutor may propose the imposition of a provisional measure to secure assets (asset freezing), as follows:

- 1) prohibition to dispose of and use immovables, with an annotation of prohibition in the real estate register;
- 2) order to the bank to refuse the payment of an amount of money against which a provisional measure to secure assets is being imposed;
- 3) prohibition to dispose of a claim arising from a contractual relation;



- 4) prohibition to dispose of and encumber shares or stakes in the company, with a registration of prohibition in public records;
- 5) prohibition to use or dispose of the rights stemming from shares or stakes in a company or other securities;
- 6) introduction of interim administration into the company.

In view of preserving the material benefit derived from criminal activities and in view of enabling confiscation of such material benefit, the court may order movables to be seized, at the proposal of the state prosecutor.

### **Conditions for Imposing Provisional Measures to Secure Assets** **Article 20**

Provisional measures to secure assets shall be imposed if well-founded suspicion exists that the material benefit has been obtained through a criminal activity and if threat exist that the confiscation of such material benefit would be prevented or protracted.

Provisional measures to preserve material benefit shall be imposed if, in addition to the conditions referred to in paragraph 1 of this Article, one of the following risks also exists:

- that the value of material benefit referred to in paragraph 1 of this Article would depreciate;
- that the holder would use the material benefit referred to in paragraph 1 of this Article himself or via other persons to commit a crime;
- that the holder would use the material benefit referred to in paragraph 1 of this Article himself or via other persons to prevent or significantly protract its confiscation.

Introduction of an interim administration into the company may be imposed with the prohibition to dispose of and encumber shares or stakes in the company, along with entry of prohibition into public records or along with the prohibition to use and dispose of the rights stemming from shares or stakes in the company if, in addition to the conditions referred to in paras. 1 and 2 of this Article, the following conditions are also fulfilled:

- the holder owns shares or stakes in the amount of at least 25% of all shares or stakes in the company or controls the company on the basis of a dominant position in the management of the company;
- there is a need to protect the property of the company.

When imposing a provisional measure to secure assets, the court shall limit itself to establishing a manifest disproportion between the value of the property reduced by taxes and other duties paid and the lawful income of the holder.

### **Competence for Imposing a Provisional Measure to Secure Assets** **Article 21**

Provisional measures to secure assets shall be imposed by the court upon a motion of the state prosecutor.

The investigative judge shall be competent to impose a provisional measure to secure assets, and the appeal shall be decided by a panel of three judges of the first instance court.

In urgent cases, the state prosecutor may issue an order:

- prohibiting the disposal of and use of immovables, with an annotation of prohibition in the real estate register;
- ordering the bank to deny the payment of an amount of money against which a provisional measure to secure assets is being imposed;
- prohibiting the disposal of a claim arising from a contractual relation;
- prohibiting the disposal of and encumbrance of shares or stakes in a company, with registration of prohibition in public records;
- prohibiting the use of or disposal of the rights stemming from shares or stakes in a company or other securities;
- imposing seizure of movables.

The state prosecutor shall inform the investigative judge without delay of the issuance of an order referred to in para. 3 of this Article and file a motion to impose a provisional measure to secure assets.

The order referred to in para. 3 of this Article shall be in force until the court issues a decision referred to in para. 1 of this Article.

### **Motion to Impose a Provisional Measure to Secure Assets Article 22**

Motions to impose a provisional measure to secure assets shall contain: data on the holder or owner of the object, the statutory title of the criminal offence and material benefit that is subject to the provisional measure, evidence of legal grounds of ownership; circumstances affording well-founded suspicion that the property has been derived from criminal activities and the reasons justifying the need to impose a provisional measure to secure assets.

### **The Hearing Article 23**

The investigative judge shall schedule an ex-parte hearing to render a decision on the motion to impose a provisional measure to secure assets and shall invite the state prosecutor, whose presence is mandatory, to attend.

The hearing referred to in paragraph 1 of this Article shall be held at the latest within three days from the date of delivery of the motion to impose a provisional measure to secure assets.

### **Decision of the Investigative Judge**

## **Article 24**

After the hearing referred to in Article 22 paragraph 1 of this Law is held, and not later than three days following the completion of the hearing, the investigative judge shall issue a ruling imposing a provisional measure to secure assets or a ruling rejecting the motion to impose a provisional measure to secure assets.

The ruling referred to in paragraph 1 of this Article shall include a statement of reasons.

The investigative judge shall not be bound by the state prosecutors' motion to impose a provisional measure to secure assets as regards the type of the measure.

## **The Ruling Article 25**

The ruling imposing a provisional measure to secure assets shall contain:

- 1) data on the holder;
- 2) statutory title of the criminal offence referred to in Article 2 para. 1 of this Law;
- 3) name of the provisional measure to secure assets being imposed;
- 4) data on the material benefit subject to the provisional measure to secure assets;
- 5) circumstances affording well-founded suspicion that the material benefit has been derived from criminal activities;
- 6) reasons to impose a provisional measure to secure assets;
- 7) period during which the provisional measure to secure assets is being imposed;
- 8) instruction on the right of appeal and a warning that the appeal does not suspend enforcement of the ruling.

## **Delivery of the Ruling Article 26**

The ruling imposing a provisional measure to secure assets shall be delivered to the holder, defence attorney or proxy, the state prosecutor and the competent body.

To protect the rights and interests of bona fide third parties, the ruling imposing a provisional measure to secure assets shall be published in the Official Gazette of Montenegro and posted on the court's bulletin board, and it may be published in one of the print media in Montenegro.

Together with the ruling imposing a provisional measure to secure assets an invitation to join the procedure shall be published to bona fide third parties under this Law before the judgment to confiscate material benefit derived from criminal activities becomes final.

Bona fide third parties shall have procedural rights that the injured party has in accordance with this Law and the Criminal Procedure Code.

## **Appeal Article 27**

The state prosecutor may lodge an appeal against the ruling of the investigative judge rejecting the motion of the state prosecutor to impose a provisional measure to secure assets and may do so within eight days as of the date of delivery of the ruling.

The defence attorney or proxy shall be entitled to file an appeal against the ruling of the investigative judge imposing a provisional measure to secure assets within eight days from the delivery of the ruling, which shall not stay enforcement of the ruling.

Together with the appeal referred to in paragraph 2 of this Article, the holder shall submit evidence of origin of material benefit for which a provisional measure had been imposed.

### **Appellate Proceedings Article 28**

In view of deciding upon the appeal against the ruling imposing a provisional measure to secure assets, the panel referred to in Art. 21 para. 2 of this Law shall schedule a hearing and summon the holder, his defence attorney or proxy and the state prosecutor thereto.

In view of deciding upon the appeal against the ruling rejecting the motion of the state prosecutor to impose a provisional measure to secure assets, the panel referred to in Art. 21 para. 2 of this Law shall schedule a hearing and summon the state prosecutor thereto.

The summons and the appeal shall be delivered to the known address or main office of the person referred to in paras. 1 and 2 of this Article, including a warning that the hearing shall be held even in the event they fail to appear.

### **The Hearing Article 29**

The hearing referred to in Article 28 of this Law shall be held at the latest within 15 days from the date of lodging the appeal. Failure of duly summoned parties referred to in Art. 28 para 1 of this Law to appear shall not prevent the holding of the hearing.

The hearing which was opened shall be completed, as a rule, without deferral and recess.

The decision on the appeal shall be rendered by the panel referred to in Art. 21 para. 2 of this Law within eight days as of the date of conclusion of the hearing.

### **Decision on the Appeal Article 30**

The panel referred to in Art. 21 para. 2 of this Law shall dismiss the appeal against the decision referred to in Art. 27, paras. 1 and 2 of this Law if it is belated, incomplete or lodged by an unauthorized person.

The panel referred to in Art. 21 para. 2 of this Law shall reject the appeal by means of its ruling, if it finds it to be unfounded.

When deciding on the appeal of the state prosecutor referred to in Article 27 paragraph 1 of this Law, if the panel referred to in Art. 21 para. 2 of this Law finds that conditions have been fulfilled to impose a provisional measure to secure assets, it shall uphold the appeal of the state prosecutor and impose a provisional measure to secure assets.

The panel referred to in Art. 21 para. 2 of this Law shall uphold, by means of its ruling, the appeal of the holder referred to in Article 26 paragraph 2 of this Law and abolish the provisional measure to secure assets if:

- 1) there is no threat that subsequent confiscation would be prevented or protracted;
- 2) there are no sufficient evidence affording well-founded suspicion that material benefit subject to an imposed provisional measure has been derived from criminal activities;
- 3) the holder proves that he is not the owner of the entire or part of material benefit subject to an imposed provisional measure.

### **Decision of the Court of Second Instance Article 31**

An appeal may be lodged to the court of second instance against the decision to uphold the appeal of the state prosecutor referred to in Art. 30 para. 3 of this Law. The appeal may be lodged by a holder, defence attorney or proxy, within eight days as of the date of delivery of the decision.

The appeal referred to in para. 1 of this Article shall not operate as a stay of execution of the decision.

When deciding on the appeal referred to in para. 1 of this Article, the three judges' panel of the court of second instance may:

- dismiss the appeal as lapsed or inadmissible;
- reject the appeal as unfounded;
- uphold the appeal and reverse the decision; or
- uphold the appeal, abolish the decision and render its decision.

The second instance decision referred to in para. 3 of this Article shall be rendered within 15 days as of the day of receiving the appeal.

The second instance court may hold a hearing to decide on the appeal referred to in para. 1 of this Article.

Provisions of Articles 28 and 29 of this Law shall apply to scheduling and holding hearings referred to in para. 5 of this Article.

### **Duration of Provisional Measures to Secure Assets Article 32**

Provisional measure to secure assets may last at the longest until the decision to confiscate material benefit derived from criminal activities becomes final.

If a provisional measure to secure assets was imposed during a preliminary investigation, it shall be abolished by virtue of office if investigation is not initiated within six months as of the date of issuing the ruling imposing the provisional measure to secure assets.

If a provisional measure to secure assets was imposed during investigation, it shall be abolished ex officio if the indictment is not confirmed within two years as of the date of issuing the ruling imposing a provisional measure to secure assets.

The court may abolish the provisional measure to secure assets before the expiry of the period referred to in paras. 1, 2 and 3 of this Article, at the request of the state prosecutor, holder, defence attorney or proxy, if found that it is not needed or justified given the gravity of the crime, property status of the person to whom the provisional measure relates or the status of the person he is obliged to maintain under law and if the circumstances of the case indicate that confiscation of material benefit would not be prevented or significantly protracted before the completion of the procedure.

The court may replace the provisional measure to secure assets with another measure at the request of the state prosecutor, holder, defence attorney or proxy, if it finds that the purpose of preserving material benefit shall be achieved with another measure.

At the request of a bona fide third party, the court shall abolish the provisional measure to secure assets if that person submits documents from which one can clearly establish that he is owner of the material benefit which is subject to the provisional measure to secure assets.

The motion to abolish a provisional measure to secure assets may be filed again by the state prosecutor, holder, defence attorney, proxy or a bona fide third party, after the expiration of a three-month deadline from the adoption of the decision rejecting the motion to abolish referred to in para. 4 of this Article.

### **Relevant Application Article 33**

Unless otherwise stipulated in this Law, the provisions of the law governing execution and security of claims shall apply accordingly in the procedure of imposing a provisional measure to secure assets.

### **Temporary Seizure of Movable Property**

## **Article 34**

The provisions of this Law governing the procedure, jurisdiction and duration of provisional measures to secure assets shall apply accordingly to the procedure, jurisdiction and duration of seizure of movable property.

## **V. PERMANENT CONFISCATION OF MATERIAL BENEFIT DERIVED FROM CRIMINAL ACTIVITIES**

### **Time-Limit to File a Motion to Confiscate Material Benefit**

#### **Article 35**

*(Law amending the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity, Official Gazette of Montenegro 047/209, Article 2)*

After the finality of the judgment declaring the accused person guilty of the criminal offence referred to in Article 2 para. 1 of this Law, the state prosecutor shall file a motion, at the latest within two years, to confiscate material benefit derived from criminal activities from the holder who does not prove, by means of authentic documents or otherwise, that the origin of property is lawful (confiscation).

In the case referred to in Article 10 of this Law, the motion to confiscate material benefit derived from criminal activities may be filed at the latest within two years from the finality of the decision establishing that circumstances exist which permanently preclude prosecution or from the date of establishing that criminal proceedings may not be initiated due to the death of the criminal perpetrator.

The panel referred to in Article 21 paragraph 2 of this Law shall decide on the motion referred to in paras. 1 and 2 of this Article, at the main hearing referred to in Article 38 of this Law.

### **Contents of the Motion**

#### **Article 36**

The motion to confiscate material benefit derived from criminal activities shall contain:

- 1) data on the final decision or decision referred to in Article 35 paras. 1 and 2 of this Law;
- 2) data on the holder;
- 3) data on the material benefit that needs to be confiscated;
- 4) evidence of the property the holder possesses and of his lawful income;
- 5) evidence that the material benefit has been derived from criminal activities or reasons which indicate a manifest disproportion between the value of the property reduced by taxes and other duties paid and the holder's lawful income.

In addition to the data referred to in paragraph 1 of this Article, the motion to confiscate property derived from criminal activities filed against the successor shall also contain evidence that the successor inherited material benefit derived from criminal activities, whereas a motion against third parties shall also contain evidence that the material

benefit was transferred without remuneration or for remuneration if the third party knew that the material benefit has been derived from criminal activities or if he could have known or was obliged to know that the material benefit has been derived from criminal activities.

Financial investigation case files shall be delivered with the motion to confiscate property.

### **Preliminary Hearing Article 37**

The court shall, within 30 days as of the date of filing the motion referred to in Art. 35 of this Law, schedule a preliminary hearing in view of proposing evidence and deciding on the matters to be discussed at the main hearing.

The court shall summon the state prosecutor, the holder and his defence attorney or his proxy to the preliminary hearing. The summons shall be delivered upon the holder at the address known to the court or at the main office of the summoned person, with a warning that the hearing will be held even if he fails to appear.

If the summons were delivered directly upon the holder or his defence attorney or proxy, it shall be deemed that the delivery to the holder was duly performed. In the case that the summons cannot be delivered in this manner, the court shall appoint an ex officio proxy to the holder for the material benefit confiscation procedure.

The summons shall be delivered on the holder at least eight days before the hearing.

The court shall invite in the summons the persons referred to in paragraph 2 of this Article to this facts and offer evidence at the preliminary hearing which serve as the basis of state prosecutor's motion or which contest it.

### **Main Hearing Article 38**

The court shall hold the main hearing within two months from the date of holding the preliminary hearing.

If circumstances exist to conclude that a proof cannot be obtained within the time-limit referred to in paragraph 1 of this Article or if the proof needs to be obtained from abroad, the date of holding the main hearing may be postponed at the longest for another two months.

After the expiration of the four months' time-limit from the date of holding the preliminary hearing, the main hearing shall be held regardless of the fact that the proof referred to in paragraph 2 of this Article has not been obtained.

In the event referred to in para. 3 of this Article, the court may postpone the holding of the main hearing in case of decisive evidence.



## **Summons Article 39**

The court shall invite the state prosecutor, the holder and his defence attorney or proxy to the main hearing and where appropriate, other persons as well.

The summons shall be delivered upon the holder, defence attorney or proxy and other persons at the address known to the court or at the main office of the summoned legal person, with a warning that the hearing shall be held even in the event they fail to appear.

The summons shall be delivered on the holder at least 15 days before the hearing.

## **Presentation of Evidence Article 40**

The main hearing shall begin by presenting the contents of the state prosecutor's motion and shall be held, as a rule, without deferral and recess.

If the motion is focused on the property of the accused person, the state prosecutor shall this evidence on the property of the accused person, on his lawful income and on the circumstances which indicate a manifest disproportion between the value of the property reduced by taxes and other duties paid and lawful income.

The accused person or his defence attorney shall make pleas regarding the state prosecutor's allegations referred to in para. 1 and 2 of this Article.

If the motion is focused on the property of the legal successor or of the third party, the state prosecutor shall this evidence that the legal successor inherited property derived from criminal activities or that the property were transferred to a third party without remuneration or for remuneration that is manifestly disproportionate to the actual value, so as to thwart its confiscation.

The legal successor, accused person's family member, third party or his proxies shall make pleas regarding the state prosecutor's allegations referred to in paras. 1 and 4 of this Article.

## **The Ruling Article 41**

After the completion of the main hearing, the court shall issue a ruling upholding or rejecting the motion to confiscate material benefit.

The ruling on confiscation of material benefit shall include data on the holder, the statutory title of the criminal offence from the judgment, data on the material benefit and value of material benefit confiscated from the holder if the holder had the property at his disposal and a decision on the management costs of material benefit placed

under a provisional measure to secure assets, on the injured party's claim for damages and on lawyer fees.

The ruling referred to in paragraph 1 of this Article shall be delivered by the court to the holder, defence attorney or proxy, injured party and his proxy and to the competent body.

Where the ruling referred to in para. 2 of this Article decided on the costs of managing the material benefit which is subject to a provisional measure to secure assets and the costs of the proxy referred to in Art. 37 para. 3 of this Law and the costs of the temporary agent referred to in Art. 46 para. 2 of this Law, and those costs cannot be collected from the holder, the court shall set aside that amount from the confiscated material benefit in the decision to confiscate material benefit.

### **Claim for Damages Article 42**

If a final judgment was rendered on the injured party's claim for damages, and the judgment has not been enforced, the court shall set aside that amount in the decision to confiscate material benefit or set aside a part of assets in view of settling the claim for damages, and if a decision was not made on the claim for damages, the court may set aside a part of such assets by means of its ruling in view of settling the claim for damages.

### **Right of Appeal Article 43**

The ruling referred to in Article 41 paragraph 1 of this Law may be appealed by the holder, his defence attorney or proxy, injured party and his proxy or the state prosecutor, within 15 days from the delivery date of the ruling.

The second instance court of appropriate jurisdiction shall render a decision on the appeal referred to in paragraph 1 of this Article.

### **Decision on the Appeal Article 44**

When deciding upon the appeal, the court of second instance may dismiss the appeal as belated or impermissible, reject the appeal as unfounded or uphold the appeal and reverse or abolish the ruling and remand the case for a new decision.

Where the ruling has already been abolished once in the same case, the court of second instance shall schedule a hearing and render a decision on the appeal, given that the ruling may not be abolished and the case may not be remanded for a new decision to the court of first instance.

Provisions of Art. 29 of this Law shall apply to the scheduling and holding of the hearing referred to in paragraph 2 of this Article.

## **Reopening Proceedings Article 45**

The procedure which was completed in accordance with this Law with a final decision may be reopened at the request of the state prosecutor or holder, in accordance with Articles 424 to 432 of the Criminal Procedure Code.

## **Delivery of documents Article 46**

Summons, documents and decisions in proceedings of imposition of provisional measure to secure assets and of seizure and confiscation of material benefit derived from criminal activities respectively, shall be delivered by the court to the parties in accordance with the provisions of the Criminal Procedure Code governing service in person.

Where a summon, document or decision cannot be delivered to the holder, the court shall appoint a temporary agent authorized to take actions on behalf of and for the account of the holder in view of protecting his interests.

In the event referred to in paragraph 2 of this Article, the summons, documents or decision shall also be posted on the court's bulletin board.

## **VI. PROTECTION OF BONA FIDE THIRD PARTIES AND IMPACT ON OTHER PROCEDURES**

### **Social Protection Article 47**

Decisions to confiscate material benefit derived from criminal activities shall not exclude the exercise of rights in the field of social and child protection, in accordance with the law which regulates social and child protection.

### **Protection of Injured Parties Article 48**

If a final decision was rendered in criminal proceedings on account of a crime referred to in Article 2 para. 1 of this Law or in civil proceedings, to uphold the injured party's claim for damages, the court shall impose, at the request of the injured party, in the ruling on confiscation of material benefit, that the claim for damages is to be settled from the confiscated material benefit if the claim for damages has not been not settled otherwise before the ruling becomes final.

Where civil proceedings are underway in view of exercising the claim for damages on account of a crime referred to in Article 2 para. 1 of this Law, the court shall impose, at the request of the injured party, in the ruling on confiscation of material benefit that

funds amounting to the claim for damages are to be set aside and kept separately or deposited onto a separate account.

Where a judgment is rendered in proceedings referred to in paragraph 2 of this Article to uphold the claim for damages, execution shall be conducted on the funds set aside or deposited, if the claim for damages has not been settled otherwise.

### **Rights of Bona Fide Third Parties** **Article 49**

Confiscation of material benefit derived from criminal activities shall not affect the rights of bona fide third parties to that property.

A bona fide third party may join the procedure conducted in accordance with this Law before the decision to confiscate material benefit derived from criminal activities becomes final.

A bona fide third party may file a motion to abolish or modify the provisional measure to secure assets, take part in the hearings, lodge an appeal against the ruling imposing a provisional measure to secure assets or against the ruling on seizure of movable assets or confiscation of material benefit derived from criminal activities and take other actions in accordance with this Law.

If the bona fide third party does not join the procedure conducted in accordance with this Law before the decision to confiscate material benefit derived from criminal activities becomes final, their right to seek the settlement of claims from the confiscated material benefit shall be forfeited.

### **Settlement of Claims of Bona Fide Third Parties** **Article 50**

Bona fide third parties whose claim or another right was upheld in the final judgment on confiscation of material benefit derived from criminal activities may file a request to the competent body within two months as of the date of receipt of the final judgment, for the satisfaction of their claim or for exercise of another right stemming from the confiscated property.

If the total value of the claim referred to in paragraph 1 of this Article exceeds the value of confiscated material benefit derived from criminal activities, the competent body shall offer settlement to the bona fide third party in accordance with the rules for satisfying creditors in bankruptcy proceedings.

If the offer referred to in paragraph 2 of this Article is not accepted by the bona fide third party, they may, within two months, file an application for issuing a ruling on settlement to the court which rendered the judgment to confiscate material benefit derived from criminal activities. The court shall order settlement in accordance with the act governing creditor settlement in bankruptcy proceedings.

An appeal may be filed against the ruling referred to in paragraph 3 of this Article to the second instance court within eight days of the receipt of the ruling.

### **Impact on Other Procedures Article 51**

After imposing the provisional measure to secure assets in accordance with this Law, it shall not be possible to initiate against the holder enforced collection proceedings of a tax claim, enforcement procedure or voluntary liquidation procedure of a company, nor other proceedings aimed at settling the claim from the material benefit subject to confiscation, with the exception of the procedure aimed at exercising the injured party's claim for damages.

Initiated procedures referred to in paragraph 1 of this Article shall be stopped pending the finality of the decision on confiscation of material benefit derived from criminal activities.

The statute of limitations and the statutory time-limits for taking actions in proceedings referred to in paragraph 1 of this Article shall be stopped during the period from the imposition of a provisional measure to secure assets in accordance with this Law, until the rendering of a decision on confiscation of property derived from criminal activities.

The procedure referred to in paragraph 1 of this Article may be resumed after the decision on the motion to confiscate material benefit derived from criminal activities becomes final.

### **Impact on Bankruptcy Proceedings Article 52**

The legal consequences of opening bankruptcy proceedings shall not impact the enforcement of this Law.

In case of opening bankruptcy proceedings, Montenegro shall be:

- the secured creditor of material benefit derived from criminal activities in relation to which a provisional measure to secure assets has been imposed and whose annotation has been entered into the public register;
- the unsecured creditor of material benefit derived from criminal activities that were confiscated in accordance with the provisions of this Law.

On the date of opening bankruptcy proceedings against a legal entity which owns seized material benefit, conditions shall be fulfilled for lodging an interpleader action regarding that material benefit, as well as regarding due amounts.

## **VII. MANAGING THE SEIZED AND CONFISCATED MATERIAL BENEFIT**

### **1. Seized and Confiscated Material Benefit Management Duties**

## **Managing Seized and Confiscated Material Benefit Article 53**

Management of seized and confiscated material benefit shall include:

- 1) enforcement of provisional measures to secure assets imposed in accordance with this Law or the Criminal Procedure Code;
- 2) execution of decisions on seizure of movable property and confiscation of material benefit derived from criminal activities;
- 3) enforcement of decisions to seize and confiscate material benefit acquired by a criminal offence, instrumentalities of crime and items seized in criminal and misdemeanour proceedings and the decision on property pledged to the court as bail;
- 4) valuation of confiscated material benefit for purposes of its management in accordance with law;
- 5) leasing confiscated material benefit or entrusting it for management in accordance with this Law;
- 6) granting free of charge utilization of seized and confiscated material benefit;
- 7) safekeeping, storing, selling and restituting confiscated material benefit;
- 8) depositing confiscated funds and funds obtained by selling confiscated property in accordance with law;
- 9) destroying confiscated material benefit in accordance with law;
- 10) keeping records on seized and confiscated material benefit and on judicial proceedings within which they were seized or confiscated, as well as on provisional measures to secure assets;
- 11) other tasks in accordance with law.

The police shall assist the competent body to enforce decisions referred to in paras. 1, 2 and 3 of this Article.

## **Manner of Management Article 54**

Management duties referred to in Art. 53 of this Law shall be conducted, with the diligence of a prudent owner, by the competent body ex officio or under a court's decision, in a manner which guarantees the highest level of preservation of value of seized and confiscated material benefit and the lowest costs.

## **Delivery of Decisions and Data Article 55**

The decisions referred to in Art. 53 para. 1 items 1, 2 and 3 of this Law, as well as the data necessary to perform management duties of seized and confiscated material benefit shall be delivered to the competent body without delay by the court, other bodies and legal entities.

## **Record Article 56**

The record on taking over confiscated material benefit derived from criminal activities shall contain:

- 1) name of the court which rendered the decision referred to in Article 53 para. 1 items 1, 2 and 3 of this Law, case number, decision number and the date of its rendering;
- 2) name, surname, and address of the person from whom the material benefit was confiscated, or name and main office of the legal person;
- 3) capacity of the person from whom the material benefit was confiscated;
- 4) data on confiscated material benefit and on the state of the material benefit in question;
- 5) data on the value of confiscated material benefit;
- 6) data on the location of confiscated material benefit;
- 7) signature of the authorized person; and
- 8) other data on the confiscated material benefit.

## **2. Execution of Provisional Measures to Secure Assets and Decisions on Seizure of Movable Property and Confiscation of Material Benefit Derived from Criminal Activities or Acquired by a Criminal Offence**

### **Prohibition of Disposal of and Use of Real Estate, Order to the Bank, Prohibition of Disposal of a Claim and Prohibition of Selling, Transferring and Encumbering Shares Article 57**

Where a provisional measure to secure assets referred to in Article 19 paragraph 1 items 1 to 4 of this Law is imposed, the competent shall issue an order on execution immediately after receiving the ruling imposing that measure.

The competent body shall deliver without delay the order referred to in paragraph 1 of this Article together with the ruling imposing a provisional measure to secure assets to the administrative authority in charge of managing the real estate register or to the legal entity managing the public registry or records of the material benefit subject to the provisional measure to secure assets or which manages the holder's account.

The authority or the legal entity referred to in paragraph 2 of this Article shall act upon the order of the competent body in accordance with the provisions of the act on the basis of which the authority or the legal entity performs tasks.

Provisions of the act governing execution and security of claims shall apply accordingly to the execution of orders on the taking of Provisional Measures to Secure Assets, unless otherwise provided by this Law.

### **Prohibition of Using or Disposing of Rights Stemming from Shares and Stakes Article 58**

If the provisional measure to secure assets referred to in Art. 19 para. 1 item 5 of this Law was imposed, the competent body shall issue an execution order immediately after receipt of the ruling imposing that measure.

Provisions of Art. 57 of this Law shall apply accordingly to the submission of the order referred to in para. 1 of this Article, on obligations of the body, i.e. legal person keeping public records on shares and stakes in companies and other securities and on execution of the order.

In case of imposing a provisional measure to secure assets referred to in Art. 19 para. 1 item 5 of this Law, the competent body may designate a person to represent the interests of the minority shareholder or minority stake owner in the company.

### **Company in Administration** **Article 59**

If the provisional measure to secure assets referred to in Art. 19 para 1 item 6 of this Law related to a joint-stock company was imposed, the Government of Montenegro (hereinafter "the Government") shall appoint an interim steering committee having three members and the interim administrator at the proposal of the competent body.

The interim steering committee referred to in para. 1 of this Article shall take over the powers of the general meeting and board of directors of the joint-stock company, whereas the interim administrator shall take over the powers of the executive manager.

If a provisional measure to secure assets referred to in Art. 19 para. 1 item 6 of this Law related to another form of company was imposed, the Government shall appoint the interim administrator at the proposal of the competent body and he shall take over the powers of company's bodies.

The following persons may not be appointed members of the interim steering committee or interim administrator referred to in paras. 1 and 3 of this Article:

- 1) subject to a security measure of prohibition of performing profession, activity or duty;
- 2) who have a claim or a liability towards the company in administration;
- 3) who were members of a managing body or other authorized persons in the company in administration during the previous year;
- 4) who are blood relatives in the direct line of descent, collateral relatives onto the fourth degree of kinship or relatives by marriage onto the second degree of kinship, or spouse or common-law spouse, regardless of whether the community of life was dissolved or not, of the holder or of managing bodies' members of the company in administration;
- 5) who took part, as a person in official capacity, in the seizure or confiscation of material benefit procedure in accordance with this Law or if other important reasons exist indicating conflict of interest in respect of the company in administration;
- 6) who is a defence attorney or a proxy of the holder;
- 7) who is related to the holder.



Supervision over the work of the interim steering committee and of the interim administrator referred to in paras. 1 and 3 of this Article shall be conducted by the competent body.

The interim steering committee or the interim administrator referred to in paras. 1 and 3 of this Article shall submit an operating statement of the company in administration to the competent body once in three months.

### **Enforcement of a Decision to Seize Movables Article 60**

Provisions of the law governing execution and security of claims shall apply accordingly to the enforcement of a decision to seize material benefit.

### **Enforcement of a Decision to Confiscate Material Benefit Derived from Criminal Activities or Acquired by a Criminal Offence Article 61**

Confiscated material benefit shall become state property and the law governing state property shall apply to the enforcement of decisions regarding confiscated material benefit.

## **3. Valuation, Leasing and Granting Free of Charge Utilization of Seized and Confiscated Material Benefit**

### **Valuation of Seized and Confiscated Material Benefit Article 62**

The competent body shall carry out a valuation of seized and confiscated material benefit for the needs of material benefit management (leasing, granting free of charge utilization and sale) or at the request of the court.

The valuation referred to in paragraph 1 of this Article may be performed by an expert employed by the competent body.

By way of derogation from paragraph 2 of this Article, the competent body may hire an expert, an organization or an institution to carry out the valuation of confiscated property, with prior consent of the public administrative authority in charge of financial affairs.

### **Leasing or Granting Free of Charge Utilisation of Seized Material Benefit Article 63**

The material benefit which is subject to a provisional measure to secure assets referred to in Art. 19 para. 1 item 1 of this Law may be leased by the competent body or entrusted for management to a person not related to the holder, state bodies or local

self-government bodies, legal persons performing public powers, humanitarian and non-governmental organisations or other legal entities.

The competent body may grant free of charge utilisation of a house or an apartment which is subject to a provisional measure to secure assets referred to in Art. 19 para. 1 item 1 of this Law to the spouse, children or parents of the holder, if they were living in the seized house or apartment at the time of its seizure.

The funds obtained by leasing seized material benefit shall be paid onto a special account of the competent body and used to cover the costs of management and maintenance of seized material benefit.

The manner of leasing seized material benefit shall be laid down by the Government.

#### **4. Safekeeping, Storing and Selling Seized and Confiscated Material Benefit**

##### **Safekeeping and Storing Seized Confiscated Material Benefit Article 64**

The competent body shall hand over seized material benefit of historical, artistic and scientific value to institutions specialized in safekeeping such property, until the finality of the decision.

Seized objects made of precious metals, precious and semi-precious stones, pearls and other valuables shall be handed over by the competent body for safekeeping to the Central Bank of Montenegro.

Seized weapons shall be handed over for safekeeping by the competent body to the public administrative authority competent for internal affairs, with the exception of collector's and trophy specimens which shall be entrusted for safekeeping to a museum.

The competent body may conclude a contract with a physical or legal person to whom it shall hand over the seized material benefit for safekeeping and storing.

Confiscated material benefit referred to in para. 1 of this Article and confiscated old weapons referred to in para. 3 of this Article, shall be entrusted as state property for safekeeping to an institution specialized for safeguarding such property designated by the public administrative body in charge of culture.

Confiscated material benefit referred to in para. 2 of this Article shall be safeguarded as state property in a safe deposit box of the Central Bank of Montenegro on the basis of a safe deposit box lease agreement concluded by the competent body and the Central Bank of Montenegro.

##### **Sale of Movable Property Article 65**

The competent body may sell movable property against which a seizure order was issued, if:

- the estimated costs of safekeeping, managing and maintaining significantly exceed the value of that property;
- the property is under a threat of deterioration.

The sale referred to in paragraph 1 of this Article shall be conducted via a public auction, in accordance with the law governing execution and security of claims.

In the case of unsuccessful sale referred to in paragraph 2 of this Article, sale may be performed via a negotiated deal, in accordance with the law governing execution and security of claims, and if that sale also fails, the seized movable assets may be donated for humanitarian purposes, entrusted for use to a state body or a public administrative body or destroyed.

The value of assets referred to in paragraph 1 of this Article shall be established by the competent body.

### **Securities Article 66**

Management and sale of securities shall be conducted in accordance with the law governing securities.

In the case where seizure of securities was imposed, the competent body shall enter an annotation of prohibition to dispose of or alienate those securities with the Central Depository Agency.

The competent body may hire an authorized actor in the securities market to keep track of the developments regarding the market value of securities whose seizure was imposed.

### **Sale of Immovable Property Article 67**

The competent body may sell the immovable property which is subject to a provisional measure to secure assets referred to in Art. 19 para. 1 item 1 of this Law, with the approval of the court, if:

- the costs of safekeeping, managing and maintaining significantly exceed the value of that property;
- the property is under a threat of deterioration.

The value of assets referred to in paragraph 1 of this Article shall be established by the competent body.

The manner of selling immovable property which is subject to a provisional measure to secure assets referred to in Art. 19 para. 1 item 1 of this Law shall be stipulated by the Government.

### **Restrictions of Disposal Article 68**

Confiscated property handed over for safekeeping and storing may not be leased or sold by the competent body to the spouse or common-law spouse of the holder, their direct blood relative to any degree whatsoever, collateral blood relative to the fourth degree, or relative by marriage to the second degree, defence attorney or proxy of the holder nor to the company in which the holder has shares of at least 25% of all shares or the company controlled by them on the basis of a dominant position in its management, or another person related to the holder.

### **Sale of Perishables and Animals Article 69**

The competent body may sell perishables and animals without a public auction.

Funds obtained by selling seized material benefit referred to in paragraph 1 of this Article shall be kept in a special account of the competent body as a demand deposit at the most favourable interest rate, until the finality of the decision on confiscation of material benefit.

## **5. Restitution of Seized Material Benefit and Compensation of Damages**

### **Restitution of Seized Material Benefit Article 70**

Where a provisional measure to secure assets or seizure of movable property were imposed in accordance with this Law, the holder shall be entitled to restitution of seized material benefit and damages in accordance with the law governing contractual relations, in the case where:

- 1) a decision was issued to reject the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence;
- 2) judgment of acquittal or judgment of rejection were rendered with regards to the offence referred to in Art. 2 para. 1 of this Law.

In the case referred to in paragraph 1 item 1 of this Article, the competent body shall retribute seized material benefit without delay and at the latest within 15 days from the date of the receipt of the decision rejecting the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence.

In the case referred to in para. 1 item 2 of this Article, the competent body shall retribute seized material benefit without delay and at the latest within 15 days of the receipt of a final judgment of acquittal or of dismissal.

An action for damages may not be brought after the expiration of the time-limit of three months as of the date of delivery of the final judgment rejecting the motion for confiscation of material benefit derived from criminal activities or acquired by a criminal offence.

A written record shall be drawn up concerning the restitution of property referred to in paras. 1, 2 and 3 of this Article, which shall be signed by the director of the competent body and the holder.

Montenegro shall be accountable for compensation of damages referred to in paragraph 4 of this Article.

### **Scope of Restitution of Material Benefit Article 71**

In the case of restitution of material benefit, the revenues and all other benefits generated during the management of seized material benefit shall be handed over to the holder.

If the entire material benefit or part of it was sold during the management of seized material benefit, the competent body shall transfer to the holder the amount of the sales price increased by the amount of average interest rate calculated on sight deposits in Montenegro.

If the material benefit against which a seizure order was issued was gifted or destroyed during management, the holder shall be entitled to compensation of damages in accordance with the law governing contractual relations.

The competent body shall act in accordance with paras. 1 and 2 of this Article, within 15 days as of the date of delivery of the decision referred to in Art. 70 paragraph 1 of this Law.

## **6. Depositing Seized Cash and Funds Obtained by Selling Seized Material Benefit**

### **Depositing Seized Cash Article 72**

Cash seized in euro shall be deposited onto a special purpose account of the competent body, which shall be kept with the public administrative authority competent for financial affairs, until the finality of the decision on seizure of cash.

Seized cash, that is foreign currency and foreign exchange in cash shall be paid onto a special purpose account of the competent body held with the Central Bank of Montenegro, until the finality of the decision on seizure of cash.

### **Depositing Funds from the Sale Article 73**

The funds obtained by selling the movable property referred to in Article 65 of this Law and by selling immovable property referred to in Article 67 of this Law shall be deposited with a bank in Montenegro as a sight deposit, until the finality of the decision to seize material benefit.

The funds referred to in para. 1 of this Article shall be used by the competent body to cover the costs of management and maintenance of seized material benefit.

## **7. Destruction of Seized and Confiscated Material Benefit**

### **Destruction of Material Benefit Article 74**

Seized and confiscated material benefit that has to be destroyed in view of protecting the lives and health of humans and animals and the environment, due to security-related or other reasons shall be destroyed under the supervision of competent authorities and in accordance with law.

The costs of destruction of material benefit referred to in paragraph 1 of this Article shall be borne by the person from whom the material benefit was seized or confiscated.

In the case that the person referred to in paragraph 2 of this Article is unknown or cannot be reached, the costs of destruction shall be borne by the competent body.

If the identity of the person is established at a later time or if the person referred to in paragraph 3 of this Article becomes reachable, the competent body shall be entitled to compensation of costs from that person.

The costs of destroying perishable property shall be borne by the holder.

### **Management Costs Article 75**

Safekeeping and maintenance costs of seized and confiscated material benefit shall be borne by the competent body, until the finality of the decision.

## **8. Management of Confiscated Instrumentalities of Crime, Items Seized in Criminal and Misdemeanour Proceedings and Property Pledged to the Court as Bail**

### **Relevant Application Article 76**

The provisions concerning the management of property confiscated in accordance with this Law shall apply accordingly to the management of confiscated instrumentalities of crime and items seized in criminal and misdemeanour proceedings, and to property pledged to the court as bail.

## **9. Record Keeping on Seized and Confiscated Material Benefit and on Judicial Proceedings within which it was Seized and Confiscated**

### **Records Article 77**

Records on seized and confiscated material benefit shall include data on:

- 1) final court decisions imposing provisional measures to secure assets, seizure of movables and confiscation of material benefit derived from criminal activities or acquired by a criminal offence – number and date of rendering, name of court and date when the decision became final;
- 2) criminal offence referred to in Art. 2 para. 2 of this Law or the criminal offence committed to obtain the material benefit – statutory title of the criminal offence and Article of the Criminal Code of Montenegro laying down the criminal offence;
- 3) type of and estimated value of seized and confiscated material benefit, as follows:
  - for movables – list of items, their estimated value and the place where the items are located;
  - for immovables – data on: surface area of real estate, buildings, rights over real estate and the body with which the real estate is registered in the real estate register; period during which the material benefit has been seized, material benefit entrusted for safekeeping and to whom it has been entrusted; movables sold with the objective to preserve its value and the value for which it has been sold; sale of confiscated material benefit; value for which it has been sold; property whose use was granted free of charge; destroyed property;
- 4) person from whom the material benefit has been seized or confiscated – name, surname, personal identification number and address of the natural person or name, main office and company identification number and capacity of the person from whom material benefit has been seized or confiscated;
- 5) restitution of seized material benefit – number of final decision of the court rejecting the motion to confiscate material benefit and date when the decision becomes final; number of final judgment referred to in Art. 70 para. 1 item 2 of this Law and date when the judgment becomes final and scope of restitution of seized material benefit;
- 6) confiscated instrumentalities of crime, items seized in criminal and misdemeanour proceedings and property pledged to the court as bail.

The records referred to in para. 1 of this Article shall be kept separately for provisional measures to secure assets, seizure of movables, confiscated material benefit, confiscated instrumentalities of crime, items seized in criminal and misdemeanour procedure and property pledged to the court as bail.

The records referred to in para. 1 of this Article shall be kept in the form of a book comprising numbered sheets or electronically.

Record keeping on seized and confiscated material benefit shall be subject to a relevant application of regulations on office management in state administration bodies.

## **VIII. INTERNATIONAL COOPERATION**

### **Basis for International Cooperation Article 78**

International cooperation with a view to seizing, confiscating and managing material benefits shall be exercised in accordance with an international treaty.

If there is no international treaty or if some matters are not governed by an international treaty, international cooperation shall be exercised in accordance with this Law, under the condition that reciprocity exists or if one can expect that the foreign country would act upon a mutual legal assistance request of the domestic judicial authority.

The provisions of the act governing mutual legal assistance in criminal matters shall apply accordingly to international cooperation matters not governed by this Law.

Division of confiscated material benefit with other countries may be governed by an international treaty.

### **Scope of International Cooperation Article 79**

International cooperation within the meaning of this Law shall include identification, tracking and tracing material benefit, imposing provisional measures to secure assets, seizing movable property, confiscating material benefit and managing the seized and confiscated material benefit.

The organisational police unit competent for financial investigations shall act upon requests in accordance with the Council Decision 2007/845/JHA of 6 December 2007.

### **Delivery of Requests for Co-operation Article 80**

The request of the competent foreign authority for mutual cooperation shall be delivered to the competent body of Montenegro through the public administrative authority competent for judicial affairs. The request of the competent body of Montenegro shall be delivered to the competent foreign authority in the same manner.

### **Contents of Requests for Co-operation**



## **Article 81**

A request for mutual cooperation shall contain:

- 1) name of the requesting authority;
- 2) legal basis for mutual cooperation;
- 3) data on the person to whom the request relates (name, date and place of birth, nationality and place of temporary residence), and if it concerns a legal person, also data on its main office;
- 4) data on the material benefit subject to the request for cooperation and its connections to the person referred to in paragraph 1 item 3 of this Article;
- 5) specific actions that should be taken; and
- 6) extract from the text of the Law of the other state which is the basis for taking specific measures.

In addition to the data referred to in paragraph 1 of this Article, the request for mutual cooperation which relates to tracing material benefit, prohibiting the disposal of material benefit and seizing and confiscating material benefit shall also contain a description of circumstances affording reasonable suspicion that the material benefit has been derived from criminal activities.

In the case referred to in paragraph 2 of this Article, evidence shall be attached to the request showing that criminal proceedings have been instituted on account of the crime referred to in Article 2 para. 1 of this Law or that a financial investigation has been instituted.

The final judgment ordering confiscation of material benefit shall be attached to the request for confiscation of material benefit.

## **Procedure Article 82**

After receiving the request of the competent foreign authority for mutual cooperation, the state prosecutor and the court shall check whether the terms and conditions referred to in Articles 79 and 81 of this Law have been fulfilled.

If the request of the competent foreign authority for mutual cooperation does not contain all the prescribed elements, the foreign authority shall be asked to supplement the request and a time-limit shall be fixed for it to do so.

If the competent foreign authority fails to act in accordance with paragraph 2 of this Article, the request of the foreign authority shall be rejected.

## **Duration of the Measure to Secure Assets Article 83**

The provisional measure to secure assets imposed under a mutual cooperation request shall last until the completion of the procedure for confiscation of material benefit in the requesting country.

If the procedure referred to in paragraph 1 of this Article is not completed within two years as of the date of issuance of the ruling imposing a provisional measure to secure assets, the court shall abolish the provisional measure to secure assets ex officio.

Six months before the expiry of the time-limit referred to in paragraph 2 of this Article, the court shall inform the competent foreign authority of the consequences of expiry of time-limit.

Upon a substantiated request of the competent foreign authority, the court may decide to extend the duration of the provisional measure to secure assets for one more year at the longest.

## **IX. TRANSITIONAL AND FINAL PROVISIONS**

### **Initiated Procedures Article 84**

The procedures in which the first instance decision to confiscate property was passed up to the date of entry into force of this Law shall be continued in accordance with the provisions of regulations which were in force before the entry into force of this Law.

If the first instance decision on a motion to confiscate property was overruled and the case was remanded to the court of first instance for retrial, provisions of this Law shall apply in further proceedings.

If the final decision to confiscate property rendered before the entry into force of this Law has not been executed, execution shall be conducted in accordance with the provisions of this Law.

### **Adoption of Bylaws Article 85**

Bylaws for the enforcement of this Law shall be passed within 30 days following the date of entry into force of this Law.

### **Termination of Validity Article 86**

The Law on Management of Seized and Confiscated Property (Official Gazette of Montenegro 49/08 and 31/12) and the provisions of Article 113 paras. 3 and 4 of the Criminal Code of Montenegro (Official Gazette of the Republic of Montenegro 70/03 and 47/06 and Official Gazette of Montenegro 40/08, 25/10, 32/11, 40/13 and 14/15) and Article 90, sub-heading "3. Confiscation of Property Whose Lawful Origin has not Been Proven" and Art. 486 to 489 of the Criminal Procedure Code (Official Gazette of Montenegro 57/09, 49/10, 47/14, 2/15 and 35/15) shall be repealed on the day of entry into force of this Law.

**Entry into Force**

**Article 87**

*(Law amending the Law on Seizure and Confiscation of Material Benefit Derived from Criminal Activity, Official Gazette of Montenegro 047/209, Article 3)*

This Law shall enter into force on the eighth day following the day of its publication in the Official Gazette of Montenegro.