INTERNATIONAL ASSOCIATION OF JUDGES
Third Study Commission
Questionnaire 2011
Criminal organizations: Identification, Seizure and Forfeiture

Responses from the Austrian Association of Judges

1. Has your country signed and ratified the Convention and the Protocols thereto. If yes, on what date.

Yes, Austria has signed the Convention Against Transnational Organized Crime on December 12, 2000 and has ratified it on September 23, 2004. Furthermore, Austria has signed two out of three Protocols (the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the Protocol Against the Smuggling of Migrants by Land, Sea and Air) on December 12, 2000. The Protocols came in force on October 15, 2005 and December 30, 2007.

2. Has your country special legislation for
   2.1. the identification,
   2.2. the seizure (freezing),
   2.3. the forfeiture,

   of property of criminal organizations? If yes, could you specify to what extent?

   All questions regarding the freezing and the forfeiture of property of criminal organizations are regulated in the Criminal Code and in the Code of Criminal Procedure. Additionally, the identification of assets in the area of organized crime is subject to special legislation that includes the duty of banks, insurance companies, trustees, lawyers etc. to identify and check the identity of contractors, to analyse the risks of transactions and to inform the Federal Criminal Police Office in suspicion of money laundering.

   The asset recovery of the profits obtained through a crime is regulated in Art. 19 a, 26 (Confiscation) and Art. 20 and 20 b (Forfeiture) of the Criminal Code. Property assets which are subject to the power of disposition of a criminal organization or a terrorist association and moreover those which were made available or collected as a means to finance terrorism shall be declared forfeited.

   According to the Code of Criminal Procedure a seizure (Art. 110) and a confiscation (Art. 115) is admissible if it appears to be necessary to secure a forfeiture.

3. Has your country set up one or more specialised agencies to identify and seize the proceeds of organized crime?

   Yes, the Financial Intelligence Unit and the Asset Recovery Office within the Federal Criminal Police Office.
4.

4.1. What assets are subject to seizure?
Generally, assets that are subject to confiscation and forfeiture are subject to prior seizure under the conditions mentioned above.

4.2. What assets are subject to forfeiture?
Money, valuables and any other property benefit gained through or owing to the committance of a criminal offence shall be forfeited from the perpetrator or recipient. In case forfeiture cannot be carried out, property equivalent to the property benefit shall be forfeited. The subject of forfeiture is also extended to benefits derived and to objects which are replacements for its destruction, damage or loss. Furthermore, property assets which are subject to the power of disposition of a criminal organization or a terrorist association or which were made available or collected as a means to finance terrorism shall be declared forfeited.

Objects used in commission of a crime and objects which constitute or are derived from a crime and are in the ownership of the perpetrator shall be confiscated. Furthermore, all objects by its nature designed to commit criminal offences are subject to confiscation.

4.3. Does an asset need to have been seized in order to be forfeited?
There is no such requirement. Although, in most cases freezing takes place to secure forfeitable assets.

4.4. What is the process for seizure of assets?
Assets which have to be confiscated or forfeited according to the Criminal Code or which could be used as evidence in the criminal procedure are seized (confiscated) through the order of the public prosecutor. The police is entitled to seize objects on its own initiative, if nobody has disposing power over them, if they were taken from a victim as a result of the punishable act, if the possession is generally prohibited or if they are of low value. Confiscation is a court decision establishing or continuing a seizure upon application by the public prosecutor.

Seizure may take place through the preliminary establishment of a disposing power over objects, the preliminary ban to release objects or other property items to third parties, as well as the ban on selling or pledging such objects or values. The court decision may include the ban to sell, encumber or pledge real-estate property or rights recorded in a public register.

4.5. What is the process for forfeiture?
Confiscation and forfeiture of property benefits may be imposed in the judgement of conviction as well as in the ruling on security measure e.g. psychiatric treatment for persons considered not responsible for their action or in the court decision based on an independent procedure if a criminal proceeding cannot take place.

4.6. Does in your country the judge play a role in the process mentioned in 4.4. and in 4.5.?
Yes, as mentioned above.

5. **Has your country legislation in force to confiscate after due process the proceeds of crime?**

Yes, proceeds of crime are objects of forfeiture under the conditions of Art. 20 and 20 b CC.

6.  “Money makes the world go round”. **Has your country special legislation in force with regard to the electronic movements?**

No, the legal basis for the information on bank accounts and bank transactions is Art.109 CCP, for the information about data of message transmission as well as surveillance of messages Art. 135 CCP.

7.  **7.1. Should there be an international authority to handle organised crime besides for instance Interpol, Eurojust and Frontex.**

In my opinion, the existing organizations work successfully. Therefore, new bodies or agencies are not needed.

7.2. **Could your country be more active in that field?**

No. Austria is successful in fighting transnational organized crime and has ratified the Convention and its Protocols.

7.3. **Could you as Judge be more active in that field? Do you think you have enough instruments and qualifications to handle cases of organized crime in Court?**

No. Judges are not part of law enforcement and therefore do not influence this field directly. Besides, judges in Austria have the instruments and qualifications to handle cases of organized crime. Within the Public Prosecution Service a special unit to fight organized crime was established in 2008.

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Dr. Bernd Lutschounig