

Abstract

Criminal Code Act No. 40/2009 Coll. distinguishes criminal sanctions into penalties and protective measures. This distinction is called dualism of criminal sanctions. Protective measures are broadly subdivided into protective measures restricting personal liberty and protective measures affecting property. These 'property protection measures' have long been represented by the protective measure of *seizure of property* under Section 101 of the Criminal Code, which was linked to similar protective measures in previous substantive criminal law. Amendment No. 55/2017 Coll. to the Criminal Procedure Code, in response to the so-called Confiscation Directive 2014/42/EU, introduced a new protective measure of *seizure of part of the property* pursuant to Section 102a of the Criminal Procedure Code. An alternative solution with significant doctrinal support was considered, including the creation of a special regulation for a more comprehensive solution to the confiscation issue and a more appropriate settlement with the principles contained in general criminal law.

The seizure of property serves to seize an item through which there is a threat of committing or supporting criminal activity. *The seizure of part of the property*, similarly to the provisions of Section 101 of the Criminal Code, aims at the protection of society, the aspect of draining illegal property is more prominent, so that no one benefits from the property of criminal activity.

In the application of protective measures, there is usually a conflict between the general interest of society in the effective drainage of illegally acquired property and, on the other hand, the interference with the property rights of the person concerned. Concerns about the disproportionality of the sanction, lowering of the standard of proof, reversal of the burden of proof, do not, according to case law and doctrine, lead to the impossibility of applying the provision. At the same time, the significant individualisation and sensitivity with which individual cases differ from each other is apparent, thus differentiating the conclusions themselves.

The above-mentioned regulation is a response to the Europeanisation of substantive criminal law. The thesis includes an assessment of its development prior to the confiscation directive, and similarly the emerging legislation under consideration in the Commission's proposal.