

CRIMINAL PROCEDURE ACT

Chapter XXVIII PROCEDURE FOR THE CONFISCATION OF PROCEEDS OF CRIME

Article 556

(1) Objects that are to be confiscated by law, as well as other objects, if required by public safety or protection of dignity and honour of citizens, shall be confiscated even if the criminal proceedings do not end with a judgment pronouncing the defendant guilty.

(2) A special decision is made by the body before which the proceedings were conducted after the proceedings were completed or suspended.

(3) The decision on the confiscation of the objects referred to in paragraph 1 of this Article shall be taken by the court even if the judgement by which the defendant was found guilty has failed to make such a decision.

(4) A certified copy of the decision on confiscation of objects shall be delivered to the person from whom the object is confiscated.

(5) The persons from whom the objects were confiscated shall be entitled to appeal the decision referred to in paragraphs 2 and 3 of this Article. If the decision referred to in paragraph 2 of this Article has not been issued by the court, the appeal shall be decided by the panel of the court that was competent for the first instance trial.

Article 556a

(1) If it is not otherwise prescribed by law or differently ordered by the state attorney, objects that were intended for or used in the perpetration of a criminal offence or have been made by the perpetration thereof shall be seized by the police and handed over to authorities, i.e. legal entities with public powers which, according to the special regulations, are competent to dispose of and manage property owned by the Republic of Croatia. The state attorney shall immediately be notified of this unless, he provided the referenced order.

(2) When a temporary seizure is made pursuant to the provision of paragraph 1 of this Article, a third party's complaint shall be decided by the court that would be competent to issue a provisional security measure under the provision of Article 557a paragraph 2 of this Act.

(3) In the cases referred to in paragraphs 1 and 2 of this Article, provisions of this Chapter of the Act shall apply to third parties.

Article 557

(1) The procedure under this Title of the Act shall be carried out at the motion of the authorized prosecutor.

(2) The court shall also without the motion of the authorized prosecutor confiscate from the accused person proceeds of the illegal acts contained in the description of the criminal offense of the indictment.

(3) The court and the other body before which proceedings are conducted shall be obliged to collect evidence during the course of the proceedings and to investigate the circumstances relevant to the determination of the material gain.

Article 557a

(1) In order to secure the confiscation of the proceeds of a criminal offence, authorized prosecutor shall propose, before and after initiation of criminal proceedings, that the property be frozen by any provisional measure achieving this purpose, in particular by:

a) prohibiting the disposal and encumbrance of immovable property or rights *in rem* in immovable property and recording this prohibition in the land registry, and confiscating the immovable property and entrusting the competent state authority with its keeping and management;

b) prohibiting the defendant or other person to whom the proceeds were transferred to, to dispose of or encumber movable property, and confiscating this property and entrusting the competent state authority with its keeping;

c) seizing and depositing cash and securities and handing them over to the state authority competent for managing state property;

d) prohibiting the debtor of the defendant or other person to whom the proceeds were transferred to, to voluntarily fulfil his obligation towards the defendant or other person to whom the proceeds were transferred to, and prohibiting the defendant or other person to whom the proceeds were transferred to receive the fulfilment of the obligation or to dispose of its claims;

e) ordering the bank to withhold payment from the bank account to the defendant or other person to whom the proceeds were transferred to or a third person, on the order of the defendant or other person to whom the proceeds were transferred to, for the amount covered by the provisional measure;

f) prohibiting the disposal and encumbrance of shares, stocks or business interests and recording this prohibition in the book of shares, stocks or business interests and, where necessary, in the public register, prohibiting to exercise or dispose of the rights attached to such shares, stocks or business interests, entrusting the competent state authority with the management of the shares, stocks or business interests, appointing a temporary management board of the company;

g) prohibiting the defendant or other person to whom the proceeds were transferred to hand over objects, transfer a right or make other non-monetary transaction to the defendant or other person to whom the proceeds were transferred to.

(2) Before the presentation of the indictment, the proposal referred to in paragraph 1 of this Article shall be decided by the investigating judge, and after the presentation of the indictment and before its confirmation, it shall be decided by the indictment panel, and after the confirmation of the indictment or the scheduling of a hearing on the basis of a private action, it shall be decided by the court before which the hearing is to be held.

(3) The decision referred to in paragraph 2 of this Article may be appealed within three days from the date of its delivery. An appeal shall not stay the enforcement of the decision.

(4) The court or another body designated by a special law shall be responsible for enforcing the decision referred to in paragraph 2 of this Article.

(5) The decision referred to in paragraph 2 of this Article shall be submitted immediately to the court or another body responsible for its execution, to the party proposing the security measure, the defendant and the other person to whom the proceeds were transferred to and no later than the first working day following the day the decision was rendered.

Delivery of decision referred to in paragraph 2 of this Article to the defendant or other person to whom the proceeds were transferred to shall be delayed only in exceptional circumstances, i.e. if it necessary to do so so as to avoid endangering the purpose of the investigation. Delivery shall be delayed for the maximum of three days from the day the decision was rendered.

(6) The procedure of confiscation of proceeds of crime is urgent.

Article 557b

(1) When freezing is carried out using a provisional measure, it shall be presumed that there is a risk that the claim of the Republic of Croatia related to the confiscation of the proceeds of a criminal offence will not be satisfied or that its satisfaction may be hampered if the provisional measure is not imposed.

(2) A freezing measure may be imposed even before the defendant or another person to whom the proceeds were transferred to is given the opportunity to respond to the proposal of the party proposing the freezing measure.

Article 557c

(1) If a provisional measure needs to be entered in a public register (land registry, ship register, aircraft register, court and public notary register of secured claims etc.), the court decision shall also contain the order to enter the provisional measure in a public register.

(2) No fees shall be paid in the procedure referred to in paragraph 1 of this Article.

Article 557d

The legal transaction by which the defendant or another person to whom the proceeds were transferred to disposes of the property or right covered by the freezing measure after the provisional measure is entered in the public register shall have no legal effect.

Article 557e

(1) A provisional measure may be imposed before the initiation of criminal proceedings or filing a motion to confiscate proceeds of crime pursuant to Article 560a of this Act.

(2) The provisional measure may be valid for a maximum of two years before the confirmation of the indictment, the scheduling of a hearing on the basis of a private lawsuit or the submission of a motion pursuant to Article 560a of this Act, and thereafter no longer than sixty days after the delivery of the final decision on the confiscation of the property gain to the State Attorney. The two-year term does not run during the discontinuance of the investigation.

(3) The Court shall examine every three months whether the legal conditions for further application of the provisional measure are met and shall issue a decision on its extension or termination.

(4) A provisional measure may be revoked or replaced by another measure before the expiry of the period specified in paragraph 2 of this Article, provided that the court, on the proposal of the authorized prosecutor, the defendant or the other person to whom the proceeds were transferred to, determines that the measure is not necessary or that securing may be achieved by another more lenient provisional measure. A provisional measure may be revoked or replaced by another measure also if the defendant or the other person to whom the proceeds were transferred to or a third person lodges a security. Such security shall always be given in cash. A provisional measure shall be revoked upon the motion of the authorized prosecutor.

(5) An appeal against a decision rejecting a motion of a defendant or other person to terminate a provisional measure is not allowed.

(6) The court shall inform the court or other authority competent for its enforcement of the cessation of the measure due to the expiry of the time limit referred to in paragraph 2 of this Article and of the termination or replacement of the measure without delay.

(7) The provisions of Article 557a of this Act shall apply *mutatis mutandis* to the procedure for revocation, extension, replacement or imposition of an additional provisional measure.

Article 557f

(1) At the motion of the injured party, the Court shall amend or terminate the provisional measure determined to secure the confiscation of the proceeds of crime if this is necessary to secure the property claim.

(2) If the injured party abandons the property claim or temporary measure determined to secure the property claim, the court shall inform the state attorney thereof and determine the appropriate time limit for proposing a provisional measure to secure the confiscation of proceeds of crime.

Article 557g

(1) The Republic of Croatia shall be liable for damages arising from a provisional measure imposed for the purpose of securing the confiscation of the proceeds of a criminal offence.

(2) By way of derogation from paragraph 1 of this Article, if the proposal to impose a provisional measure has been filed by the injured party acting as a subsidiary prosecutor or a private prosecutor, the injured party or private prosecutor shall be liable for damages arising from the provisional measure.

(3) The defendant or other person to whom the proceeds were transferred to may file a lawsuit for the compensation of damages before the competent court, within one year from the date the judgement acquitting the defendant or refusing the charges has become final. In the case referred to in paragraph 1 of this Article, the defendant or other person to whom the proceeds were transferred to may file a lawsuit within 30 days from the day of being notified that the state attorney had refused his request for a peaceful settlement of the dispute or from the day of expiry of the period in which the state attorney was to deliver a decision on this request.

Article 557h

(1) A third person who claims to have the right to prevent the application of the provisions of this Chapter of the Act over the property which is the subject to a provisional, has the right to propose that the provisional measure be revoked.

(2) The decision from paragraph 1 of this Article shall be decided upon by the court that issued the ruling on the provisional measure. An appeal is allowed against this decision, which does not prevent the implementation of the freezing/securing.

Article 558

(1) When the confiscation of proceeds of crime is taken into consideration, the person to whom the proceeds of crime are transferred to shall be summoned for questioning in the preliminary proceedings and at the trial. The summons shall contain a warning that the procedure will be carried out without his presence. Along with the summons instruction on the right to have a legal representative shall also be provided.

(2) A third person who claims to have a right preventing the application of the provisions of this Chapter of the Act over the proceeds of crime shall be summoned for the purposes of the questioning in the preliminary proceedings and at the trial.

(3) A person to whom, according to the motion of the State Attorney for the confiscation of the proceeds of crime, the proceeds were transferred to shall be summoned by the court to the indictment panel session, the preparatory hearing and the trial. That person shall be questioned at the hearing after the defendant who provided a statement not disputing the merits of the charges, or at the beginning of the evidentiary proceedings.

(4) The person to whom the proceeds of crime are transferred and the third person referred to in paragraph 2 of this Article is authorized to propose evidence with regard to determining property gain and according to the permission of the presiding judge to ask questions the defendant, the witnesses and the expert witnesses.

(5) The State Attorney and the court shall inform the person to whom the proceeds were transferred to and the third person referred to in paragraph 2 of this Article concerning his rights under paragraph 4 of this Article, as well as the right to the legal representative.

Article 559

The Court shall measure the amount of the proceeds on the basis of a free judgment if its determination was made with unreasonable difficulties or with considerable delay in the proceedings.

Article 560

(1) Confiscation of proceeds of crime shall be pronounced by the court in the judgment determined that the defendant has committed an unlawful act which is the subject of the prosecution.

(2) In the judgment referred to in paragraph 1 of this Article, the court shall state which objects or rights represent the proceeds of crime and, depending on the circumstances, indicate their monetary equivalent, determine that these objects or rights have become the property or assets of the Republic of Croatia, order the defendant and other person to whom the proceeds were transferred to, to hand over certain objects or to transfer certain rights to the Republic of Croatia, if they have not yet been transferred to the Republic of Croatia, or to pay their monetary equivalent within 15 days from the date of the judgment became final, and stipulate that the recordation of rights in favour of the Republic of Croatia shall be entered in public registers kept by courts and other bodies.

(3) Unless otherwise prescribed by law, in a judgment acquitting the defendant from a charge of a criminal offense or refusing the charge motion to confiscate proceeds of crime shall be rejected. The Court shall act in the above manner when the defendant is not acquitted of the charge for the criminal offense, but the proceeds of crime are fully covered by the property claim or there no legal requirements exist for its confiscation.

(4) A written judgment shall also be delivered to the person to whom the proceeds were transferred to.

Article 560a

(1) The provisions of this Act shall also apply in the proceeding of the confiscation of the proceeds of crime if the person against whom the criminal proceedings are initiated is

permanently incapacitated or unavailable to the criminal prosecution authorities, when it is probable that proceeds amount to no less than HRK 60.000,00 if provisions of Articles 560a to 560e of this Act do not make any specific stipulations.

(2) The procedure referred to in paragraph 1 of this Article shall be instituted and conducted only at the request of the State Attorney.

(3) In the cases referred to in paragraph 1 of this Article, the State Attorney shall initiate special proceedings in which he shall collect the evidence and facts necessary to determine whether the person referred to in paragraph 1 of this Article has committed an unlawful act which is the subject of the prosecution and if by the act in question property gain was acquired and in what amount.

(4) After the order referred to in paragraph 3 of this Article has been issued, the person referred to in paragraph 1 of this Article must have a defense attorney.

(5) If the proceeds of crime have been transferred to another person, the person in the proceedings referred to in paragraph 1 of this Article shall have the status of a party and all rights which under this law belong to the defendant.

Article 560b

(1) In cases referred to in Article 560a, paragraph 1 of this Act, the State Attorney shall request that the court establish that the person referred to in Article 560a paragraph 1 of this Act has committed an unlawful act and thus acquired proceeds of crime and that such proceeds be confiscated from the person or person to whom it was transferred.

(2) In case that the person referred to in Article 560a of this Act is permanently incapacitated, the State Attorney shall, in the presence of an expert witness and a defense attorney, before the request referred to in paragraph 1 of this Article is made, attempt to examine that person. If it is unable to examine the person referred to in Article 560a paragraph 1 of this Act due to the fact that the person is incapable for trial, the State Attorney shall apply for a request referred to in paragraph 1 of this Article.

(3) The State Attorney shall submit the request referred to in paragraph 1 of this Article to the president of the panel of the competent court who will examine beforehand whether there are any conditions for the dismissal by proper application of Article 344 of this Act, and if there are any, he shall issue a decision on the dismissal of the request. The decision is delivered to the state attorney, the person referred to in Article 560a, paragraph 1 of this Act and the defense attorney. If he does not issue a decision to dismiss the request, the president of the panel shall act appropriately in accordance with Articles 345 and 346 of this Act and the Indictment panel shall act appropriately pursuant to Articles 348 to 357 and Articles 365 to 367 of this Act.

Article 560c

(1) The court shall decide on the State Attorney's request referred to in Article 560b of this Act after the hearing has been conducted. The legal representative of the person referred to in

Article 560a, paragraph 1 of this Act shall be informed of the hearing, and if there is no legal representative, his or her spouse, the nearest relative, the defense attorney and the person to whom the proceeds were transferred to and the third person claiming to have rights with regard to proceeds that prevent the application of the provisions of this Chapter of the Act.

(2) Before the trial, in the presence of an expert, the president of the panel shall try to question the person referred to in Article 560a, paragraph 1 of this Act for the purpose of assessing his mental capacity (Article 325, paragraph 5 of this Act). The state attorney, the person referred to in Article 560a, paragraph 1 of this Act the defense attorney and legal representative, or the closest relative shall be informed of the time and place of the questioning. The questioning will also be carried out without the presence of a properly invited state attorney and deputy. If, after the questioning conducted by the expert witness, the court finds that the person referred to in Article 560a paragraph 1 of this Act is permanently mentally incapacitated, the trial shall be held in his absence.

(3) It shall be considered that the person referred to in Article 560a, paragraph 1 of this Act has denied the merits of the request referred to in Article 560b, paragraph 1 of this Act, and upon the completion of the evidentiary proceeding, records of its previous questioning shall be read, if any.

(4) The expert witness who performed the examination of the person referred to in Article 560a, paragraph 1 of this Act shall be questioned regarding the mental capacity of the person.

Article 560d

(1) If a state attorney has submitted a motion under Article 560b, paragraph 1 of this Act and the court after the hearing has found that the person referred to in Article 560a, paragraph 1 of this Act has committed an unlawful act and thus acquired proceeds of crime, a judgment establishing that the person referred to in Article 560a, paragraph 1 of this Act has committed an unlawful act and thus acquired proceeds of crime shall be passed.

(2) In the judgment referred to in paragraph 1 of this Article, the court shall state which objects or rights represent the proceeds of crime and, depending on the circumstances, indicate their monetary equivalent, determine that these objects or rights have become property or assets of the Republic of Croatia, order the person from Article 560a, paragraph 1 of this Act, i.e. to another person to whom the proceeds are transferred, to hand over certain objects to the Republic of Croatia or to transfer certain rights to it if they have not yet been transferred to the Republic of Croatia or to pay their monetary equivalent within 15 days from the day the judgement was final, and order the rights be recorded in public registers kept by courts and other bodies in favour of the Republic of Croatia.

(3) If the court does not find that the person referred to in Article 560a, paragraph 1 of this Act has committed an unlawful act and obtained any proceeds of crime or that the proceeds of crime are fully covered by the property claim, it shall reject the claim referred to in Article 560b, paragraph 1 of this Act.

Article 560e

(1) The judgments referred to in Article 560d, of paragraphs 1 and 3 of this Act shall be delivered to the State Attorney, the person referred to in Article 560a, paragraph 1 of this Act and his defence attorney and to the legal representative, and if there is not one, to a spouse or partner, or informal lifestyle partner or closest relative and to the person to whom the proceeds were transferred to.

(2) Any person entitled to appeal against the judgment (Article 464 of this Act) may appeal the decision referred to in Article 560d of paragraphs 1 and 3 of this Act within fifteen days from the date of receipt.

(3) Second-instance court shall hold a session of the panel in the presence of a person referred to in Article 560a, paragraph 1 of this Act and his defence attorney if it deems it purposeful. It shall submit its decision and case file to the first-instance court no later than within the half time limit stipulated in Article 488, paragraph 2 of this Act.

Article 560f

Provisions of Articles 560a to 560e herein shall be applied in case of a death of a person against whom the criminal proceedings were initiated.

Article 561

Provisions of Article 465, paragraphs 2 and 3 and Article 479 herein shall be applied to appeals against decision on confiscation of proceeds of crime.

Article 562

Person referred to in Article 558, paragraph 4 herein can submit the request to renew criminal proceedings regarding the decision on the confiscation of proceeds of crime.

Article 563

(1) If provisions of this Chapter do not prescribe anything differently with regard to the proceeding of confiscation of proceeds of crime or seizures, the other provisions of this Act, the Enforcement Act and special laws shall apply.

(2) Ministry responsible for state property keeps records of temporary and permanently confiscated property and proceeds of crime that are temporarily or permanently confiscated by a final court decision from the defendant or related persons and which had been deployed by such decision to be guarded and managed by the ministry responsible for state property

(3) Minister responsible for state property issues an ordinance regulating the keeping of the records referred to in paragraph 2 of this Article.