

Comparative and International Aspects of Criminal and Terrorism Funding

Non conviction based asset recovery in
the Netherlands: money laundering and
confiscation of illegally obtained profits

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NCB asset recovery in NL

Two prominent methods:

- 1) Anti money laundering legislation
- 2) Confiscation of illegally obtained profits

Anti money laundering legislation:

- Money encountered under extraordinary circumstances
→ elaboration: proof

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Anti money laundering legislation, example I:

- Possession of € 24.000 at Amsterdam Airport, knowing that such money was – directly or indirectly – criminal proceeds
- Evidence: accused (A) was about to leave for Bonaire; A declared he only carried USD 800; A hid packages of money on several places; A had received money from J and thought it wasn't honest labour's profit, but proceeds of drugs or theft; J told A: in case you get caught, don't mention who gave you the money
- Supreme Court: in order to prove 'criminal proceeds' (criminal origin), it's not necessary that the evidence makes clear that the money originates from a specified offence → no specific evidence needed that points out who committed the crime, when and where he did so

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Anti money laundering legislation, example II:

- *Evidence*: A and B about to leave for Spain; no hold baggage; standing in different rows at security-check; B carried a big amount of money; A carried € 25.000 (500 x € 50), hidden in jeans and toilet bag; A voluntarily relinquished the money; A made different/contradictory statements about the goal and destination of the trip and the origin of the money
- It's *generally known* that Amsterdam Airport is often used for import, export and transit of proceeds of crime

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Anti money laundering legislation, construction of proof:

- Evidence
- General experience/empirical rules (typologies) or matters of public knowledge
- No (plausible) statement of the accused in a situation that requires an explanation
- The money/property has to have a criminal origin
 - The possibility that the money has a legal origin is so improbable, that the money is supposed to represent criminal proceeds

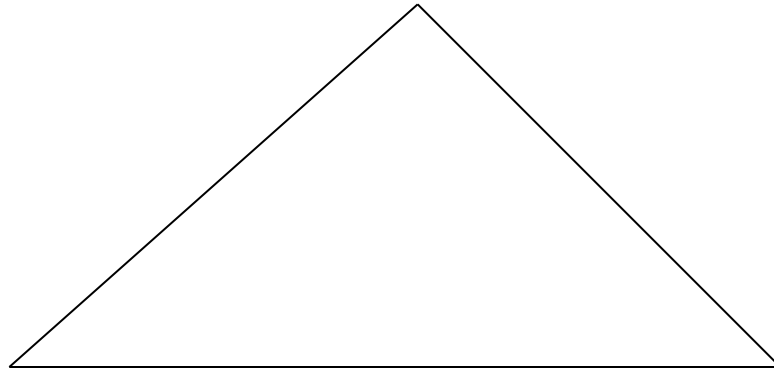
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Confiscation of illegally obtained profits:

1. Profits of the offence for which the accused was convicted
2. 'Other' offences → balance of probabilities
3. In case of conviction of criminal offence for which a 5th category fine (€ 81.000) can be imposed: that offence or other offences in whatever way led to proceeds → balance of probabilities

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Ad 3):



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Calculation criminal proceeds:

- ‘Classic’ method: specification of:
 - offences
 - proceeds of those offences
- Comparison of property:
 - growth of property in investigated period
 - for which no legal source can be found
 - specific offences unknown

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Comparison of property, example:

- Reference date 0: property = € 45.000,-
- Expenses during investigated period = € 100.000,-
- Reference date 1: property = € 300.000,-

- Illegally obtained profits :
 - Increase of property = € 255.000,-
 - Expenses = € 100.000,-
 - (Assumed) profits = € 355.000,-