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Approval of the final text of the Criminal Code

In force as of 1-6-2020

CHAPTER II Security measures on assets

Article 240 (Confiscation)

In case of a conviction, the court may order the confiscation of the things that were used or meant to be used to commit the offence, or the things that constitute their product or profit.

Confiscation shall always be ordered:

1° of the things that constitute the price of the offence,

1-bis. of computer or electronic assets and tools that were used, in whole or in part, to commit the offences under Articles 615-ter, 615-quater, 615-quinquies, 617-bis, 617-ter, 617-quater, 617-quinquies, 617-sexies, 635-bis, 635-ter, 635-quater, 635-quinquies, 640-ter and 640-quinquies (*as well as the assets that constitute their profit or product or sums of money, assets or other property available to the perpetrator for a value corresponding to such profit or product when confiscation of the direct profit or product is not possible*)),

2° of the things whose manufacturing, use, carrying, possession or disposition amount to an offence even though no judgment of conviction has been passed.

The provisions of Part I and sub-paragraphs 1 and 1-bis of the preceding paragraph shall not apply if the things or assets or computer or electronic tools are owned by a person who is not involved in the offence. The provisions of sub-paragraph 1-bis of the preceding paragraph shall also apply when the penalty is applied upon request by the parties to the proceedings under Article 444 of the Code of Criminal Procedure.

The provisions of sub-paragraph 2° shall not apply if the things are owned by a person who is not involved in the offence and their manufacturing, use, carrying, possession or disposition may be allowed by means of an administrative authorisation.

Article 240-bis

((Confiscation in particular cases.))

((In case of a conviction or application of sentence upon request by the parties to the proceedings under Article 444 of the Code of Criminal Procedure, for any of the offences referred to in Article 51, paragraph 3-bis, of the Code of Criminal Procedure, in Articles 314, 316, 316-bis, 316-ter, 317, 318, 319, 319-ter, 319-quater, 320, 322, 322-bis, 325, 416,

perpetrated with a view to committing the offences under Articles 453, 454, 455, 460, 461, 517-ter and 517-quater, as well as under Articles 452-quater, 452-octies, first paragraph, 493-ter, 512-bis, 600-bis, first paragraph, 600-ter, first and second paragraphs, 600-quater.1, with respect to the production of, or trade in, pornographic material, 600-quinquies, 603-bis, 629, 644, 648, except for the cases set out in the second paragraph, 648-bis, 648-ter and 648-ter.1, Article 2635 of the Civil Code, or any of the offences committed for purposes of terrorism, including international terrorism, or the subversion of the constitutional order, confiscation shall always be ordered of the money, assets or other property whose origin cannot be justified by the convicted person and which are owned by, or for any reason available to, the convicted person, including through an intermediary, be it a natural or legal person, in a disproportionate amount compared to the income reported for purposes of income taxes, or to his/her business. In any case, the convicted person may not justify the legitimate origin of his/her property based on the premise that the money used to acquire such property is the proceed or reuse of tax evasion, unless tax obligations have been fulfilled in compliance with the relevant law provisions. Confiscation under the preceding provisions shall be ordered in case of a conviction or application of sentence upon request for the offences referred to in Articles 617-quinquies, 617-sexies, 635-bis, 635-ter, 635-quater, 635-quinquies when the types of conduct described therein concern three or more systems.

In the cases referred to in the first paragraph, when it is not possible to confiscate money, assets or other property set out in the same paragraph, the court shall order the confiscation of other sums of money, assets and other property of legitimate origin for a corresponding value, available to the perpetrator, including through an intermediary.))