



## NEWSLETTER n. 2

July 2018

# PhD DEFENCE: ASSET RECOVERY AND THE EXECUTION OF CONFISCATION MEASURES

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**Wouter de Zanger** is a member of the research Project ConfiscEU (University of Utrecht) and on Friday 1<sup>st</sup> June 2018 he defended his dissertation on asset recovery and the execution of confiscation measures, titled *De ontnemingsmaatregel toegepast*.

The dissertation of De Zanger reports on a study of the legal position of the person concerned in proceedings, in which the measure to confiscate illegally obtained profits is imposed and executed. The normative aspect of the review framework relates to the interests to be protected and honoured in applying the confiscation measure. The first interest is the presumption of innocence, prescribing that citizens cannot be expected to prove their own innocence. The second interest is the interest of restoration from the perspective of the person concerned. Application of the confiscation measure is to bring him in the financial position that existed prior to the criminal acts. The hypothetical lawful situation may thus be 'restored'. The interest of restoration, however, is not absolute. It may be

curtailed by the third relevant interest, i.e. the interest of rehabilitation of the person concerned. As it happens, the interest of restoration to a large extent ignores the socioeconomic consequences of imposing and executing the confiscation measure. These possible consequences may be a serious impediment to a person's return to society and to his social functioning.

One of the conclusions of this dissertation is that the legal position of the person concerned in proceedings for the confiscation of illegally obtained profits has deteriorated on several points. His contribution to the furnishing of proof is essential to realise the interests of restoration and rehabilitation. If he gives insufficient substance to the proactive attitude that is expected of him, he 'loses' the proceedings on that point. He has thus become largely responsible for the protection of these interests. In the context of the active defence that is required, it is not appropriate to limit the possibilities for substantiating a defence. One can therefore criticize the standpoint of the Dutch 'Hoge Raad', which has limited the possibilities to

adduce witness evidence in the confiscation procedure. In addition, protection of the interest of restoration could be improved by taking into account to a greater extent loss-making circumstances that do not occur in normal economic transactions. The forfeiture of long-term investments does, for instance, not influence the confiscation measure to be imposed. In doing so, the current application of the confiscation measure brings the defendant into a financial situation that is worse than before the commitment of the crimes. This is at odds with the aim of restoration. Furthermore, the current application of the confiscation measure can seriously hamper the possibilities of the person involved to reintegrate into legal society. Since the payment obligation does not need to relate to money or objects that are in the possession of the person involved, he is in fact obliged to work in order to pay his debt to society. In certain cases, especially when this takes several years, this can seriously hamper his reintegration into legal society.



Here the link to the paperback of the dissertation