

DOCTORATE STUDY IN LAW AND BUSINESS

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**CRIMINAL TRIAL AGAINST PROPERTY AND THE
FUNCTIONS OF CONFISCATION**

ENGLISH SUMMARY

This dissertation is focused on the effects brought by confiscation on the function and discipline of our criminal trial. It draws the attention to the fact that traditional criminal frame based on investigating and punishing the offender is moving towards a proceedings against property, where confiscation is the main sanction and where, consequently, proving the link between the crime and his author is not a prerequisite anymore.

In this situation, criminal proceeding emerges as an useful arena where to hit at property, allowing for the use of those intrusive investigative measures that are not allowed in civil or administrative settings.

From this viewpoint, the doctoral research studies the emerging criminalisation of the proceeds of crimes, drawing attention on the increasing quest for freezing orders and confiscation as stand-alone crime control measures and analysing their impact on the functions of criminal trial.

The dissertation is divided into four chapters.

The first one focuses on the various types of confiscation provided for within our criminal law system. It opted for a functional approach which goes beyond labels to grasp the inner nature of the single provisions. It also takes into account the recent developments brought by in this field by Legislative Decree no. 202/2016 and no. 161/2017.

The second addresses some problematic aspects concerning non-conviction based measures. It deals in particular with the premises for asset forfeiture, examining the relevant domestic and sovranational case-law. It observes that trial is becoming more and more focused, dependent and tailored on property measures and it remarks upon the risk that its truth-seeking objective will downgrade to the mere establishment of a connection between the property and the criminal conduct, leaving the individual out of consideration. This mainly because of the fact that principle under which “when there is no criminal conviction there is no confiscation” has become a heavily derogated principle. In fact, case-law started considering the result of the proceeding not to be decisive for confiscation. In so doing, conviction has been degraded and considered only an “evocative” term, easily replaceable by the judge with other types of cognition. So forth, criminal confiscation orders are being applied even where a criminal conviction could not be reached, provided that the conduct at stake could be considered unlawful by other means.

The third is strictly connected to the previous one and deals with the questions that confiscation without conviction encounter with respect to our criminal procedure system. It deals essentially with the system of release and acquittal sentences and their related assessment criteria.

The fourth chapter addresses the issues concerning confiscation without conviction in the EU arena. It explores the various framework decisions adopted together with the functioning of the principle of

mutual recognition in this field, focusing the attention on directive 2014/42/EU.

In the development of the EU model, different proposals and negotiations between the Member States have shown the inextricable tension between traditional principles and new economic threats together with the byzantine cohabitation of different national models. Interestingly, the EU directive, rather than harmonising the legal framework, seems to have added another model to the current law system, leaving ample space to the Member States precisely on the prerequisite of a conviction. Article 4 of the directive, in fact, allows to overlook conviction *at least* in cases of illness and absconding of the suspect, making asset forfeiture subject to a hypothetical “conviction prognosis” and enabling for more extended derogations by the Member States.

Moreover, this action against property has an hybrid nature because - unlike the common law *actio in rem* - is directed against an individual and, secondly, it has not a civil nature because it is applied within a criminal law frame. In other words, it works as a sanction without a *proved* guilty individual.

The analysis refers also to the recent Proposal of the Parliament and of the Council on the mutual recognition of freezing and confiscation orders introduced last December that intends to deal with mutual recognition of confiscation without conviction, leaving to the Member States the difficult task of determining its nature.