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ASSET RECOVERY

INTRODUCTION

- Criminal offences, especially organized crime do not recognize borders
- Predominate criminal offences are one committed against the other natural persons, legal entities, and sometimes against whole society
- Reform of the criminal justice system in Montenegro

ASSET RECOVERY

- In 2003, in Montenegrin criminal code was introduced confiscation
- Confiscation is conviction based
- Money, things of value and all other property gains obtained by a criminal offence shall be seized from the offender
- should such a seizure be not possible, the perpetrator shall be obliged to pay for the monetary value of the obtained property gain

- The rights of the victims
 - Claims under property law
 - the interests of the victim have priority over the measure of confiscation
 - the victim does have right for property gain even in civil procedure

FINANCIAL INVESTIGATION TEMPORARY SEIZURE

- The court shall decided of temporary seizure
- Need for amending the Criminal Code
- New CPC prescribes extended confiscation and financial investigation

***The request of the State
Prosecutor for temporary
confiscation shall consist:***

- The description of the object or property
- Data about the person who possesses that property
- Reasons for suspect that this property is illegally gained
- Reasons for possibility that it will be difficult to confiscate the property

- The decision on temporary seizure is brought by the judge for investigation or the president of the panel of judges during the main hearing
- The decision on temporary seizure shall be sent to:
 - person who is the subject of the decision
 - the bank or the other financial institution

CONFISCATION OF PROPERTY WHOSE LEGAL ORIGIN HAS NOT BEEN PROVED

- Many countries recognize this institute, but there are certain questions to be posed:
 - the burden of proof
 - retroactively application of the law

- According to the new CPC of Montenegro, extended confiscation is only possible after the judgment is final and only for the criminal offences that are listed in the Criminal Code as adequate for extended confiscation

TAHANK YOU FOR THE
ATTENTION