

RINSE

Research and INformation Sharing on freezing and confiscation orders in European Union

RINSE Talks about Confiscating Assets in the EU.

The Podcast that Follows Dirty Money.

EP. 5 - Belgium: The Words of an Investigating Judge

- Speaker 1 : Presenter, François Fameli
- Speaker 2 : Moderator & President of Crim'HALT, Fabrice Rizzoli
- Speaker 3 : Michel Clais, Belgian Magistrate, Investigator in serious crime and economic and financial crime in Belgium

INTRO. “Confisqué” (translation: confiscated). Conversation on the seizure and reuse of ill-gotten assets in Europe. Hello and welcome to “Confisqué”, the podcast of the European judicial research project on ill-gotten assets and money laundering: RINSE. In this series, we will give the floor to professionals in the fight against organized crime in Europe. How to fight effectively and sustainably against mafias and organized crime? How to reach criminals in the wallet by drying their ability to function? How to sustainably reduce the violence they generate? We will try to answer these questions through the harmonisation of police and judicial practices in Europe, because crime has no borders. In this first episode, we return to Belgium, where the drug scene continues to grow and destabilizes institutions. An attempt by a mafia group to remove the Minister of Justice from office, settling of scores over repetition, a cocaine record at the Port of Antwerp, and an obvious link with the world of politics. If the subject isn't yet up for debate in France, at least it's likely to be during the next federal elections in June in the flat country.

On January 9, 2023, an 11-year-old girl was playing in the garage of a house in Antwerp when she was struck by a gunshot. Firdaous dies, killed by munitions of war. Belgium suffers its first innocent victim of drug trafficking. These intimidations are the work of the Mocromafia, an organization that has supplanted the historic Italian criminal groups to flood Europe with cocaine. Faced with the scale of the Mafia phenomenon, Belgians are waiting for answers, and we're going to talk about them with Michel Claise, the investigating judge behind “Qatargate”, the biggest corruption scandal in the history of the European Parliament, and for whom Antwerp has become a world capital of organized crime. The investigating judge is standing for election with “DéFI”, a French-speaking centrist party. Fabrice

Rizzoli, founder of Crim'HALT and a specialist in mafia crimes, met up with him to talk about money, the sale and the confiscation of criminal assets, a major concern for delinquents.

[00:02:25.890] - SPEAKER 2

Michel Claise, good morning. You're a magistrate who, for years, investigated serious crime and economic and financial crime in Belgium. You've also written around fifteen novels, as I've seen on the Internet. Today, as part of RINSE, which is a European project I've already described, we wanted to give Belgium a say in terms of asset confiscation, because there was Italy, there was France... As we have a partner in Belgium, we thought that in terms of current events, and with everything going on, that it was important that we give the floor to a Belgian specialist. Could you give us an overview of asset confiscation in Belgium? How does it work? Is it criminal confiscation? What tools do you have at your disposal?

[00:03:22.330] - SPEAKER 3

The topic is extremely interesting. There are different aspects to confiscation, if I may say so. Confiscation is a judicial decision, in essence. You know that for years, I was an investigating judge. In reality, I have never ordered confiscation. I have ordered seizure with a view to confiscation. In a very classical manner, and independent of financial rights, confiscation simply means, at a given moment, declaring the end of ownership of an object belonging to a certain person. This is what was used to commit the crime. For instance, in a homicide case, the knife used would be confiscated. Therefore, the car used to commit the murder would be confiscated. This is straightforward confiscation. The object has been previously brought into the procedure. Of course, in financial terms, things are somewhat different because what precedes confiscation, generally, although confiscation can be ordered by a court without prior seizure, is the seizure. Seizure is ordered either by the public prosecutor's office or by the investigating court, and this seizure, in reality, is part of the legal procedure. What do we seize? It's extremely simple. You either take the proceeds of the offense, in financial terms, which is obviously the amount, the money from the crime, or you seize by equivalent. What is seizure by equivalent? It is also provided for in a very general way in the Penal Code, in article 42. But seizure by equivalent means, if you have committed an offense, you are ordered to pay this money, to return it to the State. Seizure is ordered, either in financial terms, by the Public Prosecutor or the Examining Magistrate's Court. It takes place in the context of a criminal investigation or inquiry. And it's a decision that's taken on everything. There is no particular type of asset; anything can be seized, like bank accounts... In criminal investigations, it's essential to look at the accounts of people who are alleged to have embezzled money. These include bank accounts, shares and virtual real estate. At the moment, we have to be very careful when looking for the so-called "keys to bitcoins", because we keep forgetting that there is this virtual money in which, because of the ease of distribution and exchange, dirty money circulates extremely easily. So, we obviously have to look for anything that can be linked to the proceeds of an offense. You're familiar with all the offenses that generate money. As a matter of fact, in the penal code, apart from murder, rape and indecent assault, all offences are linked to money.

[00:06:27.300] - SPEAKER 2

For those who are unfamiliar with the term, it should be remembered that there is confiscation of the instrument of the crime - you mentioned the weapon, etc. - or of the proceeds of the crime, in other words, the money. And you pointed out that even if we can't show a direct link with the offense, the money that a person would have earned illegally, has to be paid back. So, we can oblige him to pay the sum he has earned with the offense. This is called confiscation by equivalence. This is what we studied in our focus groups. Do you have any past examples of confiscation that you've asked? And obtained?

[00:07:22.070] - SPEAKER 3

Of course, because in financial investigations, that is what counts. In this respect, when it comes to financial criminalization, the result of all offenses is money laundering. In Belgium, confiscation is mandatory under article 505.2 of the Criminal Code. Seizure is therefore carried out on an equivalent basis, and not just on the proceeds of crime. If the money was used to buy a house - and let's assume that the criminal proceeds went abroad, that they were directly hidden in these strong companies called "offshore companies", which are inviolable - we could possibly seize and then confiscate the assets in the person's estate, but the assets that would appear in his estate, after the commission of offenses. The easiest way is obviously through inheritance. Let's say for instance, you've hidden the proceeds of a crime in a tax haven, but you've inherited it. The article 505 also stipulates that you may be prosecuted in the same way as the money launderer himself, in other words, the person who has been previously incriminated. The most obvious type of accomplice is a professional money launderer. This is what is known as white-collar crime. There can be no real profit from crime without specialists to launder the money, like bankers or accountants... But of course, they have not profited from the proceeds of the crime. But they will, as co-perpetrators or accomplices, be considered as likely to receive this sanction. Asset confiscation is a sanction. That's where it gets tricky are a sanction. And it's a sanction decided by the criminal court, in the first instance. And when you have the person who has committed an offense, who may be his own money launderer, he can be sentenced to the full amount of what he saw as the proceeds of the offense, and whatever the source of his assets. Of course, the question will be posed differently in relation to the professional who enabled him to launder by organizing offshore companies and enabling the transfer. Confiscation, as a sanction, will be assessed by the court, which will apply it proportionately from time to time.

[00:09:57.430] - SPEAKER 2

But in Belgium, it's a bit like in France, the media don't have the culture to explain confiscation. So we see drug use, we see people convicted or acquitted, and we don't see confiscation. But in Belgium, do we seize assets from drug traffickers, do you have any examples?

[00:10:17.650] - SPEAKER 3

Lots and lots of them, especially cars. What do drug dealers like in cars? Not just any cars, of course. The great classic is obviously the confiscation of cars, but also of buildings. There are people who buy buildings, mainly in offshore companies and so on. We already have many examples of this. As I said earlier, confiscation also includes counting in banks and abroad. But this concerns all countries, all

those that have ratified the anti-money laundering convention, with the possibility of freezing assets abroad. So, it's international seizure that's fundamental. When I identify a house in Spain, a castle in Spain, or bank accounts in Portugal, or properties on the Côte d'Azur... I ask that, on the basis of the freeze, the judicial authorities block the assets, and on the day of judgment, confiscation will be pronounced, and the public prosecutor will then act in such a way that we can recover the assets seized abroad, which will then be confiscated. So you see, we have to be bold, imaginative and hard-working to recover the misappropriated funds.

[00:11:49.230] - SPEAKER 2

You anticipated one of my questions, about the confiscation of assets abroad. When the Belgian state, like the French state, asks for the assets of one of its citizens to be confiscated abroad, you said that it worked. Are there countries with which this works better than others, which have more of a confiscation culture in Europe? In your experience, are there any states that respond more quickly to your requests, that meet your demands more quickly?

[00:12:18.310] - SPEAKER 3

In reality, it depends. It's not so much the states, but the people you're talking to that make the difference. I've had some very pleasant surprises. I've had some not-so-good ones, of course. I sometimes realized that it wasn't so easy to work with certain corners of Spain, in the south, for example. Whereas in the north, everything worked very, very well. Yes, it's true that there is one country where it's more difficult in fact: England. Although it's no longer part of the EU, we've always had communication problems because of the complexity of the Anglo-Saxon system compared to ours. There are enormous opportunities for local protests. But, generally speaking, I can assure you that when it comes to freezing, things work very well. In fact, we receive freeze requests from all over the world, from Poland, Spain, even Hungary. Which means it's working. But, of course, we need to go further in the procedure. After the judgment, when confiscation has been ordered, the public prosecutor's office has to follow up and the federal police officers in charge also have to follow up, so that the funds can be recovered.

[00:13:41.230] - SPEAKER 2

You will recall, Mr Claise, that justice is a matter of human beings, of personalities. The Honorary President of Crim'HALT and Mario Vaudano - a retired Italian magistrate and leading specialist in corruption, who brought about the conviction of some Finance Guard generals in the 1980s - told us that if Switzerland was considered a banking haven, it was a question of people. For instance, when he asked the Swiss for information, he could sometimes work very well with Swiss magistrates, despite the culture of discretion that existed there. It's worth remembering that the practice of justice is also a question of people. So, on the contrary, when foreign states ask you to confiscate assets on Belgian soil, from their nationals, is it easy for Belgium to comply with their request? And above all, since we are in the RINSE project, when confiscations do not exist on Belgian soil - for example, in the case of Italian confiscations, known as anti-mafia preventive confiscations, or without the owner's criminal record, or even when we are talking about Anglo-Saxon law, when confiscations are civil, Common

Law, or Irish - has it been easy for Belgium? Has it been recognized, little by little? Have you practiced it?

[00:15:04.950] - SPEAKER 3

No, because, as an examining magistrate, I'm not involved in confiscation, but I am in seizure, even if they are preliminary to confiscation. A freeze is a seizure of course, so it's a precautionary measure. It's a double incrimination. It's a principle of international criminal law. But confiscation without trial, I don't think that's possible. However, Belgium is extremely flexible and fast in these procedures. As far as I'm concerned, I've never refused a single freeze request.

[00:15:48.000] - SPEAKER 2

I'd like to ask a question: three months ago, there was news in the Belgian press telling that Belgium had passed a law allowing drug traffickers to confiscate the proceeds or instruments of crime. This was extremely surprising, as if it hadn't existed before. Were you aware of this reform or did the media get it wrong? It really felt incredible to read about it.

[00:16:20.970] - SPEAKER 3

It has always existed. I'd say it's a general principle that seizure is the same as confiscation, whether it's the instrument that enabled the crime or the proceeds of the crime. Cocaine seized from a drug trafficker is destroyed - we still keep a little for analysis - but that's always happened. Money laundering and human trafficking are two laws that specifically provide the obligation to confiscate and the possibility of doing so by equivalence. As you can see, these are things that have been organized for a long time. There can be no drug trafficking without money laundering.

[00:17:08.280] - SPEAKER 2

That's part of the richness of this project, where we're going to try and give training to a slightly broader public rather than magistrates, including journalists, etc. It seems that confiscation is rather badly treated by the world of journalism, but that's normal, because they are not specialists. When you talk about compulsory confiscation in Belgium, we're very surprised because in France, where confiscation is fifteen years old in its systemic aspect, it's still not compulsory. Although in November we had compulsory confiscation put to the vote, this time on first reading in the National Assembly. We are hopeful that the Senate will confirm it. When assets are seized, even though they are definitively confiscated, the practice is to sell them, as in France. You also have this practice when the assets belong, for example, to a foreign citizen in Belgium - or when you ask for the confiscation of a Belgian citizen in Italy or Spain - as you said. Is it the case that half the property is sold to the territory where the Belgian citizen lived, and the other half to the Belgian State?

[00:18:23.670] - SPEAKER 3

Yes, it is part of the conventions of this judicial practice. When you have a million euros, it's 50-50. In general, states share the money. I would also like to clarify one thing. Because what is important is that in Belgium, we have an office for seizures and confiscations, which is an administrative and

judicial body, an institution. It takes care of the management of seizures and the fate of confiscations. It has happened to me in my career to come across amounts of cash. For example, one day, I happened to come across drug trafficking laundering of 6 million euros, and 3 million euros in the context of traditional serious and organized tax fraud laundering. We ended up in the federal police with 10 million in cash. In this case, the next day, you have to go to the bank to do the calculation and then deposit the money into the account of the Office of Seizures and Confiscations. Another thing, a confiscation can take years. When we confiscate a car, we sell it. It's the magistrate who takes the decision. The owner of the vehicle may not agree, and this dispute will be decided by the indictment chamber. But if the car is sold, the proceeds are paid into the account of the office of seizures and confiscations. Then, either the person is acquitted and the money is returned to him, or he is sentenced and the money falls into the state revenues. There are also, in relation to this management, the possibilities of managing securities portfolios. When you enter large amounts, the Office of seizures and confiscations will manage the securities portfolio, sometimes even with the help of the person who was seized. We always try to value the collected items and avoid a loss during the procedure.

[00:20:40.370] - SPEAKER 2

The assets are sold, the money goes to the State and benefits the citizens. As part of our research projects, Italy is a driving force. As you know, there are movable assets, and real estate, which are immovable property. The movable assets are resold because the State will not maintain a yacht for instance, as an illustration. Even if, at some point, Mr. Berlusconi wanted to give a Maserati to the Italian police, The Italian police department would find out that if they had to change a tire they would have problems taking care of those Maseratis. So we leave out movable property. But as you know, in general, real estate cannot be sold in Italy. They are distributed to civil society. And in Belgium, there is a bill that would apply this spirit of redistribution of confiscated real estate. France voted for this measure in 2021. Of course, for now, real estate can be redistributed. There is no obligation, as in Italy. On your side, in Belgium, do you think this bill can succeed? Do you like this philosophy? Do you have examples of real estate - without saying where - that could be redistributed to associations or foundations? What do you think of this bill?

[00:22:11.360] - SPEAKER 3

Extremely interesting. From the moment when property that comes from criminal organizations - we can recognize today the power of criminal organizations has become unmanageable in States, from a European point of view - It would be extremely interesting if the money that justice has recovered from these criminal organizations could be allocated. And this, not to the State, but be affected by the means that justice needs today. For example, we could affect the money for a series of measures of seizing property. This must be considered. But for me, there is a fundamental measure that must absolutely be examined by the legislator in Belgium: confiscation should not be a sanction, but a measure. What is the difference between the two? If you're suing a very good launderer, you've seized property, and the person dies before they're convicted: this is a problem. But if confiscation is a measure, we can continue the confiscation beyond the death of the person, and therefore, the sale and profit of the State. For me, this is fundamental.

[00:23:25.640] - SPEAKER 2

The Italian anti-mafia code of 2011 did put an end to this procedure, when a mafioso dies and his heirs can recover the property before it is definitively confiscated. And today, even the property of a deceased person, which belongs to the mafia, cannot return to the heirs. Justice shows, in a way, that it could not, not have known that this property was the product of a crime.

[00:23:51.740] - SPEAKER 3

What a great idea.

[00:23:53.640] - SPEAKER 2

So it's a bit complicated. I would like to ask you a personal question because we did a podcast with a person who belongs to civil society, an honorary lawyer who explained why he felt the need for asset confiscation to advance in France, that it is important to fight against criminal organizations, especially in Corsica, where he thinks there is a real mafia. I would like to ask you a question. You have recently retired and have decided on a political commitment. I think it would be interesting to explain why, in a way, you wanted to continue what you did in the legislature, but in another sector of life. Can you explain this commitment?

[00:24:38.110] - SPEAKER 3

Very simply, as I like to say, there are people who make politics their job. I bring my job in politics. I have absolutely nothing personal to claim in a political commitment, except to continue this fight that I had already led as an investigating judge, and beyond the exercise of my mission as an investigating judge. How many times I have been a teacher, I've always been in the business of numbers, I taught. How many times have I been in the gallery of the Parliament, in Belgium, in the Justice and Finance Committee, of which I am an expert, even in the gallery of the European Parliament, in the framework of the "Panama Papers", trying, with a few other professionals to pass relatively simple measures, to combat money laundering and corruption. At that time, I saw a huge failure. After being applauded for our goals, it was sad to see that nothing had received the continuation at the level of action. Once in retirement, someone came to me asking if it would not be wise to continue to pursue these goals, with another cap and the possibility of being better heard. And there, I must say, since the three weeks I announced my well-worked program, the welcome was very warm. I did not expect it at all. I will continue till the end. First, on the basis of justice itself, which is in very bad shape in Belgium. I hope to revive it completely and make it a power and not a mere administration, as is the case today. And on the other hand, continue this struggle that must be relentless against criminal organizations. And to reach them, it is through money. We must reach them, following the good old Eliottness method.

[00:26:42.540] - SPEAKER 2

Thank you very much, Michel Caise. If you want to add something, if you have a message to convey, I will give you the floor. But on my side, this meeting was very rich.

[00:26:53.190] - SPEAKER 3

I do have a specific message. This is a European policy decision that must be implemented. It is extremely urgent. Everything you are talking about makes sense only when the judicial authorities of the countries are given the means. Of course, there is the European Public Prosecutor's Office, of course, there is Eurojust, Europol. But I think that we cannot really have effective actions without having, at some point, the appreciation of the proceeds of crime in Europe. And so I strongly advocate that there has to be a European study on the financial proceeds of crime. Drug traffickers, counterfeiting, cybercrime, environmental attacks - which is the third financial product in the world of criminal organizations - all scams, arms trafficking, human trafficking... I was able to make a quick calculation based on the assessments of the Organisation for Economic Co-operation and Development (OECD), the Monetary Fund, etc. With terror, we saw that we are franchising the \$1 trillion a year in financial products for criminal organizations in Europe. Can you imagine that this amount of money, made in one year, mixes with the proceeds of the amount of other years according to money laundering? Are we not simply losing control of the very core values of our society, and we call that democracy?

HIGHLIGHT

For decades, Belgium has been notorious for high-profile corruption cases. Quatagate is just the latest of a long list. When it comes to organised crime, experts stress the historical presence of foreign organisations in the country, such as: Italian mafias, and Albanian criminal organisations. But over the past 10 years, through the port of Antwerp one of the main gateways for cocaine into Europe, a new type of criminality has entered the scene.

On Monday 9 January 2023, in Antwerp, an 11-year-old girl was playing in the garage of a typical Flemish city's house when shots rang out. Firdaous, aged 11, died after having been shooten by munitions of war... Belgium has suffered its first innocent victim of drug trafficking.

These projectiles pierced a garage door at leg height and were not designed to kill. It was considered to be classic intimidation by the Belgian drug traffickers, as also the explosion of several bombs outside the traffickers' businesses. In November 2022, Belgian Minister of Justice was the target of a planned kidnapping by the Mafia! For 10 years, the port of Antwerp has been a resource for traffickers, who are now settling their accounts with the Kakalishnov in Brussels! 2022, 110 tonnes of cocaine seized in the port of Antwerp, 116 in 2023!

In 2023, MP Ahmed Laaouej is promoting new legislation to increase the resources of the investigative justice system, and to give civil society a role in contrasting organised crime. How is this achievable? Thanks to a specific law, aiming to "return to society" property confiscated from mafias, a law inspired by Italian legislation. These reforms are possible because Belgium used to have a central body for seizure and confiscation (OCSC) for about ten years, due to instigation of EU recommendations. To find out how Belgium attacks criminals, we talk to Michel Claise, who practiced criminal law for over 40 years. He has been an examining magistrate in Brussels, specialised in the fight against white-collar crime. Author of numerous novels, he has now retired and decided to continue the fight against crime by taking part to polical life. He is a candidate in the parliamentary elections of June 2024.

