

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. 6 - Corsica: The Words of Those Who Changed the Law

- Speaker 1 : Presenter, François Fameli
- Speaker 2 : Moderator & President of Crim'HALT, Fabrice Rizzoli
- Speaker 3 : Maître Jérôme Mondoloni, Honorary Lawyer and Specialist in Criminal Matters

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 third episode, we will talk about the harmonisation of asset confiscation measures in Europe. As we announced in the previous episode, the provisional seizures and permanent confiscation of assets and criminal assets have increased dramatically in recent years in France. Seizures have even tripled in financial volume over the past five years to reach 1.5 billion euros last year. Judges Falcon and Borsellino, murdered in 1992, proposed to follow the money to dismantle not only criminal organizations, but also their accomplices at all levels.

This practice requires considerable time and effort that few States have been able to implement outside Italy. Thus, while confiscation is strongly encouraged by Europe, it is not a mandatory measure. Suffice to say that faced with the complexity of the measures and the lack of means of the various judicial systems, confiscation is sometimes perceived as a chimera by the magistrates. However, the confiscation of the criminals' assets, whether they are the fruit or the object of the offense, will soon be mandatory and no longer optional for French judges. The ratios between seizure and asset confiscation are now about a third in France, that is to say that one in three euros seized is permanently confiscated. It is still too little, but the mandatory nature of confiscation will surely push the magistrates to confiscate more, at the risk of being accused of laxity against organized crime and having to justify their refusal to apply the sentence. This is in any case the opinion of Jérôme Mondoloni, honorary lawyer in Corsica and member of the collective Massimo Susini, the name of

this environmental activist assassinated for having denounced the mafia actions on the Island of Beauty. Our specialist, Fabrice Rizzoli, met him for us.

[00:02:41.250] - SPEAKER 2

Good morning, Maître Jérôme Mondoloni, you are an honorary lawyer and a specialist in criminal issues in general. And above all, you are also co-founder and leader of an anti-mafia collective in Corsica called the “Maxime Susini collective”. And if we wanted to give you the floor today in the framework of this project RINSE, this European research project on confiscation, it is because after having made many focus groups with magistrates, investigators who gave us very great information for later training. We also wanted to give voice to civil society, to citizens who are interested in these issues and who face the burden of organized crime and serious crime. So, we also had a brilliant academic who accompanied us in the focus group, but you, you have the militant approach and that is the reason why today, we intend to interview you. First of all, asset confiscation in France is recent compared to other countries, but finally, despite everything, it has already been 10 to 13 years since there is an agency that makes confiscation more important than before. There is a before and after regarding the creation of this confiscation agency. Within 10 to 11 years since the AGRASC agency creation - the collection agency that seized and confiscated assets - allowed the definitive confiscation of about 1 billion assets over 12 to 13 years and that it was able to give back the fruit of this sale - the fruit of this billion or precisely 900 million - to the State. To understand how to confiscate 950 million in ten years? That is to say, what is confiscation in France? How does it work? What are the violations?

[00:04:39.630] - SPEAKER 3

Good morning, Mr. Rizzoli. In France, asset confiscation works in a shaky way insofar as, until recently, confiscation of criminal assets was not mandatory, even in the event of a criminal conviction. It was a complementary and voluntary measure ; in France, there was no culture of confiscation. The Warsmann Act of July 2010 introduced the principle of confiscation, but it was, again, a complementary and optional measure. What was ironic was that everyone recognized that confiscation had to be the central axis, the pivot, the cornerstone of the fight against organized crime, because what these people fear most is that their assets would be seized. So we were in a paradoxical situation. We had a judicial arsenal that was very elaborate, very complex, but that failed because asset confiscation was not mandatory, even in the case of a criminal conviction. Hence the militancy of our collective and others to obtain this compulsory confiscation.

[00:05:45.090] - SPEAKER 2

So we will come to that, but when you say that this is what works, you often remember that our gangsters or fraudsters systematically appeal confiscation orders and not necessarily decisions to sentence them to prison sentences. Is that what you noticed?

[00:06:04.400] - SPEAKER 3

But it is a fact that is proven, that everyone is aware of. It is indisputable. What organized crime groups or mafia groups fear most is that the fruit of their “labour” - is indeed the fruit of their racketeering,

their power of intimidation, their takeover of the legal economy - which suddenly evaporates. Because a magistrate will finally have decided, following their criminal conviction, to confiscate all the criminal assets produced directly or indirectly from their offenses. That's what they fear the most, obviously. What they are looking for is both a power of intimidation and the consequence of that power of intimidation, a financial power that allows them to enter the legal economy and establish their power. If we take that away from them, they lose all power.

[00:06:53.420] - SPEAKER 2

All right. That's for organized crime that uses violence and that conditions populations. But there is a whole series of confiscations in France that concerns fraud, tax evasion, a form of economic corruption. There, they do not necessarily use violence, but we have had confiscations recently. For example, the Balkany family, etc. Do you know any examples?

[00:07:17.300] - SPEAKER 3

The Balkany, yes, of course, is an emblematic example in that it involved politicians. In Corsica, we saw a politician convicted because he had his villa financed by a company, etc. Here is an important point : we must not neglect this aspect of the fight against white collar workers who, under the pretext of being elected, have all the rights. But for us, the essential danger is not really there, even if it seems a bit of a killjoy. For us, the essential danger is in the power that is increasingly exponential of organized crime in France and especially in Corsica, because now, we are dealing with networks that have powers, capital reserves like never seen before.. The European Union is a great example of this. And from there, we can see that little by little, especially in Corsica, the legal economy is penetrated, that politicians are more and more involved and that there is a decisive fight for democracy to remain a rule of law and not a state of the strongest.

[00:08:27.660] - SPEAKER 2

It seems particularly true in Corsica, you insist on it. In France, the gangsters systematically appeal against the confiscation orders of their property. But during the focus groups that we did for civil society, the judges told us that particularly in Corsica, they systematically appeal decisions, using lawyers heavily. They talk about embolization of the justice system. It is as if they really wanted justice, especially in Corsica, to be completely stifled by recourse.

[00:08:59.100] - SPEAKER 3

That is absolutely correct. They do so whether all the more since the human means, the disposition of justice in Corsica whether to search for drug traffickers or to judge cases, are at least insufficient. Everyone notices it. When we participated in workshops on mafia-related issues, particularly mafia drifts, we observed that colleagues who often have clients involved with mafia groups or criminal organizations, particularly in Corsica, were vehemently opposed to any evolution in penal policy that would lead to mandatory confiscation, for example. However, by overwhelming the confiscation measures with appeal procedures and given the lack of human resources, there is always hope that a clerk or a magistrate might have made a procedural error. And often it happens. In Corsica, for

example, we have seen the case, it does not concern organized crime, but the director of a chamber of agriculture which was prosecuted for 500 and a few thousand euros for misappropriation of aid from the common agricultural policy. In the end, the liberty judge, although seized in time by the prosecutor, forgot to make his orders before the closure of the investigation. So the whole process was set aside and his lawyers, triumphantly, “our client was cleared”.

[00:10:20.290] - SPEAKER 2

Of course. So, we see the great difficulty, ultimately, in fighting these offenses and economic offenses that leave traces, but that require a lot of resources from the judicial police and the judiciary to investigate. So, finally, we understand that when we fight against these gangsters, the problem is money laundering. That is to say, if you catch someone doing drugs, you will confiscate the drugs. It's normal. Drugs are confiscated immediately. The murder weapon, if found, is confiscated immediately. Or even what you said, the instrument of crime. So obviously, if the villa is used to cut drugs, it is confiscated. But what becomes difficult is to confiscate the villa that the trafficker bought by selling his drugs. Because the magistrate will have to prove that the trafficker bought it with that money, with the drug money. This makes it very complicated. This is why it is difficult in France to confiscate the property of organized crime, the proceeds of crime, right?

[00:11:28.010] - SPEAKER 3

But there is a possibility, it is the confiscation in value, even if the property is not directly related to the offense, as soon as the magistrate can assess the proceeds of the crime, he can seize what corresponds in value to the proceeds of the crime and thus seize the famous villa of which you speak. So value confiscation is increasingly practiced. It's a good thing, it's even a very good thing. It is an effective instrument that is provided for in 131-21 of the Criminal Code. It is really a very effective instrument today.

[00:12:05.950] - SPEAKER 2

Excuse me, Jérôme, I'm interrupting you, what you say is fascinating. As part of our focus group research, the magistrates confirmed that today, 50% of confiscation in France was confiscation by equivalence or they prefer to call it confiscation in value. I repeat for our listeners, imagine that a drug dealer sells drugs, he earned 500,000 €. With this 500,000 €, he buys a villa. Okay. The problem is that for any reason, if the \$500,000 went through Liechtenstein, they'd already been laundered in a nightclub. The magistrate, faced with the lack of means and the difficulty of working internationally, will not be able prove “*stricto sensu*” that drug money paid for the villa, but as there is an investigation that shows that he earns his living with drugs, we will be able to estimate what he earned with drugs and confiscate as an equivalent in his assets for 500,000 € of his property. And so, for example, a villa worth €500,000. So, it's true, you're right, it works, it was confirmed to us.

[00:13:12.080] - SPEAKER 3

But the difficulty in France, even if it works, is that the law on special seizures, which is a huge progress, often discourages judges by its complexity. This is why they prioritize the fact that

confiscation was not mandatory to forget to confiscate or confiscate what was the simplest and most obvious: the money in the bank account. But so far, there has been no concern in France to make an assessment of the offense-related assets. That is to say, we were trying to prove the guilt of the person, but less to look for his heritage. However, today, thanks to the new amendments that have passed, the judicial police officer should normally have a paper sheet that will make him think of filling out everything concerning the offense-related property, what has been acquired or what is available to the accused. And from there, we will change the habits in the judiciary.

[00:14:20.180] - SPEAKER 2

In terms of numbers, what you're saying is very interesting. We confiscated a billion of assets and we sold them. But on a dozen-year scale, it's not that huge. It has been said that confiscation by equivalence works, but it is already a misappropriation of confiscation "stricto sensu" which is difficult to apply. In France, 32.1% of all seized property is permanently confiscated. This is a figure that, by all accounts, is quite low. All the people who think about it would like it to go up, judges would like to see it at 40 to 50%, but we will not get there overnight. So very clearly, the practice today is, as you said, with the difficulties. Finally, much is confiscated in economic offenses, so called tax evasion, or even laundering in the broadest sense, not the laundering of organized crime. Money laundering, as the offense of simply using property that comes from traffic, so a car that is used that we do not know how to justify the resource. Finally, the most serious offenses that concern us a lot, particularly in the RINSE project, are the association of criminals, assassinations and including drug trafficking. We do not confiscate enough in France. And that is why, with your collective and another association, you have recently taken a proactive approach to defending amendments to a law that has just been passed unanimously in the National Assembly and where you voted for mandatory confiscation. Can you go back on why it is very important that this confiscation is mandatory in France?

[00:16:11.860] - SPEAKER 3

This confiscation, for the time being, was optional : the confiscation penalty was a complementary penalty. As I said in the introduction, how to fight organized crime and what justifies their existence and what motivates groups of criminals, if not the constitution of criminal capital and to penetrate the legal economy. Until now, this confiscation was only optional. So a pimp could be convicted of procuring, but the building in which he exercised could not be confiscated because the magistrate did not want to make a complex heritage investigation and which sometimes poses problems for the application of the proportionality criterion, of personality, etc. Thus, the magistrates, faced with the difficulty of implementing the law on special aesthetics, often forgot to confiscate. In addition, it was not at all in their culture. By making the confiscation of criminal assets produced directly or indirectly from the offense, the magistrates, unless otherwise motivated, will no longer be able to dodge and forget to confiscate. And from there, we think there's going to be a multiplier effect on confiscation, because now the judicial police officer knows that when he's investigating, not only is he there to provide evidence of guilt, but it is also there to determine the offense-related property on which the judge will rely. And the judge of liberty will rely to validate the orders of seizure or confiscation. It is the cornerstone of any organized crime policy. As long as it was optional, it was, once again, a

pleonasm, only an ancillary, complementary, optional measure. With that, we weren't making much progress.

[00:18:05.110] - SPEAKER 2

You are very humble. I would like to revisit the genesis of the work that has been accomplished. Indeed, it was a first reading in the National Assembly in November. We will await the Senate's review in March, but in reality, it began as a bill proposed by a deputy who wanted to push through significant reform regarding confiscation. However, there were only one or two articles in his initial proposal. It is truly the civil society, through the Crim'HALT association, that has long advocated for more confiscations in France, as well as the Maxime Susini collective. They conducted thorough groundwork, as you demonstrate here with all the reflections and expertise you show, but also by reaching out to the right interlocutors, specifically two deputies, particularly Deputy Colombani, to introduce amendments that were not included in the initial bill. It was you who proposed a whole series of amendments. So, I want to emphasize that in France, it is indeed the civil society that mobilizes to improve these confiscations.

[00:19:09.110] - SPEAKER 3

Excuse me for interrupting, my dear Fabrice, but what's important is that this initiative originated in Corsica. Corsica is often singled out. Here, representatives of civil society, an anti-mafia collective, took multiple contacts with Corsican-origin deputies, Colombani, Aquaville, Marc Angel, and managed to agree on amendments which were then partially adopted by Deputy Warsmann in his own bill. Originally, his bill only included one emblematic measure, that the confiscation order equated to an eviction notice, but it didn't go much further. Now, Deputy Warsmann has accepted that confiscation be included in his bill, and it was unanimously approved. Such a law, unanimously passed and originating from respecting the intellectual property rights of the Crim'HALT association, which initially drew our attention to the fundamental issue of mandatory confiscation. This highlighted that confiscation was crucial in the battle against organized crime. From there, we noted their advice, worked diligently on it, met with deputies, agreed on texts, and in the end, it passed. This proves that we can make a difference and that civil society cannot stand back from what is happening at the level of organized crime.

[00:20:34.820] - SPEAKER 2

And let's also note that if civil society has taken action, these laws, which are only a bill and not a government initiative, were unanimously approved with unwavering support from the government, voiced by the Minister of Justice, and from all political parties. This is important to mention in the context of a research project where we aim to understand how laws can be amended.

[00:21:00.250] - SPEAKER 3

Excuse me, but we must not forget that initially, when the collective took action and reiterated what Crim'HALT had been advocating for years, we were told: "What you propose is a violation of civil liberties, it undermines the presumption of innocence," and "We are entering a state of exceptional

legislation.” Moreover, what we were asking for supposedly already existed in criminal law. We faced a barrage of criticism from lawyers, even magistrates, including some in Corsica, and a general prosecutor who told us, “The judicial arsenal is sufficient, let’s not change anything.” Now, thanks to the cooperation of Crim’HALT, the Massimu Susini collective, the deputies, and with the support of the Minister of Justice, we have succeeded in making significant changes on a fundamental point. This is no small feat. As Warsmann said, it’s a small revolution. And it’s a beautiful revolution.

[00:21:55.180] - SPEAKER 2

And since we are funded by the EU as part of this research project, I would like to highlight the importance of the Erasmus+ adult continuing education projects, funded by the Erasmus+ agency in France and the European Commission. Since 2019, Crim’HALT has been taking a French audience to Italy to train in social antimafia practices, particularly in asset confiscation. Members of the Maxime Susini collective and other members of the group have regularly visited Italy to see how things are done there. I believe we can commend the virtuous chain of European funding that has allowed people to train and present concrete proposals to the political authorities for modifying asset confiscation laws. Two key points about mandatory confiscation: First, from the start of an investigation, all investigators will be required to conduct financial investigations, which they are willing to do despite resource issues. They will now be obligated to do so. Second, I must point out something noted in our research: sometimes, these dedicated judicial police officers spend hours conducting financial investigations, often taking on tasks meant for magistrates. Given the magistrates’ overwhelming workload, these officers still issue the orders. However, there have been instances where, during the trial, the presiding magistrate did not order confiscation without providing any justification. This is what will change. Now, they will be required to explain their reasoning.

[00:23:22.230] - SPEAKER 3

What will change is that previously, a magistrate could forget to order a confiscation without providing any justification for this omission. From now on, according to the new law, confiscation is mandatory, except when the magistrate considers the personality and the criterion of proportionality. In other words, if the magistrate does not wish to proceed with the confiscation, they will have to justify the reason. This is a complete reversal of the current practice: now, it is the magistrate who will have to explain why they do not want to order a confiscation. And that is fundamental.

[00:23:52.800] - SPEAKER 2

Remember that it is very important anyway, because we are in a project of confiscation, so it is a repressive measure. And it must all be in an arbitration of respect for public freedoms.

[00:24:03.140] - SPEAKER 3

Exactly.

[00:24:03.720] - SPEAKER 2

The magistrate will be obliged to order a confiscation unless they do not want to, in which case they will have to justify it. And clearly, as you mentioned, we are talking about jurisprudence. It is not a matter of confiscating the entire estate of a family or someone who has been convicted if it does not correspond to the value of the proceeds of the crime. If other wealth have been legally acquired through inheritance or honest work, the rule of law must not become a confiscatory state. So, we fully understand these guarantees.

[00:24:35.070] - SPEAKER 3

Yes, because the principle of proportionality is a fundamental principle that demonstrates how case law has established principles to protect individual rights. Sometimes, the entirety of a defendant's assets may be the direct product of the crime. In such cases, when all of the assets are directly derived from the crime, the principle of proportionality does not apply, as everything the person owns is the direct result of the crime. There are cases like this, but generally, it's mixed. Following priority questions of constitutionality, we have introduced the possibility for an innocent third party to participate in the legal process.

[00:25:22.430] - SPEAKER 2

“Priority questions of constitutionality” is a procedure for constitutional review of laws that have already been enacted.

[00:25:28.350] - SPEAKER 3

We allowed the third party in good faith to assert their rights by informing them that the property of which they are partially owners had been seized. So, at that point, the innocent owner or the unfortunate spouse of the criminal who says, “But the villa is half mine too. I had nothing to do with my husband trafficking drugs.” In that case, they are invited to assert their rights during the procedure. This is an innovation, but it's also important because it allows us to avoid criticisms that it seriously undermines the right to private property.

[00:26:06.770] - SPEAKER 2

We will benefit from your expertise for just a moment longer. Besides confiscation by equivalence, there is extended confiscation; there is also confiscation for non-justified resources. You wanted it to be mandatory as well, but in this case, the legislature refused. If you can be educational, it's not easy, but please explain why you wanted it to be mandatory.

[00:26:35.320] - SPEAKER 3

It's Article L321-6 of the French Penal Code which provides that a person who is associated with individuals who have committed crimes punishable by sentences exceeding five years and who cannot justify through legitimate and legal means how they acquired their assets may have their assets confiscated. So, the person can be convicted. That's the paradox and absurdity of French law. They may be convicted because they can't justify the origin of the assets, but those assets are not necessarily confiscated. So, we proposed an amendment to follow through logically. If a person may be convicted

under Article 321-6 because they can't justify the origin of the assets, let's go all the way and make the confiscation of those assets mandatory. Currently, this provision doesn't exist in the French Penal Code, which means this common-sense measure is rarely applied, as lamented by Deputy Warsmann in his November 2019 report. Unfortunately, due to a minor drafting issue, our amendment was not adopted this time, but we remain hopeful for the next opportunity.

[00:27:46.730] - SPEAKER 2

Perfect. So, we would like to finish on something even more "civil society" even if you're not an expert. As you know, since 2021, there's also a law in France that has come into effect, "social use of confiscated assets," directly inspired by the Italian model. It's not mandatory in European directives, it's just a recommendation within the directives. France is one of the first countries in Europe to have tried to copy the Italian law. It's more restrictive, but to keep it simple: Has your collective, since 2019, since its inception, supported associations like Crim'HALT and Libera France to ensure this law exists? As an activist, why is it important that tomorrow, a confiscated asset isn't automatically sold, but can be allocated to an association, foundation, or directly returned to civil society?

[00:28:46.880] - SPEAKER 3

Imagine if in Corsica, members of civil society, associations, were entrusted with managing real estate assets that once belonged to criminals who have committed murders in Corsica, who have engaged in extortion in Corsica, who have enforced the law of silence in Corsica. Can you imagine the example for civil society, the impact, if associations have the courage to request these assets for management, aligned with the social mission of these associations? It would be an amazing example, a huge message to civil society. And what if tomorrow, local authorities could also manage these assets? Imagine if the Corsican community received confiscated assets for management? Imagine the example, the impact there too. It would say, the gangs, the four major gangs operating in Corsica, don't always win. In fact, they are winning less because their assets, look, are now yours. They no longer have them; it's for you now. And that would change a lot in how these criminals are perceived.

[00:30:06.970] - SPEAKER 2

Thank you very much, Maître Mondoloni. The example is very striking. Currently, there are only five assets being reused, directly made available to citizens. However, there are some very promising projects, like a house confiscated from a slumlord, which will now host a foundation helping people off the streets. In Guadeloupe, property seized from a fraudster is now used to house violent spouses separately, ensuring safety for mothers and women at home. Another property seized from a cocaine trafficker in Marseille now houses two associations aiding victims. I appreciate your mention of Corsica, as the first confiscated property that may be made available there is now listed on a website, inviting associations to apply. This could set a wonderful example. It would indeed be crucial for Corsicans, who experience high levels of violence compared to other areas, to have these properties returned directly to the community. Is there anything else you would like to add?

[00:31:16.390] - SPEAKER 3

I would say that we will never forget our initial contacts with Crim'HALT. Without Crim'HALT, we would have lost a lot of time. Thanks to Crim'HALT, we immediately saw the paths we needed to take, the straight path we needed to follow. We emerged a bit from the dark forest, as Dante would say, to walk on the straight path by making very concrete requests and fighting organized crime, primarily through strengthening the law for the common good. We will never forget those first contacts. This contact was fundamental in our fight.

[00:32:02.090] - SPEAKER 2

Thank you very much, Maître Mondoloni and to the entire Maxime Susini collective, for your participation, both in changing the law and in contributing to the RINSE project, European Research Project on Confiscation. We sincerely hope that all the amendments you have submitted will be passed in the Senate, and that you will continue to improve the law so that confiscation prevails over the triumph of money that we sometimes observe in Europe. Thank you very much and goodbye to all, dear listeners.

HIGHLIGHT

Since the Stockholm Programme in 2010, which advocated “an open and secure Europe that serves and protects its citizens”, EU countries have been working to confiscate the assets of traffickers, acquired with dirty money (so-called “ill-gotten gains”). In 2011, the creation in France of an Agency for the Management of Seized and Recovered Assets (AGRASC) launched a confiscation policy that is steadily increasing. Between 2011 and 2021, AGRASC paid the State €800 million from the proceeds of sales of assets confiscated by the courts. The number of properties confiscated has risen from 10 in 2013 to 200 in 2022. In 2023, a record €1.4 billion will be seized provisionally by the courts, compared with €771 million in 2022 (€725 million in 2021 and €592 million in 2020).

It is important to underline that since 2021, after the instigation of associations and members of parliament, France created a law about the social use of confiscated assets. For instance, an association in Guadelupe is protecting women who are victims of domestic violence in a villa confiscated from a swindler. In Dunkirk, the building belonging to a slumlord is used to provide accommodation and integration facilities for homeless people. In Marseille, the villa of a cocaine trafficker is now available for two victim support associations. These are great examples, that should increase. Other projects are underway in Corsica and in Seine Saint Denis.

To understand how confiscation gained relevance in France, particularly following the EU directives of 2014 and 2019, we interviewed two magistrates in Marseille.

Laure Humeau, Vice-President of the Marseilles Criminal Court, 6th correctional chamber, works in a specialised inter-regional court dealing with complex economic, health, and environmental offences.

Pascal Gand, 1st Deputy Vice-President of the same specialised jurisdiction, was also President of a chamber that tried organised crime cases. Moreover, Pascal Gand was responsible, under Italian influence, for the first social affectation of confiscated property in France. In Paris, a stone's throw from

the Ministry of Justice, a victim of human trafficking is rebuilding her life in the former flat of an Italian mafioso. A perfect example of sharing best practice in Europe.