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COMPARATIVE REPORT

LEGISLATION MEETS PRACTICE: NATIONAL AND EUROPEAN PERSPECTIVES IN CONFISCATION AND FORFEITURE OF ASSETS

Co-funded by the
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LEGISLATION MEETS PRACTICE: NATIONAL AND EUROPEAN PERSPECTIVES IN CONFISCATION AND FORFEITURE OF ASSETS

Comparative Report

AUTHORS

Assoc. prof. Antoniy Galabov PhD in Sociology, Chiara Putaturo, Claudia Marà, Diana Kovatcheva PhD in International Law, Giorgio Fraschini, Kapka Milcheva, Katia Hristova-Valtcheva PhD in Political Science, Krum Zarkov, Miruna Maier, Att. Petia Ivanova, Ruxandra Soare PhD in Public Administration, Savina Mihailova-Goleminova PhD in Financial Law

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ABBREVIATIONS

ADD	Antimafia District Directorate, Italy
ANBSC	National Agency for Forfeited and Confiscated Assets, Italy
ARO	Asset Recovery Office
CEPACA	Commission for Establishing Property Acquired from Criminal Activity, Bulgaria
CIAF	Commission for Illegal Assets Forfeiture, Bulgaria
DIA	Antimafia Investigative Directorate, Italy
EC	European Commission
EESC	European Economic and Social Committee
ECHR	European Court of Human Rights
EU	European Union
FCAA	2005 Forfeiture in Favour of the State of Assets Acquired through Criminal Activity Act (repealed), Bulgaria
FIAA	2012 Forfeiture in Favour of the State of Illegally Acquired Assets Act, Bulgaria
JPI	Judge for Preliminary Investigations, Italy
KTB	Bulgaria's Corporate Commercial Bank
MP	Member of Parliament
MS	Member State
NAFA	National Agency for Fiscal Administration, Romania
NGO	Non-governmental organization
NRA	National Revenue Agency, Bulgaria
NRAA	National Revenue Agency Act, Bulgaria
NSI	National Statistical Institute, Bulgaria
OFC	Offshore financial centres
PPO	Public Prosecutor's Office
SA	State Attorney, Italy
TI	Transparency International
TFEU	Treaty on the Functioning of the European Union
TSIPC	Tax and Social Insurance Procedure Code, Bulgaria
UN	United Nations
UNCAC	United Nations Convention against Corruption
UNTOC	United Nations Convention against Transnational Organized Crime
USA	United States of America

INTRODUCTION

In order to disrupt organised crime activities it is essential to deprive criminals of the proceeds of crime. Organised crime groups are building large-scale international networks and amass substantial profits from various criminal activities. The proceeds of crime are laundered and re-injected into the economy to be legalised. The confiscation/forfeiture and recovery of criminal or illegal assets[1] is considered as a very effective way to fight organised crime, which is essentially profit-driven. Seizing back as much of these profits as possible aims at hampering activities of criminal organisations, deterring criminality and providing additional funds to invest back into law enforcement activities or other crime prevention initiatives.

The relevance of this problematic is in removing the economic gain from serious crime (including, but not limited to drug trafficking, corruption, money laundering, organised crime) in order to discourage the criminal conduct. Its importance is evidenced by the number of multilateral treaties that have been concluded and provide obligations for states to cooperate with one another on confiscation, asset sharing, legal assistance, and compensation of victims. Several United Nations conventions and multilateral treaties contain provisions with regard to confiscation and forfeiture[2].

The issue is also a matter of interest at European Union (EU) level with the new legislation adopted. However challenges still remain and should be addressed, so that cooperation can be more effective, since anti-fraud policy should be targeted in a trans-border perspective. The Stockholm programme called upon the Member States and the Commission to make the confiscation of criminal assets more efficient and to strengthen the cooperation between Asset Recovery Offices (AROs)[3]; EC report on cooperation between AROs (2011) has identified common capacity problems (insufficient personnel and resources, lack of common legislative framework), inadequate access to databases and judicial statistics.

[1] The publication aims at presenting some of the most common models for confiscation or forfeiture of criminal and illegal assets in EU Members states. The research identified differences both in the models and in the terminology in the Member states in this particular filed. This is why for the purposes of correct presentation of all types of models and for fair reflection of of their specific features, the publication uses the following terms: confiscation/forfeiture and criminal /illegal assets.

[2] United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988; Vienna Convention); United Nations Convention against Transnational Organized Crime (2000; UNTOC); United Nations Convention against Corruption (2004; UNCAC) art 5; Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005); Council of Europe, Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990; Strasbourg Convention); Organisation for Economic Co-operation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1997).

[3] See also Council Decision 2007/845/JHA1 that obliges Member States to set up or designate national Asset Recovery Offices ("AROs") as national central contact points which facilitate, through enhanced cooperation, the fastest possible EU-wide tracing of assets derived from crime. The Decision allows the AROs to exchange information and best practices, both upon request and spontaneously, regardless of their status (administrative, law enforcement or judicial authority).

In this context, three national chapters of Transparency International, being also EU Member States, (TI–Bulgaria, TI–Italy and TI-Romania) are conducting a 24-month research and independent civil monitoring over the legal, institutional, and operational modes of the Asset Recovery Offices (AROs) and policies to outline their main strong and weak aspects in terms of competencies, capacity, performance and integrity. The aim of the project "Enhancing Integrity and Effectiveness of Illegal Asset Confiscation – European Approaches", funded by the "Prevention of and Fight against Crime" programme carried out by DG Home Affairs of the European Commission, is to support the effectiveness, accountability and transparency of asset confiscation/forfeiture policies and practices in Europe, allowing for improved cooperation between authorities in Memeber states (MSs).

The research provided for objective understanding of main strong and weak points in asset confiscation/forfeiture legal, institutional and policy practices in Bulgaria, Romania and Italy[4]. It became the basis for the independent civil monitoring and the exchange of know-how and good practices. The addressed shortcomings and recommendations will trigger improvement of the institutional and procedural capacities of national confiscation/forfeiture authorities at local and EU level, especially regarding transparency, accountability, integrity, modes of operation, human resource management, coherence with other relevant authorities, access to databases, use of expertise in asset assessments, cost effectiveness. The project findings from the monitoring (lessons learnt) will also be disseminated via the Transparency International network on regional, EU and international level. Ultimately, this means strengthened capacities of AROs, better chances for cooperation between MSs and civil society representatives.

The publication is based on the work of the three national chapters of Transparency International that analyse and monitor the national models of confiscation/forfeiture of assets in Bulgaria, Italy and Romania.

The aim is to provide information on the national approach on confiscation/forfeiture as regulated by the national law as well as to provide information on its implementation, based on civil monitoring on real cases tackled by the national confiscation authorities.

The publication includes summaries of the three national models of confiscation/forfeiture of illegal/criminal assets (Bulgaria, Italy and Romania). In this part a critical analysis of the legislation is made to be used as a basis for identification of strong and weak features of each model. This is the basis for concrete recommendation for improvement of each model.

The second part of the publication includes summaries of the reports for monitoring of the activities of the national confiscation/forfeiture authorities in the three countries. The actual reports are presented as attachments at the end of the book. Each monitoring report includes specific recommendations for improvement. The analysis of the indicators for transparency, integrity, accountability and efficiency in the work of confiscation authorities, based on the active monitoring, is provided as well.

In addition the paper provides for a model for civil monitoring of the activities of national confiscation/forfeiture authorities, which is irrelevant of the specific national model and could be used by civil society organizations in any country to monitor the activities of institutions in this respect.

The presentation gives a special focus on the elaboration of an "ideal model" for confiscation/forfeiture at national level. This model is perceived as a set of common standards which should be applied in all EU MSs, in order to achieve transparency, accountability, integrity, efficiency and human rights protection, when confiscation/forfeiture procedures are at stake.

Last but not least, the book provides for recommendations for adoption of more advanced common European standards at EU level in the field of confiscation/forfeiture of assets. Further improvement of the existing EU regulations shall contribute to the more successful work of national authorities.

[4] The legal research "Forfeiture of Illegal Assets: Challenges and Perspectives of the Bulgarian Approach", "Illicit Assets Recovery in Italy", and "Extended Confiscation Procedure in Romania" could be found on the website of the initiative: www.confiscation.eu, "Research" section.

THREE EUROPEAN MODELS FOR CONFISCATION OF ASSETS: MAIN FEATURES

BULGARIAN MODEL

LEGAL BACKGROUND

Forfeiture of illegally acquired assets in favour of the state is not a novelty in Bulgaria. Throughout the different historical stages of state development this institute has had different characteristics, scope and application procedures that have been determined by the different public and economic context.

The historical review of the legislation in this field points to several regimes of forfeiture in favour of the state with different characteristics and consequences.

The first is related to confiscation as a form of punishment. The second regime has been established by the Criminal Code in 1982. It envisages forfeiture of proceeds of crime in favour of the state where the proceeds are not subject to return or reimbursement[5].

Changes in the public, political and economic relations after 1989 led to changes in the nature of crime and the appearance of new forms of crime organisation. The expansion of this criminal activity beyond national borders objectively led to generating illegal assets in proportions that required additional mechanisms for the establishment of criminal assets and their forfeiture in favour of the state that would contribute to more effectively counteracting this crime. In 2005 the Forfeiture in Favour of the State of Assets Acquired through Criminal Activity Act (2005 Forfeiture of Criminal Assets Act, FCAA) entered into force. Unlike the confiscation as a form of punishment for a crime and the forfeiture as a measure of coercion imposed together with the punishment in the framework of criminal proceedings, the 2005 Forfeiture of Criminal Assets Act (repealed) provided for freezing and confiscation of assets before a civil court.

The 2005 Forfeiture of Criminal Assets Act (repealed) was repealed in 2012 when the Forfeiture in Favour of the State of Illegally Acquired Assets Act (2012 Forfeiture of Illegal Assets Act, FIAA)[6] came into force and is currently an acting law in the country[7]. Although at first it would appear that the two pieces of legislation have identical scope of application, in fact they are very different. **Asset forfeiture that does not require a final verdict of guilt against a criminal defendant and is based only on civil court judgement (civil forfeiture), also known as non-conviction based confiscation, is governed by the 2012 Forfeiture of Illegal Assets Act.** Its provisions stipulate which assets are to be deemed ill-gotten or criminal proceeds, the grounds for initiating asset

[5] Article 53, para 2, lettera 'b' of the Criminal Code.
[6] Forfeiture of Illegal Assets Act (State Gazette 38/18.05.2012, in force since 19.11.2012). The full text of the act is accessible at the website of the Commission for Illegal Assets Forfeiture (CIAF), section 'National Legislation' at http://www.ciaf.government.bg/pages/view/nacionalno-29/.
[7] Such an act is not a novelty in the Bulgarian law. In 1919 a Forfeiture in Favour of the State of Illegally Acquired Real Estates entered into force in Bulgaria. Those were real estates acquired by a wide circle of persons such as public servants, private natural persons or legal entities in relation to a crime committed by them or on another ground set forth in the same act.

forfeiture proceedings, as well as the various stages of such proceedings. The Act establishes also procedures for setting up the public bodies entrusted with asset forfeiture activities, the requirements for their election or appointment, as well as their functions, duties, and powers with regard to illegal asset forfeiture proceedings.

These statutory provisions are further regulated in more detail by the Rules of Procedure of the Commission for Illegal Asset Forfeiture (CIAF) and its administration, as well as by the Joint Operational Instructions for interaction between the Commission for Illegal Asset Forfeiture, the State Agency for National Security, the Ministry of Interior, the bodies with the Ministry of Finance, and the Public Prosecutor's Office of the Republic of Bulgaria. In addition to the provisions of the Forfeiture of Illegal Assets Act, the general rules of the Civil Procedure Code also apply to illegal asset forfeiture procedures.

FORFEITURE AUTHORITIES

According to Article 5, paragraph 1 in conjunction with Article 13, paragraph 1 of the Forfeiture of Illegal Assets Act, the powers to govern asset forfeiture are conferred upon the Commission for Illegal Asset Forfeiture and the bodies operating out of its regional units, i.e. directors and inspectors.

The Commission for Illegal Asset Forfeiture is a permanent independent specialised public authority. It has the status of a legal person domiciled in the city of Sofia, and is composed of five (5) members, including a chairperson and a deputy chair (Article 6, paragraph 1, FIAA).

The Commission is composed on quota-based principle whereas its chairperson is appointed by the Prime Minister, three of its members are elected by the National Assembly, and one member is appointed by the President. All Commission members are elected or appointed, as the case may be, for a five-year term. They may not serve two consecutive terms.

All resolutions of the Commission are adopted by a majority of more than half of all its members and include the findings of fact that constitute the grounds for their adoption, the evidence underlying such findings, and the legal conclusions drawn therefrom (Article 11, FIAA).

The heads (directors) of the CIAF regional units and the inspectors working therein are also instrumental in the identification and tracing of ill-gotten assets. The regional units are locally competent bodies tasked with carrying out some of the frontline enforcement of the Forfeiture of Illegal Assets Act. The CIAF has five (5) regional directorates and sixteen (16) regional bureaus under them.

The nature of the tasks assigned to the CIAF makes it an analytical rather than an operational authority. Its resolutions are based on analyses of the vast amounts of varied information gathered in the course of the probes carried out by its regional units.

ASSETS SUBJECT TO FORFEITURE

Under the so called "civil forfeiture" model adopted by Bulgarian law, subject to forfeiture to the state are any illicit proceeds and other ill-gotten property, regardless of where they are physically located, or in whose possession they may be. There is no requirement that the assets should be proceeds or instruments of crime. **The lack of evidence that the assets derive from legal sources would suffice.** Criminal proceedings brought against a person accused of having committed any of the crimes set out exhaustively in the Forfeiture of Illegal Assets Act are meant to serve just as the reasonable grounds to launch a probe into that person's assets to determine if any of those are ill-gotten or criminal proceeds.

Subject to forfeiture under the FIAA is any illicitly derived property and proceeds. This includes "money, assets of any type, both tangible and intangible, movable and immovable property, and restricted rights in rem (§ 1, item 1, Additional Provisions, FIAA).

Any assets, which do not appear to stem from legitimate source, are deemed illegal (Article 1, paragraph 2, FIAA). The presence or absence of a legitimate explanation or source for the assets is linked to the source of funds for their acquisition, i.e. to the sources of income (mostly cash income) used to acquire those assets. It is possible however to earn income from prohibited sources, such as corruption, trafficking in human beings and drugs, tax evasion, smuggling, etc. The unlawful nature of such sources renders any income, generated therefrom, illegal too, and, accordingly, any assets acquired using such profits. This constitutes sufficient grounds to forfeit such proceeds or assets to the state.

For any assets to be forfeited, however, **it is necessary that a probe by the Commission's inspectors should have ascertained a significant disparity between suspects' identified assets and her or his lawfully acquired net income.** In value terms the mismatch need not exceed **BGN 250,000** (EUR 125,000) over the entire time period being probed (Article 21 and § 1, item 7, Additional Provisions, FIAA).

Subject to forfeiture are not just the assets held by suspect as at the conclusion of the probe, but also any illegal assets transferred by her or him to other persons (third parties), as well as any illegal assets inherited by the suspect's heirs or devisees/legatees up to the sizes of inheritance received. In certain cases, subject to

forfeiture are also assets acquired directly by a third party acting as a nominee for the suspect (Article 63, paragraph 2 and Article 67, FIAA).

In cases where any illicitly derived property has been transformed, in whole or in part, into other assets, those transformed assets are also subject to forfeiture, provided they are at least equal to or greater in value than the illicit assets originally transferred.

Illegal assets are subject to forfeiture in their entirety, regardless of their nature, location, and amount. They are valued at actual cost as at the time of their acquisition or disposal. Where it proves impossible to seize separate property, subject to forfeiture is its monetary equivalent assessed at market value as at the time of bringing the forfeiture action.

With respect to *time*, subject to forfeiture are any illegal assets acquired or transferred over the time period covered by the probe into their origins conducted by CIAF inspectors. **Such period is laid down bindingly and covers the ten (10) years immediately preceding the date when the probe commenced.** (Article 27, paragraph 3, FIAA).

PERSONS SUBJECT TO FORFEITURE PROCEDURE

As a rule, **the *main passive* subject of forfeiture proceedings is the person charged with a criminal offence under Article 22, paragraph 1,** and who, accordingly, meets the requirements of Article 22, paragraphs 2 and 3, and Article 23 of the FIAA (person being investigated, suspect).

The Forfeiture of Illegal Assets Act provides for the probe into the origins of the suspect's assets to extend and include also the possessions of *third parties* that are subsequent acquirers of illegal assets. The FIAA declares also, subject to certain conditions, any transactions concluded with such persons null and void with respect to the state (Article 64, FIAA). Thus subjects of forfeiture proceedings may also be any persons to whom the suspect may have transferred her or his illicitly derived property, or persons who are, on other grounds, in possession of the entire unlawful property or parts thereof.

Most closely related to the suspect are his or her *immediate family members* (spouse or *de facto* cohabitee, and underage children as per § 1, item 3, Additional Provisions, FIAA).

Other related third parties are former spouses, lineal kinsmen, both descending (regardless of age) and ascending, with no limit as to the degree of consanguinity, collateral kinsmen up to the fourth degree of consanguinity inclusive, and affines up to the second degree of affinity inclusive (Article 65, FIAA).

Subjects of forfeiture proceedings may also be the heirs or devisees/legatees of a deceased suspect who are subsequent acquirers of the illicit assets by way of inheritance (by law or under a will) or by way of a testament (Article 71, FIAA).

Legal entities may also be named as defendants if the suspect has either transferred illegal assets to their capital, or made cash or in-kind contributions to their capital using criminal assets. In this case however, the persons managing or controlling the legal entity need to have either known or, based on the circumstances, presumed that the assets were illegal.

A legal entity controlled by the suspect or by persons related to him or her, either separately or jointly, may also be named as defendant in asset forfeiture proceedings.

Third parties unrelated to the person being investigated may also be named as defendants in a forfeiture action brought by the Commission. As per Article 64 of the Forfeiture of Illegal Assets Act, any transactions they concluded with the suspect are null and void with respect to the state, and any assets obtained by them are subject to forfeiture but under different conditions depending on the nature of the transactions in issue (for a consideration or free of charge).

A subject of illegal asset forfeiture proceedings may be also any third party that has acquired criminal assets acting as a nominee for the suspect with a view to preventing their forfeiture or concealing their origins or beneficial ownership (Article 67, FIAA).

STAGES OF THE ILLEGAL ASSET FORFEITURE PROCEEDINGS

In general, asset forfeiture proceedings can be divided into four stages: (1) administrative proceedings to trace and identify illegal assets and undertake measures for their safekeeping and management; (2) judicial proceedings to prove that the assets in question were used or obtained illegally, and are therefore subject to forfeiture; (3) seizing the illegal assets; and (4) management and disposal of the seized assets. The Forfeiture of Illegal Assets Act regulates in much detail the first two stages of the forfeiture procedure and is very laconic about the last one. Applicable to the third stage are the general rules set forth in the Civil Procedure Codegoverning the enforcement of final and conclusive judgements.

The first stage transpires before the Commission for Illegal Asset Forfeiture in the form of a probe into the assets suspected of criminal origins, launched by the head (director) of the respective regional directorate. The probe plays a decisive role in identifying and tracing the assets and its scope is unlimited. The grounds

for launching a probe are exhaustively set out in the Forfeiture of Illegal Assets Act, namely: **bringing criminal charges against a person for any of the offences explicitly outlined in Article 22; a final administrative order for a profit-driven administrative offence, should the profit from such offence exceed BGN 150,000 (EUR 75,000) at the time it was obtained; a recognised foreign conviction for any of the offences referred to in Article 22, or for profit-driven administrative offences.** *The probe may continue for up to one (1) year.* The Commission may extend the time for conclusion of the probe by six (6) months or may terminate it based on the recommendation contained in a reasoned report by the regional directorate's head (director) (Article 27, paragraph 4, FIAA). The probe covers the ten (10) years immediately preceding its commencement date.

The probe is conducted without the suspect's knowledge and participation. It is because of the probe's unilateral nature that the Forfeiture of Illegal Assets Act provides protection of the suspect's rights through a number of mandatory provisions: **the Commission bodies are required to draw up a report for every action they take, all recorded personal data of the suspect is to be processed in accordance with the Personal Data Protection Act, etc.**

Where in the course of a probe, **sufficient data have been collected to reasonably assume that the assets being probed are illegally acquired,** the CIAF adopts a decision to launch forfeiture proceedings and to apply to the court for interim measures to preserve the assets pending the outcome of the civil forfeiture action (Article 37, paragraph 1, FIAA). The decision to launch proceedings is not notified to the suspect, is not publicised, and is not appealable. Based on its decision, the Commission applies to the court for interim measures pending a future civil judicial forfeiture action.

The court having jurisdiction over an application for interim measures is the district courtin whose region the natural or legal person to be named as defendant in the future civil forfeiture action have their domicile or registered office, respectively. The court is required to decide on the application without delay, on the same day on which it was filed (Article 395 of the Code of Civil Procedure) by way of reasoned order either granting the interim measures or declining the request. The court deliberates and delivers its ruling in camera. The defendant is not served with a summons and is not present.

The court's ruling to grant the interim measures is appealable by filing a petition to appeal. However the court's ruling and the imposition of precautionary measures may not be stayed pending appeal (Article 38, paragraphs 3 and 4, FIAA).

The court may grant the precautionary measures provided for in the Code of Civil Procedure, i.e. attachment of corporeal immoveable property, attachment of movable personal property, attachment of claims and other assets of the person to be named as defendant in the forfeiture action, as well as other appropriate measures. Additionally, the Forfeiture of Illegal Assets Act lays down special rules governing the attachment of monetary assets, bank accounts, chattels deposited in safe deposit vaults and boxes, as well as rules for attachment of transferable securities and shares in companies. The FIAA provides also for the court, at the CIAF's request, to order the sealing of premises, equipment, and vehicles should there be any risk of dissipation, destruction, concealment, or disposal of assets stored therein. Based on the court's ruling to grant precautionary measures, an order for preservation of assets (protective order) is also granted in favour of the CIAF.

The main consequence of ordering interim measures is that any transfer of ownership, creation or transfer of rights *in rem* over or attachment of encumbrances to the real property under attachment, as well as disposal of attached personal property and assets carried out following the grant of interim measures **has no effect with regard to the state** (Article 54, FIAA). Additionally, the defendant may not, upon the imposition of an attachment on a chattel or claim, dispose of them, nor is he or she allowed, on pain of criminal sanctions, to modify, damage, or destroy such article or claim.

The imposition of interim measures to preserve the assets pending the outcome of the civil forfeiture action significantly curtails the defendant's legal and human rights sphere. Hence the FIAA limits their effect to a 3-month term from the date of imposition. The CIAF has to bring a civil forfeiture action within such time limit. Upon the filing of the action, the precautionary measures' effect is extended until the case is resolved by a final and conclusive judgment. If, however, the CIAF fails to bring a civil forfeiture action or fails to present evidence that the action was brought within the 3-month term, the court that granted the precautionary measures will revoke them either *ex officio* or at the request of the interested parties (Article 74, paragraphs 1 and 4, FIAA).

Following the imposition of precautionary measures to preserve the assets, the CIAF inspectors carry on with the probe into their origins. At this point, however, the suspect is also involved, as are any other persons who are subsequent acquirers of assets or control assets owned by the suspect, and may be affected by the forfeiture should the assets' illegal origins be ascertained. The probe into the assets suspected of criminal origins is finalised by way of a reasoned report drawn up and submitted to the CIAF within one (1) month. The report identifies the type and value of the assets acquired by the suspect and draws a final conclusion regarding the

absence or presence of a significant disparity between earnings and assets along with all supporting evidence. Depending on the conclusion, the head of the regional directorate will put forward to the CIAF a proposal to hand down a decision to either terminate the non-judicial forfeiture proceeding or bring a civil forfeiture action to seek the confiscation of the illegal assets.

The second stage **transpires before a civil court.** The litigants in the court case are the CIAF as a plaintiff, and all persons, whose rights and interests in the illicitly derived assets will or could be affected by the forfeiture.

The principal action is brought against the defendant (the person investigated), accused of committing a crime or other acts referred to in Articles 22 to 24 of the FIAA, and in the event of the defendant's death – against his or her devisees/legatees, or the heirs who received the inheritance. The action seeks to establish the assets' criminal nature and, consequently, to have an order for forfeiture granted by the court.

Additionally, the Commission will bring forfeiture actions against any third party holding or controlling illegal assets at the time of bringing the actions, seeking also to have any transactions involving such assets declared null and void with respect to the state.

The court of original jurisdiction is the district court in whose region the defendant has his or her permanent address. If, however, the property subject to forfeiture includes real property, the action is to be brought before the district court in whose region the real property is located.

The court will declare the person investigated and the persons who have acquired or who control illegal property defendants to ensure their right to adequate defence (Article 76, FIAA).

The forfeiture case will be heard in open court in keeping with the general rules of procedure provided for in the Code of Civil Procedure. The proceedings are public and adversarial. Both the plaintiff and the defendants are granted the right to be heard and the right to an adequate defence. The main point at issue in the case is the presence or absence of a legitimate explanation or source for the defendant's assets.

The trial court may grant an order to forfeit the assets acquired through or used for unlawful activity, or their equivalent, or may reject the application. **Any party aggrieved may appeal from the judgment to an appellate court and subsequently to the Supreme Court of Cassation.**

With a view to expediting forfeiture proceedings and the judicial dispute resolution, Article 79 of the Forfeiture of Illegal Assets Act provides for a court settlement between the plaintiff and the defendant concerning the type and value of the assets to be seized from the defendant. The conclusion of such settlement requires a decision by the CIAF and an agreement to forfeit no less than 75 percent of all assets or their monetary equivalent.

The third stage – actual forfeiture of assets acquired through or used for unlawful activity involves taking appropriate action by the CIAF following the entry into force of the court order to forfeit the illegal assets (or the court-approved settlement between the litigants, respectively). To this end, the CIAF will immediately submit to the Registry Office all final court orders to forfeit real estate, or will file applications in writing to the respective trial court to issue writs of execution needed to enforce asset forfeiture orders (Article 88, paragraphs 2 and 3, FIAA).

MANAGEMENT AND DISPOSITION OF ASSETS

The main concern subsequent to the forfeiture of assets is *their management.* It should cover both the time period preceding the imposition of interim measures and the period after the forfeiture.

The Forfeiture of Illegal Assets Act lays down rules for the management of frozen assets until the forfeiture order becomes final or the attachment on the assets is lifted (Articles 81 - 86, FIAA). These rules aim to preserve the assets so they can be either forfeited or returned to the owner or, where preserving the assets is not possible, be cashed so as to keep their value.

The assets attached may be left for safekeeping with the person being investigated, or with the person holding them at the time of imposing interim measures. At the CIAF's request, the court may appoint another safekeeper to whom the items are handed over for safekeeping in exchange for a signed and dated receipt. Where the nature of certain personal chattels necessitates special care and maintenance (e.g. moveable property of historical, scientific, artistic, antiquarian, and numismatic value, or exotic animals and plants, etc.), the FIAA specifies expressly the persons to whom such chattels are to be handed over for safekeeping (Article 83). Incidental costs associated with the safekeeping and maintenance of the assets attached will be borne by the CIAF (Article 82, paragraph 4, FIAA).

Regarding the management of confiscated assets, the Act provides for the establishment of a special authority, **Interdepartmental Board for Forfeited Assets Management.** The Interdepartmental Board is a college of five Deputy Ministers designated by the Ministers of Justice; Finance; Economy, Energy and Tourism; Labour and Social Policy; and Regional Development. It is not

permanent in nature and is convened once every two months (Article 89, FIAA).

The Board's main function is to manage (in a broad sense) assets forfeited to the state. To this end, the CIAF is required to forward to the Interdepartmental Board, as quickly as possible, all final court orders to forfeit, writs of execution, and any other documents required for the execution of forfeiture orders (Article 88, paragraph 3).

The discretion on how confiscated assets are to be utilized is vested in the Interdepartmental Board. It renders its decisions on a case by case basis in public meetings attended by representatives of non-profit organisations, industrial associations, trade unions, and the National Association of Municipalities in the Republic of Bulgaria. The Board may elect to propose to the Council of Ministers one of two options – possession and control over the confiscated property may be transferred to budgetary or subsidised organisations and municipalities to use in the performance of their functions, or the Council of Ministers may have it auctioned off.

STRENGTHS AND WEAKNESSES OF THE BULGARIAN FORFEITURE MODEL

RECOMMENDATIONS FOR IMPROVEMENT

The main advantages of the civil forfeiture model adopted in Bulgaria **are the ability of institutions to react much faster; better options to impose interim measures and preserve the assets pending forfeiture; separate forfeiture proceedings unrelated to the outcome of criminal proceedings.**

In civil forfeiture proceedings (*in rem*), the competent forfeiture authorities "prosecute" the assets, and not their owner or holder.

Regarding the Commission for Illegal Asset Forfeiture

Strengths

1. Incompatibility requirements set forth in the Forfeiture of Illegal Assets Act (FIAA) with regard to Commission membership. Such requirements are conventional for the entire national legislation and are designed to ensure the Commission members' independence and impartiality in the performance of their duties.

2. Explicit prohibition laid down in the FIAA that the National Assembly shall not elect more than one (1) member nominated by one and the same parliamentary group (caucus) to prevent any dominance of proposals coming from any caucus.

3. Prohibition for any CIAF member to serve two (2) consecutive terms, which contributes to ensuring impartiality and prevents abuse of power (abuse of official capacity).

4. Information and publicity measures specified in the FIAA concerning the operations of the CIAF and the requirement that all reasoned decisions to decline launching forfeiture proceedings be immediately published online, on the CIAF website.

5. Procedures for voting to adopt decisions by a majority of more than half of all CIAF members, and the requirement that all decisions be accurately reasoned (transparency).

6. Adoption of ethical rules for the operations of the CIAF and its subordinate units.

7. Applicability of conflict of interest rules in respect of the CIAF. All CIAF members and staff are required to file a personal and conflict of interest disclosure statement and to declare their assets (integrity).

8. Appropriate organisational structure of the CIAF, particularly as regards its regional units, conducive to efficient management and development of staff, as well as to high impact operational efficiency.

9. Decentralisation approach adopted by the CIAF with regard to its recruitment and hiring policy to ensure that the hiring process regarding CIAF's regional units remains more operational. Hiring functions are split between the CIAF and its chairperson. The CIAF recruits and appoints the heads (directors) of the regional directorates and all inspectors. The hiring process for administrative and staff positions is entrusted to the CIAF chairperson with nominations coming from the heads (directors) of the regional directorates.

Weakness

The procedure laid down in the FIAA to nominate and elect the CIAF members is an important and valuable novelty. Unfortunately, it applies to the National Assembly quota alone. There are no rules in place governing the nomination of CIAF members by the Prime Minister and by the President.

Recommendation

It would be appropriate to consider amendments to the Forfeiture of Illegal Assets Actaimed at introducing transparent rules for nominating CIAF members by the Prime Minister and by the President. Such rules should ensure full compliance with the principles of fair and open competition, publicity, and transparency in the selection and appointment of contenders. The amended Act should provide for public hearings of commissioners-designate where they will be able to present concepts for the future CIAF operations and entertain questions.

Regarding the Stages of the Illegal Asset Forfeiture Proceedings

Strengths

1. The first stage of the illegal assets forfeiture proceedings transpires over a relatively short period of time. The extensive probe to identify and trace assets acquired through or used for unlawful activity lasts up to one (1) year with an extension option of six (6) months.

2. The short time limit prescribed by the FIAA to bring a forfeiture action before the court – up to three (3) months from the imposition of interim measures.

3. Provision of rules, both in the FIAA itself and in subsidiary legislation, i.e. the Rules of Procedure, governing the interaction between the Commission for Illegal Asset Forfeiture and the other institutions involved in illegal asset forfeiture – the Public Prosecutor's Office, the State Agency for National Security, the Ministry of Interior, the National Revenue Agency, the National Customs Agency.

4. Setting up joint teams made up of CIAF inspectors and prosecutors at local level.

Weaknesses

1. Lack of uniform asset assessment methodology applicable to all individual cases of illegal asset forfeiture. This allows subjective attitude and disparate assessments in each specific case of seized items of property whose characteristics and economic purpose are identical.

Recommendation

It would be appropriate, in view of the need to overcome subjective attitudes, to **introduce a uniform statutory methodology for asset assessment as early as in the pre-trial stage of probing assets suspected of criminal origin by the bodies referred to in Article 13, paragraph 1 of the FIAA.** Additional legislative amendments could be proposed aimed at setting up a system of statutory requirements for appraisers and their analyses.

2. The Register maintained by the CIAF to record data on all assets attached, their owner(s), the person(s) holding such assets at the time of imposing interim measures, as well as the assets' safekeeper, is not public and serves the CIAF alone.

Recommendation

It is desirable that the Register be made public with a view to ensuring dependability of the civil turnover considering the consequences, which the imposition of interim measures has for the third parties.

3. Lack of an overall concept for seized asset management, extremely laconic provisions in the FIAA as regards the management of frozen, seized, and confiscated assets. Realistically, there are no statutory rules for the forfeited assets' preservation and maintenance.

Recommendation

The process of managing and preserving attached and forfeited assets' value is in bad need of a thorough rethinking and an overhaul both because of serious gaps in the legal framework and because of its inappropriate underlying principles. It is necessary to provide more flexible statutory mechanisms for the sale of forfeited assets in order to overcome the factors, currently impeding successful sale finalisation. Clear statutory rules should be developed for transferring confiscated property to budgetary or subsidised organisations or municipalities as well as for disposal of such property. Rules for transparency of decision taking procedures and management of forfeited assets should be adopted; a public e-register of confiscated assets could be a good step in this direction. In addition a regulation for better visibility of confiscated assets in needed to ensure a preventive and dissuasive effect.

The risk that forfeited assets return into criminal hands should be tackled with further guarantees that the former proprietor cannot gain the assets back during the public sell and guarantees that the potential buyers do not belong to criminal circles.

ITALIAN MODEL

LEGAL BACKGROUND

Italy has a mixed system for the confiscation of assets: it is impossible to classify it under the traditional conviction or non-conviction based confiscation. On the one side, there is a general procedure which is based on the criminal conviction; on the other side, special regulation – called precautionary confiscation – is applied for criminal organisations (mafia) for the purposes of confiscation of illegal assets gained by them and for a residual list of crimes, including corruption.

Italian legislative framework on confiscation is quite advanced: it has passed through several progressive amendments that helped to improve the set of measures to efficiently and severely contrast criminal organisations but, on the other hand, creating an overlapping of provisions and implementation difficulties.

In 1982 the so-called "**Law Rognoni-La Torre**" was the first law specifically directed to contrast the economic profit and to attack the properties of criminals. In the following years, new special tools were gradually introduced, such as the extended confiscation, the possible subjects to confiscation and the list of crimes leading to seizure and confiscation proceedings, cases for mandatory confiscation, the confiscation by equivalent, the confiscation against legal persons.

In 1992 seizure and confiscation in case of conviction or plea agreement for severe crimes were introduced, such as those related to criminal mafia-type organisations.

In 1996 a new law for the first time introduced rules to regulate what should occur to the goods when they are seized (and later confiscated). A remarkable introduction was the end for social purposes of the confiscated assets, with the restoration of these goods collected by the criminal organisations to the public community that suffered consequences of illicit behaviours and that represents the original owner of these assets. This reuse for social, collective purposes was deemed to have the double target of both weakening criminal organisations and of affirming loudly and clearly the principle of legality in areas where mafia organisations had put their roots.

Other novelties to the framework introduced by following decrees were the extension of the fields of precautionary seizure and confiscation (2008) and the appointment of a specific body for the management of the goods and fully responsible to deal with the phase related to the assignment of confiscated assets (2010). In 2011 the **Antimafia Code** consolidated all existing laws against criminal organisations and specifically regulated tools to contrast mafia organisations; 2013 Stability Law then impacted the same Code and other provisions on confiscated assets.

CONFISCATION AUTHORITIES

Under current legislation, several bodies are involved in the seizure, confiscation and management of the assets. These are:

1. The court, and in particular the delegate judge;

2. The judicial administrator;

3. The National Agency for the Management and Assignment of Seized and Confiscated Assets.

The **court** takes any decision on the seizure decree, the confiscation or the revocation of the seizure. In particular the collegiate court:

- appoints the delegate judge and the judicial administrator;
- decides the executive details of the seizure;
- dialogues with the National Agency for the Management and Assignment of Seized and Confiscated Assets;
- decides on the acts carried out both by the delegated judge and the judicial administrator;
- participates to the management of seized companies and decides their possible closure.

The delegated judge is a judge chosen within the collegiate court and represents the main institutional figure during the seizure/confiscation proceeding: his/hers position is central, since he or she coordinates the activities of the court, the judicial administrator and the National Agency. He/she supervises the whole procedure, reports to the collegiate court in cases of a motion to revoke the seizure measure and he/she can eventually appoint experts (e.g. when the evaluation of an asset is contested). After being appointed, the delegated judge, within 30 days, writes a detailed report of the seized assets, which includes: list and status of the single asset/company; the market value based on an estimation by the judicial administrator; third parties' rights on the assets; anomalies in companies' budget; indication of the preferable management strategies for the assets. This report is the basis for the entire confiscation proceeding.

The **judicial administrator** is the person who actively manages the assets during the seizure phase; he/she takes custody, preserves and manages the assets, trying to increase their profitability, when possible. He/she acts as a public official and establishes a trust relationship with the delegated judge which constitutes the basis for an efficient management of the asset. It is the judicial administrator to directly interface all the actors involved with the asset and to timely deal with them. The judicial administrator is in charge until the seizure revocation or until the first degree confiscation; in particular, he/she has to preserve the assets and to increase the productivity of the assets, when possible. Among his/hers tasks there is taking possession of the seized assets (assisted by the judicial police), issuing reports on the status and size of the assets and management activities, executing ordinary administration activities (and extraordinary upon authorisation by the delegated judge), performing the activities to assess and settle the credits, issuing a statement on his/hers managing activities at the end of the mandate. In case of irregularities or clear inability, the court can revoke the judicial administrator, on proposal by the delegated judge.

The **National Agency** for the administration and the assignment of the assets seized and confiscated to the criminal organisations was created in 2010 and the rational for its establishment was the opportunity to appoint one body with competence on assets seized or confiscated to criminal organisations during the precautionary confiscation proceedings and criminal proceedings for crimes of counterfeiting, import of counterfeited products, slavery, child prostitution, pornography, mafia crimes.

The Agency follows all the steps of the proceeding, from the seizure until the effective management of the asset when this is confiscated. There are three main areas of action for the Agency under the current legislation:

- fact-finding: the Agency acquires information regarding seized and confiscated assets, in particular about the proceedings where they are involved, about their status, their size and consistency; moreover, it explores in advance options for the possible assignment of the assets, in case of their final confiscation;
- support to the court and to the delegated judge, in particular by proposing the most suitable options for the use of the assets during the seizure phase and with a view to the possible final confiscation. The Agency can also ask the court to revoke or to amend administrative acts taken by the delegated judge;
- custody and administration of the assets: after the first degree confiscation, the Agency replaces the judicial administrator in this role.

In order to be effective also in local centres, where a branch is not present, the Agency establishes support units at the Prefectures; it is also supported by the State Property Agency and by staff employed in other local public administrations.

ASSETS SUBJECT TO CONFISCATION/FORFEITURE

Criminal and precautionary measures, because of the different nature, have some differences in the identification of the assets and the application proceeding.

In the criminal proceedings the object of confiscation is the good that is the price (the compensation given or promised as consideration for the execution of an offence), product (the empirical result of the offence, meaning assets acquired, obtained, modified or created through the crime) or profit (the economic advantage got immediately and directly from the offence) of the crime. There are also several hypotheses where the confiscated assets do not correspond to the actual product or profit of the crime and they need to be substituted by some assets which have an equal value.

In the precautionary proceedings the identification of the asset is not directly linked to the crime but is broader (extended confiscation). Moreover, when the general confiscation is not possible for different reasons (e.g. the asset is lost, missing or destroyed), confiscation by equivalent of the disproportioned goods (product, profit, price) object of the extended confiscation applies.

Common grounds for proceeding between criminal and precautionary systems are:

- having a right or the availability, also through another legal or physical person, of money, goods or utilities;
- disproportion between the goods value and the declared incomes or the activities performed by the criminally convicted person (based under article 12-sexies) or by the person who is socially dangerous (precautionary confiscation);
- lack of explanations about the origin of the goods by the convicted person or by the socially dangerous person.

Starting from these common grounds, additional elements distinguish the two procedures:

- in the criminal proceeding a conviction is the necessary element to activate the confiscation. In the precautionary proceeding the social dangerousness needs to be verified;
- in the precautionary proceeding, it is possible to also confiscate goods of a legitimate origin. In the criminal proceeding the asset which is targeted for confiscation needs to be related to the crime the person is accused of.

A specific focus concerns in particular the evaluation of the evidences and the ground to introduce them. For example, the prosecutor needs to provide proof in relation to the confiscation of all kinds of assets that a subject owns, is a right holder of or has the availability of: most of times the assets are fictitiously or practically transferred to a third party but the actual availability stays on the subject and it is up to the prosecutor to determine these circumstances. On the other side, it is upon the convicted subject to justify the reasons behind the disproportion of assets and the income and/or the economic activities of the convicted person.

Given the different nature and functions of the precautionary proceeding which tries to anticipate the commission of crimes, an overall evaluation of the subject is made to determine the social dangerousness: in particular, elements which did not result suitable to determine a criminal responsibility can be instead used to determine it in this proceeding. The precautionary proceeding is separate and independent from the criminal one, but a wide exam of the subject life can determine its status.

PERSONS SUBJECT TO CONFISCATION/ FORFEITURE PROCEDURE

Under criminal proceedings seizure and confiscation proceedings are operated under the general criminal court proceedings. Confiscation can be finalised only after the decision of the third degree judge in Corte di Cassazione (Italian Supreme Court). **Also in cases regarding individuals who belong to criminal organisations, final confiscation follows a conviction decision issued by a criminal court.**

Under precautionary (prevention) proceedings, it is possible to proceed confiscation of assets for some categories of persons, notwithstanding a pending criminal proceeding or a conviction by the court. The precautionary proceeding has a more flexible structure and it is carried out in criminal courts but under different rules.

Crimes entering the precautionary proceeding are those concerning mafia criminal organisations, crimes against the public administration, crimes against individual personality, fraud, usury, money laundering, gambling corporate crimes, crimes in financial intermediation, abusive subdivision of lands, crimes to the Traffic Code, transnational organised crime, smuggling.

Legislative Decree no. 231/2001 provides for confiscation of assets from private companies' illicit activities, too: confiscation is linked to the crime committed by a physical person and it is carried out through goods of equal value when it is needed.

STAGES

There are three main phases related to the confiscation proceeding:

- the first one starts with the seizure decree by the judge and ends with the first degree confiscation;
- the second one begins with the first degree confiscation and it is concluded by the final confiscation;
- the third one is extra-judicial as it follows the assignment and the management of the asset after the confiscation becomes final.

1. The seizure is a precautionary measure, adopted by the court on input by the competent body, based on lighter motives than those requested for the successive confiscation. Lighter requirements are due to the fact that seizure is implemented without a hearing of the person against whom the measure is taken.

The judicial administration is a cross-section activity that concerns all the stages of the proceeding. The aim of seized assets management is the custody, the preservation and the administration in order to

increase their profitability, if possible. The judicial administrator acts under the direction of the delegated judge, who has to also follow the general guidelines of the national agency.

The seizure of the assets is decided during the precautionary phase; this decision needs to be confirmed during the effective court proceeding where the defendant can litigate the charges and try to turn over the seizure order and to have the seized assets returned.

2. The **first degree confiscation** can be appealed but the parties involved in the proceeding can assume a higher expectation of a final confiscation since this degree follows the cross-examination of the parties; after the appeal, the second degree confiscation provides even more stability expecting the final confiscation. The confiscation is final when the third degree judges confirm the decision issued in the previous degrees.

3. Then it starts the final phase which is the **management and the assignment of assets.**

MANAGEMENT AND DISPOSITION OF ASSETS

The proper management stage starts when the confiscation is decided by the first degree court and the asset is assigned to the National Agency. After the confiscation becomes definitive through the Corte di Cassazione judgement, the asset continues to be managed by the Agency but it enters into the State property, with the Agency in charge of the assignment, which is carried out through a resolution of the Directive Counsel.

The management of the asset is a crucial part of the confiscation proceeding; the activities can prominently differ based on the kind of asset.

Movable assets (money, collections, objects and animals), **registered movable assets** (vehicles, intangibles goods like licenses) and **financial assets** (all kind of stock and financial goods) are generally sold and proceeds are deposited into the Justice Unique Fund.

Immovable assets can either remain into the State property or be transferred first to the Municipality or secondly to the Province or the Region where the asset is located. In the first case they can be used for justice, law enforcement or civil protection purposes, or other government or public needs related to the implementation of institutional activities of public offices, tax agencies, universities or cultural institutions of considerable interest; and they can also be used by the Agency itself for economic purposes. Local administrations (Municipality, Province, and Region) can receive the asset for institutional or social purpose, this meaning that they can directly manage the asset or assign it to communities, including youth groups, volunteer organisations, cooperatives, therapeutic and rehabilitation centres for drug-addicted people, environmental protection associations. This grant must be free of charge and in accordance with principles of transparency, adequate publicity and equal treatment.

Local authorities have also the opportunity to use the asset for profit purposes if it cannot be allocated but the income has to be re-used for community purposes exclusively; moreover, sell is restricted to business associations, public authorities and foundations.

There is a different procedure for **companies** which can be rented, sold or cleared: the rent is possible when there is a proven possibility that the activity can continue or restart; in this case, it can be rented either to public and private companies, upon payment, or to cooperatives of workers, free of charge. The sell or clearing are instead admitted when it comes a higher benefit for public interest. All proceeds coming from the rent or the sell are deposited into the Justice Unique Fund.

STRENGHTS AND WEAKNESSES OF ITALIAN MODEL

RECOMMENDATIONS FOR IMPROVEMENT

Strengths

1. The **historical background** in the fight to criminal activities through the confiscation of assets has a strong value, along with the **high experience** of many actors involved in the confiscation proceedings.

2. The **flexibility of the system** with different proceedings for different kinds of crime is extremely valuable.

3. The **level of discretion** that the asset recovery officers can use during the proceeding is quite **limited.** During the judicial phase, in particular, the procedures are strictly defined by the several laws on confiscation approved during the last few years. A certain, reasonable amount of freedom both on content and schedule is left to the operators of the management and assignment phase.

4. **Asset recovery officers are politically independent,** since they do not need to ask authorisation to political institutions nor they are supervised by political bodies. The only asset recovery officers which are not completely independent by the political power are the bodies of the National Agency.

5. **The permeability of the confiscation system to possible corruption pressures looks quite limited;** there are no spaces for manoeuvre for actors who want to take advantage of illicit crimes to affect confiscation proceedings. Procedures are quite detailed and actions which need to be carried out by individuals who could eventually be bribed are actually delimited by law requirements.

Weaknesses

1. The **lack of clarity** in some phases of the proceedings and the **excessive length** of these.

2. The **availability and reliability of data** related to the confiscated assets is another major issue.

3. The **inefficient administration of companies**, which is affected by the length of proceedings and some restrictions related to the phases of the confiscation.

4. Bureaucratic and financial burdens (such as **mortgages**) on immovable assets, which affect their assignment.

5. **Restrictions to the sale of the asset,** which aim at the reuse of the asset for social purpose but can sometimes question its sustainability.

6. The **deterioration** of the immovable assets.

7. The **malfunctioning of the National Agency** for confiscated assets, due mainly to lack of recourses and inadequate independency.

8. **Lack of accountability and incompetence** of public administration.

9. **Scarce monitoring** after assets are assigned.

Relevance to International Conventions and Standards

In the last few years European Union has adopted several rules concerning seizure and confiscation of illegal assets. Even if Italy has not complied with the last framework decision yet, it seems Italy already has an advanced legislation concerning asset recovery which complies with most of the EU provisions.

Italy is already compliant on the proceeds of the criminal offences to be confiscated, the confiscation powers granted for the extended confiscation, the existence of a non-conviction based confiscation, the rights related to third parties, the safeguards for subjects whose assets are seized or confiscated.

If there is a topic where Italy still fails to comply with EU directives it is the international mutual recognition of confiscation orders.

Recommendations

1. A consolidated act on asset recovery.

2. A reform of criminal proceedings in order to anticipate the final confiscation.

3. Improve the availability of accessible, detailed and updated data on the seized and confiscated assets.

4. Implementation of the Register of judicial administrators with a specific sub-list of companies' administrators.

5. Reform of the provisions on immovable assets (criteria for the sale, the problem of mortgages and other burdens).

6. Reform of the Agency for Seized and Confiscated Assets. We recommend an increase of resources, responsibilities and competences for the Agency, with an involvement of the institution since the forfeiture phase; a better centralised coordination between the Agency and the judicial bodies and support to the Agency by statistical expertise for an improved data transparency.

ROMANIAN MODEL

LEGAL BACKGROUND

The main regulations in Romania regarding the confiscation procedure are the Criminal Code of Romania[9], Code of Criminal Procedure[10], Government Ordinance no. 2/2001 on the legal framework of contraventions[11], Law no. 144/2007 on the establishment, organization and functioning of the National Integrity Agency[12], the Fiscal Procedure Code[13], and Law no. 115/1996 for the declaration and control of assets of the officials, magistrates, of persons holding management and control positions and of public officials.

National law regulations on extended confiscation were introduced in 2012 by Law no. 63/2012 on the modification and completion of the Criminal Code and Law no. 286/2009 on the Criminal Code[14]. **These laws define extended confiscation as the safety measure used to confiscate illegal assets from persons who have committed a certain category of criminal offence and are unable to justify their assets.** Government Ordinance no. 2/2001 on the legal framework of contraventions stipulates a complementary penalty of confiscating the assets intended or used for or obtained as a result of committing contraventions.

Another important law regarding the implementation of the confiscation procedure is Law no. 144/2007 on the establishment, organization and functioning of the **National Integrity Agency**, which is an autonomous, operationally independent administrative authority

[9] Law no. 286 of 17 July 2009 regarding Criminal Code, Title IV: Precautionary measures, Chapter I: General Provision, art. 108 d, e, Chapter II: Precautionary measures regime, art. 112 (special confiscation) and art. 112^1 (extended confiscation).
[10] Law no. 135/2010 regarding Code of Criminal Procedure, Title V: Preventive measures and other procedural measures, Chapter III: Precautionary measures, restitution of assets and restoration of the previous situation, art. 249 (general conditions to enforce precautionary measures); art. 250 (appealing precautionary measures); art. 251 (bodies with competencies to enforce precautionary measures); art. 252 (attachment procedure); art. 252^2 (procedure for capitalising the movable assets attached during the criminal prosecution); art. 252^3 (procedure to capitalise the attached movable assets during the trial); art. 253 (sequester report and mortgage registration); art. 255 (restoration of the assets); art. 256 (restoration of the previous situation); Special part Title V: Enforcement of the criminal decision, Section 3: Enforcement of the precautionary measures, Chapter II: Enforcement of the decision, art. 574 (enforcement of special and extended confiscation).
[11] Government Ordinance no. 2/2001 on the legal framework of contraventions, Chapter I: General provisions, art. 5 paragraph 3 a, Chapter III: Enforcement of the contravention sanctions, art. 24, 25, Chapter IV: Appeals procedure, art. 31, 32, 34, Chapter V: Enforcement of contravention sanctions, art. 41.
[12] Law no. 176/2010 regarding the integrity in exercising the public officials and dignities, in order to modify and complete Law no. 144/2007 regarding the establishment, organization and operation of the National Integrity Agency as well as for the modification and completion of other normative acts, Part I, Title II: Procedures to ensure integrity and transparency in the performance of public functions and dignities, Chapter I: Procedures before National Integrity Agency, Section I: General provisions, art. 8 - art.12, Section II: Property assessment, art. 13 - art.19, Title III: Sanctions, art. 27 - art. 31.
[13] Fiscal Procedure Code, Chapter IV: Solutions regarding confiscation, Title XI: Transitory and final provisions, art. 232 (confiscations).
[14] Law no. 63/2012 on the modification and completion of the Criminal Code and the Law no. 286/2009 on the Criminal Code, art. 112 h (extended confiscation).

whose duty is to verify the assets, conflicts of interest and compliance with the legal regime governing incompatibilities in exercising public office. **If the integrity inspectors find a difference exceeding 10,000.00 EUR between the wealth obtained and the earned revenues, they refer the matter to the Asset Investigation Committee attached to the court of Appeal**[15].

According to the Law no. 115/1996 for the declaration and control of assets of the officials, magistrates, of persons holding management and control positions and of public officials, **the Asset Investigation Committee has the role to start the control action once it is brought to its attention by the National Integrity Agency with the evaluation report**[16]. The Investigation Committee decides, by majority of votes, within three months from the date of referral, giving a reasoned order, through which it may dispose: submitting the case to the Court of Appeal afferent to the residence of the person whose property is subject to investigation if it finds, based on the evidence, that the acquisition of a share of it or certain specific assets is not legally justified; dismissal, if it finds that the origin of goods is justified; suspension of the control and referral to the competent Prosecutor's Office, whether the goods whose origin is unjustified represents an offense[17].

CONFISCATION AUTHORITIES

The National Agency for Fiscal Administration (NAFA)[18] is a specialised body of the central public administration in charge of the implementation of the tax administration policy. NAFA performs its activity in the field of budget income administration, by means of the procedures of: management, collection, tax control and development of a partnership relation with the taxpayers. After the final decision ordered by the prosecutors or courts, which convicts the offender and orders the confiscation measure to be delivered, the confiscation measure is carried out by the Ministry of Economy and Finance, Ministry of Internal Affairs or by other public authorities authorized by law[19]. The confiscated amounts as well as the amounts obtained from the capitalisation of the confiscated assets shall become part of the state budget (or of the local budgets)[20].

Bailiffs. According to the Law no. 188/2000 on bailiffs[21], one of the most important role of the bailiffs when performing their activity, is the enforcement of the precautionary measures ordered by the court.

Enforcement of forfeiture is carried out by the bailiff, who has exclusive competency in all cases of forfeiture by virtue of a court order or based on criminal prosecution. In the event of confiscation being ordered by authorities other than the court or otherwise than by criminal prosecution, the execution of the confiscation is carried out by the authority that ordered the confiscation. As soon as the bailiff is invested with the execution of the confiscation, he must put together the executive case file and settle the date of expiry for the 30-days period,in which the convict's creditors can claim damages regarding the goods subjected to the procedure.

After analysing the action for enforcement requested by the creditor, the bailiff issues a resolution for registering and opening the case for forced execution or, where appropriate, they will formulate a reasoned refusal to commence the forced execution. The creditor shall be informed of the resolution, and should the bailiff refuse to commence the forced execution, the creditor has the right to appeal to the competent court of enforcement within 15 days of the date of issuing of the resolution.

Within a maximum period of 3 days, the bailiff will request the executory court to issue a declaration of enforceability. The executory court is the court having territorial jurisdiction over the bailiff carrying out the execution, except in those cases where immoveable property is the subject of forced execution. In this case, the executory court is the court in whose jurisdiction the immovable asset is placed.

After the bailiff files the request for the approval of the forced execution, the executory court must decide the case within 7 days from its submission to the court's registry by a resolution issued by the court in a closed session, without notifying the parties involved. The delivery of the resolution can be delayed for no longer than 48 hours, and the reasoning of the resolution must follow within a period of maximum 7 days from the delivery[22].

The police. The Romanian Police is part of the Ministry of Internal Affairs and is the specialised institution of the state which has responsibilities in defending the

[15] Law no. 115/1996 for the declaration and control of assets of the officials, magistrates, of persons holding management and control positions and of public officials, art. 10.
[16] *Ibidem,* art. 10^1.
[17] *Ibidem,* art. 10^4.
[18] Emergency Ordinance no. 74/2013 of 26 June 2013 on measures to improve and reorganize the National Tax Administration Agency and amending and supplementing certain acts.
[19] Fiscal Procedure Code, Chapter IV: Solutions regarding confiscation, Title XI: Transitory and final provisions, art. 232 (confiscations), paragraph 1; Law no. 135/2010 on the new Code of Criminal Procedure, published in Official Journal no. 486 of 15 July 2010, in force since 1 February 2014, art. 574 regarding enforcement of special and extended confiscation.
[20] *Ibidem,* art. 232, paragraph 3.
[21] Law no. 188/2000 on bailiffs, Chapter II: The competencies of the bailiffs, art. 7, lit. "e".
[22] National Union of Bailiffs, http://www.executori.ro/Intro/execSilita.aspx

fundamental rights and freedoms of the individual, in defending private and public property, preventing and uncovering crimes, monitoring compliance with public law and order in accordance with the legal provisions[23]. When performing its activity, the police has responsibilities in the field of determining contraventions and enforcing penalties for contraventions in accordance with the legal provisions.

The Police plays a very important role in enforcement of the confiscation procedure: **it is tasked with collecting information in order to prevent and combat crimes and other illegal acts, and with performing activities to prevent and combat corruption, economic and financial crime, transnational crimes and organized crime.** Governance Ordinance no. 2/2001 on the legal framework of contraventions stipulates the complementary sanction of confiscation of the assets intended, used for or resulting from committing contraventions.

The police is entitled to determine a contravention enforces both the main sanction for contraventions (warning, fine, community service, imprisonment) and the complementary sanction of confiscation. A complaint may be filed against the record of findings establishing the contravention and the sanction to be enforced for it within 15 days of the serving or delivery of the record of findings. The injured party can file a complaint only with respect to the indemnification, and the owner of the confiscated assets, who is not the offender, only with respect to the measure of confiscation[24].

The damaged unit's own enforcement bodies. Each institution will appoint via its legal and financial departments the persons in charge of enforcing the confiscation procedure.

ASSETS SUBJECT TO CONFISCATION

Special confiscation is a safety measure stipulated among the provisions of the Criminal Code and may be enforced only if a person has committed a criminal act. This measure has the purpose of eliminating the state of peril and to avert criminal acts being committed. Confiscation affects a person's assets and may, therefore, be considered a safety measure of a pecuniary nature to the benefit of society.

In accordance with the Romanian Criminal Code the following assets are subject to special confiscation[25]:

- Assets obtained by perpetration of an offence stipulated in the criminal law.
- Assets which were used in any way to perpetrate a criminal offence, if they belong to the offender or if, in case they belong to a different person, this person was aware of the purpose the assets were used for. This measure cannot be ordered in the case of media. If the value of the assets to be confiscated is noticeably disproportionate to the nature and seriousness of the criminal offence, partial confiscation is ordered in a pecuniary form, while taking into consideration the consequences of the offence and the part played by the asset in perpetrating the offence. If the assets cannot be confiscated, since they do not belong to the offender, and the person they belong to was unaware of the purpose they were used for, an amount of money equivalent to the value of the given assets shall be confiscated.
- Assets offered in order to establish whether an offence was committed or as a reward for the offender.
- Assets whose ownership is prohibited by the law.

Extended confiscation. National law regulations on extended confiscation were introduced in 2012 by Law no. 63/2012 on the modification and completion of the Romania Criminal Code and Law no. 286/2009 on the Criminal Code, by including article 118^2. The article defines extended confiscation as the safety measure used to confiscate illegal assets from persons who have committed a certain category of criminal offence and are unable to justify their assets.

Extended confiscation is a criminal law sanction, applied *in rem* respectively only for those goods which are connected to the committed crime. In order to eliminate various states of peril, as a special measure of prevention, the competent bodies may enforce the confiscation procedure, as a means to clear these risks.

According to the Criminal Code, extended confiscation may be enforced whenever the following conditions are meet cumulatively[26]:

The first condition required for the enforcement of the extended confiscation is the assessment of the amount of assets obtained during a period of 5 years before or after the offence was committed. If the amount noticeably exceeds the offender's lawful income, the competent bodies are authorized to take measures.

The second condition is for the court to be convinced that the assets resulted from the perpetration of the following criminal offences: offences related to trafficking of drug or drug precursors; human trafficking offences; offences related to the state

[23] Law no. 218/2002 on the organization and functioning of Romanian Police, Chapter I: General Provisions, art. 1.
[24] Governance Ordinance no. 2/2001 on the legal framework of contraventions, Chapter IV: Appeals, art. 31 - 36.
[25] Law no. 286 of 17 July 2009 regarding Criminal Code, Title IV: Precautionary measures, Chapter II: Precautionary measures regime, art. 112 (special confiscation).
[26] *Ibidem,* Title IV: Precautionary measures, Chapter II: Precautionary measures regime, art. 112^1 (extended confiscation), paragraphs 1 - 8.

borders of Romania; money laundering offences; offences stipulated in the legislation on preventing and combating pornography; offences stipulated in the legislation on the prevention and fight against terrorism; the offence of initiating or setting up an organised crime group or of joining or supporting such a group in any way; offences against property; offences related to infringement of the regime on weapons and ammunition, nuclear materials or of other radioactive and explosive substances; counterfeiting of currency or other securities; disclosure of an economic secret, unfair competition, infringement of the provisions on import or export operations, embezzlement, infringement of the provisions on import of waste and residues; offences related to the organisation and operation of gambling; trafficking of migrants; corruption offences, offences assimilated to corruption offences, offences related to corruption offences, offences against the financial interests of the European Union; tax evasion offences; offences related to the customs regime; offences committed via computer systems and electronic means of payment; trafficking in human organs, tissues or cells.

Confiscation as a result of the enforcement of Law no. 144/2007 on the National Integrity Agency. According to the law no. 176/2010[27], the goal of the National Integrity Agency is to ensure integrity in the exercise of public positions and dignities and to prevent institutional corruption by assessing wealth statements, data and information regarding the wealth, as well as patrimonial changes, incompatibilities and potential conflicts of interest, which occur while exercising public positions and dignities[28]. These assessments shall be done during the performance of public dignities and within three years after their termination[29].

If the integrity inspectors find a difference which exceeds 10,000.00 EUR between the wealth obtained and the earned revenues, they refer the matter to the Asset Investigation Committee attached to the Court of Appeal. Following verification, it may decide referring the case to the Court of Appeal, classifying the cause or suspending it if there is evidence of a criminal act. The competent Court may issue an order to confiscate the **assets or the part of the assets which were unjustifiably obtained,** while enforcing the complementary prohibition to exercise any public office or dignity except for the elective ones for a period of 3 years. The rules which apply here are therefore those of **civil procedure**; as a result, there is no need for a conviction in this sense[30].

PERSONS SUBJECT TO CONFISCATION PROCEDURE

1. The convicted offender, a person upon whom a sanction for contraventions is enforced and persons who fall under Law no. 144/2007 on the establishment, organisation and functioning of the National Integrity Agency.

2. Another person (third party) if:
- They were aware of the unlawful origins of the asset.
- They were aware of the purpose of the assets subject to confiscation (i.e. committing an offence).
- The production, modification or adaptation of the asset subject to confiscation was performed by the owner or by the offender with the owner's knowledge.

3. In case of extended confiscation, the court will take into account the value of the assets transferred by the convicted person or by the third person to a family member or to a legal entity over which the convicted person has control[31].

STAGES

Necessary procedural stages in enforcing the confiscation procedure (applicable both in the special confiscation procedure and in the extended confiscation procedure):

- Identification of the assets obtained as a result of offences and measures to safeguard and managed them;
- Trial to establish and forfeit the assets;
- Forfeiture of the illegal assets;
- Management and disposal of the assets forfeited.

According to art. 249 of the Code of Criminal Procedure[32], while respecting certain conditions, the **prosecutor and the judge of the preliminary chamber or courtmay take precautionary measures in order to avoid the concealment, destruction, disposal or circumventing of goods that may be the object of special or extended confiscation or which may serve for the enforcement**

[27] Law no. 176/2010 regarding the integrity in exercising the public officials and dignities, in order to modify and complete Law no. 144/2007 regarding the establishment, organization and operation of the national integrity agency as well as for the modification and completion of other normative acts.
[28] *Ibidem,* art. 8, paragraph 1.
[29] *Ibidem,* art. 11, paragraph 1.
[30] *Ibidem,* art. 18.
[31] Law no. 286 of 17 July 2009 regarding Criminal Code, Title IV: Precautionary measures, Chapter II: Precautionary measures regime, art. 112[1] (extended confiscation).
[32] Law no. 135 /2010 regarding Code of Criminal Procedure, Title V: Preventive measures and other procedural measures, Chapter III: Precautionary measures, restitution of assets and restoration of the previous situation, art. 249 (general conditions to enforce precautionary measures).

of the fine or court costs or to repair the damage caused by the offense.

- Precautionary measures aimed at compensating for the damage may be enforced on the assets belonging to the accused or defendant and to the person liable in accordance with the civil law up to the probable value of the damage. Precautionary measures, aimed at guaranteeing that the penalty in the form of a fine shall be enforced, are applied only on the assets of the accused or defendant.In accordance with the Code of Criminal Procedure[33], the authority which initiates the enforcement of the sequesterhas the obligation to identify and assess the attached assets and likewise to draw up a record of findings comprising all the elaborated documents comprising the detailed description of the attached assets while indicating their value. The record of findings shall mention the assets exempt from prosecution in accordance with the law and which were found with the person the attachment is enforced upon.

The procedure for capitalising the movable assets attached during the criminal prosecution. During the criminal prosecution, when there is no consent from the owner, if the prosecutor instituting the attachment deems it necessary to capitalise the attached movable assets, a time limit no shorter than 10 days is set by the judge, to convene the parties, as well as the custodian of the assets, if a custodian was appointed. The parties, the custodian, and any other stakeholders may lodge a complaint against the writ ordering the capitalisation of the attached movable assets with the court that has the jurisdiction over the case as a court of first instance. The complaint against the writ suspends the enforcement. The hearing of the case is pre-eminent and accelerated, and the judgment of the court with respect to the complaint is final.

Procedure to capitalise the attached movable assets during the trial. During the trial, the court may rule on the capitalisation of the attached movable assets on its own or upon the request of the prosecutor, of one of the parties or of the custodian. To this purpose, the court sets a time limit, which cannot be shorter than 10 days, to summon the parties as well as the custodian of the goods, if one has been appointed.

On the set date the parties will discuss in a public hearing the capitalisation of the attached movable assets and they are made aware that they are entitled to make observations or requests related to these assets. The absence of the summoned parties does not preclude the procedure being carried out. The injunction ordering the attachment may be appealed in the same court, and the ruling of the court may be appealed via a review which will be enforced.

For seized real estate, the prosecutor, preliminary chamber judge or court who ordered the sequester asks the competent institution for the registration of the sequestered assets, enclosing a copy of the order or conclusion ordering the sequester and a copy of the sequestering report.

Enforcement of the special and extended confiscation. According to the Code of Criminal Procedure[34], the precautionary measures of special and extended confiscation decided through a court decision, are enforced as follows: the confiscated assets are delivered to the competent bodies; if the confiscated assets are in the keeping of the police or other institutions, the judge in charge of the procedure sends a copy of the decision to the respective institution, following which the assets in question will be transferred to the proper authorities in order to be manages appropriately; when the confiscation regards amounts of money that are not in banks, the judge sends a copy of the decision to the fiscal authorities, in order for the confiscation to take place according to the provisions of the law regarding budgetary claims; if the confiscated assets are slated to be destroyed, this is done in front of the designated judge, and a report is made that is then submitted to the case file.

Stages of Confiscation Procedure as a Result of the Enforcement of Law no. 144/2007 on the National Integrity Agency are:

- Assessing wealth statements, data, information regarding wealth, patrimonial changes.
- Identification a difference which exceeds 10,000 EUR between the wealth obtained and the earned revenues.
- Refer the matter to the Asset Investigation Committee attached to the Court of Appeal.
- Asset Investigation Committee investigate the matter and decide referring the case to the Court of Appeal, classifying the cause or suspending it if there is evidence of a criminal act.
- The Competent Court may issue an order to confiscate the assets or the part of the assets which were unjustifiably obtained, while enforcing the complementary prohibition to exercise any public office or dignity except for the elective ones for a period of 3 years.

MANAGEMENT AND DISPOSAL OF THE ASSETS FORFEITED

The management of the assets to be confiscated must be taken into account since, at times, part/all of

[33] *Ibidem,* art. 252 (attachment procedure) and art. 253 (sequester report and mortgage registration).
[34] Law no. 135 /2010 regarding Code of Criminal Procedure,Title V: Enforcement of the criminal decision, Section 3: Enforcement of the precautionary measures, Chapter II: Enforcement of the decision, art. 574 (enforcement of special and extended confiscation).

the assets subject to confiscation have a short validity period (perishable goods), become morally/materially degraded (cars), are subject to rapid degradation (foods), etc. In the national law, the Code of Criminal Procedure stipulates that the criminal prosecution authority/the court is entitled (via a writ, or an injunction respectively), to order the immediate capitalisation of the attached assets upon request from the owner of the assets or with their consent even before a conviction is delivered.

In the case of some assets, if there is no agreement on the part of the owner, the assets may be capitalised prior to the injunction being delivered only provided that their value has decreased with at least 40% compared to the value they had at the time the attachment was instituted: animals, poultry, flammable and oil products whose storage and maintenance require expenses which are disproportionate to the value of the assets.

The amounts obtained following the capitalisation of the assets are registered on the name of the accused or of the person liable in accordance with the civil law on a special account at the disposal of the judicial authority which enforced the attachment.

A complaint against the writ issued by the prosecutor ordering the capitalisation may be lodged with the court within 10 days as of the date the writ is served. The complaint suspends the enforcement. A complaint may be filed against the injunction ordered by the judge within 15 days as of the challenged act is carried out.

The legal provisions specifying the concrete manner to carry out the prosecutor's/court's orders on the capitalisation of the assets subject to confiscation do not stipulate the procedural guarantees for the participation or, at least, the notification of the defence counsel. The current provisions only make reference to the lawful summons of the parties and the presence of the custodian, in case one is appointed.

STRENGHTS AND WEAKNESSES OF ROMANIAN MODEL

RECOMMENDATIONS FOR IMPROVEMENT

Strengths

1. The list of goods required by law regarding the procedure of confiscation is a comprehensive one.

2. Legislation regarding the procedure of confiscation provides sufficient guarantees regarding the protection of human rights.

3. Comprehensive and concise list of offenses that trigger the confiscation procedure.

4. The confiscation procedure is enforceable not only in the case of a criminal conviction.

5. There are a reasonable number of remedies and sanctions in the criminal and in the civil procedures in order for the losses to be recovered.

6. Strong legislative background regarding the procedure of confiscation. At the national level there are sufficient provisions regarding the implementation of an efficient procedure of confiscation.

7. The right to property is respected both in theory and in practice. Regarding the enforcement of the confiscation measure, the law stipulates that the right to property be complied with proportionality between the value of the assets subject to confiscation and the nature and seriousness of the criminal act committed is taken into account, so that whenever they are noticeably disproportionate partial confiscation shall be ordered via an equivalent amount of money.

8. National legislation provides measures to protect personal data. Institutions with competencies in the procedure of confiscation which must access personal data have to do so according to the conditions provided by the law. Also, the institutions authorized to provide personal data have the possibility of asking for a judicial decision.

9. The national legislative framework establishes important provisions in order to facilitate the competent institutions' access to the information held by banks. Thus, the institution can identify and follow the incomes arising from criminal activities. Access to the information held by banks facilitates the identification of the transferred money and of the persons involved.

10. To facilitate the discovery of assets arising from criminal activities, the legislative framework enables competent institutions to obtain information from service suppliers by meeting certain strict conditions.

11. The legal framework provides the competent institutions the opportunity to freeze assets after a financial investigation by order of a judge.

12. The legal framework provides effective possibility for the person whose property is affected to challenge the freezing order before a court.

Weaknesses

1. The lack of clearly defined periods of time for assets identification and management.

2. The lack of a complete list of institutions with competencies in the field of confiscation, along with the specialty of each.

3. Legal gaps providing the offender with the possibility to dispose of their assets.

Recommendations

1. Establish a period of time for the management of the assets

2. A list with clear division of competencies of institutions with attributions in the field of confiscation, along with the specialty of each, in order to facilitate public understanding of who does what in the confiscation procedure.

LEGISLATION MEET PRACTICE: SUCCESSES AND FAILURES IN CONFISCATION/FORFEITURE OF ASSETS

BULGARIA

The observational study of several high-visibility cases handled by the Commission for Illegal Asset Forfeiture (CIAF), as well as the follow up of some other highly public cases, have demonstrated, with all the clarity one could wish for, all the complexities associated with the enforcement of the Forfeiture of Illegal Asset Act. Among all cases observed in this study, the notorious case of the "Galev Brothers" most fully illustrates the strengths and weaknesses of illicit asset forfeiture procedures. The twists and turns of asset forfeiture proceedings in this particular case reveal important features of the forfeiture process and provide an opportunity to perform an in-depth analysis of the Commission's activities[35].

POSITIVE ASPECTS OF CIVIL ASSET FORFEITURE PRACTICE

- ***Promptness of investigations; prompt tracing and temporary freezing of assets; thorough and effective probes into relations with third parties***

Forfeiture proceedings in the cases at hand were initiated under the Forfeiture of Criminal Asset Act (FCAA) in effect until October 2012, when it was succeeded by the new Forfeiture of Illegal Assets Act[36]. The Commission for Illegal Asset Forfeiture (CIAF) probe into a suspect's assets was to continue up to ten (10) months with a possibility for a one-time 3-month extension. In the cases analysed herein, and particularly in the fully scrutinised case of the Galev Brothers, the CIAF inspectors managed to trace and identify the assets, and request that they be frozen, much faster than the statutory time limit.

It could only be assumed that the main reason behind such expeditiousness was the inspectors' willingness to achieve rapid investigation results in view of the increased public attention on those cases and especially on some of them. In the performance of their duties, the CIAF inspectors depend exclusively on other government authorities that are required to provide them with information on the family and marital status, assets, and financial situation of the persons to be investigated. The inspectors alone are in no position to speed up the inflow of information. Prompt reaction to CIAF inspectors' requests for information is laid down as a principle in the Joint Operational Instructions for the interaction between the CIAF and other authorities. A review of all CIAF cases, however, has shown that when a probe involved high-profile figures, the background check results were returned faster. This is so because the public and the media in particular exert pressure on

[35] For a complete overview of the case, please see Annex 1.
[36] The Forfeiture of Criminal Asset Act (FCAA) was adopted in 2005 (State Gazette 19/2005) and was dealing with forfeiture of assets acquired through crime. It established a Commission for Establishing Property Acquired from Criminal Activity (CEPACA). The Law was abolished in 2012 with the adoption of the Forfeiture of Illegal Assets Act – a new law introducing the non-conviction based confiscation. The new law established a new body – the Commission for Illegal Asset Forfeiture (CIAF).

Box 1. *Galev Brothers Case*

Who are Plamen Galev and Angel Hristov? Commonly referred to as "the Galev Brothers", they are not of kin. Their fortunes got intertwined during their military service and they became inseparable ever after. Until their disappearance in 2012, the two men shared the same domicile. They applied for a job with the Ministry of Home Affairs and were recruited at the same time. In the 1990-s the pair worked for the most elite police units, i.e. the Specialised Counter-terrorism Squad and the National Service for Combating Organised Crime. Both Mr. Galev and Mr. Hristov left the police service in 1998 and set up a number of businesses.

Within a few years, the Galev Brothers took full control of the town of about 44,000 in Dupnitsa. The town lies at the foot of the Rila Mountains, about 70 kilometres south of the capital, Sofia, in western Bulgaria. There the two men run a string of businesses in construction, waste collection, trucking and gambling. Their main business however was fraud, racketeering, and blackmail. In 2009, the pair took the plunge into politics and campaigned for Parliament. They took advantage of a newly adopted and later repealed revision of the Elections Act allowing non-partisan parliamentary candidates to run and get elected by majority vote. At the time they were in custody charged with the crimes of which they were later convicted. They effectively delayed their trial in an attempt to escape justice by abusing a provision granting immunity from prosecution to parliamentary candidates during election campaigns. They failed to win seats in the National Assembly, but were still free on bail. However, the two murky businessmen had been previously known for their political connections. The pair gained notoriety in 2008 when the interior minister at the time, Rumen Petkov, admitted he had met secretly with them. The disclosure sparked strong public outrage and Mr. Petkov resigned over the scandal.

In early 2009, Mr. Galev and Mr. Hristov were charged with heading an organized crime group that engaged in fraud, racketeering, extortion and other crimes. On November 4, 2010, the District Court in the south-western city of Kyustendil ACQUITTED Plamen Galev and Angel Hristov of all charges on the grounds that they were being tried on rumours, not real evidence. On July 6, 2011, the Sofia Appellate Court quashed the judgment of the trial court and found the pair GUILTY. The court sentenced Plamen Galev to 7 years in prison, fined him BGN 10,000, and ordered one third of his property forfeited. Angel Hristov was sentenced to 5 years in prison and ordered to pay a BGN 7,000 fine. Mr. Hristov was also ordered to forfeit a quarter of his assets. On May 3, 2012, Bulgaria's Supreme Court of Cassation upheld the jail sentences issued by the lower instance. The magistrates, however, reduced Galev's sentence by 2 years and Hristov's by one. The ruling is final and cannot be appealed. The prison sentences, however, are not being served, since Mr. Galev and Mr. Hristov managed to escape justice and have gone missing. At this time, their whereabouts are unknown.

the Commission and above all on its chairperson. As a result, the CIAF chair directs the inspectors' investigative efforts and attention toward a specific high-profile probe and even throws her or his weight behind her/ his subordinates' efforts to ensure that other authorities provide all the required information as quickly as possible.

An example of this is the forfeiture process in the case of the Galev Brothers. The proceedings against Plamen Galev and Angel Hristov aimed at tracing and identifying proceeds and property acquired through or used for criminal activity was launched on January 27, 2009. It took the inspectors at the CIAF's regional bureau in the south-western city of Blagoevgrad less time to complete the probe than the statutory time limit. They received a notification form on January 27, 2009 and by June 25, 2009 the Commission for Illegal Asset Forfeiture had already accepted their report and had sought property freezing orders. This means that the hard work to identify forfeitable property took less than five months instead of thirteen as provided for by law.

The same holds true for the CIAF's actions in another case, which sparked widespread public debate and attracted much media attention – the so called brokerage scandal involving Mr. Krassimir Georgiev, an infamous businessman, better known as Krassyo "The Swarthy Li'l Man"[37]. In July 2010, Mr. Georgiev was charged with large-scale tax avoidance. Following an investigation by the CIAF inspectors, the Sofia City Court granted their application for a freezing order against the businessman's assets. The impending forfeiture court case is worth over BGN 1,000,000. Once again, it took the inspectors less than five months to trace and identify the forfeitable property.

The CIAF acted expeditiously to trace and identify forfeitable property in yet another high-profile case involving the possessions of mafia boss Dimitar Zhelyazkov, a.k.a. Mityo Ochite ("The Eyes"). The probe into his possessions started in April 2007, after he was charged with organising and heading a criminal group. In October 2007, the CIAF initiated forfeiture proceedings under the Forfeiture of Criminal Asset Act (FCAA) in force at the material time. In February 2008, the District Court in the coastal south-eastern city of Burgas granted a freezing order against property, which the CIAF had reasonable grounds to believe, was forfeitable by reason of its illegal origins[38].

The CIAF`s efforts to expedite the tracing and identification of assets held by persons suspected or accused of crime and consequently to have such

Box 2. *Krassyo "The Swarthy Li'l Man" Case*

The businessman Krassimir Georgiev is referred to as the "lobbyist" of Bulgaria's judiciary. He gained notoriety five years ago and is associated with influence peddling, i.e. buying votes of members of the Supreme Judicial Council to fix the election of magistrates running for top positions in the judiciary. Two separate criminal proceedings have been brought against him – for perjury and for large-scale tax evasion. In December 2012, the Supreme Court of Cassation acquitted Mr. Georgiev of the first charge. In February 2011, the Sofia City Prosecutor's Office filed the indictment for tax fraud. In April 2012, the Sofia City Court, acting as a trial court, acquitted Mr. Georgiev. The Sofia Appellate Court remitted the case twice to the Prosecutor's Office with instructions to rectify certain shortcomings. In May 2013, the case was remitted to the Pleven District Prosecutor`s Office as having original jurisdiction. It, however, has appealed against the decision to the Supreme Prosecutor's Office of Cassation.

[37] For overview of the case, please see Box 2.
[38] For more information regarding this case, please see Box 3.

Box 3. *Dimitar Zhelyazkov, a.k.a. Mityo Ochite ("The Eyes") Case*

Ten years ago, Dimitar Zhelyazkov, a.k.a. Mityo Ochite ("The Eyes") was rumoured as being one of the bosses of the underground world along Bulgaria's Black Sea coast and a drug lord controlling a sizable share of the illegal drug trade. In 2001, his wife was killed in a bomb attack, whose supposed target was Mr. Zhelyazkov. He has been arrested more than ten times on charges such as making threats, assault, fighting, kidnapping. Between 2006 and 2010, five criminal proceedings were brought against him. In three of those – for organising and heading a criminal group for the purposes of drug dealing, for being part of such group, as well as for money laundering, he pleaded guilty and negotiated a plea bargain deal with the prosecution. The longest prison sentence of 4 years and 10 months was imposed in the last case. In March 2012, Dimitar Zhelyazkov was released after serving his time.

The impending forfeiture court case is worth over BGN 2.4 million. The CIAF inspectors ascertained that during the timeframe being probed, Mr. Zhelyazkov's expenditures exceeded his lawful income nearly 48 times. His earnings equalled 257.64 minimum wages (monthly remuneration), while his expenses equalled 12,326.07 minimum wages. His possessions included: an apartment of 72 m^2 in the town of Nessebar valued at BGN 87,758; a 590 m^2 yard parcel in the town of Sungurlare within the precincts of a massive residential building and a garage with a total value of BGN 242,407; 228 m^2 zoned parcel and 4,518 m^2 unzoned parcel of land in the Khendek Tarla locality within the official zoning map of the village of Ravda valued at BGN 1,124,600; 2 retail stores with retail space of 45-50 m^2 each with adjacent storage rooms of 50 m^2 each, and a garage in the town of Nessebar. The market value of those recently acquired properties was BGN 252,985.

The application for precautionary measures included also building rights to build on a 190 m^2 state-owned zoned parcel in the "Cherno More" (Black Sea) residential neighbourhood of the town of Nessebar; a 11,199 m^2 plot of agricultural land in the Onikillika locality within the cadastral boundaries of the city of Burgas with a market value of BGN 438,800; shares of a built-over yard parcel with a total area of 2,562 m^2 in the village of Akheloy valued at BGN 7,666.67; as well as 4 passenger cars. The applications for freezing orders involved also shares in the capital of three companies – "Progress 2003" Ltd., "Agro Stil 2005" Ltd., and "Invest Petrolium" Ltd.

property frozen as soon as possible, were evident also in the way it acted in the case of Mr. Günay Sefer, an elected member of the 41st National Assembly[39]. The probe into his possessions was launched in late 2009 under the FCAA in force at the time, after he was charged with large-scale documentary fraud. Less than ten months later, i.e. in September 2010, the CIAF applied for a freezing order against forfeitable property worth over BGN 2 million it had traced and identified. Freezing orders were granted by the District Court in the north-eastern city of Silistra.

It is a positive fact worth noting that in the process of tracing and identification of criminal property, and particularly so in the closely observed case of the Galev Brothers, considerable amounts of important information was obtained from international sources, including offshore financial centres (OFCs). At the same time, however, information received from such sources may be of questionable evidential value. There is clearly a need to interview witnesses from the OFCs involved. This fact is demonstrated also during the course of judicial proceedings and in any event will delay the delivery of the final judgement[40].

- ***Setting up joint action teams drawn from both the Commission for Illegal Asset Forfeiture and the Prosecutor's Office of Republic of Bulgaria***

Such institutional interaction could help both institutions improve their performance and efficiency at all stages of forfeiture proceedings – from the identification and freezing of criminal assets till their actual confiscation at the end of the judicial proceedings stage.

A telling example of this is the successful collaboration between the CIAF and the Public Prosecutor's Office (PPO) in the case involving Bulgaria's Corporate Commercial Bank (KTB, Corpbank)[41]. In the matter of the criminal proceedings brought against Mr. Tsvetan Vassilev, Mr. Tsvetan Gunev, Mr. Orlin Rusev, Mr. Alexander Pantaleev, Mr. Georgi Zyapkov, Ms. Margarita Petrova, Ms. Maria Dimova, and Ms. Borislava Treneva, who were accused of embezzlement, larceny by employee, and corporate malfeasance, the PPO submitted an application for interim and precautionary measures against their property. On August 22, 2014, the Sofia City Court rendered an order granting the application. The interim and precautionary measures were imposed as a result of the endeavours of the joint action team set up by the CIAF and the PPO to work on the case. Nine inspectors from the CIAF's regional directorate in Sofia were part of the team that managed to trace and identify the accused persons' real estate, vehicles and shares in just two weeks.

NEGATIVE ASPECTS OF CIVIL ASSET FORFEITURE PRACTICE

- ***Weaknesses of the Commission's approach to asset assessment in the initial stage of tracing and identification of forfeitable assets***

All property value estimates the CIAF inspectors come up with in the initial stage of illegal asset tracing and identification have to be reviewed and/or amended in the judicial proceedings stage by court-appointed valuation experts. This in itself is among the main causes of adjournments and delays of illegal assets forfeiture proceedings.

The court case involving the possessions of mafia boss Dimitar Zhelyazkov, for instance, has been lingering in judicial limbo for over a year now and has not been heard on the merits yet due to mass recusals of court appointed expert witnesses. They are expected to draw up a financial and accounting expert's report regarding the assets of the defendant, Mr. Zhelyazkov. However, between the start of the court case in March 2008 and April 2009, a total of 11 expert witnesses have withdrawn from the case and declined to give expert evidence and opinion.

In the closely observed case of the Galev Brothers, the CIAF representatives have themselves applied to the court to order that an expert's report be obtained regarding several pieces of real estate, which came across as a lack of confidence in the fairness of their own assessments.

- ***Weaknesses involved in the management and safekeeping of frozen and seized assets***

In the course of this observational study we have failed to clarify how frozen assets are safe-kept and preserved.

[39] The two former members of the 41st National Assembly, Günay Sefer and Mithat Tabakov, are charged with documentary fraud over public procurement misappropriations involving the construction of a 7-km rural roadway in the municipality of Dulovo (a town in north-eastern Bulgaria). In July 2013, the trial court convicted them and sentenced them to 10 and 11 years in prison, respectively. The case is still pending before the appellate court. In the meantime, in 2014 Mithat Tabakov was sentenced to 5 years of imprisonment based on other charges and is currently in prison.

[40] Seven more witnesses from Cyprus, Greece, and Seychelles will be admitted and questioned at the request of the CIAF representatives submitted to the court at the latest hearing.

[41] In the summer of 2014, Mr. Tsvetan Vassilev, the majority shareholder and owner of Bulgaria's troubled Corporate Commercial Bank (KTB), was charged with embezzling some BGN 206 million from his own bank. Prior to that charges of wilful neglect and dereliction of duty were brought also against several senior KTB officials, including the bank' executive officers, chief accountant, and chief cashier. Additionally, failure to exercise reasonable supervision over the KTB constituted grounds for bringing criminal charges against Mr. Tsvetan Gunev, one of the deputy governors of the Bulgarian National Bank.

This is of particular importance because by law frozen asset owners are responsible for their safekeeping and preservation. In this particular case, however, the owners' whereabouts are unknown. What has been observed in the Galev Brothers case in particular, is inexplicable disinterest on the part of the state with regard to frozen property, which renders the whole illegal asset forfeiture process largely meaningless.

The new 2012 Forfeiture of Illegal Asset Act contains more detailed provisions governing the management of frozen and seized assets. According to said provisions the Commission for Illegal Asset Forfeiture is required to establish and maintain a register that records all facts and circumstances relating to any frozen and seized property. So far there has been no information concerning their implementation.

The observational study of specific cases has revealed deficiencies in the process of managing frozen property. In the first place, due to lack of funds, the safekeeping of the property is left to the owner and very rarely will a safekeeping and monitoring agent be appointed. This is quite natural considering the fact that at this stage the owner has no incentive to destroy or dissipate the property entrusted to her or him for safekeeping. According to the CIAF, however, its regional bureaus lack funding or capacity to exercise control over how frozen assets are managed, safe-kept, and controlled.

Secondly, the assets are left without any special safekeeping and preservation measures for a period of at least six months – from the moment when the court order takes effect until a writ of execution is obtained, and the state takes possession of the forfeited property. Practical evidence shows that it is exactly within this period that forfeited assets are destroyed or dissipated by their former owners.

There are no adequate policies and procedures for efficient management of certain categories of frozen chattels, which, due to their specific characteristics, tend to depreciate rather quickly while seized or frozen, even though they are not perishables. These include automobiles, boats, and aircraft, which, if let sit unused for a number of years, get practically destroyed.

- ***Lack of proper coordination in the judicial stage of illegal asset forfeiture proceedings between the CIAF representatives and the prosecutor in the case***

As mentioned earlier, the successful teamwork and collaboration between the two institutions in the KTB case led to the imposition of precautionary measures as early as during the pre-trial criminal proceedings against the persons investigated by the CIAF. **It is obvious that the collaboration between government authorities should not be limited to just tracing and identification of forfeitable assets, and information sharing, but should continue until the very end of the judicial proceedings.**

The lack of such interaction was particularly evident in the judicial proceedings against the Galev Brothers, whose case is closely observed in this study. The criminal proceedings against the two men ended with a final conviction and prison sentences. They were ordered also to forfeit part of their property. However, in the subsequent asset forfeiture action brought by the CIAF, the prosecutor handling the case failed to explain to the court why the final conviction had not been enforced. Later on the CIAF inspectors were unable to specify their claim as to exactly what property should be forfeited. The defence attorney was able to exploit that confusion to create doubt in the court and this has added additional uncertainty about the outcome of this case.

- ***Inefficient management of assets and properties seized and forfeited to the state***

The cases observed in this study reveal the existing lack of adequate management of seized assets and properties. This is due to regulatory loopholes as the now repealed Forfeiture of Criminal Assets Act did not provide any rules or guidelines in that regard, as well as to certain practical difficulties, including fear of retaliation, adversely affecting its functioning in the best possible way and in the public interest.

In one of the case studies, that of mafia boss Dimitar Zhelyazkov, a confiscated country house was made available in 2011 for use by the municipality of Sungurlare (a town in south-eastern Bulgaria). The municipality had plans to refurbish the property to accommodate an orphanage. In 2013, however, the house reverted to the state because the ownership had not been transferred to the municipality. As regards other seized properties, previously owned by Mr. Zhelyazkov, the state has tried to auction them off all to no avail as no buyers attended the five subsequent seized-items auction sales and estate sales. In another case, the state abandoned its attempts to sell a confiscated hotel building in the city of Plovdiv, previously owned by rapper Ivan Glavchev (Vanko 1), and made the property available for use by the municipal administration. This whole process, however, took nearly three years to complete.

In an attempt to find a solution to the problem of managing confiscated property, the legislators laid down in the 2012 Forfeiture of Illegal Asset Act specific provisions governing this subject area. A special Interdepartmental Board for Forfeited Assets Management was also established. The Board is composed of five deputy ministers and is vested with powers to manage assets forfeited to the state. A scrutiny of its performance over the relatively short

time period of its existence, however, shows that the Board has not really been the powerhouse it was meant to be. The meetings of the Board, which by law should be convened once every two months, have been rather irregular and in actual fact have not been convened at all. It was only in May 2014 that the Council of Ministers, acting on a proposal from the special Interdepartmental Board, adopted a decision to have assets forfeited in 110 cases where final judgements had been enforced, made available for use to assist municipalities and budgetary or subsidised organisations, as well as to have such assets auctioned off by the National Revenue Agency.

Once the judgement in a confiscation case becomes final and a confiscation order is made, the supervision of the confiscated property is handed over to the Interdepartmental Board for Forfeited Assets Management, which is composed of five deputy ministers[42]. Experience shows that this approach is not really appropriate, particularly in the context of political crises and frequent cabinet changes, as it results in unending replacement of Board members and lack of continuity in the process of confiscated property management.

It is therefore expedient to contemplate a transition to another confiscated property management model, which has to provide solutions to a number of practical issues, such as the efficiency of forfeited asset management, the possibility to make confiscated property available for use by NGOs, or for public interest or social purposes, and allowing for a different mode of disposing of confiscated assets, as compared to other state-owned property, with a view to achieving the specific purposes of the Act. The management of forfeited assets could be assigned to the National Revenue Agency, provided they are treated precisely as assets forfeited to the state, i.e. enjoying a different status, which would allow for a different approach to their management. Another possible solution is to vest the Commission for Illegal Asset Forfeiture (CIAF) with powers to oversee the entire process of confiscated property management – starting with identification and freezing of forfeitable assets until after their final confiscation. The latter would require that the CIAF capacity be strengthened considerably in order to exercise its new powers and fulfil its new duties.

Analysis of the performance of all authorities involved in illegal asset forfeiture and management procedures clearly indicates lack of an overall concept concerning the process of seized asset management (including safekeeping, storage, preservation, and potential disposal). This in turn entails lack of efficiency in the performance of the authorities tasked with carrying out forfeiture and management procedures.

This observational study has shown also that confiscation of proceeds and property acquired through or used for criminal activity is not in itself sufficient to fully achieve the objectives of the Forfeiture of Illegal Asset Act. Neither can the state demonstrate that it has got the upper hand over perpetrators of serious crimes and over persons benefitting from illicitly derived assets.

Lack of transparency at the stage of confiscated asset management and failure to undertake effective measures to publicise forfeiture outcomes significantly devalue the importance of all the efforts and accomplishments of those tasked with forfeiture and management of criminal assets.

RECOMMENDATIONS

- Consider enhancing the collaboration and coordination between the Commission for Illegal Asset Forfeiture and the Ministry of Justice with a view to ensuring more efficient tracing and identification of forfeitable assets in the initial stage of forfeiture proceedings. The Justice Ministry could serve as intermediary so critical information could be received by way of mutual legal assistance requests rather than through unofficial channels. This would render foreign-source information admissible as evidence in court.
- Take measures to eliminate deficiencies in CIAF's capacity to valuate forfeitable assets. Introduce a uniform statutory methodology for asset valuation.
- Improve the ways to manage certain categories of personal property that depreciate quickly.
- It seems worthwhile in the context of the cases observed to raise the more general issue regarding the statistical information covering the area of the so called "civil forfeiture". In other words, any information gathered on any forfeitable property identified, frozen, and subsequently forfeited to the state, including the ways it is used or disposed of. **Data collected and recorded in the frozen asset public register, kept by the CIAF, provide a sufficient basis for evaluating its performance at this initial stage of forfeiture proceedings** under the FIAA. The register in itself, however, is not enough. It may be apposite to contemplate involving the National

[42] The Board is a college of five Deputy Ministers designated by the Ministers of Justice, Finance, Economy, Labour and Social Policy, and Regional Development. It is not permanent in nature and is convened once every two months. The Board's main function is to manage assets forfeited to the state. To this end, the CIAF is required to forward to the Board, as quickly as possible, all final court orders to forfeit, writs of execution, and any other documents required for the execution of confiscation orders. The discretion on how confiscated assets are to be disposed of is vested in the Board. It renders its decisions on a case by case basis in public meetings attended by representatives of non-profit organisations, industrial associations, trade unions, and the National Association of Municipalities. The Board may elect to propose to the Council of Ministers one of two options – the confiscated property may be made available for use by budgetary or subsidised organisations and municipalities, or it may be auctioned off.

Statistical Institute (NSI) as well. The NSI has the powers to gather and sum up data in the field of justice, law enforcement and internal security, and more specifically, statistics aggregated by various criteria, such as number of persons convicted, types of punishments meted out, types of offenses committed, etc. Using the same model, the NSI could gather also data on all assets de facto forfeited to the state both in criminal and civil forfeiture proceedings.

- A public register with information on forfeited assets and information on their management or disposal should be established and kept by the Ministry of Justice or the National Revenue agency.
- Increased interaction and close efficient cooperation between the CIAF and the Public Prosecutor's Office, particularly in cases where charges have been brought for an offense punishable by confiscation. Collaboration should continue not just in the initial stage of identification and freezing forfeitable property, but during the judicial proceedings stage as well.
- Reconsider statutorily sanctioned methods of managing and disposing of frozen and most of all of confiscated property. The focus should be laid on re-using it for public interest or social purposes rather than auctioning it off as a source of budget revenue.

ITALY

IMPLEMENTING THE EXISTENT LEGISLATION

The implementation of the law provisions dealt with in the previous chapter reflects in a way the complexity of the legislative framework on confiscation, shaping a *de facto* procedure that is far from the envisioned high standards of effectiveness and efficiency. Despite the attempt to simplify and entrench the confiscation procedure through the creation of the National Agency for Forfeited and Confiscated Assets, the system still proves to be strongly lacking integrity and efficacy.

However, it would be neither fair nor useful to leave aside the many steps forward accomplished in Italy during the last years on the topic of illegal assets confiscation. Before analysing such breakthroughs and their negative counterparts, though, it will be foremost important to keep in mind a significant aspect of confiscation in Italy: **the key role of civil society**. Grass-roots organizations, national associations, local politicians, professionals involved in the procedure, journalists but also simple citizens advocate and lobby to raise awareness on the importance of confiscation in the widest fight against organized crime in Italy and contribute in drafting law proposals. If it were to be described with an image, it would be like if a strong, diverse and constantly growing public movement was running parallel to – and sometimes against – the political class, whose will to improve confiscation goes often missing (or hindered by lengthy bureaucratic procedures). Furthermore, as it will be clear from the examples shown below, **most encouraging cases of confiscation management do not owe their success to the legislative system but rather to the commitment of single actors involved in the procedure.** Indeed, these features will deserve primary attention when listing the positive and negative aspects of the practices of confiscation in Italy that will follow in the next section.

POSITIVE ASPECTS OF CONFISCATION PRACTICES IN ITALY

Although the amount of negative aspects quite significantly exceeds the positive facets of the confiscation procedure in Italy, those few optimistic results deserve being mentioned and analysed.

- ***Reuse of confiscated assets for social purposes***

According to the Italian law provisions on confiscation, after being assigned, confiscated assets should be reused for **social purposes.** Indeed, a growing number of assets is currently being managed in different ways fitting into the category of "social purposes": day-care centres, shelters for women victims of domestic violence, homeless shelters, libraries, buildings hosting sport facilities, etc.

Among the cases analysed, two in particular represented very successful examples of such social reuse of former illegal confiscated assets. Villa Berceto, in the Parma area, was once the private holiday mansion of the "money-launderer" of a powerful Camorra group; after the assignation to the local administration, the building is now used as public library, public fitness centre, bed and breakfast for the guests of the literature festival organized

Box 4. *The case of Villa Berceto, Berceto, Parma*

The confiscation of Villa Berceto occurred at the end of 2009 within a much wider police operation aiming at unmask a widespread criminal network affiliated to the Camorra (a powerful mafia from the Campania region). The mansion belonged to the "money launderer" of the criminal group and after just one year, while the judicial procedure was still ongoing, the asset was assigned through a temporary lease contract (six years) to the authorities of the town of Berceto by the judicial administrator who had been managing the villa until then. Relying on the collaboration of a social cooperative and the precious help of many volunteers, the municipality was able to renovate the building after having suffered from major consequences of deterioration and set a program of efficient reuse of the asset. Also thanks to the financial support of the Emilia Romagna Region, the villa could be rehabilitated and now hosts a public library, a small public gym, a bed and breakfast, and is often the gathering place for workshops about good governance and legality.

every summer in Berceto; it also often hosts "schools of legality" for students and citizens and workshops on topics related to good governance and the fight against corruption[43].

In Casal di Principe, stronghold of the mighty Camorra criminal gang "Casalesi", a non-profit association supporting children afflicted with autism is today based in the old house of one of the bosses of the clan. In fact, the case is quite unique since only a half of the building was confiscated and therefore, the association co-habits with the rest of the family of the Camorra boss, who still occupies the other half of the house[44].

- ***Making the fight to confiscate assets a major social issue***

This second positive feature of the practice of confiscation in Italy is indeed closely related to the previous one. In most cases, Italian media cover the successful stories of social reuse of confiscated assets, allowing for a broad outreach of the news of former confiscated illegal assets reuse. Giving publicity to such stories, a virtuous circle is easily engendered in raising awareness about the topic of confiscation: many citizens get to know about the useful and worthy use of confiscated assets and many of them will further problematize the issue, getting more interested in the public and political debate on the subject.

Together with the awareness-raising campaigns implemented by the NGOs advocating for fighting the mafias (such as Libera and many other grass-roots organizations), the attention paid by the media to successful stories of confiscated illegal assets management has helped to get people interested in the topic and often actively involved in the public debate.

NEGATIVE ASPECTS OF CONFISCATION PRACTICES IN ITALY

- ***Too long judicial procedures***

A major issue in the Italian system of illegal assets confiscation is represented by the excessive duration of judicial proceedings. To be sure, the problem of long trials does not affect only the criminal procedures concerning confiscation, being rather a negative trait of the Italian judicial system as a whole. In the case of illegal assets confiscation, though, long proceedings mean an equally long period of inactivity, which can be detrimental for both real estates and (even more) companies.

- ***The inefficiency of the National Agency for Forfeited and Confiscated Assets***

Despite its very young life, the Agency has shown since the very beginning its incapacity to control and manage the great amount of confiscated assets in the peninsula.

[43] For a complete overview of the case, see Annex 3.
[44] For more information about the case, see Annex 4.

Potentially, the idea of a State Agency created to unify and centralize the management of confiscated assets during all the steps of the confiscation procedure could lead to a truly successful outcome. **However, the lack of proper resources (both financial and human) and the flawed institutional architecture have made the National Agency a highly inefficient state organism.**

The case of Villa Berceto proves such inefficiency: the very positive outcome of the confiscation procedure was possible thanks to the strong commitment of the actors involved in the process, in particular, the Major of the town of Berceto, the judicial administrator of the asset and the judge responsible for the proceeding. Had not these people acted virtuously, the case would probably still be pending, since the National Agency did not intervene in the case at all. Even when the Major requested the direct involvement of the National Agency in the case, with the purpose of obtaining the final assignation of the asset, no answer was corresponded by the national institution.

The inefficiency of the National Agency looks even more blatant when it comes to confiscated enterprises. **The Agency fully lacks the necessary competences to manage companies that have a past of criminal affiliation.** Indeed, the situation of most confiscated enterprises when they get under the supervision of the National Agency is a pretty serious one: the loss of competitiveness, the need to comply with the Italian law (very often bypassed during the criminal ownership) and the whole set of consequential expenses, make the management of these companies a very hard task. Without the necessary expertise and resources, many enterprises risk and will risk shutting down.

A good example of confiscated enterprises mismanagement is provided by the case of the La.Ra. Srl Company in Catania[45]. After some years of survival after the confiscation of the company, the La.Ra.Srl is now confronted with major problems of management that risk causing the final closure of the enterprise.

- ***The lack of proper skills of the judicial administrators***

The position of the judicial administrator appointed to manage confiscated assets is currently defined by law as an accountant assigned with the task of managing confiscated assets until their final assignation to a third party. However, in most cases the skills of an accountant have proved not to be satisfactory

Box 5. *The case of the association "The Strength of Silence", Casal di Principe, Caserta*

In 2009, the policeman Vincenzo Abate signed a free of charge lease contract with the local authorities of Casal di Principe, allowing his non-profit association "The Strength of Silence" to use the so-called "Scarface villa" for twenty years. "Scarface villa" because it belonged to the powerful Camorra boss Francesco Schiavone (nickname "Sandokan") arrested in 1998, who had made such huge mansion a symbol of the camorra pop culture shaped on the cruel and violent imagery of the American movie "Scarface". The "Strength of Silence" is a non-profit organization working with children afflicted by autism and has indeed brought the former luxurious building to a new, constructive life. However, just half of the villa was confiscated and now occupied by the association; in the other half of the house, the remaining Schiavone family (the boss' wife and his sons) occupies the rooms. A wall, making the situation even more paradoxical, divides the building. Despite the peculiar conditions, the "Strength of Silence" provides a needed and precious support to the autistic children and their families; more recently, some indoor areas of the confiscated house have also been used as congress rooms for meetings with experts on the topic of autism and to create a cooking lab for desserts production.

[45] For the overview on the case, see Annex 4.

Box 6. *The case of the La.Ra.Srl Company, Motta Sant'Anastasia, Catania*

Since 2001, the La. Ra. Srl Company has been under the lead of the National Agency for Confiscated Assets after being definitively confiscated to a powerful mafia boss from the Catania area. The La. Ra. Srl was and still is an enterprise focusing on planning, installing and managing different types of machinery; since its creation it was indeed the first provider of such services to the US military base of Sigonella, near Catania. It was just thanks to such works that the enterprise could manage to live healthy until few years ago, when Sigonella decided to change the provider of the services delivered until then by the La. Ra. Srl. Three years ago the La. Ra. Srl workers, together with the then current administrator of the company, proposed a solid and valuable plan for the construction of an avant-garde leisure centre that would have given a major boost to the business. Despite the very positive example of workers self-management and the full feasibility of the plan, its implementation was impeded by the local administration, and in particular by the then major, of Motta Sant'Anastasia. The National Agency was not able to broker a proper negotiation between the municipality and the company and today the perspective of closure is more and more real for the La. Ra. Srl workers.

when dealing with serious and complex cases, such as confiscated real estates that might easily face deterioration and companies risking closure (with the whole set of negative consequences related to employment).

Some university courses were organized in order to train judicial administrators or managers on managing confiscated assets and companies. Among them, the Agency promoted between 2011 and 2012 a course targeting industrial managers of Milan, but since the Record of Judicial Administrators has not been published yet, they have difficulties in being appointed by the courts.

- ***The risk that confiscated assets return into criminal hands***

The lack of proper checks on the phase of assignation of confiscated assets often leaves room to unlawful practices. The risk in fact twofold: in some cases, the criminal who once owned the asset could gain it back by just hiding behind a "dummy" person (prestanome, in Italian) and later fully benefits from the asset.

In other cases, the confiscated asset might be assigned to a person or a company affiliated to other criminal organizations, different from the one that first owned it.

- *The difficulty to acquire information about confiscated assets*

In most cases, gathering material about confiscated assets in Italy can be a long and complex endeavour. The fragmented system that relies on several different institutions and figures and the (nearly) complete lack of information available online gives a hard time to all those willing to know more about any confiscated asset. A direct consequence of such issue is the negative light that this sheds on the transparency and access to information the Italian law should guarantee as a primary right.

DEFICIENCIES, POSITIVE ASPECTS AND RECOMMENDATIONS

Positive aspects of the confiscation system in Italy:

- Reuse of confiscated assets for social purposes;
- Successful social campaigns advertising confiscation as a major social issue.

Negative aspects of the confiscation system in Italy:

- Too long judicial procedures;
- The inefficiency of the National Agency for Forfeited and Confiscated Assets;
- The lack of proper skills of the judicial administrators;

- The risk that confiscated assets return into criminal hands;
- The difficulty of civil society to acquire information about confiscated assets.

Recommendations:

- The **reform of the National Agency for Forfeited and Confiscated Assets** is needed in the shortest time possible. Greater funds should be allocated for the Agency and, at the same time, the staff should be expanded and gather officials with the proper skills and expertise to work in the field of illegal assets confiscation.
- This reform has been indeed a major topic of discussion in the Parliament during the last year, but no positive results have been achieved yet.
- **Data and information** of the whole procedure of confiscation should be made **available online** for all citizens, as it was proved possible by the online platform "Confiscatibene" created by a group of data/investigative journalists on an idea developed during the last Spaghetti Open Data Meeting (http://www.confiscatibene.it/it).
- A specific educational path of higher education should be created to **train the judicial administrators.** Importantly, this category should not only be trained as accountants but also as managers in order to correctly lead enterprises.
- The **assignation procedure** of confiscated assets should be **more tightly controlled.** The existent instruments to contrast conflict of interest and corruption in this phase should be made stricter and properly implemented.
- The **legislation on confiscated companies should be made more suitable** with the condition of these assets. In particular, a system of lower taxation should be created for them in order to make confiscated companies more appealing for managers. Current law proposals for supporting confiscated companies (e.g. "lo riattivo illavoro") should be rapidly passed and implemented.

ROMANIA

Although the legislation is very sound in theory, its practice leaves something to be desired. Various factors combine to bog down both the legal process and the implementation of the confiscation procedure.

POSITIVE ASPECTS OF THE CONFISCATION PROCEDURE BASED ON THE CASES MONITORED

Despite of the deficienties, is not to say that there are no positive aspects of implementing the confiscation procedure. During the course of the research, we identified several positive aspects.

One positive aspect is that, regarding cases involving the National Integrity Agency: there is relatively good access to information, final decisions for the cases were easy to find on Agency website[46]. Information about cases related to the confiscation procedure can be found also on the court's websites (parties, the object of the case and hearings)[47].

During the research we could easily identify that in the implementation of the confiscation procedure, the competent institutions guarantee the protection of human rights. Thus, one of the guarantees is the right to property. Regarding the enforcement of the confiscation measure, the law stipulates that the right to property should be complied with proportionality between the value of the assets subject to confiscation and the nature and seriousness of the criminal act committed is taken into account, so that whenever they are noticeably disproportionate partial confiscation shall be ordered via an equivalent amount of money[48].

Another positive aspect identified during the research was regarding the effective possibility for the person whose property is affected to challenge the freezing order before a court[49].

NEGATIVE ASPECTS OF THE CONFISCATION PROCEDURE BASED ON THE CASES MONITORED

In the course of the monitoring the following negative aspects of the confiscation procedure came to light.

Long trial terms, due to a lack of institutional capacity. Within the cases that can be found on the National Integrity Agency 'website we identified long terms to solve a case related to procedure of confiscation,

[46] National Integrity Agency website: http://www.integritate.eu/HOTARARI-DEFINITIVE-SI-IREVOCABILE-ALE-INSTANTELOR-DE-JUDECATA/CONFISCĂRI-DE-AVERE.aspx.
[47] All these information can be found on the: http://www.scj.ro/default.asp and http://portal.just.ro/SitePages/acasa.aspx.
[48] National Integrity Agency website: http://www.integritate.eu/HOTARARI-DEFINITIVE-SI-IREVOCABILE-ALE-INSTANTELOR-DE-JUDECATA/CONFISCĂRI-DE-AVERE.aspx.
[49] National Integrity Agency website: http://www.integritate.eu/HOTARARI-DEFINITIVE-SI-IREVOCABILE-ALE-INSTANTELOR-DE-JUDECATA/CONFISCĂRI-DE-AVERE.aspx.

for example one case started in 2004 and ended in 2012[50].

Difficulty accessing information, as although there are numerous cases involving the confiscation procedure, very few cases are listed on the website of the National Integrity Agency, since they do not all involve this institution. Therefore, it is nigh impossible to find concrete information regarding the confiscated amounts, even on the websites of the courts.

Lack of statistical data regarding the confiscation procedure (total number of completed cases involving the confiscation procedure, amounts confiscated, value of managed assets, valorification/capitalization of assets etc.).

Lack of transparency in the management of confiscated assets. In practice, we do not have a lot of information regarding the management procedure and also we do not know what happens to the confiscated assets[51].

Difficult access to information regarding the confiscation's stages following the final court decision. After a case is solved, there is no clear and complete data base accessible to the public as far as the following information is concerned:

- Institutional practice and policies of the institutions involved in the implementation of the confiscation procedure;
- Identification of illegal assets (institutions involved, who is performing the identification procedure, length of the identification phase).
- Securing the illegal assets (institution involved, whose responsibility is the precautionary measures procedure, length of the phase and value of the secured assets).
- Asset forfeiture judgement (institutions involved, length of the phase, value of asset confiscated).
- Enforcement of the judgement (institutions involved, whose responsibility is the judgement enforcement, value of the assets forfeited, length of the phase).
- Management of forfeited assets (institution involved, whose is responsibility is the management of forfeited assets, length of the phase, value of the assets managed and the methodology applied for the evaluation of assets, amount confiscated, valorification/capitalization of assets).

DEFICIENCIES, POSITIVE ASPECTS AND RECOMMENDATIONS

Positive aspects:

- The implementation of the procedure of confiscation provides sufficient guarantees regarding the protection of human rights.
- Effective possibility for the person, whose property is affected, to challenge the freezing order before a court.

Deficiencies:

- The lack of capacity for the implementation of existing legislation regarding confiscation.
- Small number of seizures, compared to the large number of corruption cases prosecuted and convicted.
- Difficulty accessing information to assess the integrity and accountability of the institutions with competencies to apply the procedure of confiscation.
- Insufficient instruments for an efficient management of frozen assets. The management measures affect the values of the confiscated assets and also involves high storage cost.
- Difficult access to information regarding closed cases for legitimate research purposes.
- Within the procedure of confiscation the property management periods are too long.
- Lack of transparency in the management of confiscated assets. In practice, we do not have sufficient information regarding the management procedure and also we do not know what happens to the assets confiscated.
- The authorities competent in the field of confiscation are reluctant to provide information with respect to confiscated amounts. There is no public data, no continuity of the procedure to provide civil society with the possibility to evaluate the cases.
- Excessive length of the implementation of the procedure of confiscation affects the value of the confiscated assets.
- The cooperation among the authorities enforcing the confiscation procedure is unsatisfactory. Statistical data regarding the confiscation procedure is not transferred from one competent authority to another.
- Poor communication between the institutions which have competencies in the field of confiscation. Our legislative framework regarding the implementation of the procedure of confiscation provides competencies

[50] The Vele Dan case started in 2003 and ended in 2011: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/VeleDan_Blur.pdf and Dabela Gheorghe Ion case started in 2004 and ended in 2012: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/DabelaGheorgheIon_Blur.pdf.

[51] For more information regarding this negative aspect, please see the Vlasceanu Gheorghe Codrut case on the National Integrity Agency website: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/VlasceanuGheorgheCodrut_Blur.pdf, the Dabela Gheorghe Ion case on the National Integrity Agency website: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/DabelaGheorgheIon_Blur.pdf, the Vele Dan case on the National Integrity Agency website: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/VeleDan_Blur.pdf, the Brădişteanu Şerban Alexandru case on the National Integrity Agency website: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/BradisteanuSerbanAlexandru_Blur.pdf, the Vlasceanu Gheorghe Codrut case on the National Integrity Agency website: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/VlasceanuGheorgheCodrut_Blur.pdf, the Zidaru Daniel case on the National Integrity website: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/ZidaruDaniel_Blur.pdf.

to several institutions, each of them has different tasks and good communication between them is important. The poor communication between these institutions is a problem which can lead to delays and procedural errors.

- Collection of statistical data on the confiscated assets. There is a lack of details and statistical information regarding the confiscation procedure and confiscated assets.

Recommendations:

- Make legislative changes to ensure faster and more efficient confiscation.
- Provide better access to information on documents related to confiscation and confiscated assets.
- Introduce efficient mechanisms to enable the confiscation of assets arising from criminal activities, which were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person (at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation).
- Adequate management of property frozen.
- Introduce mechanisms that would ensure the proper management of confiscated assets and the reuse of certain types of assets.
- Identify approaches for reuse of confiscated assets.
- Introduce efficient mechanisms for data collection/ statistics regarding the confiscated assets (the number of confiscation orders executed, the estimated value of property frozen, estimated value of property recovered).
- Improve the interinstitutional cooperation among national authorities.
- Strengthen the preventive effect of confiscation through provision of information to the public.
- Raise awareness among media about the positive effect of confiscation.
- Introduce efficient mechanism for better cooperation between states in order to combat transnational crimes.

MONITORING OF CONFISCATION/FORFEITURE AUTHORITIES: TRANSPARENCY, ACCOUNTABILITY, INTEGRITY, EFFICIENCY IN COMPARATIVE PERSPECTIVE

THE CONFISCATION

or forfeiture of criminal or illegally acquired property is the responsibility of the state to its citizens in the name of justice. In this sense, the evaluation of its effectiveness should not be limited solely to the application of the criteria of economic efficiency, the type limited tocosts-benefits analyses. As a form of public commitment, aimed at establishing fairness in compliance with the legitimate rights of all participants in the process, the confiscation of criminal/illegal assets is subject to the logic of public interest as a whole. Enabling to protect the personal interest of anyone against who were initiated similar proceedings requires more time and affects the conditions for achieving rapid results. At the same time, guaranteeing the rights of all participants in the process aimed at satisfying the public interest provides greater legal certainty to the confiscation/forfeiture of criminal or illegal assets. Even when deadlines for the final confiscation are longer, the European approach ensures consistency of combining public and private interests in compliance with the law. This specific context determines the methodology of assessing the effectiveness and integrity in the process of forfeiture of illegally acquired property.

EVALUATION INDICATORS

The definition of the main categories, defining the quality of the process of confiscation/forfeiture of assets is an important determinant for the construction of an integral assessment. ***Integrity*** includes: **openness, accountability and transparency of the process.** ***Efficiency*** in turn is determined by: **independence and institutional autonomy; sustainability and institutional partnership.** The two categories of evaluation mutually presuppose and complement. In the process of forfeiture and confiscation of criminal assets, more than in many other areas, efficiency cannot be achieved without compliance with the requirements of openness, public accountability and transparency. Similarly, compliance with these criteria implies the existence of a sufficient degree of institutional autonomy, cooperation and stability of the institutional entities.

Ideally, institutions involved in the process of identification, seizure and management of seized property should meet the same high standards, both in terms of integrity and efficiency. Crucial in this respect is the capacity of institutions and the characteristics of the social context in which they operate.

CONFISCATION/FORFEITURE AUTHORITIES OF BULGARIA, ITALY AND ROMANIA EVALUATED: FUNCTIONAL ANALYSIS OUTCOMES

The three sample cases selected for observation and comparison of the forfeiture procedures and practices provide for a unique opportunity to improve the process within the context of the EU-wide practice. Their comparison allows for identification of potential for development of each stage where deficits connected to lack of coordination, synergy and consistency between integrity and efficiency are observed and detected. The

results demonstrate that each stage of the subsequent procedures requires a different balance between the guarantee of integrity and the level of efficiency of the process. Thus, we can demonstrate that:

- The Bulgarian model puts emphasis on the identification and forfeiture of assets but is deficient in terms of asset management;
- The Romanian model emphasizes on the second stage, as far as the pattern of seizure is part of the proceedings, without neglecting the identification stage, but is deficient in terms of the assets management;
- The Italian model, where the first and second stages are logically interdependent, indicates that the emphasis is put on the stage of the asset management.

The European practice demonstrates that the standards of openness, accountability and transparency are becoming more common as a prerequisite for the proper functioning of public institutions. The achievement of high integrity standards in the work of the public institutions is even more important when the public opinion demonstrates deepening perception of lack of justice, and the institutional trust is relatively low. Insofar the confiscation of illegal assets is one of the most effective forms of justice restoration and prevention of organized crime. It is key element that should have major public support. In turn, the public support could be won only via guarantees for openness, accountability and transparency of the institutional activities.

In terms of achieved levels of efficiency, the research demonstrates that the public expenditure connected to confiscation of illegal assets still exceeds clearly the value of the confiscated assets. In the cases of effective confiscation, we still can talk about efficacy rather than efficiency, as understood in economic terms. The specificity of the activities pertaining to identification, preservation, confiscation and management of the forfeited assets always will imply high public costs. The aim is to improve the management of seized property and thus to achieve a better balance between public money invested and achieved public benefits. To this particular part of the assessment should be added more parameters that do not have direct financial terms. On the one hand, it comes to restore justice on previous conscientious owners of seized property. Rising there as well as public confidence in the readiness of state institutions to ensure the right of every citizen, has an intrinsic value to the overall social development. On other hand the more efficient functioning of the institutions engaged in the confiscation of the illegal assets, the more is the increase of the preventive effect in terms of the organized crime activities. The indirect economic effect is substantial. The increase of the probability of effective seizure of illegal assets and not its volume or size alone has a very palpable preventive effect towards criminal intent.

The evaluation of the results of the sample cases could provide for the following general observations:

- The public confidence in the integrity and effectiveness of confiscation process is a function of the overall level of legitimacy of the public institutions and institutional trust, where key component remains the degree of confidence in the respective judicial system.
- In absence of distinct economic criteria set forth pertaining to confiscation/forfeiture, the public attention tends to concentrate on the specific social profile or even personality of the person against whom the action is directed.
- In turn that skews the public and media attention towards the personalities that are thought to be connected to the underworld, rather than the total integrity and efficiency of the restorative process.
- Forfeiture of illegal assets is not a subject of a lasting public interest. Few are the observed publicly available materials dedicated to the subject that provide systematic or “in depth” information and explanation. Media materials are rather marginal in terms of information about the nature and principle of the forfeiture process.
- No systematic public or media pressure to obtain such information and to use it as a leverage to activate state institutions is detected.
- The interpretation of the process is dependent on the dominant political culture in the respective cases.
- Procedures pertaining to the process are not perceived as isolated activities, rather seen as connected to the general effectiveness of the judiciary, especially in terms of Prosecution.
- In general all of the observed media publicity the initiative for media coverage of the process usually comes via institutional means. Thus, this fact determines the overall share of registered publications and determines the overtone of majority of them.
- Such a “snapshot” demonstrates a rather passive support for the necessity of efficiency increase pertaining to forfeiture process thus we could expect “top down” (legislative initiative and institutional) approach is needed. Also could partially explain why the confiscation process is seen as a penal instrument rather than restorative one.
- Little attention is paid to the management of seized property and its potential for the greater social benefit.
- The confiscation process measured against the social expectations for justice is perceived as slow, cumbersome and ineffective so it quickly exits the focus of public and media attention thus weakening the public interest and pressure over the institutional stakeholders.
- The lack of economic assessment and analysis of the illegal assets prevents the public to fully understand and build a picture of its magnitude. Thus it does not sustain a lasting interest.
- Clear need to provide a “visible” and “measurable” qualitative and quantitative public platform (web-based

for instance) where the public can identify, assess the magnitude, size, price, location, etc. of the illegal assets pertaining to conviction based or non-conviction based forfeited assets.

In general we can state that via the method of functional analysis it becomes obvious that all of the sampled models demonstrate weaknesses and have potential for improvement at the various stages in terms of legal provisions and institutional guarantees. In all cases transparency standards should be enhanced by the establishment of viable statistical data on the forfeited assets and their management. Accountability guarantees are still needed in terms of public control over the effective functioning of the confiscation/ forfeiture procedures. Tools for insuring integrity of confiscation authorities should be consolidated – only in the case of Bulgaria legislation in force sets standards for incompatibility.

TOWARDS EU MODEL ENHANCING TRANSPARENCY, ACCOUNTABILITY, INTEGRITY AND EFFICIENCY

The comparative results provide grounds for thinking about achievement of a singular and harmonized EU practice where a combination of the strengths of the existing models could be amalgamated, calibrated and aimed towards overcoming the detected deficiencies of the various models applied currently.

In addition to the comparative general observation of the sampled cases we have applied analyses of the political, economic, institutional and legal environment to assess the forfeiture process. These have shown us in a nutshell that confiscation/forfeiture is perceived as a part of restoration of justice by protecting the public interest; the specialized units do face serious difficulties in carrying out their work; the direct economic impact of the confiscation of criminal assets and the illegal assets forfeiture remains rather insignificant, but there is a direct and very strong political effect.

Given the dynamic interaction between integrity and effectiveness of the process we should account for number of external factors. That is why the assessment needs to take into account the analytical capabilities of the two methods – SWOT and PESTLE. The combination of these allows precise identification of the factors that determine the strengths and weaknesses in the institutions as well as opportunities and threats generated in the external environment.

- The **political context** in European countries permanently requires increasing the effectiveness of the actions of the institutions involved in the process of forfeiture of criminal assets. Combating organized crime, increasing public confidence in state institutions and ensuring justice and civil rights are inalienable priorities of the political environment in the Member States of the European Union. In this sense, the political environments have a positive impact on achieving objectives and stimulate the activity of the institutions.
- The **economic context** in which to be evaluated process of confiscation/forfeiture of assets has a contradictory impact on the achievement of objectives. On the one hand, the trend towards austerity and putting them to promote employment and ensure social security system of the European countries, suppresses the increase in public expenditure on the organization and operation for the withdrawal of illegal property. On the other hand, namely in the context of such restrictions, increasing the importance of effective management of public property, and in particular the seized property. This trend rather encourages efforts for effective management.
- The **social context** has a significant impact on the institutions. Expansion of social pessimism does not help increase public support for the actions of state institutions as a whole. Critically high levels of distrust in some countries significantly hamper the work of the institutions on the establishment and effective removal of criminal or illegally acquired property, while maintaining low willingness of citizens to participate actively in the management of seized property. At the same time, the practice in some countries shows that targeting the seized property management to NGOs and civil society organizations active in addressing the social problems associated with isolation and the difficult adaptation of separate social groups in European countries, gives good results.
- The existing **technological environment** and the rapid development of information and communication technologies, provide for a positive effect on the institutions by increasing the effectiveness of international and inter-institutional collaboration. Rapid exchange of information provides greater efficiency in the activities of national institutions against criminal acts that lead to illegal acquisition of property in more countries. The international nature of criminal activity requires more complete information interlinking at institutional level and stimulating influence in terms of their technological innovation. This trend is sustainable and will continue to determine the dynamics of organizational processes within and outside government institutions.
- The **legal framework** of the process in the European Union is in the process of complete renovation. EU law in an increasing degree will develop in the direction of harmonization of standards regulation of large groups of processes directly related to the forfeiture of criminal assets. While preserving the relative specificity of the national legal framework, European standards increasingly will seek to ensure the achievement of greater efficiency in the establishment and withdrawal of illegally acquired property, even more when it is in the territory of another Member State the

European Union. The development of European and national legislation for the withdrawal of criminal or illegally acquired property has an extremely positive impact on the attainment of a high level of quality in combining the criteria of integrity and efficiency.

- The **environmental aspects** of the external environment will have more significant impact on issues of interest. Illegally acquired property is often an element of systemic risk in terms of environmental protection and public efforts to prevent its storage. In many cases, the lack of effective access to certain areas may undermine the performance of the tasks of environmental protection and prevention of various types of risk. Public expectations for raising standards and ensuring the protection of the environment, act one way of efforts to increase efficiency in the withdrawal of criminal assets in the Member States of the European Union.

The results of the PESTLE analysis indicate that the external environment in the European Union has markedly positive impact on the actions and institutions involved in the withdrawal of criminal assets. Sustainable trend towards deepening and widening the scope of cooperation from security authorities in the Member States of the European Union, in turn, increases the opportunities and threats to restrict this activity. Opportunities to increase efficiency increase combined factors effects such as political will, increased social expectations, deepening integration legal and institutional cooperation.

The **threats** are arising from the dynamics and changes in the nature and resources of transnational organized crime. Technological environment supports the activity of state institutions, using the same efficient manner and by those who would like to hide property or violate the law. In this context, an increasingly greater risk becomes lack of coordination and coherence in the activities of the institutions at national level. Where there is a deficit of institutional competence and commitment in the activities of the institutions of establishment, withdrawal and management of criminal/illegally acquired property, there is a real threat of poor performance and failure to achieve planned results.

The **strengths in the internal environment** of the institutions are strongly related to the expertise of the staff. Extremely diverse environment in which must be established ownership, high quality form of expertise. In an appropriate organizational environment and a high level of stability in the institutions, expertise is becoming a crucial factor in achieving high performance.

The weaknesses in the institutions are mainly related to the high public costs and difficulties arising from deficits of institutional interaction. The lack of a direct link between the institutions involved in the identification and confiscation of the illegal assets and those who are responsible for the effective management of seized property is a systemic risk to the business. Part of the weaknesses associated with determining the value of property in terms of the different methods and practices, especially when it comes to property situated in the territory of another country.

The overall SWOT analysis demonstrates that despite the prevailing weaknesses, **external environment continues to be extremely stimulating.** There are all prerequisites for achieving a new level of efficiency in the process of confiscating illegal assets, which in turn, in a European context implies the achievement of high standards of integrity. Increasingly part of the internal weaknesses in individual Member states of the European Union can be overridden by strengthening and extending the scope of European integration. As far as the property acquired through criminal activity on the territory of more than one country, the development of common standards and rules, and the active exchange of expertise can ensure a high level of defending the public interest.

The monitoring and subsequent assessments of the institutional effectiveness in the identification, forfeiture and management of criminal assets are a reliable tool for increasing efficiency and ensuring high standards of integrity in compliance with European approaches. In this sense, the subsequent evaluation of the pending legislative and institutional changes periodically should be used as a tool to address the weaknesses in national institutions and optimizing the conditions for the realization of public interest. Such ex-post evaluations of the impact of legislative changes in this area should be implemented in all Member states of the European Union, which operate different models of forfeiture of criminal assets. The high degree of standardization and the active exchange between the evaluation teams will ensure more effective cooperation in combating crime. The existing model of partnership on countering money laundering is a reliable basis for the deployment of such models and to illegally acquired property.

The experiences of various European countries in the organization and management of this activity represents a challenge to achieve common standards of evaluation, but also serves to identify advantages and disadvantages of the different solutions. In this sense, patterns occurring in Italy, Romania and Bulgaria mostly illustrate the approaches that are reflected in all European Union Member states. The aim of an integrated European effort in this direction should be to achieve higher efficiency and integrity in the process of forfeiture/confiscation of criminal assets through full integration of expertise in the various Member states, while maintaining the specificity of the national legal and institutional environment.

THE ROLE OF CIVIL SOCIETY: TENTATIVE MODEL FOR PRO-ACTIVE MONITORING OF THE CONFISCATION/FORFEITURE AUTORITIES

THE RESULTS

of the surveys conducted so far demonstrate that public attention is erratically attracted by media response to the launch of confiscation/forfeiture proceedings or to challenges in court, but fails to stay focused on the rationale of the overall process as an instrument for public interest protection. The lengthy periods when confiscated/forfeited or frozen assets remain outside the scope of public attention avert continuous media attention, which in turn makes public attention fleeting and sporadic.

The proposed set of indicators for civil monitoring rely on the possibilities to focus public attention on the confiscated/forfeited or frozen assets. Practice shows that when a single organisation or a group of non-governmental organisations or media does civil monitoring, they themselves have to keep up the public interest in the matter. Thus monitoring the work of government authorities runs the substantial risk of "professionalisation" of the civil initiative, which could in time alienate it from public attention and its initial purpose.

INDICATORS FOR ACTIVE CIVIL MONITORING

- ***Regular provision of information about finally confiscated/forfeited assets: size, value, location, actual condition, authorities in charge of their future management***

How frequently does the respective government authority provide official information about the forfeited assets? In what manner is this information provided – as a summary or particularly for every case against specific owners? Does the information cite the actual price of the confiscated/forfeited assets? Is information published in cases where the court has found that there is not enough evidence for the assets to be confiscated/forfeited? How do the authorities explain this? Does the information published contain any data about the management of the confiscated/forfeited assets? Have the authorities in charge of managing the confiscated/forfeited assets been clearly identified?

- ***Regularly provide information about frozen assets (in terms of size, type, price) that are the subject of judicial proceedings***

How often does the authority in charge publish information about judicial proceedings for confiscation/forfeiture of assets that have been launched? How is the information provided? Acting upon whose initiative – the authority in charge or the party involved? What is the price of the assets at the time the judicial proceedings have started, according to the authority in charge?

- ***Civil initiatives for monitoring forfeited assets in terms of number, type, frequency and scope of public signals***

How frequently do citizens publish information about the state of play of finally confiscated/forfeited assets? What shape does this information usually take – pictures, data, or comments? Is this civil pro-activeness region-specific,

i.e. are there more and less active regions? What is the response to citizens' signals about the current condition and management of forfeited assets? Are there civil initiatives regarding involvement in the decision-making process concerning forfeited assets?

- ***Media events and investigative journalism: number and type of the publications, relatedness to the work of the authorities; right of reply***

Upon whose initiative do media events take place – government authorities', a signal, or as a result of a journalist's work? How frequently is the topic discussed in national, regional and local media? Is the work of authorities with special competence and the outcome of cases whereby assets have been forfeited commented upon? Have the ones who have illegally kept the forfeited assets been extended the right of reply? How does the issue of effective and transparent management of forfeited assets rate?

- ***Initiatives for effective civil monitoring and for improving the work of authorities in charge of confiscated/ forfeiting and managing of such assets: number of bills seeking legislative amendments, analyses and expert assessments of the value of confiscated/forfeited assets, public reports submitted by government authorities, civil initiatives aimed at enhancing transparency and accountability of the government authorities' work***

Upon whose initiative are proposals aimed at improving government authorities' work made – the authorities' themselves, involved parties', journalists' or NGOs'? Are independent analyses and expert studies regarding the methods of the assets' value appraisal published? Are economic assessments and analyses of illegal assets forfeiture being made? Upon whose initiative is information regarding the work of competent government authorities being provided – in response to specific questions put forward by citizens or the media, or regularly, in the form of accountability reports? Is any parliamentary control being exercised over the work of the executive regarding application of the law? How many are the bills amending and supplementing the applicable law? How many of these legislative initiatives have borne any specific outcome?

The action-monitoring is the form of mobilisation to answer the required enhancement in the transparency and integrity of illegal assets forfeiture process. Unlike traditional forms of civil monitoring that require substantial resources and extra efforts for ensuring sustainability, the action-monitoring relies on the energy and pro-activeness of the citizens themselves. Once this initiative has secured itself its proper Internet space, it could independently evolve into a civil public register of the illegal assets forfeited for public benefit.

CONFISCATION AND FORFEITURE OF ASSETS TO COMBAT CRIME: EUROPEAN CONTEXT

ASSET FORFEITURE: WHERE IS THE EUROPEAN UNION

EU law in the field of confiscation/forfeiture of assets should be considered in the context of the reform brought along by the Lisbon Treaty that repealed the three-pillar structure and created a single subject, the European Union. Regardless of this change, we should nevertheless remember that illegal asset forfeiture or confiscation of criminal assets goes hand in hand with crimes such as organised crime and corruption, which crimes have been dealt with until recently under the so called third pillar of the EU[52], where the Union and Member States share joint competence and interstate cooperation[53].

This means that both before and after the Lisbon Treaty reform Member States are competent to take decisions insofar as the EU has not acted on a particular matter. The EU for its part is competent to take decisions in this area respecting the principle of subsidiarity[54].

Confiscation/forfeiture of assets policy follows the course set forth by the common EU policy in the area of justice and home affairs. This course is demonstrated by the special focus on corruption and organised crime in the Lisbon Treaty and the Stockholm Programme alike[55].

Many EU Member States apply illegal asset forfeiture or confiscation of criminal assets (or both) as specific means for counteracting serious crime.

Confiscation and asset forfeiture fall under criminal law, a sensitive area for the Member States. This circumstance largely explains the difficult and generally slow progress in developing standards and norms that harmonise national legislations. Another reason certainly is the various confiscation and asset forfeiture models that largely differ from one another. On the other hand, however, Member States with functioning confiscation and asset forfeiture models encounter similar problems in their application. These problems are largely due to the fact that in the modern world of globalised and transnational crime tracing and freezing of assets as well as execution of judgments often requires interstate cooperation. These problems may and should be resolved on EU level as far as Member States are concerned.

Article 83 of the TFEU is exemplary of the new EU approach and different attitude towards serious and transnational crime. It allows minimum rules to be established for the harmonisation of national legislations. Opportunities for further and deeper

[52] The other two pillars of the European Union were respectively the European Economic Community and the Common Foreign and Security Policy.
[53] Article 2.2 of the Treaty on the Functioning of the European Union, accessible at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN.
[54] Article 5.3 of the Treaty on European Union accessible at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012M/TXT&from=EN.
[55] The Stockholm Programme – An open and secure Europe serving and protecting citizens, Official Journal C115 of 4 May 2010, available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF.

regulation of the problematic issues regarding illegal asset forfeiture that European States experience should be viewed in the context of this new EU vision.

The EU strategic vision on these issues is reflected in the Stockholm Programme which sets down the priorities of the European Union in the area of justice, freedom and security for the period 2010 – 2014. Building on the achievements of past programmes, namely the Tampere and Hague Programmes, it aims at meeting future challenges and strengthening this area by measures focused on citizens' interests and needs.

Currently no new Stockholm Programme is expected. Some of the issues dealt with in it may be found in the European Council Conclusions of 26 and 27 June 2014, which set forth future key priorities of the Union policy. The key priorities of the Stockholm Programme in the area of freedom, security and justice regarding protection and promotion of fundamental rights, building a European area of justice, safeguarding the Union security etc. are reiterated. However, issues such as confiscation and forfeiture of illegal assets have been left out. Therefore progress made so far by Directive 2014/42/EU appears to be the maximum that Member States have achieved regarding mutual consent on the topic. So far.

Despite the slim chances of progress on this issue before 2020, we should nevertheless acknowledge that problems encountered by Member States persist. These problems should be addressed to allow for a more effective cooperation among Member States and greater efficiency of the different national models in the event of transnational obstacles.

We should nevertheless take note of the fact that in 2008 the EU acceded to the UN Convention against Corruption. This is not just symbolic of the priority that the EU attaches to the fight against corruption. Accession to this Convention requires taking into account those provisions in relation to which the EU has declared that fall within areas where the EU enjoys competence[56]. Although issues regarding confiscation and forfeiture of illegal assets are not expressly mentioned, this mechanism for counterfeiting corruption falls under the obligation assumed by the EU to "develop and implement or maintain preventive [...] anti-corruption policies".

DIFFERENT ASSET CONFISCATON/FORFEITURE MODELS AND THE NEED OF A UNIFORM EU LEVEL STANDARD

Within the EU, every single Member State decides, in accordance with its individual legal system, how to combat serious, often organised crime and corruption. Problems in this field have long ago transcended national borders and need to be addressed on supranational level. These problems have been largely resolved or are being resolved (e.g. Council of Europe conventions against organised crime (to which the EU is a party), conventions concerning trafficking, terrorism and corruption). Next to harmonisation of national legal norms in these areas, solutions are sought such as joint investigative teams involving individual states and several states. Eurojust operates on EU level.

This is not the case as regards asset confiscation/ forfeiture, as stated above. The topic is important in the context of various models and approaches in the different Member States and the essential deficits in their implementation due to supranational obstacles.

Three EU Member States that experience similar problems regarding serious crime but apply different confiscation/forfeiture of assets models come to serve as a case in point. These models differ not only in terms of their specific characteristics but their logic as well. At their heart, however, these three models appear not so different, in particular as regards identification and freezing the assets, the required judicial forfeiture proceedings and execution of court judgments.

Bulgaria, Italy and Romania serve as a good example of three such models. Bulgaria applies a model where illegal asset forfeiture is sanctioned by a civil court and does not require a final conviction of the person involved. Italy's mixed model relies on its special legislation in relation to the mafia, while Romania applies a model of expanded confiscation of proceeds of crime.

The existing EU model takes account of the peculiarities of the models for confiscation of proceeds of crime but almost entirely ignores those models of illegal asset forfeiture that do not require a link between a specific crime and specific assets.

THE EUROPEAN CONTEXT

In the field of serious and transnational crime, legislative initiative on national level has priority, unless the EU decides that a certain matter can be effectively dealt on EU level. The Communication from the Commission to the European Parliament and the Council "Proceeds of organised crime: ensuring that "crime does not pay"[57]

[56] Cf. Declaration concerning the competence of the European Community with regard to matters governed by the United Nations Convention against Corruption.
[57] Cf. Communication from the Commission to the European Parliament and the Council of 20 November 2008 – Proceeds of organised crime: ensuring that "crime does not pay" COM (2008) 766 final, accessible at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008DC0766&from=EN.

determines the added value that the EU can provide in confiscation of proceeds of crime through:

- making the EU legal framework more coherent and further improve it;
- promoting coordination, exchange of information and cooperation among national agencies;
- assisting in the creation of new tools related to the identification and tracing of assets;
- facilitating the enforcement of freezing and confiscation orders;
- facilitating cooperation with third countries through the ratification of conventions and the promotion of asset sharing agreements;
- assisting partners to develop new initiatives through EU funding programmes.

A number of framework decisions have been adapted to that end, namely:

1. Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime;

2. Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence;

3. Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property – this is the decision whereby Member States commit themselves to ensure that they have effective rules governing the confiscation of proceeds from crime[58]. By adopting the Forfeiture of Criminal Asset Act (repealed) and setting up the Commission for forfeiture of assets acquired through criminal activity (CEPACA), Bulgaria complies with this framework decision. The latter is instrumental in introducing another fundamental institute, reverse burden of proof in determining the legal source of assets;

4. Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders – it applies the principle of mutual recognition to confiscation orders[59]. This decision is amended by Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial;

5. Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime.

These framework decisions aim at setting up an effective legal framework and standards for forfeiture of proceeds of crime. The principle endorsed in the above-mentioned framework decisions is that forfeiture is possible in the framework of criminal proceedings, by a competent criminal court, after a final conviction, and in relation to proceeds of crime.

REGULATION BY THE FRAMEWORK DECISIONS

Framework Decision 2001/500/JHA improves the rules for confiscation endorsed in Joint Action 98/699/JHA of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime.

Thus Article 3 of the Framework Decision stipulates that each Member State shall take the necessary steps to ensure that its legislation and procedures on the confiscation of the proceeds of crime also allow, at least in cases where these proceeds cannot be seized, for the confiscation of property the value of which corresponds to such proceeds (the so called value confiscation). At the same time Member States shall ensure that all requests from other Member States which relate to asset identification, tracing, freezing or seizing and confiscation are processed with the same priority as is given to such measures in domestic proceedings (Article 4 of the Framework Decision).

As regards the notions “property”, “proceeds” and “confiscation”, the Framework Decision does not contain express definitions but refers instead to the definitions given in the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

EU rules regarding confiscation are further consolidated by Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.The aim of this Framework Decision is to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, inter alia, in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.

[58] „The aim of this Framework Decision is to ensure that all Member States have effective rules governing the confiscation of proceeds from crime, inter alia, in relation to the onus of proof regarding the source of assets held by a person convicted of an offence related to organised crime.”
[59] This Framework Decision has been transposed to the domestic legal order by the Recognition, Enforcement and Notification of Confiscation or Forfeiture or Financial Sanctions Orders Act (promulgated State Gazette issue no. 15/2010).

Unlike the 2001/500/JHA Framework Decision, the 2005/212/JHA one provides for definitions of the relevant terms such as "proceeds", "property", "instrumentalities", "confiscation" and "legal person".

Confiscation of instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds (the so called value confiscation), are expressly provided for in Article 2 (1) of the Framework Decision.

At the same time Framework Decision 2005/212/JHA introduces for the first time an exception to the principle that confiscation is only possible within the scope of criminal proceedings. Thus Article 2 (2) stipulates that in relation to tax offences, Member States may use procedures other than criminal procedures to deprive the perpetrator of the proceeds of the offence.

The 2005/212/JHA Framework Decision provides for the first time for extended powers for confiscation or the so called extended confiscation in case of expressly set forth serious offences committed within the framework of a criminal organisation or covered by the Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism (Article 3).

What is characteristic of this type of confiscation is that where such offences have been committed, it is possible to also confiscate property that has not been derived directly from the criminal activity in question, thus a link between the assets acquired through the convicted person's criminal activities and the specific offence is not required. This conclusion is most clearly demonstrated by Article 3 (2) (c) whereby each Member State shall take the necessary measures to enable confiscation where it is established that the value of the property is disproportionate to the lawful income of the convicted person and a national court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that convicted person.

The Framework Decision provides for two new hypotheses of the so called extended confiscation. Article 3 (4) provides for another exception to the above mentioned principle and allows Member States to use procedures other than criminal procedures to deprive the perpetrator of the property in question. For the first time Member States are granted the discretion to confiscate property acquired not by the convicted person, but by third parties. These include the closest relations of the person concerned as well as legal persons in respect of which the person concerned, either alone or in conjunction with his closest relations, has a controlling influence (Article 3 (3)).

The analysed Framework Decisions set forth the substantial prerequisites for Member States to initiate confiscation of crime-related proceeds. In addition, two more Framework Decisions need to be mentioned; they regulate the procedures for or establish the procedural means whereby final confiscation orders may be executed.

These are Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence and Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders. The purpose of both Framework Decisions is to establish the rules under which a Member State shall recognise and execute in its territory a confiscation order issued by a court competent in criminal matters of another Member State.

A number of states provide for in their domestic legislation a mechanism for forfeiture of crime-related property or property of illegal origin. One of the problems encountered by national authorities is the transnational nature of the committed offences; another one is that property subject to freezing or forfeiture is often located in another Member State. This hampers forfeiture of the identified illegal property and sometimes makes it even impossible.

The issue at hand is how the EU legal toolbox in the area of confiscation of proceeds of crime may improve the cooperation between Member States in identifying, preserving and forfeiting illegal property. It is essential that the EU sets forth uniform, albeit minimum standards as regards freezing and forfeiture of illegal assets (proceeds of crime) so that Member States' laws and practice are harmonised. This issue remains open in the context of mutual recognition and execution of freezing and confiscation orders[60].

The analysis made above leads to the conclusion that the procedures for the recognition and execution of freezing and confiscation orders established by the two Framework Decisions, 2003/577/JHAand 2006/783/JHA, are not applicable in relation to such orders issued by a Bulgarian court in the framework of civil proceedings under the Forfeiture of Illegal Assets Act currently in force. What is more, Directive 2014/42/EU will not help much to resolve this issue since its scope

[60] It is precisely the different confiscation regulations in the individual Member States that make harmonisation of standards on EU level indispensable. For example, in relation to Bulgaria the fact that illegal assets but not proceeds of crime are subject to forfeiture appears to be problematic. Thus non-conviction based confiscation proceedings under the Forfeiture of Illegal Assets Act are in fact civil law proceedings conducted by a court competent to review civil cases. The only reference to criminal law is the prerequisite to initiate such proceedings after the person in question has been constituted as an accused party for an offence that is expressly mentioned in the law.

is considerably smaller than the one of the Bulgarian Forfeiture of Illegal Assets Act.

This is so because the European legislation in this field continues to be bound by criminal proceedings in a much larger degree than the special Bulgarian law.

The consequence of this fact is that it would be hard for the Bulgarian authorities to ensure execution of freezing and/or confiscation orders under the Forfeiture of Illegal Assets Act in cases falling under the scope of the Directive. This is hardly insignificant if we keep in mind that the law's efficiency is largely determined by its capacity to reach illegal property abroad.

This is not to say that orders issued under the Forfeiture of Illegal Assets Act may not be executed abroad; this however could be done under the general procedures for recognition of foreign court orders rather than under the special rules for European cooperation in the area of freezing and confiscation of proceeds of crime.

REGULATION UNDER DIRECTIVE 2014/42/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 3 APRIL 2014 ON THE FREEZING AND CONFISCATION OF INSTRUMENTALITIES AND PROCEEDS OF CRIME IN THE EUROPEAN UNION

The legal framework set by the 2001 and 2005 Framework Decisions is complemented by Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union[61]. It further extends the exceptions outlined above and introduces basically new rules in this area. The purpose is to facilitate confiscation of property in criminal cases.

The adoption of this Directive brought high expectations going as far as considering introducing non-conviction based confiscation of property on EU level. Such expansion of the concept was supported during meetings of the Council of Ministers at the end of 2011 and the beginning of 2012 by Bulgaria, Italy and Ireland.

The possibility to expand the scope of the Directive to include non-conviction based confiscation was discussed also in the beginning of the Irish Presidency of the Council of European Union, during the informal meeting of the Ministers for Justice in January 2013 in Dublin.

The proposal of the European Commission for a Directive of the European Parliament and of the Council for freezing and confiscation of proceeds of crime in the European Union aimed precisely at introducing such possibilities.

The provisions of the Directive however hardly met these expectations. What does the Directive provide for?

The principle of confiscation of property subject to a final conviction for a criminal offence is largely observed, in compliance with the existing rules (Articles 1 and 4).

Nevertheless, an exception to this principle is envisaged by introducing non-conviction based confiscation. It is however only possible if a number of conditions set forth in Article 4 (2) are met, namely where confiscation on the basis of a final conviction is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.

Article 2 provides for express definitions of relevant notions. The definition of 'proceeds' deserves to be noted down. It includes not only any economic advantage derived from a criminal offence but also any subsequent reinvestment or transformation of direct proceeds and any valuable benefits.

The scope of freezing and confiscation of proceeds of crime within the meaning of the Directive is determined by reference to specific EU acts regarding particular areas of crime set forth in Article 83 (1) of the Lisbon Treaty.

Rules regarding extended confiscation are amended and a uniform minimum standard is set forth instead of the existing system of optional rules. Discrepancy between the value of the property and the lawful income of the convicted person is expressly laid down as a fact to be considered by the court when issuing extended confiscation orders (Article. 5). The criminal offences in relation to which extended confiscation is applicable are also laid down.

Rules regarding confiscation from a third party that were set forth for the first time by Framework Decision 2005/212/JHA are built upon and fine-tuned. Unlike the non-binding nature of Article 3 (3) of the Framework Decision, which leaves it to the Member States' discretion whether or not to adopt measures to enable confiscation of property from third parties, the Directive requires that Member States take the necessary measures to enable such confiscation (Article 6).

What is meant are proceeds, or other property the value of which corresponds to proceeds, which were transferred by a suspected or accused person to third parties.

[61] The Directive is accessible at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0042.

Confiscation of such proceeds is possible, on the basis of concrete facts and circumstances, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation.The fact that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value is explicitly mentioned.

Confiscation from third parties should not prejudice the rights of bona fide third parties (Article 6 (2)).

Freezing of property with a view to possible subsequent confiscation is also envisaged. Property in the possession of a third party can also be subject to freezing measures for the purposes of possible subsequent confiscation (Article 7).

A series of minimum guarantees (safeguards pursuant to Article 8) are introduced to protect the rights of affected persons in confiscation proceedings[62]. Their purpose is to guarantee the presumption of innocence, the right to a fair trial, available effective remedies and the right to be informed of these remedies.

To ensure effective confiscation and to facilitate the execution of confiscation orders in practice, the Directive provides for the detection and tracing of property to be frozen and confiscated even after a final conviction for a criminal offence or following proceedings in application of Article 4 (2) (non-conviction based confiscation) (Article 9).

As regards management of frozen property, the Directive envisages establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent confiscation, including the possibility to sell or transfer property where necessary. As regards management of already confiscated property, the focus is on measures allowing it to be used for public interest or social purposes (Article 10).

Member States shall regularly collect, possibly at a central level, and send to the Commission comprehensive statistics about the number of freezing and confiscation orders executed, the estimated value of property frozen at the time of freezing, and the estimated value of property recovered at the time of confiscation.

Member States shall also send statistics to the Commission, if they are available at a central level, of the number of requests for freezing and confiscation orders to be executed in another Member State as well as of the value or estimated value of the property recovered following execution in another Member State (Article 11).

The difficulties in effectively applying the European legal framework in the area of confiscation of instrumentalities and proceeds of crime are generally rooted in the following legal propositions:

- The endorsed principle of binding confiscation of property to a final criminal conviction.
- The applicability of the rules for mutual recognition and execution of freezing or confiscation orders – only in relation to those orders issued by courts in the Member States in criminal cases.
- The powers of the Asset Recovery Offices that concern mostly tracing and identification of proceeds of crime, as well as the nature of the data exchanged between these offices – largely operative data, which cannot serve as evidence in confiscation proceedings in court.

It is clear from this analysis that the Directive builds upon the legal propositions in the area of confiscation of proceeds of crime on EU level, in particular as regards non-conviction based confiscation. New instruments and measures aim at enhancing its effectiveness and at guaranteeing the rights of affected persons.

The question is to what extent the rules set forth in this Directive actually make the identification, freezing and confiscation of crime-related proceeds an effective approach to counteracting organised crime, and whether they diminish, as far as possible, the obstacles encountered in the application.

PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON THE FREEZING AND CONFISCATION OF PROCEEDS OF CRIME IN THE EUROPEAN UNION[63]

Following the debate on the adoption of the Directive, a number of important proposals of the Council and of the European Parliament were dropped out. It is important to review these proposals as they indicate the possible trend of future legislation in this area.

These proposals concern in general the scope of the Directive, non-conviction based confiscation,

[62] Right to an effective remedy and to a fair trial; communicating the freezing order to the affected person as soon as possible after its execution; possibility for the person whose property is affected to challenge the freezing order before a court; immediate return of the frozen property which is not subsequently confiscated; giving reasons for any confiscation order and communicating the order to the person affected, as well as effective possibility for a person in respect of whom confiscation is ordered to challenge the order before a court; right of access to a lawyer throughout the confiscation proceedings; effective possibility to challenge the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct; measures to ensure that the confiscation measure does not prevent victims of a criminal offence from seeking compensation for their claims.

[63] The proposal for a Directive is accessible at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012PC0085&qid=1424758687316&from=EN; summary of the report of the Civil Liberties, Justice and Home Affairs Committee of the European Parliament is accessible at: http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0178+0+DOC+XML+V0//EN.

extended confiscation and management of frozen and confiscated property.

Regarding the Scope of the Directive, Concerning only Confiscation in Criminal Matters

Pursuant to Article 1 of the Directive, it establishes minimum rules on the freezing of property with a view to possible later confiscation and on the confiscation of property in criminal matters.The position of the European Parliament however demonstrates an ambition to go beyond the criminal law framework, which restricts the scope of application of the Directive. Here are some of the amendments proposed by the European Parliament that support such a conclusion:

- Dropping out "criminal matters" in the preamble in relation to the purpose of the Directive, in order to facilitate confiscation of property;
- Expressly providing in the preamble that Member States are free to bring confiscation proceedings which are linked to a criminal case before any competent court, be it criminal, civil or administrative. A similar provision albeit with some revisions has been reproduced in Article 1 (2) of the Directive. Member States are therefore free to apply confiscation through proceedings suitable for their particular national legal orders;
- And most importantly, the amendment in the very first recital of the preamble. In the view of the European Parliament, it should be expressly stated that *"Mutual recognition of freezing and confiscation orders of proceeds of crime is not effective enough. An effective fight against economic crime, organised crime and terrorism would require the mutual recognition of measures taken in a different field from that of criminal law or otherwise adopted in the absence of a criminal conviction [...] and having as their object, more broadly, any possible asset or income attributable to a criminal organisation or to a person suspected or accused of belonging to a criminal organisation".* The arguments for such a proposal are crystal clear: the low efficiency of the existing system requires that no means are spared for tracing, freezing, management and confiscation of proceeds of crime.

Regarding Non-conviction Based Confiscation

This type of confiscation gives rise to numerous questions. Many of the proposals made by the European Parliament that were not endorsed concern precisely this type of confiscation.

The fact that non-conviction based confiscation appears in the second paragraph of Article 4 and not as an individual Article 5 in the original proposal speaks for itself.

What is more, the departure from the initial expectations regarding non-conviction based confiscation is best demonstrated by dropping out entirely from the Directive preamble recital 12 as proposed by the Commission and supplemented by Parliament. It explains the nature of this type of confiscation and reasons why it is necessary to adopt measures allowing for such a confiscation in all Member States.

„(12) The issuance of confiscation orders generally requires a criminal conviction. In some cases, even where a criminal conviction cannot be achieved, it should still be possible to confiscate assets in order to disrupt criminal activities such as organised crime or terrorism and ensure that profits resulting from criminal activities are not reinvested into the licit economy. Some Member States allow confiscation where there is insufficient evidence for a criminal prosecution if a court considers on the balance of probabilities that the property is of illicit origin, and also in situations where a suspect or accused person becomes a fugitive to avoid prosecution or conviction, is unable to stand trial for other reasons, died before the end of criminal proceedings. In other cases some Member States allow confiscation for instance where a criminal conviction is not pursued or cannot be achieved, if a court is satisfied, after making full use of the available evidence, including the disproportionality of assets compared to the declared income, that the property derives from activities of a criminal nature. This is referred to as non-conviction based confiscation. Provision should be made to enable non-conviction based confiscation in all Member States."

Article 4 (2) of the Directive however does not reflect, or at least not sufficiently, the idea incorporated in the text cited above. Pursuant to the Directive non-conviction based confiscation requires impossibility to reach a final conviction, at least where such impossibilisty is the result of illness or absconding of the suspected or accused person, in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.

In fact the initial proposal by the Commission and the changes proposed by the Parliament but not endorsed try to introduce more and stricter rules for non-based confiscation with a view to making it more efficient[64].

What is more, the report of the Parliament proposes provisions making it clear that the proposal for a Directive concerns only these forms of non-conviction based confiscation that are considered to be of a criminal nature. This clarification is justified by Article 83 (1) of the Lisbon Treaty, which stipulates that *"The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary*

[64] This is the intention stated in the Explanatory statement by the rapporteur Monica Macovei to the EP Report on the proposal for directive.

legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis".

The report specifies that notwithstanding its denomination in national law as civil confiscation, Article 83 (1) TFEU does not exclude this type of confiscation, as long as it can be qualified as "criminal sanction" according to the criteria developed the European Court of Human Rights[65].

The Court has ruled on numerous occasions on the compliance of non-conviction based civil confiscation with the standards set in the European Convention of Human Rights. According to the Strasbourg Court it does not suffice that the law defines certain proceedings or measures to be of a non-criminal nature. In some case it is possible that proceedings defined by domestic laws as civil be deemed to be of a criminal nature from the point of view of the Convention. Hence stricter safeguards for the rights of accused persons set in Articles 6 and 7 of the Convention would apply such as presumption of innocence, prohibition against retrospectivity etc.

According to the consistent case-law of the Court, it determines the nature of proceedings on the basis of the following three criteria: a) the manner in which the domestic state classifies the proceedings; b) the nature of the conduct in question; and c) the severity of any possible penalty[66]. These criteria have been further developed in subsequent judgments. The criteria are alternative and meeting just one of them suffices a conclusion that the proceedings in question are criminal in nature and hence higher guarantees of the rights of the person affected by these proceedings apply.

Therefore defining non-conviction based confiscation as a criminal measure has yet another consequence related to the protection of the rights of the persons affected by it as it allows the higher guarantees set in the ECHR in relation to criminal proceedings to be applied.

This is why Article 5 (1) of the Directive as proposed by Parliament but not endorsed expressly refers to the above-mentioned criteria and refers to the ECHR and the European Charter of Fundamental Rights. According to the proposed text, *"Each Member State shall take the necessary measures to enable judicial authorities to confiscate, as a criminal sanction, proceeds and instrumentalities without a criminal conviction where a court is convinced on the basis of specific circumstances and all the available evidence that those assets derive from activities of a criminal nature, while fully respecting the provisions of Article 6 of the ECHR and the European Charter of Fundamental Rights. Such confiscation is to be considered of criminal nature according, amongst others, to the following criteria: (i) the legal classification of the offence under national law, (ii) the nature of the offence, and (iii) the degree of severity of the penalty that the person concerned risks incurring and shall also be in line with national constitutional law."*

Regarding Extended Confiscation

The proposals made by the European Parliament regarding extended confiscation have been largely endorsed. Here the purpose is confiscation of property outside the scope of the immediate proceeds of crime, i.e. property which the court finds to have been acquired through criminal conduct and not through legal activities. This is why what matters most in such cases is the discrepancy between the value of the property and the legal incomes of the person concerned.The proposal made by Parliament in this regard has been endorsed and Article 5 (1) expressly lays down discrepancy between the value of the property and the lawful income of the convicted person as a fact justifying the finding of a court that the property in question has been acquired through criminal conduct[67].

Article 4 (2) of the Directive does not provide for the two hypotheses excluding confiscation that were included in the proposal, namely where criminal activities could not be the subject of criminal proceedings due to prescription under national criminal law, or where such criminal activities have already been subject to criminal proceedings which resulted in the final acquittal of

[65] Contrary to that the Committee of the Regions is of the opinion that non-conviction based confiscation falls outside the scope of Article 83 (1) TFEU. In its report the Committee of the Regions points out that in most Member States confiscation is a penalty linked to a criminal conviction. It further notes down that confiscation without conviction is based on civil proceedings and is not covered by Article 82 (2) TFEU, which is the legal base of the proposal for a Directive and which refers to criminal matters only. It proposes a criminal law route, namely the creation of a new criminal offence for the possession of "unjustified" assets, or the inability to account for resources, an offence according to the French Code pénal.
Unlike the Committee of the Regions, in its opinion the European Economic and Social Committee recognises that non-conviction based confiscation as proposed by the Commission (in circumstances where a criminal conviction cannot be obtained because the suspect has died, is permanently ill or when his flight or illness prevents effective prosecution within a reasonable time and poses the risk that it could be barred by statutory limitations) is a useful measure in practical terms and supports it on the grounds of effectiveness. It even proposes that the concept of "permanent illness of the suspected or accused person" be left out as it may open the door to all manner of abuses.
[66] Engel and others v. the Netherlands, judgment of 8 June 1976, Series A no. 22; Walsh v. United Kingdom [2006] ECHR 43384/05, (21 November, 2005); Air Canada v. the United Kingdom, judgment of 5 May 1995, Series A no. 316 A.; AGOSI v. the United Kingdom, judgment of 24 October 1986, Series A no. 108; Dassa Foundation and others v. Liechtenstein, judgment of 10 July 2007; Welch v. The United Kingdom, judgment 9 February 1995, Series A no. 281 A.
[67] The opinions of the Committee of the Regions and the European Economic and Social Committee have also helped formulate discrepancy between property and incomes as an essential circumstance justifying a finding of illegal assets.

the person or in other cases where the ne bis in idem principle applies.

Regarding the Models for Managing of Frozen and Confiscated Property

Regarding management of frozen and confiscated property, the text of the Directive is supplemented by some of the proposals made by the European Parliament. In particular Article 10 (3) has been introduced, which is missing in the proposal by the Commission. It focuses on using confiscated property in public interest or for social purposes and encourages Member States to consider taking the necessary measures to that end.

The report of the European Parliament however gives more prominence to the reuse of confiscated property for social purposes[68]. New provisions in Article 10 are proposed reading that Member States, instead of just considering, shall take the necessary measures to provide for the disposal and the destination of the confiscated property as a priority for law enforcement and crime prevention projects as well as for other projects of public interest and social utility. This proposal has been endorsed.

The importance attributed by the European Parliament to the social reuse of frozen assets is demonstrated also in the proposed amendments in the respective recitals of the preamble of the proposal for a directive (16 and 16a), which however have been endorsed to a very limited extent.

To encourage social reuse of frozen assets and to avoid the risk of further criminal infiltration, the European Parliament notes down that *"it would be useful to consider the formation of a Union fund that would collect a part of the confiscated assets from Member States. Such a fund should be open to pilot projects by the citizens of the Union, associations, coalitions of NGOs and any other civil society organisation, to encourage the effective social reuse of the confiscated assets and to expand the democratic functions of the Union" (16).*

Next it is pointed that it is necessary to adopt common measures to avoid that the criminal organisations recover possession of property illicitly obtained. Examples of effective instruments in this regard are the Asset Recovery Offices, as well as the use of the confiscated property for projects aimed to contrast and prevent crime, and for other institutional or public purposes or social use (16a).

Some of the above-mentioned measures proposed by Parliament are at the heart of different models of managing frozen and confiscated property endorsed in different Member States. In some Member States (e.g. Italy) management of property is entrusted to an agency specially established to that end. Other Member States leave management of confiscated property in the hands of tax authorities or interdepartmental councils within the government (e.g. Bulgaria).

Some of these models show essential deficits, which result in the destruction or dissipation of confiscated property. Others demonstrate good practices and envisage using confiscated property for social purposes or letting non-governmental organisations manage it. According to a third group of models such property is sold and the financial means are used for the purpose of crime prevention.

COMMON STANDARDS AT EU LEVEL

RECOMMENDATIONS

As obvious from the above, the development of the EU regulation in the field of confiscation of assets is not yet completed as it is not ready to address some of the more advanced confiscation/forfeiture models, not related to criminal conviction.

Some recommendations could be made in view of overcoming some of the above-mentioned deficiencies in the EU regulations. Their aim is to contribute to the future elaboration of common standards at EU level and to improve the tracing, seizure and confiscation of assets, subject to confiscation at national level. This is especially needed as far as the European cooperation is concerned in cases of transnational crimes and of assets that are located outside the boundaries of the confiscating state. Bellow, are recommendations of some general nature, which could adapt to EU member-states irrespective of their model of confiscation/forfeiture of assets.

Regarding the Institutional Framework

- Envisage standards that would allow for the institutional strengthening of the asset recovery offices acting in the Member States in three aspects: increasing their autonomy, independence and specialisation; expanding their powers regarding the identification, freezing and confiscation of proceeds of crime; and reinforcing the cooperation between them.
- Putting in place mechanisms for supervising the

[68] In its opinion the European Economic and Social Committee also draws particular attention to the matter of application and restitution of confiscated funds. The EESC points out that direct sale of property often allows criminal organisations to regain possession of such property in roundabout ways. This reinforces the advantages of applying such assets first to social purposes. This would have the "double benefit of preventing organised crime and promoting economic and social development". In this regard the EESC notes down that "there are various possible approaches, which must involve the central authorities of the Member States and which should be explored and adapted in light of the victims, the public interest and the nature of the frozen assets".

work of the confiscation bodies.

- Legal guarantees for transparency, integrity, effectiveness and accountability of the confiscation bodies and the confiscation procedures followed.
- High common standards for interinstitutional and interstate cooperation on EU level.

Effective freezing and confiscation of illegal assets, just like an adequate and practically feasible legal regulation, depend largely on the implementing national authorities in the Member States, their powers and the modalities of their cooperation.

In this regard neither the proposal for a directive, nor the finally adopted act contains any provisions pertaining to these authorities. What is more, the Directive description of the legal framework currently in force in the Union in the area of freezing, forfeiture and confiscation of assets fails to make a reference to Council Decision 2007/845/JHA, which calls upon the Member States to establish or determine national Asset Recovery Offices (recital 7 of the Preamble)[69].

Establishing national structures with individual organisation and competence in the area of confiscation, in addition to expanding their current powers not only in the initial stage of confiscation proceedings, as regards tracing and identification of proceeds of crime, but also in the next stages, including judicial proceedings, predetermines a more successful and effective work of these bodies.

In addition to that, expanding the powers of these authorities would allow using information and data exchanged between them in confiscation proceedings in court.

Regarding the Scope of the Non-Conviction Based Confiscation and the Management of Frozen and Confiscated Property

- Encourage expanding the scope of non-conviction based confiscation, including issuing such in the framework of civil proceedings; the approach endorsed in relation to the extended confiscation should be followed here, i.e. focusing on the discrepancy between a person's property and lawful income, and not just on the impossibility to have a final conviction for the criminal offence committed by that person.
- Such approach would facilitate mutual recognition of freezing and confiscation orders in those Member States that have established such a procedure in the national laws.
- Standards guaranteeing protection of human rights in the confiscation proceedings by means of judicial review and effective remedies, especially as regards non-conviction based confiscation.
- Analysis and evaluation by the Member States of the efficiency of the rules applicable on national level for managing frozen and confiscated property with a view to their improvement.
- Adequate mechanisms for managing frozen and subsequently confiscated property, in particular for the purpose of its reuse in the public interest, including for social needs.
- The measures taken by the Member States in relation to managing confiscated property should be visible to the general public in order to have a deterring effect and to demonstrate that property acquired through criminal activity is always forfeited by the state. In other words to show that crime does not pay.
- Promoting publicity about the measures taken by the government in relation to criminal offenders and ensuring transparency through statutory measures (e.g. a public register of the confiscated property; a strategy for work with the public).

Regarding Mutual Recognition of 'Civil Confiscation' Orders within the EU

- Consider possibilities to expand the scope of the two Framework Decisions making their provisions applicable to judicial acts for freezing and confiscation of proceeds of crime issued in civil cases as well.
- Consider the idea of adopting a directive replacing the Framework Decisions and establishing minimum rules for the execution of orders for freezing and confiscation of proceeds of crime within the European Union.

[69] In this regard in its opinion the EESC voices its regret that the proposal does not incorporate the acquis communautaire in relation to judicial cooperation and cooperation between investigative authorities. It also notes down that identifying and tracing the proceeds of crime requires strengthening the powers of the Asset Recovery Offices and Eurojust. Thus, apart from the necessary coordination and the systematic exchange of information between national Asset Recovery Offices, the EESC believes that it is necessary in the long term to consider centralisation at European level in this area, whether through a new, dedicated organisation or directly through Eurojust. The findings of the Committee of the Regions should also be borne in mind. In its opinion on the proposal for a directive it notes down that not all Member States have implemented Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices. Therefore the measures mentioned above are justified.

IDEAL MODEL (COMMON STANDARDS) FOR NATIONAL PROCEDURES FOR CONFISCATION/FORFEITURE OF ASSETS

IDEAL MODEL

- **Institutionally strengthened (autonomous, independent, specialised, competent) national authorities with powers to trace, identify, freeze, seize, and confiscate/forfeit derived property**

This is a basic requirement for Member States where serious crime leads to accumulation of criminal and illegal assets. Such authorities should be independent, competent and highly motivated to achieve the specific goals of confiscation: deprive the criminals from the economic profit of their criminal/illegal activities.

Effective freezing and confiscation of criminal and illegal assets, just like an adequate and practically feasible legal regulation, depend largely on the implementing national authorities in the Member States, their powers and the modalities of their cooperation.

Establishing national structures with individual organisation and competence in the area of confiscation, in addition to expanding their current powers, where necessary is a prerequisite for a more successful and effective work of these bodies. Extension of powers could cover not only the initial stage of confiscation proceedings, as regards tracing and identification of proceeds of crime, but also in the next stages, including judicial proceedings.

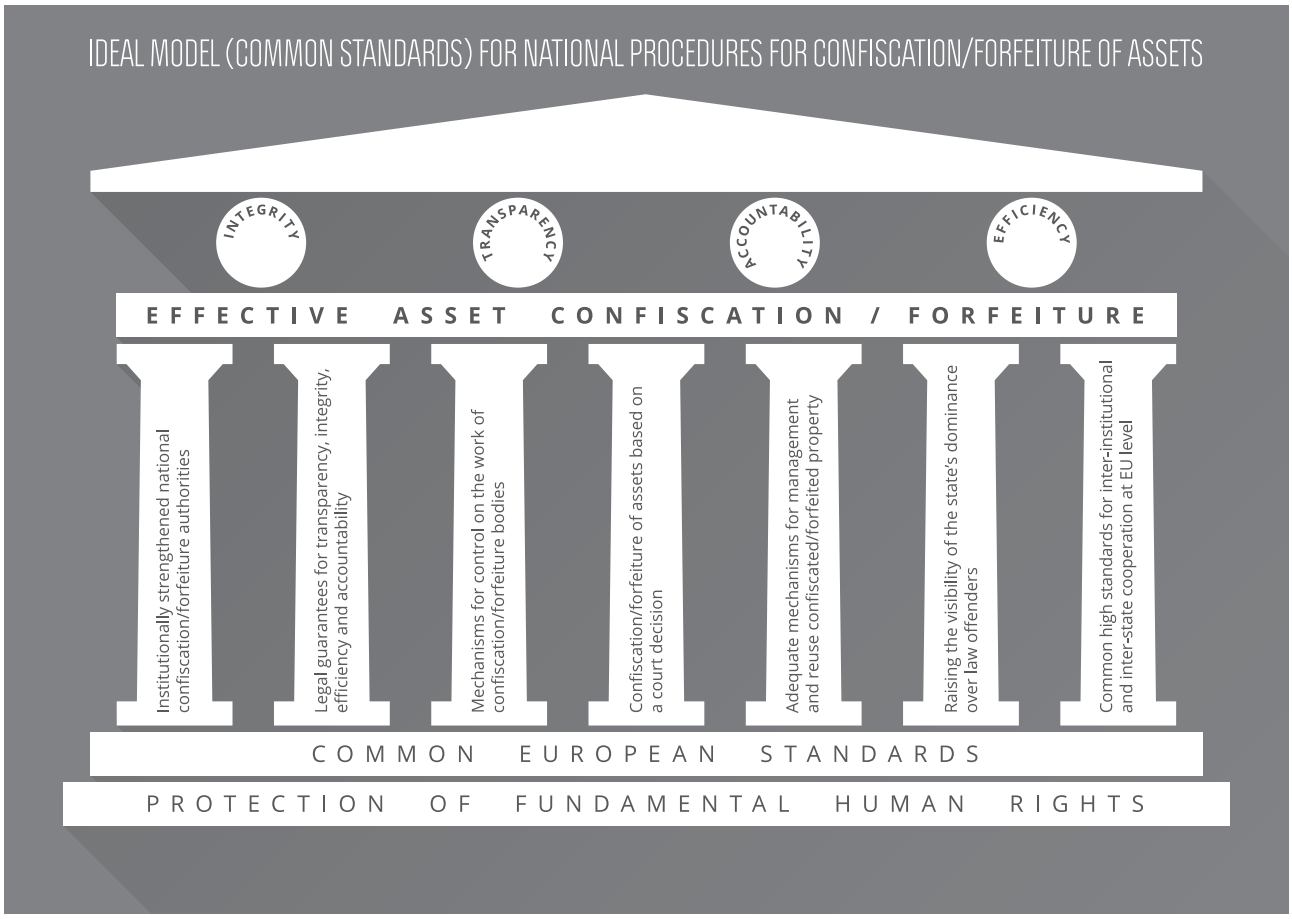
- **Guarantees in the law for transparency, integrity, efficiency and accountability of the confiscation/ forfeiture authorities and procedures**

The significant powers of confiscation/forfeiture authorities require a level of transparency, integrity and accountability that goes beyond the usual general standards.

Transparency is a characteristic of the public policies achieved by building a sustainable and widely shared understanding of the work of public institutions. In this sense, in the context of confiscation/forfeiture authorities' specific functions and role, transparency should be perceived as a question of an additional and targeted effort.

Transparency should provide for good access to information to the procedures, documents, confiscated assets as well as their management and further use. Implementing transparency policies is instrumental also for raising general public awareness regarding management of assets, strictly meeting tax and other statutory obligations and rejecting to be involved in operations that promote the so-called informal sector. It is precisely through these transparency policies that the preventive effect of the law could be achieved.

Integrity is indicative of the level of correspondence between the statutory powers, objectives and approach to public interest protection, structure and functional specificity of the confiscation/forfeiture authorities, on the one hand, and the actual actions of the management and its staff members, on the other hand. Integrity should be related to effective management of conflict of interests, declaration of assets of confiscation/forfeiture



authorities and high ethical standards in their personal and professional life.

Accountability is essential in relation to public spending. Such accountability largely deals with the correspondence between the objectives set and the public funds spent to attain these objectives. Regarding public spending and resources used in accordance with the attained objectives, accountability is the conduct due by the institutions and their staff members.

Efficiency is related to the achievement of the main objective of confiscation/forfeiture: deprivation of criminals from the assets deriving from criminal activities or forfeiture of assets whose legal origin cannot be proven. An important aspect of efficiency is the existence of swift procedures, both in the pre-trail and the trail phase. In this respect the non-conviction based forfeiture indicates significant advantages compared to criminal confiscation. The main advantage is in the fact that the forfeiture procedure is not dependent on the completion of the criminal case and on the proof of the guilt of the defendant for the crimes committed. This allows the civil court to start the forfeiture procedure upon completion of the check of the assets of the defendant by the confiscation authorities.

- **Mechanisms for control on the work of confiscation/forfeiture bodies**

A very important characteristic of a well-functioning model is to have independent and reputable institutions dealing with the confiscation/forfeiture of assets. However, strengthening national authorities and reinforcing their powers regarding confiscation/forfeiture procedures should go hand in hand with establishing legal guarantees for transparency, integrity and efficiency in exercising these powers, including adequate mechanisms for supervising their work.

Such institutions should be subject to both institutional and public control. By taking into consideration the specifics of the national models, the institutional control could be established by the Parliament or the President. It is essential to also have efficient mechanisms for public control, exercised by civil society. This is crucial in view of the significant powers focused in confiscation authorities and the need for them to be accountable for their work. This involves official public annual reports of the confiscation authorities, public debates on the report in Parliament, press conferences with information on confiscated/forfeited activities, oversight over the management and use of confiscated/forfeited assets.

Judicial control over the acts of confiscation/forfeiture authorities is an important guarantee as well.

- **Confiscation/forfeiture of assets should be based on a court decision, issued either as a criminal conviction or as a civil sanction in a case there is a significant difference between the assets acquired and the legitimate or the legally proved income of a person**

Such an approach would facilitate mutual recognition of freezing and confiscation/forfeiture orders between Member States that have established such procedures in their domestic laws. Judicial procedures should be marked with the highest standards for transparency, fair trial and human rights protection. Special guarantees for avoiding excessively long judicial procedures, conflict of interest prevention and application of high ethical standards should be introduced.

- **Standards to ensure human rights protection in asset confiscation/ forfeiture proceedings through judicial control and adequate and effective legal remedies for judicial protection**

Establishing such standards is mandatory, especially with a view that human rights could be seriously infringed during confiscation/forfeiture procedures. Human rights that should be protected include: right to an effective remedy and to a fair trial; communicating the freezing order to the affected person as soon as possible after its execution; possibility for the person whose property is affected to challenge the freezing order before a court; immediate return of the frozen property which is not subsequently confiscated; giving reasons for any confiscation order and communicating the order to the person affected, as well as effective possibility for a person in respect of whom confiscation is ordered to challenge the order before a court; right of access to a lawyer throughout the confiscation/forfeiture proceedings; effective possibility to challenge the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct; measures to ensure that the confiscation/forfeiture measure does not prevent victims of a criminal offence from seeking compensation for their claims.

The human rights protection should cover also third parties affected by confiscation/forfeiture procedures.

- **Adequate mechanisms for management of frozen and subsequently confiscated property with a view to re-using it for public interest**

The European standard as far as the management of confiscated/forfeited assets is concerned is clearly manifested in the Directive 2014/42/EU of the European Parliament and the Council of the 3 of April 2014.

As regards management of frozen property, the Directive envisages establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent confiscation, including the possibility to sell or transfer property where necessary. As regards management of already confiscated property, the focus is on measures allowing it to be used for public interest or social purposes (Article 10).

Member States shall regularly collect, possibly at a central level, and send to the Commission, comprehensive statistics about the number of freezing and confiscation orders executed, the estimated value of property frozen at the time of freezing, and the estimated value of property recovered at the time of confiscation.

Member States shall also send statistics to the Commission, if they are available at a central level, of the number of requests for freezing and confiscation orders to be executed in another Member State as well as of the value or estimated value of the property recovered following execution in another Member State (Article 11).

On the one hand such measures would facilitate future confiscation of frozen property since it would largely prevent its destruction and dissipation. On the other hand, risk would be reduced (in cases of selling the property) that property would be reused for criminal purposes. In this respect establishment and maintenance of national e-registers with information on confiscated/ forfeited assets in EU member states have significant importance.

It is important to identify the most appropriate model for management of confiscated/forfeited assets and accredit it to one institution, marked with integrity, accountability, transparency and efficiency. Procedures should be adopted to manage the risk that confiscated assets could return into criminal hands. Last, but not least, the efficient management of confiscated/forfeited assets at national level should be based on the principle "less cost – better use".

- **Raising the visibility of the state's dominance over law offenders and introduce mandatory measures to ensure transparency (e.g. public register of confiscated assets; signs for confiscation/forfeiture on the assets; strategy for public outreach)**

In order to focus the public attention on the measures taken by the Member States in relation to managing confiscated/forfeited property, these measures should become visible to the general public. In this way their deterring effect is enhanced and it is reiterated that property acquired through criminal (illegal) activity is

always confiscated/forfeited by the state. The idea is to show that crime does not pay.

Visibility is a tool that ensures transparency in all the activities of the state, but it is also a tool that enables public control. In this respect the one side of visibility could be related to the establishment of public e-register with confiscated/forfeited assets in each member state.

The other aspect of visibility is related to the need to make obvious the state's dominance over the law offenders. This type of visibility is important in order to attain dissuasive and preventive effect and to disrupt future criminals from committing economic crimes. This is the most important outcome of all the procedures in view of showing that the state is stronger than criminals and offenders of the laws. In this respect confiscated assets, especially buildings and cars, should be marked in such a way as to announce the fact of their confiscation/ forfeiture. This could be made by special stickers or posters "confiscated/forfeited by the state" or by making public events to declare the fact of confiscation.

- **Common high standards for inter-institutional and inter-state cooperation at EU level**

Interinstitutional cooperation is essential for the efficient confiscation/forfeiture of assets. This usually entails the need of common and often urgent actions, exercised by the institutions involved in the procedures for tracing and freezing of criminal/illegal assets. Access to different databases with information on assets and swift exchange of information is sometimes decisive for the success or the failure of confiscation procedures.

Interstate cooperation at EU level is extremely important for all EU Member-states, especially in the context of tracing and seizure of assets located on the territory of another Member-state. Mutual recognition of judicial acts is also crucial element of efficient confiscation procedures. The issue is resolved as far as the conviction based (criminal) confiscation is concerned, but remains unaddressed as far as the judicial decisions for forfeiture of illegal assets are at stake.

ANNEXES

ANNEX 1. "GALEV BROTHERS" CASE STUDY, BULGARIA

SEPTEMBER, 2014

Plamen Galev and Angel Hristov are notorious Bulgarian underground figures who attract a huge public interest. Since the mid-1990s they are a symbol of the helplessness of the Bulgarian state and institutions alike to tackle the challenges of organised crime. The personal profile of these people, their history, open links to the underground and political world, demonstration of endless wealth and power, and last but not least their mysterious disappearance, turned Galev and Hristov into a city legend whereby criminals were the strong and capable, while the institutions are left totally helpless. The aim of this monitoring is to establish how much the civil forfeiture procedure contributes to the destruction of the "Galev Brothers" legend.

Who are Plamen Galev and Angel Hristov? Commonly referred to as "the Galev Brothers", they are not of kin. Their fortunes got intertwined during their military service and they became inseparable ever after. Until their disappearance in 2012, the two men shared the same domicile. They were recruited by the Ministry of Interior at the same time and in the 1990s used to work for the most elite police units, i.e. the Specialised Counter-terrorism Squad and the National Service for Combating Organised Crime. They both left the police service in 1998 and set up a number of businesses.

Within a few years, the Galev brothers took full control of Dupnitsa, a town some 55 km away from Sofia, numbering around 40,000 people. Their main business was racketeering. A year and a half after their disappearance, the former mayor Mr. Plamen Sokolov said that the Galev Brothers had introduced the so-called "peace tax" that everyone who wanted to develop a business was bound to pay. In the course of time they took over the local government. It is a public secret that the Galev Brothers used to control the municipal governance. Their companies used to provide security to municipal buildings and to get awarded all public procurement procedures in the region. People from the Galev Brothers' circle still enjoy the reverence of the local town. Positions such as 'the former bodyguard' or 'the former driver' of the Galev Brothers keep resurfacing in criminal records and arouse fear. People living in Dupnitsa believe that even now the Galev Brothers keep extending rewards and punishments, from their unknown whereabouts, and the people keep living in fear.

In 2009, the Galev Brothers took the plunge into politics and campaigned for Parliament. They took advantage of a newly adopted and later repealed revision of the Elections Act allowing non-partisan parliamentary candidates to run and get elected by majority vote. At the time they were in custody charged with the crimes of which they were later convicted. What was going on was actually an attempt of escaping justice by abusing the immunity, which MP nominees enjoyed during parliamentary elections campaigns. However, the Brothers' political connections dated prior to this. A meeting of the then interior minister Roumen Petkov with the Galev Brothers in 2008 sparked strong public outrage and Mr. Petkov resigned over the scandal.

In early 2009, Mr. Galev and Mr. Hristov were charged with setting up an organised crime group that engaged in racketeering and other crimes. On November 4, 2010, the District Court of Kyustendil issued a judgment no. 23 thereby ACQUITTING Plamen Galev and Angel Hristov of all charges. By its judgment no. 24 of 6 July 2011 the Sofia Appellate Court reversed the district court judgment and found the two defendants GUILTY, thereby sentencing Plamen Galev to seven years of imprisonment, a 10,000 BGN fine and confiscation of 1/3 of his property shares Angel Hristov was sentenced to five years of imprisonment, a 7,000 BGN fine and confiscation of 1/4 of his property. On May 3, 2012, Bulgaria's Supreme Court of Cassation upheld the sentences and the latter became final. These prison sentences, however, have never been served, since Mr. Galev and Mr. Hristov managed to escape justice and have gone missing.

The long family saga that ended before the chance of having the punishment imposed for the well-known works of the "Dupnitsa Brothers" has undermined an already well shaken confidence in the Bulgarian judicial system. This is precisely why here the confiscation of assets is the only and last opportunity to restore at least to some extent the sense of justice, meaning no impunity for profiting from crime.

STAGES MONITORED

1. Identification of illegal assets

The legal grounds for initiating an inspection of illegal assets are set forth in the Forfeiture of Criminal Asset Act (FCAA) applicable to the case at study, which Act was repealed in 2012. Pursuant to Article 4 of FCAA, the latter sets forth the terms and conditions for forfeiting assets acquired during the studied period by persons in relation to whom the grounds under Article 3 have been established, namely criminal proceedings have been initiated for crimes expressly stipulated in the law, and it may be reasonably concluded in the specific case that the proceeds are crime-related, as long as no legal source has been established. In cases where such assets have been transferred to third parties in good faith and the assets' actual value has been paid in full, only the proceeds received by the inspected person are subject to forfeiture.

Proceeds of crime that are part of the assets of a legal person controlled by the inspected person individually or jointly with another natural or legal person are also subject to forfeiture in favour of the state. Assets are also forfeited in case of legal succession by the respective legal person (Article 6 FCAA) as well as in case of matrimonial property if the other spouse's failure to contribute to the said property is established (Article 10 FCAA). In this relation the law provides for a rebuttable presumption whereby assets are presumed to be acquired for sake of the person inspected, until proven otherwise, if these assets have been acquired by the spouse and/or his or her minor children in their respective name/s, where the acquired assets are of a substantial value and exceed these persons' incomes during the inspected period and no other source of incomes may be established (Article 9 FCAA).

The law further provides that transactions conducted with proceeds of crime shall be deemed null in relation to the state if the requirements set forth in Article 7 FCAA are met, namely (1) in case these are gratuitous transactions with third natural or legal persons, or (2) in case these are paid transactions with third parties where the latter knew that the assets were proceeds of crime or received the assets for the purpose of concealing their illegal source or actual title. On these grounds what has been paid is also subject to forfeiture.

In the particular case the proceedings for establishing assets acquired through illegal activity in relation to Plamen Galev and Angel Hristov started on 27 January 2009. The inspectors at the Blagoevgrad unit of the Commission for Establishing Property Acquired from Criminal Activity (CEPACA, "the Commission") are the competent bodies tasked with the inspection. Pursuant to the law applicable at the launch of the proceedings, the inspection of assets by the Commission could last no more than 10 months and could be extended once by another three months (Article 15 of the Forfeiture of Criminal Asset Act).

In this case the inspectors completed the inspection sooner. They were notified on 27 January 2009, and on 25 June 2009 the Commission endorsed their report and sought freezing of the assets. Therefore work on establishing the assets took less than five months instead of the statutory 13 months. The main reason for this expeditiousness could only be that quick results were sought in view of the growing public attention this case was receiving. In their work the Commission's inspectors depend exclusively on other public bodies that provide them with information concerning the family, property and financial standing of the inspected persons. The inspectors alone cannot possibly speed up this process. Prompt reaction to inspectors' requests is a principle endorsed in the Joint Operational Instructions regulating how the Commission interacts with other bodies. However, practice shows that the inspections are much quicker if they involve high-profile figures. This is so because the public, mostly through the media, exerts pressure on the Commission management and its chairperson in particular. Subsequently, the latter focuses the inspectors' efforts on a particular case and facilitates the provision of required information by the respective bodies. This is what happened in relation to the probe into Galev Brothers' assets.

Once the inspection is completed, the inspectors submit a detailed report to a five-member college body, which is the only authorized body to take decisions on subsequent actions. The Commission however does not enjoy any discretion but is bound to take a decision regarding the freezing of assets and their subsequent forfeiture if the inspection establishes significant discrepancies between the legal income and the expenditures incurred by the inspected persons over a certain period of time. Under the Forfeiture of Criminal Asset Act applicable at the material time, significant discrepancy is considered a gap of BGN 60,000, which the case law interprets as 400 minimum wages.

In the case at hand the CEPACA considered that the proceeds of crime acquired by Plamen Galev and Angel Hristov totaled BGN **4,247,789.12.** The assets varied in type and included company shares, sums in banks, firearms, real estates, cars and motorcycles. For the real estates and cars, the Commission sought the opinion of independent expert appraisers certified in appraising real estates. In its reasoned forfeiture motion, the Commission asked the court to assign expert assessment in terms of the market value for some real estates and assets. The inspection found that over the inspecting period Plamen Galev's expenditures exceeded his legal income by **6,443.08 minimum wages.** In the case of Angel Hristov, the discrepancy established was to the amount of **1,193.73 minimum wages.** On the basis of these findings the Commission decided on 25 June 2009 to seek with the competent Kyustendil District Court freezing of the illegally acquired assets identified by the inspectors. Thus the results of the inspection conducted by the Blagoevgrad unit of the Commission were endorsed at central level as well.

To guarantee impartiality of the Commission's bodies and objectivity of the inspections, the Forfeiture of Criminal Asset Act (repealed) prohibits that members of the Commission: (1) are engaged in commercial activity or are partners in unlimited liability companies, are managers or members of supervising, managing or control bodies of companies, co-operatives, public enterprises or not-for-profit legal persons; (2) receive remunerations under civil contracts or civil service employment contracts with state or public organisations, commercial entities, co-operatives or not-for-profit legal persons, natural persons or sole traders, save for academic or teaching assignments or copyrights (Article 12, para 6). What is more, in accordance with the Conflicts of Interest Act, the members of the Commission are bound, in their capacity of heads of a public budget organisation set up by law, to declare any incompatibility or private interest.

The Commission Rules of Procedure envisage setting up an Inspectorate. Such a body with similar powers had been established pursuant to an internal act issued under the FCAA. The Inspectorate is tasked among others with "exercising control over and carrying out inspections for establishing conflicts of interest under the terms and procedure set forth in the Conflicts of Interest Act". In the case in question the issue of possible conflicts of interest in relation to inspectors or members of the Commission has not occurred. There is no data pointing to such conflicts of interests or any doubts in this regard either in the framework of the proceedings or in the media. We are not aware of any actions taken by the Inspectorate in this direction in relation to the case in question.

This study relies substantially on information provided by the Commission, including legal acts, records of court hearings, the reasoned action searching forfeiture, in addition to media publications and publicly accessible court rulings. The results of the Commission inspection have been challenged in court. A judgment on the merits is pending.

Overall assessment of the phase

The identification of assets was fast and efficiently made. A large number of objects and cars were established. A substantial number of related persons were identified, including offshore companies. The written replies by the inspectors in response to subsequent appeals demonstrate that they are well prepared and informed, and that they are convinced that they are both factually and legally right. There is not a single element in this case that casts any doubt on the integrity of the inspectors or members of the Commission.

As far as efficiency is concerned, hardly anyone can be convinced that the Commission managed to establish all of the Galev Brothers' assets. Their very disappearance welcomes another conclusion. It will not be an overstatement, however, to say that if the Commission succeeds in completing its work, it will be the one to have damaged the Galev Brothers the most.

Regarding transparency, inspections of assets are by law confidential and the results of such inspections should not be announced prior to the freezing of the respective assets.

2. Freezing of assets

Regarding freezing of assets, the Commission acts *ex officio* and lodges a reasoned request with the competent district court. The court rules on the very same day when the request is lodged either granting or refusing freezing of the respective assets. The court ruling granting the freezing of assets is immediately enforced.

The inspection of the Galev Brothers' assets established, as mentioned above, significant discrepancies between the legal incomes and the expenditures incurred by these

persons over the inspecting period. On these grounds the Commission decided on 25 June 2009 to seek with the Kyustendil District Court freezing of the illegal assets identified by the inspectors. A request to that end was lodged with the court on 26 June 2009. By a ruling issued the same day the court granted freezing of the assets.

The statutory requirement that the court rules without delay upon a request filed by the Commission was strictly abided in the case in question. All illegal assets, established by the inspection, were fully secured.

A number of challenges were filed at this stage of the proceedings. The most serious appeals were filed by legal persons who the Commission considered to be "controlled" by Galev and Hristov and who in turn claimed this was not the case. The appeal brought by Maxa Limited, a company registered in the British Virgin Islands and represented by a third party, is a notable example. The company challenged the freezing of assets claiming that its activities were in essence separate from the ones of the defendants in the forfeiture proceedings, and that it could prove the initial legal source of the assets, with which it had purchased the frozen assets, at any time. The second issue concerned the dispute on the merits and the court did not find it necessary to rule on it in the framework of the security proceedings. As far as the first issue is concerned, the court apparently endorsed the arguments brought up by the Commission inspectors that the company was in fact used to conceal the actual title, namely Plamen Galev and Angel Hristov's ownership in the property. The Commission supported its claim by a detailed study of the transactions conducted by the companies and of all direct and indirect relations between these companies and the defendants. It was established that the real estates in question, although in title of the companies, were occupied, used, held and managed by Galev, Hristov and their families; that in the course of the construction of these real estates the two conducted all activities related to control, issuing if required papers etc.; that the company conducted transactions whereby it registered millions of losses for which no logical market explanation existed; that the company representative is an accountant in companies controlled by Galev and Hristov; as well as other indirect evidence indicating that Maxa Limited served as a cloak of the defendants' property.

The fact that the court accepted these arguments and granted the freezing of assets that were owned by offshore companies demonstrates the potential of the Assets Forfeiture Act. The legal provisions relied upon in the case of the Galev Brothers were reproduced in the new act, so it may be reasonably expected that the new act will become a major instrument in combatting dissipation of assets through offshore companies. However, this also requires a respective forfeiture ruling where the court rules on the issues raised in the motion. During the security stage the Commission motion is assessed only as "possibly well-founded". In any way, the Commission and the law were apparently efficient as regards freezing of assets, including such of companies and third parties, in the case of the Galev Brothers.

As regards management of the frozen assets, the Forfeiture of Illegal Assets Act currently in force contains express provisions to that end. The general principle enshrined in the Civil Procedure Code applies, namely that frozen assets shall be left with the inspected person or the person holding the assets at the moment the security was issued for safe keeping. The Commission may also request the court to appoint a person to keep the assets against remuneration (Article 81 FIAA). In addition to the usual obligation to keep the assets with due diligence and to report related incomes and costs, the person who has been trusted with keeping the frozen assets must notify the Commission of any damage, transfers to third parties, or proceedings concerning these assets, and must ensure access to the assets by the Commission bodies inspecting them. Costs related to the storing and maintenance of the frozen assets shall be paid by the Commission (Article 82 FIAA).

To ensure transparency and efficiency of the Commission work at this stage, various circumstances related to the frozen assets shall be entered in a register kept by the Commission. The register contains data about the person in relation to whom proceedings have been initiated; the frozen assets; the owner and the person holding the assets at the time they were frozen, as well as of the person safe-keeping the respective assets; and other data required for the particularization of the frozen assets. The law stipulates that any disposal of such assets or encumbering them with mortgage, or assuming any obligations that could create difficulties in the recovery of claims pursuant to the court ruling granting forfeiture in favour of the state of illegal assets, shall be null and void (shall not take any legal effect) in relation to the state (Article 86 FIAA).

Data collected in the above-mentioned register is a good basis to assess the work of the Commission at this stage of the proceedings under the Forfeiture of Illegal Assets Act. The statistics available that allow to analyze the work of the Commission at the stage of the freezing of assets and in the other stages of the proceedings are collected by different public bodies. However, these are not enough to draw sufficiently objective conclusions about the work of the Commission during the different stages of the proceedings for establishing, freezing, forfeiting and managing frozen and forfeited illegal assets.

The repealed Forfeiture of Criminal Asset Act that is applicable to the case in question does not contain express provisions regarding management of frozen

assets, hence the general rules set forth in the Civil Procedure Code apply.

This study relies largely on data provided by the Commission, including legal acts, records of court hearings, the reasoned action searching forfeiture, in addition to media publications and publicly accessible court rulings.

Overall assessment of the phase

Freezing of assets imposed under the Forfeiture of Criminal Asset Act (repealed) is certainly one of the most radical acts of the state in relation to Galev and Hristov. The Commission may hardly be said to have got to every single asset of the "Dupnitsa Brothers" but nevertheless its success should not be underestimated since this is the only institution which may get hold of well concealed illegal assets. Property that does not belong only to Galev and Hristov but to related natural and legal persons has been encumbered, too. Restrictions have been imposed on real estates that were the subject of transactions which the Commission claims to have been null. This demonstrates the huge potential of the assets forfeiture procedure and the body in charge of its application as compared to the confiscation of assets in the framework of criminal proceedings where action may be taken only in relation to property which is officially owned by Galev and Hristov thus leaving a large part of their property actually intact. Of course all this needs to be substantiated in the next stage, namely the forfeiting proceedings.

The fast freezing of assets that are significant in size and value is a success for the Commission since failing it would make the subsequent work of the Commission completely pointless.

3. Illegal assets forfeiting proceedings

According to the law applicable to the case in question, the Forfeiture of Criminal Asset Act (repealed), forfeiture proceedings begin after a final conviction of the inspected persons issued in criminal proceedings. At this stage the Commission acts *ex officio* as well and files a reasoned motion for forfeiture of proceeds of crime in the competent district court (depending on the residence of the natural person or the legal person respectively). If the motion concerns movable property and real estates, it is lodged at the district court competent in the area where the real estate is located (Article 28, para 1). The court initiates the case and publishes an announcement in the State Gazette indicating the date of the first court hearing, which could not be earlier than three months as of the publication of the announcement.

In the case in question the Commission was notified of the final conviction of the Galev Brothers on 10 May 2012. A new inspection of these persons and related companies was required since three years had passed since the previous inspection of their assets conducted in 2009. This is why upon a request of the Commission the deadline for filing a forfeiture motion was extended.

On 14 August 2012 the Commission lodged a reasoned motion at the competent Kyustendil District Court for forfeiture of assets totaling BGN 4,250,189.12. The defendants in the case were Plamen Galev, Angel Hristov, their spouses Emilia Galeva and Radmila Hristova, as well as three offshore companies, M.P.V. Trading Limited, P.I.G. Nord Adams Limited, and Maxa Limited. The Kyustendil District Court issued a ruling on 26 September 2012 scheduling the first court hearing for 6 February 2013 and ordered the publication of an announcement to that end in the State Gazette.

Since before the first court hearing the defendants Plamen Galev, Angel Hristov and their spouses Emilia Galeva and Radmila Hristova were duly summoned but were not found at the respective addresses, in accordance with Article 47, para 6 of the Civil Procedure Code the Kyustendil District Court designated special representatives for each of them, at the expenses of the Commission (ruling of the Kyustendil District Court of 3 December 2012). It is precisely in relation to the designation of special representatives that the first court hearing originally scheduled for 6 February 2013 was postponed. On the one hand it was established that the one-month period extended to defendants under Article 131 of the Civil Procedure Code for providing written responses to the illegal assets forfeiture motion lodged by the Commission had not expired. Copies of the materials in the case were only provided to the special representatives on 21 January and 28 January 2013. On the other hand, in view of the voluminous case materials and the factual and legal complexity of the case, as well as the required adequate defence, the court granted the special representatives' request and extended this period by two months, scheduling the next court hearing for 29 May 2013.

At this court hearing the Commission representatives backed up the allegations contained in the forfeiture motion about the nullity of transactions involving the assets in relation to the state as well as the legitimate assumption that the defendants had acquired these assets through illegal activity. The court denied the defendants' objections of inadmissibility of the proceedings and compliance of the forfeiture motion lodged by the Commission. The court proceeded with the case on the merits.

During the court hearing the Commission legal representatives made additional requests to the ones laid down in the motion, namely interrogation of witnesses and a number of expert witness assessments

such as construction, appraisal, automobile, and three economic ones. They challenged the loan agreements provided by the defendants regarding their date and content and following the defendants' request to establish Plamen Galev and Angel Hristov's connection with the three offshore companies, also parties to the case, insisted that the original documents be presented and the foreign nationals representing the companies in question be interrogated as witnesses. They further asked the court to order that the four defendants, the Galev Brothers and their spouses, appear in court in person. The court granted these requests and set a deadline for the Commission representatives to specify the questions to be put to the defendants. The objections made by the defendants' special representatives during the court hearing in relation to the new evidence requests made by the Commission representatives were also granted and the court granted an additional one-month period to the defendants to make a statement regarding these.

During this court hearing a dispute rose between the Commission representatives and the defendants' special representatives regarding a final but not executed conviction of the Galev Brothers. They were found guilty and sentenced to imprisonment and to confiscation of 1/4 and 1/3 of their respective assets. The question put forward during the hearing concerned the relation between the civil and criminal confiscation since according to Article 1, para 2 of the Forfeiture of Criminal Asset Act (repealed) assets that have been forfeited under other acts cannot be the subject of forfeiture under the FCAA (repealed).

However, according to the defendants' special representatives the final sentence for the confiscation of certain assets of the Galev Brothers rendered the reasoned forfeiture motion made by the Commission invalid and inadmissible in relation to those assets specified in the final sentence of the Sofia Appellate Court, because these assets would be forfeited once the prosecution office enforced the sentence. This begged the question what assets had been already forfeited under different terms and procedures and what remained thereafter to be forfeited as requested by the Commission in terms of money, real estates, property rights, etc. To this the Commission representatives replied that the Prosecutor General had asked that the criminal case before the Supreme Court of Cassation be reopened and the imposed confiscation be repealed. However, the proceedings were terminated and the case was remitted to the Supreme Prosecution Office of Cassation with the instruction that the two convicted persons' up-to-date residence addresses were specified in order to be summoned in due course. In this regard the supervising prosecutor in the case before the Kyustendil District Court said that *"the conviction of Plamen Galev and Angel Hristov is final but not enforced due to a number of reasons which I shall not discuss in today's court hearing".*

Actually one of the reasons for this was specified in the motion filed by the Prosecutor General for reopening the criminal case. According to the Prosecutor General, the final sentence for the confiscation of 1/3 of the convicted Plamen Galev's and 1/4 of the convicted Angel Hristov's assets should be repealed and the case should be returned for another examination because of insufficient evidence regarding the convicted persons' property and no indication which particular assets were to be confiscated.

However, in criminal proceedings, in addition to the committed offence, the accused party's involvement in it, and the nature and extent of the damage inflicted thereby, subject to proof are all other circumstances relevant to the accused party's liability, including his or her family and property standing. And in publicly actionable cases the burden of proof falls precisely upon the prosecution office and the investigating bodies. Collecting evidence regarding the accused parties' property is therefore one of their powers. As far as confiscation as a penalty is concerned, the Plenum of the Supreme Court issued a ruling in 1955 and instructions in view of the practical difficulties encountered in imposing and enforcing this property sanction. First of all, this penalty may be imposed only insofar as at the time the sentence is issued there is some property, movable or immovable. This requires that evidence regarding the defendant's property is collected, not only by the prosecution office but by the court as well, before the sentence is delivered.

Article 72 of the Criminal Procedure Code should also be held in mind in relation to imposing and enforcing confiscation as a penalty. It allows the first instance court to grant attachment orders in the framework of criminal proceedings upon a request to that end made by the prosecutor. The purpose is to secure the execution of imposed penalties and/or confiscation in case a conviction is issued. And since the prosecutor in criminal proceedings has an accusatory role regarding proving the charges, he or she enjoys the discretion to decide whether there are grounds to seek with the court to secure the property sanctions where such are envisaged in relation to the offence, for which charges have been pressed, and where failing this would render the future execution of the sentence difficult or impossible[70]. Therefore in the case in question both the prosecution office and the court availed, during different stages of the proceedings, of sufficient number of legal means

[70] With a view to streamlining the case law and the application of Article 72 of the Criminal Procedure Code, the General Assembly of the Criminal College of the Supreme Court of Cassation issued an Interpretative Ruling no. 2 of 11 October 2012.

to allow that confiscation of certain shares of the two defendants' assets be imposed with the sentence and to facilitate its future enforcement.

It is true that in the case in question the Kyustendil District Court granted, upon a request by the Commission, as early as 26 September 2009 attachment orders in relation to the Galev Brothers' illegal assets established by the inspectors. However, it is also true that the purpose of the proceedings under the Forfeiture of Proceeds of Crime Act (repealed) is different as compared to these under Article 72 of the Criminal Procedure Code. This is their subject is different. Article 72 of the Criminal Procedure Code is meant to secure the criminal liability, which needs to be proven beyond any reasonable doubt. This is why in proceedings under Article 72 of the Criminal Procedure Code it is inadmissible to discuss evidence which serve as grounds for imposing attachment orders under another law such as the Forfeiture of Criminal Asset Act (repealed). In any way, due to omissions in the work of the judicial authorities in collecting evidence about the assets owned by the two defendants at the time the sentence was issued the confiscation ordered in the sentence was impossible to execute in practice.

Another reason for this failure to execute the sentence that is relevant to the case in question may be the Galev Brothers' abscondence that prevented the execution of the final conviction, both regarding their imprisonment and the imposed confiscation of shares of their assets. The two defendants' abscondence received huge public attention that triggered adopting Interpretative Ruling no. 3 of 15 November 2012 by the Supreme Court of Cassation upon a request by the Minister of Justice. The issue brought to the attention of the Supreme Court was whether a conviction of imprisonment is something for the court to consider and whether it could serve as grounds for imposing a stricter remand measure, in particular remand in custody. The General Assembly of the Criminal College found that this was inadmissible. Imposing a stricter remand measure was only possible where any of the prerequisites set forth in Article 66, para 1 of the Criminal Procedure Code were established, and a conviction of imprisonment was not among these.

All this explains why the case of the Galev Brothers is so notorious and why it is exemplary not only of the work of the Commission but of the judiciary as well. It is precisely because of the impossibility to effect in full the criminal liability for the offences, committed by them, that a successful case under the Forfeiture of Criminal Asset Act (repealed) remains the only possibility to bring justice and in some way public retribution.

The next hearing before the Kyustendil District Court was held on 12 September 2013. During this third court hearing, however, the case did not proceed because the special representative assigned to one of the defendants, Radmila Hrisotva, Angel Hristov's wife, passed away. Another attorney from the Kyustendil Bar was assigned and the case was postponed for 4 October 2013.

The case was not allowed to proceed on the merits during the fourth court hearing either. The newly assigned special representative of the defendant Radmila Hristova asked for extra time to study all materials in the case. In view of the complexity and volume of the materials, and to ensure effective and adequate defence, the court granted this request and scheduled the next court hearing for 4 December 2013.

On this date the review of the case was suspended, this time upon the request of one of the defendants on the occasion of an interpretative case at the Supreme Court of Cassation initiated on 18 September 2013 at the request of the Ombudsman. The latter sought an interpretative ruling on the following issues:

(1) Is a link required between a specific offence under Article 3 of the Forfeiture of Criminal Asset Act (repealed), the time the offence was committed and the acquired assets in order to impose forfeiture under the Forfeiture of Criminal Asset Act (repealed)? and

(2) Is failure to establish the assets' legal source during the inspecting period under the terms and procedure of the Forfeiture of Proceeds of Crime Act (repealed) sufficient grounds to justify a reasonable assumption that the assets were proceeds of crime?

The Kyustendil District Court found the issues brought up in the interpretative case before the Supreme Court of Cassation to be of a preliminary nature for examining the specific Galev Brothers case, as long as collection of evidence, distribution of the burden of proof and delivering a fair judgment were concerned, and suspended the case until an interpretative ruling was issued, which happened on 30 June 2014.

According to the interpretation given by the General Assembly of the Criminal College of the Supreme Court of Cassation, **a link (direct or indirect) between the offence under Article 3, para 1 of the Forfeiture of Criminal Asset Act (repealed) and the acquired assets is required.** It would suffice if such a link may be logically assumed on the basis of the circumstances of the case, even where no legal source of the acquired assets has been identified, in order to forfeit these assets under Article 28 of the FCAA (repealed). It is the particular offence and the circumstances justifying the assumption that there is a link with the acquired assets that determine the relevant period for each individual case; this period must be within the limits set forth in Article 11 of the FCAA (repealed).

After the ruling of the Supreme Court of Cassation the case was reopened but failed again to proceed on the merits. Radmila Hristova's special representative failed

to appear in court on 15 July 2014 due to poor health. The court did not proceed with the case to ensure that the party enjoyed adequate defence. However, since the same special representative was the reason for a third postponement of the case, the court ordered his delisting and instructed that the Kyustendil Bar to assign another special representative. The next court hearing was scheduled on 15 September 2014.

An assessment of this stage is not possible at the moment as the case is still pending. Actually the court will make the assessment and will judge whether the Commission claims are justified. **The poor collaboration of the Commission and the prosecution office, however, clearly demonstrated in the judicial phase of the proceedings, should be noted down.**

A closer cooperation between the Commission and the prosecution office is required, especially in cases where charges are pressed for offences where confiscation is envisaged. In this way the prosecution office will be supported in eliciting circumstances related to the property standing of the accused party. This in turn will ensure better guarantees for assuming criminal liability in a subsequent conviction of confiscation. This is all the more valid regarding the cooperation required for securing the assets, since according to the Joint Operational Instructions the prosecutor must provide the Commission with information about the attachment orders granted by the court upon his or her request under Article 72 of the Criminal Procedure Code. After the Commission and the Prosecutor General set up joint teams, we may hope that they will cooperate much better.

4. Management and administration of forfeited assets

The Forfeiture of Illegal Assets Act currently in force sets forth express rules for the management and administration of assets forfeited by a final legal act of a civil court, unlike the Forfeiture of Criminal Assets Act (repealed) applicable to the studied case. A college body, an Interdepartmental Board for Forfeited Assets Management chaired by the deputy minister of finance and comprising the deputy-ministers of justice, economy, energy and tourism, labour and social policy, and regional development and public works is tasked with the management and administration of forfeited illegal assets (Article 87 FIAA).

Every month the Commission notifies the Interdepartmental Board of final judgments for forfeiture of illegal assets. The Board proposes to the Council of Ministers that the forfeited assets be transferred to public institutions or municipalities or their sale be awarded instead. Sale is effected by the National Revenue Agency under the terms and procedure set forth in the Tax and Social Insurance Procedure Code. If the assets failed to be sold, the National Revenue Agency returns the case file to the council which takes a decision regarding the management and administration of the assets. If the assets are transferred to a public institution or a municipality, the latter reimburses the National Revenue Agency with the costs incurred for the management, storing and sale of the respective assets (Articles 88 to 90).

OVERALL ASSESSMENT OF THE CASE

Monitoring this case has clearly demonstrated the complexity of the Commission, its capacity and deficiencies. Regarding capacity, three aspects should be noted down: (1) expeditious inspections; (2) expeditious freezing; (3) effective investigation of links with third parties.

Appraisals seem to be a weak point in the work of the Commission as all determined values have been the subject of additional expert assessments in the framework of the court proceedings, which delayed the proceedings. The Commission representatives asked the court to assign expert assessment in relation to many of the real estates concerned, which demonstrates that they themselves were not convinced in their appraisals.

The importance of this case is such that a possible failure would cast doubts on the efficiency of the so called "civil confiscation" as a means for combatting unjust enrichment.

RECOMMENDATIONS

- **It is difficult to give an estimate of the forfeited assets' value in these proceedings.** The amount of more than BGN 4,000,000 (EUR 2,000,000) is just indicative, and many of the concerned real estates are owned by third parties or have been encumbered. This makes it difficult to estimate the Commission's efficiency in a way understandable by the general public, namely in terms of the resources invested by the state in the forfeiture procedure vis-à-vis the assets to be forfeited. In the context of this case the general issue about the statistical data collected in relation to "civil confiscation" comes up. **The register kept by the Commission is apparently not sufficient.**
- **The annual reports that the Commission submits to the National Assembly give only general information, and upon the Commission discretion.** Perhaps the National Statistical Institute could play a role here. It has the power to collect and summarise data concerning justice and internal security, such as number of convicted persons, types of offences, types of imposed penalties, etc. In the same manner it may collect data regarding actually forfeited assets, under both civil and criminal confiscation.

- **In the monitored case the coordination between the bodies of the Commission and the prosecutor in the case was not good, especially during the trial phase when the prosecutor failed to explain to the court why the final conviction had not been enforced.** Subsequently the Commission inspectors could not specify which assets to be forfeited. The defence counsel made effectively use of this confusion, which makes the outcome of the proceedings even more unclear. Obviously the collaboration between the state authorities should continue beyond the identification of assets and exchange of information all the way to the very end of the proceedings. In other words, where both civil and criminal confiscation may be imposed on the same persons, inspectors and prosecutors should specify the assets to be forfeited. Otherwise we are left with the impression of overlapping claims which may run contrary to the rule of law principles.
- **A positive aspect of the monitored case is the substantial information in both numbers and importance received from abroad, including from the so called offshore areas.** At the same time the evidential value of this information may be questioned. Apparently witnesses from the respective countries need to be questioned further, which may even prove impossible, but either way will delay the final judgment. Perhaps it is the cooperation between the Commission and the Ministry of Justice, which may be instrumental in turning the informally acquired information into letters rogatory and making it a valid evidence in court.

The monitoring could not establish how the encumbered assets are stored. This is particularly important since by law the owners are liable for the assets' storing, and in this case the owners are missing. The new Forfeiture of Illegal Assets Act sets forth more detailed rules for management and administration of encumbered and/or forfeited assets but so far there is no information how these rules are applied. It the monitored case a complete lack of interest by the state regarding the encumbered assets has been observed, which basically makes the whole procedure pointless.

ANNEX 2. TOSHKO PACHEV - THE 'BLACK LOTTO' MASTERMIND CASE STUDY, BULGARIA

JANUARY, 2015

The so called 'black lotto' has been a problem in Bulgaria for a long time. Bets and 'arranged' sport competitions of any kind have become a tradition. At the same time the general public views these types of offences extremely negatively as everyone feels like a fool. Indeed, the police actions and the actions taken by the Commission received the largest possible media attention.

The case in question concerns Toshko Pachev, a 26 years old football player, who set up and was the major organiser of a network for illegal betting that operated in the largest Bulgarian cities and involved football players from various football clubs around the country. The Burgas District Prosecution Office started criminal proceedings and pressed charges against Toshko Pachev under Article 327, para 1 of the Criminal Code for arranging gambling (bets on the outcomes of sport competitions, namely football matches) over the period from October 2012 to December 2012 not in compliance with the statutory procedure set forth in the Gambling Act, i.e. without a license.

According to the charges pressed by the Prosecution Office, the criminal activity has only lasted for a short period of time, just two months. However, it may be logically assumed that this activity has lasted much longer. The arguments backing up such an assumption are numerous. Such a network for illegal bets may hardly be set up in just two months. The penalty for this offence is up to six years of imprisonment and BGN 10,000 (EUR 5,000) fine (accumulative sentence). No minimum threshold for either penalty is set forth in the Criminal Code. According to media publications, BGN 10,000 was found in cash at the time the person was detained in his apartment; the Prosecution Office believed this was cash collected from bets. This comes to demonstrate that even the maximum statutory fine cannot not actually affect the person. Even if imposed together with a minimum period of imprisonment, the two penalties combined will not achieve the purpose of liability, namely to reform the perpetrator, warn against such offences and retaliate. The retaliatory element is obviously missing since BGN 10,000 is not a serious punishment considering the possible proceeds of such crimes.

This case has been selected for yet another reason: this is one of the first cases under the new law. Criminal proceedings were initiated in December 2012, and the Commission for Illegal Asset Forfeiture was notified by the Prosecution Office in the end of April 2013 (outgoing correspondence date 24 April 2013 and incoming correspondence date 30 April 2013 respectively). This is why proceedings in this case followed the new law and a lot of procedural actions were taken under the new law, which allows for a better and fuller analysis.

STAGES OF MONITORING

1. Identification of the illegal assets

The Forfeiture of Illegal Assets Act (FIAA) sets forth alternative absolute procedural prerequisites for initiating proceedings under FIAA.

The first hypothesis is that criminal proceedings for some of the offences specified in Article 22 FIAA have been initiated.

The second hypothesis for opening proceedings under FIAA is a profit-driven administrative offence established by a final administrative order, where the profit from such offence exceeds BGN 150,000 (EUR 75,000) at the time it was obtained and which may not be forfeited under different procedures (Article 24 FIAA). What is characteristic of this hypothesis is the following: (a) only the administrative sanctioning body that has issued the administrative order is authorised to refer the matter to the Commission for Illegal Asset Forfeiture ("the Commission"); (b) the administrative offence must be indisputably established, that is by a final administrative order (this is the difference with the first hypothesis for which pressing charges suffices and it is not required that these charges are proven); (c) the offence must have enabled generating profits above BGN 150,000. The statutory threshold is apparently substantial and in most cases more than just one administrative offence is required to cross it. However a combination of administrative offences the aggregate profit of which exceeds BGN 150,000 is not a ground for starting proceedings; (d) the last condition is that the specific profit may not be forfeited under different procedures. The legislature deemed that it was not justified to set in motion the cumbersome and costly civil confiscation mechanism if a person committed a single administrative offence, even driving substantial profit from it. Only where all of the above-mentioned prerequisites are met, may proceedings under FIAA be initiated[71].

After receiving a notification from the competent authorities (prosecution office or an administrative sanctioning body), the respective territorial directorate launches a probe. The law does not specify the initial date of the probe but it must be assumed that it is the date when the notification has been registered in the respective territorial directorate. The probe may continue for up to one year but this period may be extended by up to six months. During this time the competent authorities must collect comprehensive data about the person's property, his or her usual and extraordinary expenses, the sources and specific amount of all of the person's income as well as all other relevant circumstances. After the probe has been concluded, the regional directorate's head (director) makes a proposal to the Commission to either extend the time for conducting the probe, or initiate proceedings, or terminate the probe and respectively the proceedings. What the probe must establish in practice is whether the person's assets have been illegally acquired or not. The illegal source is presumed if there is a significant discrepancy between a person's identified assets and her or his income. In value terms the mismatch is significant if it exceeds BGN 250,000 (EUR 125,000), according to FIAA Additional Provisions.

FIAA speaks of three types of decisions that the Commission takes: for starting proceedings (Article 27, para 4, item 3); for freezing illegal assets (Article 37) and for forfeiting illegal assets (Article 61, para 2, item 2). This is left behind from the former law which did not provide for express rules concerning the probes to be conducted. At present the decision to start proceedings is redundant. The Commission has interpreted the law in the sense that the legislature has not specifically envisaged a decision to request interim measures to preserve the assets. This is why the consistent practice of the Commission is to incorporate the two decisions in a single document. In other words acting upon a single decision the Commission launches proceedings and entrusts its chairperson with seeking with the court to apply interim measures. In the case at hand the probe was launched on 30 April 2013, and the decision to seek interim measures was adopted on 21 May 2014, that is **the Commission has exceeded by 21 days the statutory limitation of one year.** The data contained in the case file do not contain any decision of the Commission for extending the time for concluding the probe. It remains to be seen how the court will consider this procedural violation. By all means this omission on the part of the Commission may be used by the defendant and may lead to invalidating the Commission's decision and dismissing its claim. It must be noted that for the purposes of conducting the probe the Commission may rely only on official information, i.e. data provided by the competent government authorities. Banks are the only exception to this rule. Hence the Commission depends on these authorities and whether they would reply within the prescribed periods. The Commission may not receive data from other sources due to the confidentiality of information. At this stage of the proceedings keeping them a secret is the most essential issue. Even if delays in the work of the regional directorate may be justified, failing to adopt a decision for extending the time for concluding the probe prior to 30 April 2014 is not justified, and neither is noting this fact in the claim filed in court.

By 21 May 2014 the inspectors at the Burgas regional directorate submitted to the Commission a detailed reasoned report proposing that forfeiture proceedings be launched. The report makes inventory of all assets

[71] The legislature had envisaged yet another ground for initiating proceedings, namely upon a signal sent by citizens who had become aware that a certain person had committed an administrative violation falling under Article 24 FIAA. However this provision was declared to be unconstitutional by Decision of the Constitutional Court no. 13/2012. Currently citizens and civil organisations may not approach CIAF. Even if they do send a signal to the Commission, it may not initiate proceedings. What it could do is request information from the competent authorities and start proceedings if it receives back an official notification.

acquired by the person in question over the time period covered by the probe, that person's usual and extraordinary expenses, public duties paid and obtained income. The data presented per year. The assets were objectively valued by external experts, certified valuators.The following omissions in the proceedings attract attention:

a) Each asset is presented with its open market value at the time the asset was acquired. Pursuant to Article 69, para 1, "Illegally acquired assets shall be appraised in terms of their actual value at the time of their acquisition or alienation", while paragraph 2 reads that "**Where it is established that that the price indicated in the ownership papers is not the price actually agreed or there is no price mentioned therein,** the assets shall be appraised as of the time they were acquired or alienated in the following manner: real estates and restricted corporeal rights in terms of their open market value; ... vehicles in terms of their open market value". The systemic interpretation of these provisions shows indisputably that the legislature's idea has been that the price indicated in the papers for transfer or alienation of property should be challenged. Only then it is possible to proceed with open market appraisal. The case file does not contain any evidence that the inspectors at Burgas regional directorate made any efforts whatsoever to prove a discrepancy between the price indicated in the ownership papers and the one actually paid. No evidence to this end were furnished, be it written evidence, bank transfers etc. It is highly probable that in case of a future peremptory plea filed by the inspected person, the court finds the Commission's action unjustified and the property owned by him or her legal. If property transactions carried out by that person were appraised in terms of contract price and not market value, the discrepancy between purchase price and sale price would be reduced to BGN 218,186, or approximately BGN 30,000 (EUR 15,000) below the statutory threshold.

b) In 2006 the National Revenue Agency audited the person in question. The audit results were laid down in a certificate of audit whereby the competent authority established that the funds for the real estates acquired by the end of 2004 had been granted to the inspected person by his parents and his mother's brother. The certificate of audit is final and constitutes an official document. The inspectors at Burgas regional directorate and the Commission members concluded that the proceedings under the Tax and Insurance Procedure Code were not reliable and the findings made by the tax authorities were not credible and could not stand as evidence for the Commission. Such an approach is extremely dangerous as it leads to direct confrontation between government authorities, one doubting the quality of the other one's work and refusing to endorse the issued document as an official one. This type of conduct could not but affect citizens as well: if the State fails to acknowledge, without any specific reasoning, the probative value of a document issued by it, natural persons may also do so. Furthermore, if such a hypothesis serves the Commission in the particular case at hand, what will happen if the National Revenue Agency establishes a particular mismatch? And what will happen if the Commission chairperson issues an administrative order for a profit-driven administrative offence where the profit exceeds BGN 150,000? Will the Commission refuse again to acknowledge it? This double standard is unjustified and counter effective for establishing and maintaining the rule of law in the state. It should not be tolerated and it should not be applied by government authorities, let alone recognised by the judiciary.

c) There are some technical errors in the case file, apparently left behind from former case files. For example page 23 reads that "The value of the future claim is [...]". No such claim exists. It is the forfeiture decision that specifies the value of the claim. Apparently this is something left behind from the interim measures decision which is taken with a view to filing a future claim.

d) The case file mentions that an expert witness, Mr. Atanas Atanasov, has assessed the market value of the property at the time the latter was acquired, and respectively at the time the claim was filed. According to the invitation extended to the inspected person to acquaint himself with the documents in the file, this notification was sent by Atanas Atanasov, an inspector with the Commission for Illegal Asset Forfeiture. We do not avail of specific data in order to be absolutely sure that this is a mere coincidence in the names of the expert witness and the Commission inspector; however this is hardly probable. The expert witness should be a person entirely foreign to the case in order to guarantee his or her impartiality. No appraisal would be objective if the appraising person is in any labour or service relations with the assignor. This should even be treated as a ground for recusal of the expert witness. It cannot be convincingly claimed that this is a procedural violation or omission but either way it casts doubts over the appraisals made in the decision.

e) The Forfeiture of Illegal Assets Act does not expressly specify the manner of acquisition of a property that would deem that property illegal. The legislature's logic must have been that only proceeds of crime are subject to forfeiture, i.e.the funds with which the property has been acquired are of an illegal source. This should mean that for every particular inspected period, for example one year, the Commission should consider whether the inspected person availed of income sufficient to acquire the property in question or not. In the case at hand the inspectors have not run such a parallel; they compared year per year the income and expenses of the inspected person and checked how these match. It is clear to the side observer who is not involved in the probe that some omissions have been made. For example section 1 entitled "Income, revenue and other sources of financing" on page 23 of the decision to file a forfeiture claim mentions only one

sale of a vehicle, in market value terms. No evidence has been collected (or at least there is no evidence to that end enclosed in the case file) that the inspected person's parents' income has been probed into. If the National Revenue Agency data indicates that the inspected person has received donations from his relatives over the inspected period, the Commission, even in the event it does not trust this data, should have checked it. No tax declarations of the parents have been enclosed, or any bank documents to ascertain whether sums have been transferred or not. These bank documents would have made two things clear, namely whether the mother has made donations to her son; and whether any money has been paid for transferring the property and if so, to what amount. It cannot be safely assumed that the inspected person has paid the market value of the acquired real estates unless evidence to that end is presented. It is a usual practice for parents to transfer real estates to their children where the purchase and sale are simulated, and the donation is made under disguise. This is done in order not to violate the other heirs' right to a reserved part of the inheritance since a transaction is harder to challenge. It is mandatory for the Commission inspectors to make the respective checks as this would be the main venue the defence would take in a court trial.

This analysis of the case file demonstrates that Burgas regional directorate inspectors have not taken all required action to guarantee the outcome of the proceedings at this very stage. One of the basic advantages provided for by FIAA is the 'surprise effect', i.e. the inspectors have much more time than the defendant to prepare for the trial. The first stage, the probe, is conducted under secrecy. This gives a longer start to the Commission which has 12 months to conduct all possible checks. The inspectors should not act as defence counsels of the Commission, i.e. to seek forfeiture claim at any price. Their work is much closer to the one of the prosecutor. They need to elucidate all facts of the case and submit to the Commission only those cases of which they are positive are well founded. The Commission members do not review documents (sometimes hundreds of pages) themselves and they rely on the inspectors' opinion. This is why the inspectors must check all facts and circumstances of which they are aware, such as the donations and the real estates transferred by the parents in the particular case at hand.

These imperfections in the proceedings may well stem from the law itself and in particular Article 17 FIAA which stipulates that members of the Commission and heads of regional directorates (directors) are not financially liable for damage inflicted in the course of discharging their duties unless damage is the result of intentional publicly actionable offence. Thus they are exempted from liability in relation to any potential recourse claim under the State and Municipality Liability for Damage Act. This latter act relates to hypotheses where the respective state or municipal bodies shall be financially liable for pecuniary or non-pecuniary damage inflicted by their officials as a consequence of their unlawful acts, actions or omissions. The Commission for Illegal Asset Forfeiture, as a legal person, is liable under the State and Municipality Liability for Damage Act as well. The particularity in this case is that in practice FIAA prevents a possible recourse by the state in relation to guilty officials. To allow for recourse it must be proven that their action or omission bears all the elements of a particular offence in one's official capacity. Such a solution of the legislature is dubious. There is no logical reason for these bodies to be liable in a different manner and to be spared the financial liability typical for any official or citizen. This reduced type of liability apparently affects the quality of their work as well. Signing declarations for lack of conflict of interest or a possible (self-)recusal does not sufficiently guarantee their independence. And even if it did, these declarations could in no way act as a stimulus for a fully committed discharge of their duties.

f) Despite the lack of specific legal provisions and the reduced liability for Commission members, nothing precludes that the Commission Rules of Procedure envisage, like the ones of the Audit Office or the Commission for the Protection of Competition, that a member of the Commission follows progress made in certain cases. Such a distribution of duties, informal as it may be, was endorsed under the former Forfeiture of Criminal Asset Act (repealed), at the onset of setting up this government authority. Then every member used to monitor progress on cases assigned to the respective regional directorates. Now, to rule out lasting arrangements that could be viewed as a corruption prerequisite, case files may be distributed randomly among members of the Commission who will be tasked with following closely the evolving proceedings. This would enhance the work of the inspectors and in due course, under an increased in-house supervision, it would generally improve the quality of case work. In this way Commission members would have a genuine and comprehensive oversight on the work of the Commission.

General assessment of this stage

The work carried out by the regional inspectors is truly voluminous. It does not become clear from the Commission decision how many and who the officials who have worked on the case are. Some of the enclosed documents point to basically two officials. Despite the voluminous work done, this review has pointed to some essential defects in the proceedings such as delays in conducting the probe without a due decision extending its time period; or failure to comply with an official document issued by another government authority

within its statutory powers etc. There is no data in either the case file or media publications that deficiencies were due to corruptive practices or conflicts of interest. Most probably this is a practice that the Commission members apply in relation to their subordinate directors and inspectors. It is mandatory for the Commission to carry out genuine economic analyses. The studied case does not call for a detailed analysis (since the inspected person did not control any legal persons), not that such was made. It would however facilitate the work of the Commission and the court in the trial phase and would rule out cases where the inspected person does not possess illegal assets within the meaning of the FIAA (i.e. assets for which a mismatch of more than BGN 250,000 is established). The inspectors should carry out probes also in relation to data contained in documents other than official checkups as well as such acquired through other sources. The legal work on the case is evident but the quality of the economic work calls for a number of questions. Supervision by a Commission member could indeed enhance the quality of the work done.

2. Freezing of assets

According to FIAA the initiative for imposing interim measures falls on the Commission. This is logical since in judicial proceedings the government authority appears as the claimant. In the case in question the proceedings concern a cautionary judgment. This is why it is absolutely mandatory to keep it confidential until the respective interim measure has been registered and the debtor has been notified respectively. The Commission has endorsed a practice in this relation, namely to issue one document with two operative parts, one for launching proceedings, and one for seeking to impose interim measures. The application for interim measures is filed in court the very same or next day. Interim measures are imposed by a ruling subject to immediate execution; the ruling may be challenged before an appellate court. The law requires a "well-founded supposition that the property has been acquired through illegal activity" as a procedural admissibility prerequisite. Interim measures may be applied to all moveable and immoveable property falling within the estate of the defendant in the cautionary judgment, including receivables from different debtors.

The analysis of the case at hand brings us to some discrepancies between the law and the state at play. The materials in the case file show that the Commission took a decision to launch proceedings on 21 May 2014, while the interim measures were granted by the court on 26 May 2014, i.e. after two working days. Even if we assume that Burgas regional directorate inspectors could not file their claim on 21 May 2014 for purely technical reasons such as the distance between the two cities (the Commission meets in Sofia, while the competent court is Burgas District Court, there is no objective explanation for the lapse of the next two working days. Such an omission allows the inspected person, especially in case of information leakage, to carry out the respective dispositions with his or her assets in part or in whole, and thus substantially to impede the work of the Commission and the court. With its first ruling the court granted one month to the Commission to file its application; this term was then extended by three months by a new ruling of 29 May 2014. The reasons of the Commission or the court are not clear as no copy of the requested extension has been presented, while the court ruling only states that the request is justified, without any comments on the merits. This is why no analysis can be made here. The Commission actions after interim measures were granted are summed up by the mandatory service of a declaration allowing the persons involved to acquaint themselves with the case materials. If these persons avail themselves of the statutory possibility to protect their rights at this stage, they may refer to evidence concerning the source of their income and/or submit such evidence to the Commission. The Commission then must study the objections raised and the submitted evidence and decide whether to seek forfeiture or to terminate the proceedings. This is usually the reason to request a longer term for filing the application as at the time interim measures are granted the declaration has not been served yet and the Commission does not know which course the proceedings will take.

Unlike the repealed law, the Forfeiture of Illegal Assets Act provides for an individual section governing management of frozen assets. The principle is that attached property is left for safe keeping with the inspected person or with the person keeping it at the time the interim measures are granted. If the Commission deems it necessary, it may leave the property with a specially assigned person to safe keep it at the expenses of the plaintiff. This is similar to the former regulation. The new element is the express provisions to leave different types of assets for safe keeping with respective institutions. For example moveable property of historic value must be left with the National Museum of History or another museum; moveable property of scientific value must be left with the National Library, the Bulgarian Academy of Science or a university etc. To that end Commission officials must inspect the property, i.e. they must enter the residence of the inspected person in the presence of Ministry of Interior officers and witnesses and search for objects of cultural, historic or scientific value. Currently only checkups are made with banks to establish whether a person has concluded an agreement for the use of a safe deposit box; such safe deposit boxes are opened in the presence of the respective persons. By exception the Commission inspectors search the place itself. It should be borne in mind that often the inspected persons have a safe at home and keep there weapons, valuables, etc. It is recommended that such searches and inspections are carried out as well, all the more that the law expressly

provides for these. There is no data in the case file in question that the inspected person's residence was searched.

The materials in the case file (the collected tax data on pp. 7 and 8 of the application) show that the inspected person used to lease a real estate. There is no data that Burgas regional directorate inspectors checked whether the apartment was leased in 2014 as well. If that was so, they should have sought attachment of the inspected person's receivables and serve the debtor a distress warrant. In practice if the real estate in question appears to have been acquired through illegal activity, the rent paid appears benefit within the meaning of the law and hence is also subject to forfeiture. Even if these are not subject to forfeiture, the application concerns also funds from the sale of property, which funds are currently not available. This is why in order to guarantee its receivables, the Commission should logically and naturally seek attachment of the inspected person's receivables. No such action was taken in the case in question.

The law allows the Commission to sell certain goods. These are firstly goods that can significantly depreciate during the time of safe keeping and whose safe keeping is rather costly. This provision has not been applied so far and will hardly ever be applied. It is not applicable in practice due to the cumulative requirement that the goods must depreciate fast and their safe keeping must be costly. Safe keeping information technologies is not "costly", while these depreciate extremely fast. This is why IT technologies are left outside the scope of the law. It is questionable how costly the safe keeping of motor vehicles is. Secondly, sale prior to a forfeiture order is related to goods that are liable to spoiling such as goods of biological.

General assessment of this stage

In the particular case no violations of the law have been done by the Commission inspectors. They tried to serve the declaration under Article 57, para 1 FIAA (Burgas regional directorate inspectors tried two times to serve the declaration by post) and to allow the inspected person to get acquainted with the collected case. The inspected person refused to obtain the declaration and to get acquainted with the case file. According to the law this is a right that the inspected person enjoys, not a duty, hence not exercising it cannot be interpreted to his or her detriment. Failure to serve the declaration under Article 17 of the repealed law and omissions or mistakes in the declaration respectively were essential as they reversed the burden of proof: the inspected person had to prove the legal source of his or her assets, instead of the Commission proving the assets' illegal source. Under the Forfeiture of Illegal Assets Act currently in force it is expressly stated that this is not the case.

However there are some omissions in the work of the Commission. There is a delay in seeking interim measures. It has been stated already that expediency at this stage of the proceedings is essential as it helps keep the proceedings secret and prevents the inspected person from disposing with the property. A delay of two working days has been incurred in this particular case (four days otherwise), during which time the inspected person could carry out transactions at ease and have them registered by a notary.

Another omission is not checking up whether the inspected person continued to lease his property and those receivables were not attached. Even if there had been no such receivables, i.e. the inspected person had not leased his property, there is no such data in the case file (of any checkups being made to this end), which casts doubts about certain omissions in the proceedings. Next, Burgas regional directorate inspectors did not search the property after interim measures had been granted. They should have visited the property, search it, seize goods, seek distress warrant and turn the goods over for storage in the respective institutions. No action was taken (there is no data to this end in the case file) to turn over a vehicle (Audi A8, initial registration of 1 October 2003) for safe keeping by another person. Leaving the vehicle in the possession of the defendant in forfeiture proceedings could cause damage or destruction of the moveable property.

There is no data in the case file that the competent officials inspected the vehicle and turned it over to the inspected person with a protocol establishing the current condition of the vehicle. In this way a deterioration of its condition could not possibly be established.

3. Trial for forfeiture of illegal assets

The law provides for a three month period from granting interim measures by the court to bringing an action for forfeiture of illegal assets. During this period the Commission must serve the declaration to the inspected person and allow him or her to get acquainted with the materials in the case file and to refer to or submit evidence. Following the action taken by the inspected person, the inspectors at the regional directorates must study and analyse the new evidence in order to decide what recommendations to make in their report to the Commission: to bring an action for forfeiture or to terminate the proceedings.

Subject to forfeiture under FIAA are illegal assets of the inspected person. Pursuant to Article 63, para 2 FIAA, these include the following: personal property; property acquired jointly by the spouses or the cohabitants; property belonging to persons under age; property belonging to the spouse or cohabitant, regardless of the modality of property relations. In addition, subject to forfeiture is gratuitously

transferred property, onerous deeds where the other party is mala fide (i.e. it knew or could have known of the illegal source of the assets), as well as property that is transferred or acquired through a controlled legal person. In all other cases subject to forfeiture is the equivalent of the market value of the alienated property.

In this particular case the inspected person is not married and there is no data that he is cohabiting with another person; he has not recognised any natural children and there is no data that he is controlling individually or jointly any legal persons. This s why subject to forfeiture is his personal property and the value of the alienated property. It is questionable whether property transferred by the inspected person's parents to him is subject to forfeiture too without having studied in depth the origin of this property. If these are real estates acquired by the related third parties immediately before the property was alienated, then most probably they belonged originally to the inspected person and the preceding transactions were colour of title. However, if these real estates are inherited or were acquired well back in time, their illegal origin can hardly be justified.

Again the Commission brought the action after expiry of the statutory time limit. According to the ruling of Burgas District Court of 29 May 2014, the time limit for bringing the action was extended by two months and expired on 26 August 2014. The Commission brought the action on 18 September 2014 or almost a month later. Pursuant to Article 74, para 4 FIAA "the court shall withdraw attachments *ex officio* or upon a request to that end by the interested party in case the Commission fails to furnish evidence that it has brought the action within the statutory time limit". It is not clear why the court did not act *ex officio* to withdraw the attachments but there is a considerable risk in that regard. This is the second time that the Commission fails to respect the statutory time limits in these proceedings.

Bringing its action, the Commission did not ask for any evidence to be produced, such as expert witness assessments of the property. It is very probable that the assessments enclosed to the case file in the pretrial phase were made by an inspector at Burgas regional directorate, which casts doubt on their objectivity. Apparently (since there is no data to this end in the case file) the Commission is waiting to see whether the inspected person will challenge these assessments or not. If he does not challenge the assessments, the court may endorse the assessments made by the Commission. On the contrary, if he does challenge them, costs for new expert assessments will be brought by the defendant.

At present no analysis of the trial phase may be made due to lack of information. The action was brought in court on 18 September 2014. The court must initiate a case and publish a notification to that end in the State Gazette. The low provides for three-month period from the moment of notification publishing to the first court hearing, so that third interested parties who allege property rights or other rights in relation to the property of the inspected person may bring their claims to court. This period could not expire before 26 December 2014 (in purely technical terms initiating a case and publishing a notification to that end in the State Gazette cannot take place earlier). This is the shortest possible period and it is very likely, although there is no data about it in the case file, that it has not yet expired (as of January 2015). No evidence in this regard has been presented by the Commission; no reply to the action has been presented either, in case the defendant filed such. There is no data that a first hearing has been convened in the case. This is why at present no analysis of the trial phase is possible.

Summary assessment of this stage

Presently it is not possible to make a comprehensive and detailed analysis of the trial phase of the illegal asset forfeiture proceedings. No court hearings have taken place, respectively there are no records to serve as a basis for assessing the work of the Commission. The actions taken so far and secured by steady information indicate two problems. The first one concerns the expired time limit for bringing the action. The delay of almost a month is a ground for the future defendant to seek withdrawal of the attachments made. We leave alone the fact that the court should have withdrawn these attachments *ex officio* but failed to do so. It does not matter who is the defendant and who is the plaintiff in a case. The law provides for an express obligation of the court and the latter enjoys no discretion how to proceed in such a case.

The second possible defect is that the Commission did not study (or at least there is no such data) the origin of the property transferred by the inspected person's parents, in order to make a well-founded proposition that it is of illegal origin. The purpose of the law is not to forfeit all the property of a person but only this property which is of unlawful origin. It does not become clear from the case file whether the defendant's inaccessible assets have been left aside. FIAA expressly lays down that inaccessible assets are not subject to freezing. A fortiori they should not be subject to forfeiture even under the special law (under the Civil Procedure Code inaccessible assets are never subject to forfeiture).

4. Management and disposal of forfeited assets

At present no proceedings under FIAA have been completed with a final judgment subject to execution. This is why it is not possible to analyse the management and disposal of forfeited assets stage.

OVERALL ASSESSMENT OF THE CASE

The Commission acted lawfully and did not exceed its statutory powers. The case file is not voluminous and there is a good reason for that: the inspected person has hardly turned 30 years of age, which shortens the period of the probe; he is not married and there is no data that he is cohabiting with another person; the civil registers do not reveal any children of his; the inspected person has no shares in and has not transfered any property to legal persons, nor is he registered as a sole trader. For all these reasons the scope of related persons is very limited, and the inspected period is 10 instead of 15 years. In view of all these facts it is surprising that the probe took 21 extra days beyond the time limit, with no decision to that end. Equally surprising is exceeding the time limit set by the court for bringing the illegal asset forfeiture action. The inspected person did not fill in the declaration under Article 57 FIAA, nor made any objections or produced or offered new evidence. This is why the inspectors at Burgas regional directorate did not have to take any extra investigative action. The action should have been brought in court by 26 August 2014 and not on 18 September 2014.

Deficiencies are found in all three stages of the proceedings. Their particular impact on the outcome of the proceedings will be established and analysed in the future. At present it should be noted that there are no reasonable grounds to justify the inspectors' conduct.

Media coverage of the Commission's work is also scarce. According to the online publications, the Commission provided very limited information, which boils down to pure statistics. One of the major purposes of this law is prevention and a public perception of the rule of law and justice done. The general public has no way to know the work of the Commission unless the latter shares this information with the media in an accessible manner. In this regard the first years of the Commission's work received much more media attention, and this was the main task of the PR department.

The analysed case received media attention only in the beginning. However, the presented information was identical and purely statistical. This is not good for the Commission as it does not reveal the complexity of its work. The general public cannot possibly have a clear idea of the scale of the Commission's work and the results it may achieve. Thus the very purpose of the law is prevented, namely the perception of justice done and trust in the institutions. The PR department must provide information about each and every of the Commission's major decisions in relation to cases followed by the media. More detailed information has to be provided regarding the type and value of assets, connections of the inspected persons with the underworld if such have been established, notorious persons related to the inspected one whose property falls outside the realms of the law etc. In this way a commitment will be cultivated in the general public, an understanding for the Commission's work will be built and over time the belief that the law will prevail over crime will probably take firm roots. These objectives are largely attainable, but only with the active involvement of the Commission.

RECOMMENDATIONS

Some legislative amendments in the regulation are required. These concern every stage of the proceedings:

- The number of decisions that the Commission takes in the framework of every proceedings must be clearly laid down.
- To guarantee fair forfeiture, the hypotheses where the inspected person is acquitted in criminal proceedings must be laid down. Forfeiture no longer requires a final conviction and an indictment suffices instead. The law remains silent however what happens if in the course of forfeiture proceedings the indictment is revised and no longer complies with the requirements set for in FIAA or the person is acquitted because someone else committed the offence, for example. Under the current regulation this is not a ground for terminating civil confiscation. Differences in the hypotheses for terminating criminal proceedings should be taken into account.
- A procedure could be envisaged for assigning a member of the Commission to supervise the work of the inspectors throughout the proceedings. In this way the Commission members would be more involved with the work of the Commission and the inspectors would act more conscientiously. Assigning a Commission member to a particular regional directorate is not a good idea as this could lead to establishing relations that facilitate corruptive practices.
- The law must clearly specify which particular assets of the inspected person are subject to forfeiture. The BGN 250,000 mismatch is currently established in relation to the entire property that falls within the inspected person's estate or has been part of it. Some of this property however could have been acquired through legal means and it should not be subject to forfeiture. Any mismatch should be established after the estate has been reduced by the legally acquired property and the one acquired gratuitously (unless the Commission establishes a colour of title).
- The procedure for disposal of the forfeited assets should be eased and shortened. At present it is very cumbersome and time consuming, which leads to depreciation of property and lowers the public benefit.

In addition to the above stated legislative amendments, some reforms should be made in the work of the Commission as well:

- The inspectors should be carrying out genuine economic analyses and not just simple arithmetic that bears no point whatsoever to the source of assets.

- The inspectors should exercise in full the powers they have been granted by law. There is no impediment, once interim measures have been granted, for the inspectors to enter the property of the inspected person and search it, seizing goods where appropriate.
- The inspectors should be disciplinarily liable for every unjustified failure to discharge their duties. It is unacceptable that in a relatively easy case time limits have not been respected twice, a fact of considerable significance, and there is no data of any disciplinary liability assumed.

In the event that Commission inspectors carry out expert assessments, this should be expressly stated because the inspectors' impartiality is tarnished.

ANNEX 3. THE CASE OF VILLA BERCETO, BERCETO, PARMA, ITALY

SEPTEMBER, 2014

There are many good reasons to make this case of illegal assets confiscation a case of study. It represents indeed one of the most publicly exposed examples of confiscated assets of the last years in Italy, especially for the highly positive and rather unusual use of the asset after confiscation. The asset is a fairly wealthy villa, which was owned by Vincenzo Busso, a real estate agent working in the Milan area. In 2009 he was arrested for being part of a bigger criminal organization affiliated to the Camorra and headed by the criminal Luigi Siciliano. In order to allow for a better comprehension of the case, it is important to make clear what Camorra exactly means. Camorra is one of the biggest Italian criminal organizations and is traditionally located in the region of Naples, called Campania. The Camorra, as every branch of the Italian Mafia, can rely on a widespread network of affiliates, not only in the Southern regions of the country but also in the North, as this case visibly shows. From a business point of view, such criminal organization deals with all kinds of goods and services: from international drug trade to prostitution, from enterprises bailout to money laundering and disposal of hazardous waste.

In the case dealt within this study, Busso's role was that of managing the money laundering of the criminal group by reinvesting dirty money, mostly coming from international drug trade, through the purchase and construction of estates all over Italy. He was indeed chairman of the estate agency/building construction company G.I.L.A Srl, the agency to which Villa Berceto also belonged.

Although the first part of the confiscation procedure was also fairly covered by the national news, it was indeed thanks to the phase of confiscated asset management that the case experienced a climax in popularity. The main newspapers in Italy covered the news of this mansion virtuously reused as public library, fitness centre and available for educational courses and events on the topic of promotion of the culture of legality[72]. Such case was definitely acclaimed as an example of truly good practice in the management of illegal confiscated assets.

PHASES MONITORED

1. Identification of illegal assets

The law provisions that have been the ground for the confiscation of Villa Berceto are:

- ex art. 321 of the Code of Penal Procedure;
- art. 2 ter, par. 2, Law 575/65.

According to the Italian legislation, the phase of preliminary identification and investigation of illegal

[72] http://www.ilfattoquotidiano.it/2012/01/04/berceto-villa-confiscata-camorrista-diventa-centro-civico-bimbi-anziani/181542/; http://video.repubblica.it/edizione/parma/berceto-%C2%AD%E2%80%90villa-%C2%AD%E2%80%90confiscata-%C2%AD%E2%80%90alla-%C2%AD%E2%80%90camorra/66410?video=&pagefrom=1; http://parma.repubblica.it/cronaca/2011/04/15/foto/berceto_la_villa_confiscata_alla_camorra-%C2%AD%E2%80%9014979390/1/.

assets is led by the Italian police (often specific branches like the Carabinieri or the Guardia di Finanza) and the competent State Attorney's Office. Indeed, in the case of Villa Berceto, the two institutions involved in this phase of the confiscation procedure have been:

- the Antimafia District Directorate (ADD) of the Milan District Attorney's Office (Judicial Police Carabinieri), that has led the investigations on the properties of the estate agency G.I.L.A Srl, whose major stakeholder was Mr. Vincenzo Busso;
- the State Attorney of the Milan District Attorney's Office, Mr. Musso.

The actual length of the phase of identification of Villa Berceto is indeed not easy to estimate, since the researches about the villa have been part of a much wider investigation, called Operazione Pavone (Peacock Operation), and performed by the Carabinieri of the District Attorney Office of Milan. Such maxi-investigation lasted several years; it is hard, thus, to identify the exact moment when the checks on Villa Berceto started, nor if there was any speed-up or delay in the procedure. What it is known is that on July 27 2009 the Milan antimafia district directorate delivered to the State's attorney Mr. Musso the note that started the preventive confiscation procedure, based on the law provision ex. art. 321 of the Code of Penal Procedure.

No information about the value of the asset in this phase of the procedure is available; therefore, it is unfortunately not possible to report any kind of methodology used in the evaluation of the asset.

Furthermore, this phase of the confiscation procedure does not involve any statute or rule of procedure established to contrast the conflict of interest. Also within the institutions involved in this phase of the procedure neither laws nor procedural regulations exist with the aim of contrasting the conflict of interest. However, a recent judgment of the Court of Appeal has shed some light on the topic: the Court has affirmed that, in virtue of the deontological duty of the Attorney, the State Attorney who is in a condition of family relationship with the investigated part should take a step back from the prosecution and leave the place to another State Attorney.

From the point of view of litigations of the investigation results, no available information was provided about occurred challenges to the outcome of this phase from the side of the person against whom the confiscation procedure was launched.

Since it was not possible to get the information about this phase from the very main actors of the investigations, it is hard to judge whether the final decisions concerning the results of the inquiry matched the preliminary results.

The little information reported about this section of the confiscation procedure has been gained through an in-depth research on digital media and thanks to the help of the judicial administrator of the case, Mrs. Laura Pesce. Although she was fairly exhaustive for much information concerning the case, she could not provide the necessary info about the judicial phase, in part because the Italian law does not allow for a public disclosure of penal procedures and in part because she simply did not know how the case exactly ended after her mandate was over.

Overall assessment of the phase

When judging this phase according to the parameters offered (integrity, transparency, efficiency, etc.), it is important to keep in mind that the only information available has been provided by a single person, the judicial administrator, who has clearly not taken part to the whole procedure of investigation. Indeed, even that information did not provide a complete overview of this phase. No info was available for the part concerning the Police.

The lack of significant information corresponds then to a lack of transparency and, on the other side, it makes it hard to judge the integrity and effectiveness of the phase.

Recommendations

As for most of the following phases of the confiscation procedure, the main recommendation that can be suggested is twofold: **first, the access to information and details about every confiscation procedure should be allowed through a transparent and easy-to-use system of public information. Second, in order to do so, an overall restructuring and simplification of the confiscation procedure should be implemented.** Indeed, only by creating an *ad hoc* system of confiscation that could avoid the long periodization and complexities of the traditional Italian judiciary system, it would be possible to pursue an effective and fruitful monitoring of the whole procedure. The National Agency for Forfeited and Confiscated Assets (ANBSC) was created in 2011 with the aim of unifying and rationalize the confiscation process, but until now it has not begun to function properly yet.

2. Preservation of the illegal assets

The phase of precautionary measures in Italy involves many institutions. In the case of Villa Berceto, they are:

- the Judge for Preliminary Investigations (JPI), Mrs. Donadeo, of the Milan District Attorney's Office;
- the State Attorney (SA) of the Milan District Attorney's Office, Mr. Musso;
- the Antimafia District Directorate of the Milan District Attorney's Office (Judicial Police Carabinieri);

- the Independent Department of Preventive Measures of the Court of Milan;
- the Judicial Administrator Mrs. Pesce, named by the JPI Donadeo.

During this phase of the confiscation process, the judge for preliminary investigations and the State Attorney generally keep following the case in order to later ask the Court to release the forfeiture decree. Furthermore, the JPI nominates the judicial administrator that will manage the administrative part of the illegal asset confiscation.

As first task, the judicial administrator examines the asset and estimates its current value. Starting from this material, he/she develops an administrative plan to manage the asset during her/his mandate. Within 30 days from his/her nomination, the administrator reports all the information gathered and the administrative plan to the judge he/she refers to, in order to find an agreement on the management of the confiscated asset.

Indeed, after the SA Mr. Musso passed the deeds suggesting the forfeiture of the asset Villa Berceto to the JPI Mrs. Donadeo, the JPI went ahead emanating a decree of forfeiture against the assets owned by the G.I.L.A Srl, of which Mr. Vincenzo Busso was the main stakeholder. Villa Berceto was included within these assets.

With the decree no. 51746/05 RGNR and no. 1/06 RGGIP, emanated on 6/10/2009, the JPI Mrs. Donadeo set forth the forfeiture of the asset and nominated Mrs. Laura Pesce as judicial administrator of Villa Berceto. Mrs. Pesce soon conducted a detailed evaluation of the asset in collaboration with the Milan ADD.

Based on the information provided by the proponent institution to the Court, on February 2010 the Independent Department of Preventive Measures of the Court of Milan deemed the conditions for the confiscation of the asset fully existent and therefore, it emitted the confiscation decree according to the art. 2 ter, par. 2, law 575/65.

The judicial administrator Mrs. Pesce, in collaboration with the Estate Market Observatory, conducted the evaluation process. The value of the mansion was estimated to be around 550,000.00 EUR. The asset is burdened by a mortgage of 380,000.00 EUR. By the date of the confiscation, the residual mortgage was 295,077.31; this amount is still impending.

In practice, this phase lasted around seven months and no data are available about possible speed-ups and delays in the process. The information about the length of this part can be inferred from the date the SA Mr. Musso started the confiscation procedure on July 27th 2009 and the date the Independent Department of Preventive Measures emitted the confiscation decree in February 2010. These dates were in part provided by Mrs. Pesce in her report, and in part found on some documents concerning the case and available online, such as the "free of charge lease agreement" (which will be lengthily dealt within the next phases) and the agreement between the Town of Berceto and the Emilia Romagna Region.

From the point of view of preventive tools against conflict of interest applicable in this phase, the only legal dispositions concern the nomination of the judicial administrator (Antimafia Code, art. 3, header 1, title 9). The judicial administrator cannot be nominated if he/she results being in a family relationship with the person whose assets have been forfeited. In practice, the judicial administrator has claimed that she was not asked to declare anything in this respect.

No information is available about a possible challenge to the outcome of this phase by the person whose assets were confiscated.

About the way such information was collected, as in the previous phase much of it owes to the collaboration of the judicial administrator Mrs. Pesce, who passed the data through an email correspondence and a report she personally sent.

Overall assessment of the phase

Along with the fifth phase, this phase is considered to be one of the most transparent, efficient and effective. It was not easy to get the necessary information, but once she provided the info, it was easy to get a quite detailed overview of the phase, which proved to be transparent and effective.

Recommendations

Although the assessment of this phase is a fairly positive one, an important recommendation can still be drawn: all information about the case should be easily accessible to the public through some forms of paper or online data base. The accessibility of such important information cannot only rely on the personal disposition of one or more actors involved in the procedure.

3. Asset forfeiture judgment

The institutions involved in the third phase of the confiscation procedure, which is the phase of the judicial procedure of the case, are:

- the Judicial Courts involved in the confiscation procedure, until the Court of Appeal (Corte di Cassazione in Italy);
- the Judicial Accountant.

From the point of view of the duration of the judicial phase, the Italian legislation does not provide a

standard timeframe for the development of judicial proceedings; therefore, in this phase law determines no specific time limits. In order to have a clear overview of the length of the judicial phase, it is important to remember (as it has been suggested other times along the report) that the judicial phase has been parallel to phases 1, 2 and 4. **Indeed, the judicial phase has lasted a round three years (July 2009 – beginning 2013), and the trial has gone through all the judicial steps provided by the Italian judicial system.**

Unfortunately, the documents obtained by the judicial Courts do not provide the requested information about the number of court hearings concerning the case. The trial involving the confiscation of Villa Berceto went through all steps of judicial litigation, being all intermediate Court rulings challenged by the accused.

In detail, the first ruling of the Court (on date July 16 2010) sentenced Mr. Busso to 7 years of prison and a 7,000.00 EUR fine. Such ruling confirmed the confiscation of Mr. Busso's properties (within the G.I.L.A. Estate Agency), including Villa Berceto. As already maintained by the JPI Donadeo in the confiscation decree emitted on October 6 2009, the asset is confiscated on the ground of disproportion between the value of the asset and the salary of the accused and the evidence of illegal acquisition of the asset.

The second Court ruling (November 24 2011) confirmed the penalty for Mr. Busso and the confiscation of his assets because of the important role that they played in the criminal actions he was convicted for.

The third and final judgment of the last Court of Appeal (Corte di Cassazione) has confirmed the ruling of the previous Courts.

The Italian legislation does not provide any specific regulation to contrast the conflict of interest during the judicial proceedings of a case.

The information presented for this phase of the confiscation procedure of Villa Berceto has been gathered through a formal request of the documents to the Courts that managed the case. In the matter in question, it was the judge who ruled the case, Mr. Musso, to provide the necessary documents.

Overall assessment of the phase

The phase does not present any remarkable sign of inefficiency or lack of transparency. It is a deed that often the procedure to get such kind of documents can be long but in this case they were finally granted without any specific hitch.

Recommendations

The access to the documents concerning the judicial phase of the confiscation process is possible but nonetheless not smooth and easy. **A strong recommendation would address the need to convert all judicial proceedings into digital material accessible online.** Indeed, to date it is very hard to access online judicial proceedings, let alone for the civil rulings of the last Court of Appeal (the Corte di Cassazione). A fast renovation of the judicial documents data bases is therefore highly recommended.

4. Enforcement of the judgment, actual assets forfeiture

The authorities responsible for the phase of judgment enforcement are:

- the Judicial Administrator Mrs. Pesce;
- the JPI Mrs. Donadeo;
- the administration of the Town of Berceto;
- the Carabinieri headquarter of Berceto.

After the final confiscation ruled by the Court of Appeal, the confiscated asset should pass under the control of the National Agency for Confiscated and Forfeited Assets to Organized Crime (ANBSC). However, in the case of Villa Berceto, the phase of enforcement of the judgment, from which the phase of reuse of the asset has later started, was directly managed by the judicial administrator and the JPI Mrs. Donadeo, with the collaboration of the public administration of the town of Berceto, led by the Major Mr. Luigi Lucchi. The reasons why such peculiar procedure has taken place are mainly two:

First of all, there is a temporal annotation here to be made: when we talk of "enforcement of the judgment" for the case of Villa Berceto, we refer to the enforcement of the judgment of the first Court (or better, from that on, since all following Courts' judgments have confirmed the confiscation until the last degree of appeal). Indeed, after the ruling of the first Court, confirming the confiscation of the asset, the Major of Berceto Mr. Luigi Lucchi, showed great interest in collaborating with the judicial administrator and the judge to start the reuse plan of the asset as soon as possible. Such information was provided in part by Mrs. Pesce (in her report and her emails) and by Mrs. Silvia Gentile, employee of the cooperative Fantasia (the cooperative responsible for the management of the asset), with whom personal conversations and an interview occurred and lasted more than two hours.

As Mrs. Pesce writes in her report, in March 2011 the Carabinieri of Villa Berceto notified her the interest and will of the town administration to get in charge of the reuse of the villa. After that, and with the authorization of the JPI Mrs. Donadeo, the judicial administrator

stipulated a "free of charge lease agreement" with the Town of Berceto, allowing for the free leasing and the management of the villa by the local administration. Such contract was signed on March 22 2011 and is valid for six years. The contract is available online on the website of the Town of Berceto.

On the other side, the case of Villa Berceto did not follow the normal pattern of enforcement of judgment because the ANBSC, despite being later summoned by the Major Lucchi, was always absent in the confiscation procedure. In this regard, we have no information to judge whether the reason for such deficiency was due to a lack of resources or to the bad functioning of the institution.

From the point of view of the duration, this phase of the procedure has undergone a great speed-up, if compared with most part of confiscation cases (indeed, as mentioned above, the lease contract preceded the final confiscation of the asset). The major reason for the shortening of the general duration of this phase is mainly due to the virtuous behaviour of the local administration of Berceto, and especially the Major Lucchi, who strongly advocated for a fast and useful reuse of the asset. The inter-institutional collaboration put in practice during this phase (major, judge, judicial administrator) was reported as extremely useful and efficient by both Mrs. Pesce and Mrs. Gentile. Indeed, without such cooperative actions, the asset would have undergone severe damages. As Mrs. Pesce wrote in one of her emails, during the period the building was not used, it underwent a natural process of deterioration, making the initial monetary value of the asset decrease of about 50,000.00 EUR. In particular, as claimed by Mrs. Gentile during her interview, the hydraulic system was in very bad conditions, due to the winter cold that had made the water freeze and break the tubes. Furthermore, as usual for every building that is not used for some time, the facades had lost their original colour and water in filtrations was visible all over the external walls. Once the asset became temporary property of the Town of Berceto, the local administration provided for a general renovation of the building.

During this phase of the confiscation procedure, the Italian legislation does not provide any mechanism aiming to look for irregularities and check the work of the institutions involved in the enforcement of the judgment.

The access to the information concerning this phase have been provided in part by the judicial administrator via email and through a written report, after several requests; in part, the data have been gathered during an interview to Mrs. Silvia Gentile, employee of the social cooperative Fantasia and responsible for the management of Villa Berceto. Other information has been sourced from the internet, as in the case of the free of charge leasing contract and the agreement between the Town of Berceto and the Emilia Romagna Region.

Overall assessment of the phase

Despite being not much, the information obtained about this phase provided a picture of a transparent and efficient inter-institutional collaboration. It is indeed proved by the online public access of the two agreements mentioned above; therefore, this phase could be evaluated as a positive one from the point of view of the parameters provided.

5. Management of forfeited assets

The institutions responsible for the fifth phase of the confiscation procedure are:

- The local administration of Berceto;
- The Emilia Romagna Region;
- The Social Cooperative Fantasia.

After the lease contract assigned for six years the confiscated villa to the Town of Berceto, the local administration decided to manage it in collaboration with the social cooperative Fantasia. Furthermore, the administration of Berceto has reached an agreement with the Emilia Romagna Region to co-finance the renovation and the management of the asset during the first two years. Such agreement was signed on January 16 2012 and was renewed and integrated a year later. The documents of the agreement can be downloaded from the websites of the Municipality of Berceto and the Emilia Romagna Region.

In the 2012 agreement, the Regional administration provides funds for 120,000.00 EUR to the town administration with the aim above mentioned of renovating and reusing the asset; the 2013 agreement integrates such funds with further 20.000,00 EUR. In fact, this money represents only a small part of the total investment on Villa Berceto, which is mostly covered by the municipality.

Moreover, the agreements stipulate the put in practice of some activities, namely: renovation works on the building, the construction of a 40 kWp photovoltaic system on the roof of the villa, the creation of a public library inside the mansion, many social activities such as educational and training courses on legality and good practices in administration, and other courses and laboratories for adults and children.

In July 2013, the administration of Berceto has requested the ANBSC to finalize the acquisition of Villa Berceto. **Still today, the National Agency has not answered to the administration.**

In practice, most of the activities included in the agreements between the Town of Berceto and the Emilia Romagna Region have been implemented. In particular, nearly all necessary intervention to renovate the building has been carried out (often integrated with the precious help of engineers, architectures and plumbers who worked for free to contribute to the restoration); a photovoltaic system was installed and is used with success; one third of the house is today used as public library and contains an amount of volumes that definitely represents a great achievement for such a small town; one big room in the villa is being used as free fitness area for the citizenship; several events and courses have been organized on the topic of legality, sometimes in collaboration with Libera Parma (the local section of an important national-based NGO, Libera, which advocates for a tougher fight against organized crime and corruption). The house has an indoor pool that the administration would like to convert into a public swimming pool (which still does not exist in Berceto); unfortunately, however, they are currently facing many problems to adapt the pool to the public regulations for sport facilities, which did not apply before since it was a private pool. Finally, on the second floor of the house there are five bedrooms that are still under renovation and will soon become a bed & breakfast.

From the point of view of the duration of the phase, art. 48, par. C of the Antimafia Code states that the territorial institution to which the asset was assigned must communicate with in a year the destination planned for the asset. Such timeframe was fully respected by the administration of Berceto. This was made possible by the cooperation between the local and the regional institutions and thanks to the transparent and virtuous work of the town administration.

As in the previous phase, no law provisions to contrast the conflict of interest in this phase of the confiscation procedure are provided by the Italian legislation. However, the ANBSC should be in charge of checking on the institutions entitled to manage the asset, in order to guarantee the effectiveness and correctness of the procedure and avoid irregularities. However, the complete absence of the ANBSC in the process – for reasons that are still obscure – makes impossible such prescribed control on the institutions involved in the management of the asset.

Overall assessment of the phase

Although not all information was available, this is by far the most transparent and efficient phase, since it was and still is managed by a social cooperative and a very committed local administration that are truly satisfied of the work done at Villa Berceto.

Recommendations

The main recommendation for this phase concerns the activity of the ANBSC in regard to the management and supervision of the confiscated assets; its work should indeed be much more thorough, organized and transparent. However such institution is currently in a period of complete stalemate.
A second recommendation could be made: it would be a good practice for the institutions and companies involved in the management of the asset to draft and issue publicly available reports about the evolutions, improvements and successes concerning the asset that is being managed.

PUBLICITY AND TRANSPARENCY OF THE RESPECTIVE AUTHORITIES' ACTIVITIES WITHIN THE CONTEXT OF THE MONITORED CASE

As it was outlined throughout the phases' analysis, except for few cases the access to the necessary documents was obstructed by a clear lack of publicity and transparency of the work conducted by the institutions involved in the illegal asset confiscation. However, such deficiency in the system could hardly be representative only of the illegal assets confiscation procedure: it rather shed slight on the overall backwardness and lack of transparency that affect the Italian bureaucracy as a whole, and the judicial system in particular.

EFFICIENCY OF THE RESPECTIVE AUTHORITIES' ACTIVITIES WITHIN THE CONTEXT OF THE MONITORED CASE

From a general perspective, the activities implemented for the confiscation of Villa Berceto prove to be rather efficient. Among other reasons to maintain such judgment, one stands as the main indicator: the duration of the procedure. When compared with many similar cases, the confiscation process of Villa Berceto positively surprises for its short length (less than two years between the start of the procedure and the effective reuse of the asset). Despite not being able to first-hand examine all the phases through a direct contact with the institutions involved, the statements of the actors involved in the study show a very positive insight of the whole confiscation procedure of the monitored case.

OVERALL ASSESSMENT OF THE CASE

The conclusions that can be drawn by this case of study reflect those coming from the media and civil monitoring. Indeed, the picture shot by this analysis is twofold: a positive degree of openness and transparency in the last phases of the confiscation procedure and a totally chaotic and obscure situation for what concerns the chapters of investigation and judicial proceeding of the assets.

The case of Berceto is truly emblematic of this blatant contrast, that is unfortunately a general condition of the illegal confiscated assets management in Italy: on one side, a closed political and judicial system that does not allow the citizen to be part of the confiscation procedure and, more importantly, prevents the whole citizenry from getting a civic education about the topic of illegal assets confiscation; on the other side, a strong will coming from the population and few enlightened political characters to bring the confiscated assets to a new life and, more generally, to build and strengthen (a still weak) public awareness about corruption and organized crime.

Indeed, in the experience of Villa Berceto a major role was played by the Major of Berceto, Mr. Luigi Lucchi. In one of her emails, the judicial administrator Mrs. Pesce wrote: "Nothing would have been possible [for what concerns the last two phases] without the amazing commitment of Mr. Lucchi. I have been working as a judicial administrator since 1997 and very few times in my career I have seen such strong devotion to the common good in a politician. There should be at least 10,000 Lucchi in Italy..."

We were able to witness a similar commitment in the words of Mrs. Gentile, who has been managing the renovation and the reuse of Villa Berceto since 2012. In her interview, she depicted a community (that of the 2,000 citizens of Berceto) that wishes and works to rehabilitate a building that used to be the fancy shelter of a mafia affiliate and it is now a beautiful space of encounters, culture and civic commitment.

On the other side, the Italian State proves once again to deny every possible access of the citizenry to its gigantic and rusty system. In the case of Villa Berceto, the National Agency is indeed the big missing. Had it been a functioning institution, it would have been quite easier to gather information about the case.

Therefore in conclusion, the general opinion on the impact is that this case had and has on the Italian population that of a popular perception of an inefficient and little transparent State.

ANNEX 4. ANALYSES ON PENDING CASES IN ITALY

JANUARY, 2015

THE CASE OF THE LA.RA. SRL COMPANY (Motta Sant'Anastasia, CT, Sicily)

La. Ra. Srl is a Sicilian company whose work mainly focuses on planning, installation and maintenance of systems of diverse nature. Since it was founded, it could always rely on the works commissioned by the close USA military base of Sigonella. The company was confiscated in 1998 to the mafia boss Carmelo La Mastra and, since then, it has been under the control of the State, through the work of the National Agency for Forfeited and Confiscated Assets. Despite being once a very wealthy and dynamic business, in the last few years it has been losing all its competitiveness; as a consequence, many workers have been fired. Today, the La. Ra. Srl risks shutting down, causing a major loss of jobs.

This case was chosen for the monitoring of illegal assets management phase since it undoubtedly summarizes many interesting deficiencies of the confiscated assets management system in Italy. What is mostly remarkable is the fact that few years ago the employees of the company (well-aware of the probable shut-down and at the same time conscious of having the know-how) planned a project with a twofold objective: keep the company alive and give a new life to another, very close confiscated assets, to date still unused. Despite such great and realistic initiative, the local authorities of Motta Sant'Anastasia did not allow the project to be implemented, and the absence of the ANBSC in the quarrel let the project fail. Therefore, the company has been left without clients' commissions and will most certainly shut down soon.

The information on the management of the confiscated company have been gathered thanks to phone interviews and emails and documents exchanges with the current financial administrator of the company, Mr. Innocenzo Mascali and the investigative journalist Maria Grazia Sapienza, who has been studying the case of the La. Ra. Srl for many months.

PHASE MONITORED

Management of forfeited assets

The Institutions involved in this phase of the confiscation of the La. Ra. Srl have been:

- The State Property Office;
- The National Agency for Forfeited and Confiscated Assets (ANBSC)
- The Financial Administrators nominated by the ANBSC

After the definitive confiscation in 2001, the La. Ra. Srl company passed under the jurisdiction of the State Property Office, therefore becoming a "State-owned company". Later, when the ANBSC was created to replace the State Property Office in the management of confiscated assets, the La. Ra. Srl started being administered by the National Agency (2012), through the work of the financial administrators nominated by the Agency.

For the reasons that will be further explained, the La. Ra. Srl company has been able to keep its competitiveness on the market despite the confiscation from mafia. However, during the last four years the enterprise has undergone some major hardships that are leading it towards a definite closure. The financial administrator Mr. Mascali has provided that will follow through a phone interview and in particular through the sending of a complete set of official documents about the La. Ra. Srl and the issues it has faced during the last years.

Since the moment of final confiscation and the transfer of its administration under the State Property Office (2001) until 2013, the La. Ra. Srl could keep being a vital company in the field of high tech and systems maintenance thanks to the commissions coming from the USA military base of Sigonella (CT). Indeed, the USA military base had been relying for a long time on the La. Ra. Srl for such services and therefore these commissions after the confiscation can be seen as happened in continuity with the past. However, some years after confiscation, the company started having problems in getting leasing and financial aid from the banks, purportedly because of its dependence on the State (and therefore considered "not reliable"). To be sure, the investments were absolutely necessary for the renovation and progress of a company working in a field that is, by definition, focused on innovation.

Thus, well aware that the Sigonella base would not have renewed the commission on the works that were going to expire in 2013, the 68 employees of the La. Ra. Srl developed a new project in 2011. The project aimed at building a big sport and medical centre on the land that had been confiscated to the mafia member La Mastra together with the La. Ra. Srl company, but currently assigned to the town administration of Motta Sant'Anastasia (CT).

The project was very well accepted by the National Agency, which decided to let the La. Ra. Srl develop it and make the necessary land available to the company.

However, the then Major of Motta Sant'Anastasia, Mr. Angelo Giuffrida, strongly rejected this transfer of the land, claiming that the town administration already had other plans for its management.

After the major took such position, the ANBSC did not respond to any further call from the La. Ra. Srl employees about the development of the project, letting the proposition fail.

Moreover, during the last years the ANBSC repeatedly denied the possibility for the company to take part in the building of a big parking lot in Catania, a work that would have kept the enterprise active on the market. Also the Catania District Attorney, Mr. Giovanni Salvi, has many times publicly advocated for the participation of the La. Ra. Srl within the pool of companies working in the construction of the parking lot, claiming that such involvement would have also importantly contributed to raise the transparency of the whole construction project.

The financial administrator Mr. Mascali repeated several times during his interview how impossible it was for him and the employees to understand this behaviour of the ANBSC, which was and still is totally detrimental for the company.

After the end of the last Sigonella's commissions in 2013, the enterprise has started suffering from major current assets problems, leading to a fast closure. The impact on the staff was dramatic: from 68 working units, they were reduced to 43 in 2013 and to 24 in 2014.

In few months, the La. Ra. Srl will be definitively shut down.

THE CASE OF THE NON-PROFIT ASSOCIATION "THE STRENGTH OF SILENCE" (Casal di Principe, CE, Campania)

"The Strength of Silence" (La forza del silenzio) is the name of the non-profit organization founded by the policeman Vincenzo Abate, which has been occupying during the last six years a confiscated villa previously belonging to the Camorra boss Francesco Schiavone, called "Sandokan". Now in jail, Francesco Schiavone was one of the most powerful members of the Casalesi Clan in the region of Campania. Interestingly, only half of the villa was confiscated, while the other half is still occupied by the Schiavone family. In the confiscated half, the "The Strength of Silence" provides services for children affected by autism and is known internationally for its innovative approach and research on autism.

The case of "La Forza del Silenzio" represents a good example of enforcement of the judgment of confiscation and it will therefore analysed from the perspective of this phase. The endeavour to reuse this asset has been and continues being fairly covered by the media. As an example of such statement, in fall 2014, the internationally known criminologist John Dickie visited the (halved) villa and made a short report of it for a TV show on the Mafia on History Channel. Such asset does indeed represent a great success and therefore deserves a closer look.

The information concerning this case have been collected mainly through three channels: (1) a phone interview with the president of the non-profit association "The Strength of Silence" Mr. Vincenzo Abate; (2) official documents regarding the assignation of the asset to the association, provided via email by Mr. Vincenzo Abate; and (3) online official material from the website of the

Region Campania, in the section "Pol.i.s. Foundation" (Integrated Security Policies for Confiscated Assets and for Innocent Victims of Organized Crime)[73].

PHASE MONITORED

Enforcement of the judgment and assignation of the asset

This phase of the confiscation procedure has seen the involvement of the following institutions:

- The State Property Office, which was replaced in 2011 with the National Agency for Forfeited and Confiscated Assets as the governmental agency in charge of the confiscated assets management;
- The Town Administration of Casal di Principe (CE) and the Agrorinasce S.c.r.l. of which Casal di Principe is part. Agrorinasce S.c.r.l. is a consortium of local administrations from the province of Caserta, constituted with the aim to achieve innovation, development and territorial safety through the reception of regional, state and European funds;
- The non-profit Association "The Strength of Silence".

The institution responsible for the enforcement of the judgment in this case was the State Property Office. After the definitive confiscation of the asset, on November 12 2003 the State Property Office assigned it to the town administration of Casal di Principe with the Provision no. 39300.

After the assignation of the asset to the town of Casal di Principe (CE), the building was let unused for some six years. The local administration claimed that the confiscated half of the mansion could not be used because it was still occupied by the remaining members of the Schiavone family, to whom it had been confiscated.

Only in 2007, when the President of the Antimafia Parliamentary Commission visited the asset providing a major spin to the situation of stalemate, the local administration decided to build a wall inside the building, so that the confiscated part was finally concretely divided from the section still belonging to the Schiavone family.

Also in 2007, the Region Campania provided financial aid to renovate and furnish the confiscated part of the Schiavone villa (with the Regional Decree no. 88 of March 20 2007, 160,000.00 EUR were allocated to cover the confiscated asset expenses).

Finally, on July 8 2009 the town of Casal di Principe (CE), together with the consortium Agrorinasce S.c.r.l, signed a twenty-years free of charge lease contract with the non-profit association "The Strength of Silence". Through this contract, the non-profit association was able to reuse the asset for its activities in support of children affected by autism. Chaired by the policeman Mr. Vincenzo Abate, the non-profit "The Strength of Silence" has become an internationally well-known leading institute for the treatment and research of autism.

THE CASE OF THE SARCONE FAMILY ASSETS (Reggio Emilia, RE, Emilia Romagna)[74]

At the end of September 2014, the Antimafia Investigative Directorate (DIA) led by Mr. Arturo De Felice forfeited many assets belonging to some members of the Sarcone family in the area surrounding Reggio Emilia. According to the investigators, the Sarcone family would be closely related to the 'Ndrangheta group "Grande Aracri", whose power is mainly spread in the area of Crotone (Calabria). The total amount of the assets confiscated to the Sarcones is around 5,000,000.00 EUR and it includes around 40 estates, corporate shares, companies and current accounts.

It was chosen to examine the initial part of the confiscation procedure of this case for some good reasons. First of all, the news concerning the confiscation was given a great deal of attention by the media. This occurred mostly because the case proves the spreading of the Calabria Mafia ('Ndrangheta) in one of the wealthiest regions of Northern Italy, such as Emilia-Romagna, which is still considered to be a mafia-free region by a big fragment of the Italian population. Moreover, being very recent and significantly covered by newspapers and TV, this case provides a good example to be analysed in the initial phases of the confiscation procedure, especially those involving the identification and the securing of the illegal asset.

PHASE MONITORED

Securing the illegal asset, precautionary measures

The institutions involved in the phase of securing the illegal assets for precautionary measures in this case are:

- The national Antimafia Investigative Direction (DIA), led by Mr. Arturo De Felice and the Florence and Bologna local sections of the DIA;

[73] Available at: http://fondazionepolis.regione.campania.it/showInEvidenceDocuments.php?bb1a82c9aa29ce63beb388080ed9f1d4=36be605fb2d73ac01c3f20ff4bcea0d3&id_document=137&refresh=on.

[74] Due to the great media coverage enjoyed by this case, all necessary information were gathered online, through newspaper articles: http://www.ilfattoquotidiano.it/2014/09/24/ndrangheta-operazione-dia-sequestrati-beni-per-5-milioni-di-euro-a-reggio-emilia/1131312/; http://espresso.repubblica.it/attualita/2014/09/24/news/maxi-sequestro-alla-indrangheta-in-emilia-toccato-il-feudo-dei-grande-aracri-a-brescello-1.181491; http://gazzettadireggio.gelocal.it/reggio/cronaca/2014/09/24/news/ndrangheta-operazione-antimafia-in-corso-a-reggio-emilia-1.9990092; http://www.ilsole24ore.com/art/notizie/2014-09-24/reggio-emilia-colpo-cosca-ndrangheta-grande-aracri-121703.shtml?uuid=ABLYUkwB.

- The Court of Reggio Emilia, chaired by the judge Francesco Maria Caruso;
- The Carabinieri of Reggio Emilia.

The forfeiture decree was formally presented on September 22 2014 by the President of the Court of Reggio Emilia Mr. Francesco Maria Caruso and the Carabinieri of Reggio Emilia performed the effective forfeiture on September 24. The decree was emitted on demand of the national Antimafia Investigative Direction, in the person of its president Mr. Arturo De Felice. In fact, the DIA had made an urgent call for applying precautionary measures on the Sarcone family's assets because the Florence DIA section, which had long been investigating on this family, found ground for accusing the Sarcone brothers of "objective disproportion between the declared revenue and their effective patrimony". The DIA investigators claimed that the measure was indeed an urgent one since the Sarcone family, certainly aware of being investigated, had recently started to reduce their holdings, so that in case they underwent a confiscation procedure, the investigators would find very few assets to confiscate.

Due to the great media coverage enjoyed by this case, all necessary information were gathered online, through newspaper articles.

ANNEX 5. CASE STUDY ANALYSES, ROMANIA

JANUARY, 2015

** The only source of information available for the case studies in Romania was the National Integrity Agency (Agenţia Naţională de Integritate) website: http://www.integritate.eu/HOTARARI-DEFINITIVE-SI-IREVOCABILE-ALE-INSTANTELOR-DE-JUDECATA/CONFISCĂRI-DE-AVERE.aspx.The researchers did not get access to information through other sources despite of the numerous attempts.*

FILE NO.371/2/2009, DABELA GHEORGHE-ION CASE, ROMANIA[75]

Parties:

- The Prosecutor's Office from the High Court of Cassation and Justice (Curte de casaţie şi justiţie);
- Mr. Dabela Gheorghe-Ion, former director of the municipal company RADET Bucharest[76] and Ms. Dabela Adriana;
- The Ministry of Public Finance of Romania;
- The National Integrity Agency.

In 2004, the General Prosecutor from the National Anticorruption Prosecutor's Office (Parchet Național Anticorupție), now called the National Anticorruption Directorate (Direcția Națională Anticorupție), notified the Wealth Verification Commission (Comisia de cercetare a averilor) within Bucharest Court of Appeal, requesting them to open the control procedure to investigate the wealth of Mr. Dabela Gheorghe-Ion, former director of RADET Bucharest. The reasons for this request were discovered through the investigation made in a criminal case (the object of this case was corruption offences), in which the defendant was Dabela Gheorghe-Ion. The investigation showed that Dabela Gheorghe-Ion and his wife, Dabela Adriana, had multiple houses, domains and amounts of money (3,000.00 RON[77], 56,000.00 USD, 8,800.00 EUR, 190.00 SIT, 20.00 HRK, 840,000.00 TRL and 11,900.00 HUF – total about 360,000.00 EUR). Other valuable assets, such as jewelry, fine art and electronics, with a total value of 1,150,000,000.00 ROL (25,000.00 EUR), were also found. Therefore, the investigation showed unjustifiable differences between the wealth and the income of Mr. Dabela Gheorghe-Ion. He had also failed to fulfill the obligations based on Law no. 115/1996, namely to make a statement of his wealth within 15 days

[75] Decision no. 1573 of 22.03.2012 of the High Court of Cassation and Justice of Romania (Curte de casaţie şi justiţie) on the file no. 371/2/2009, Dabela Gheorghe-Ion case is accessible (by January 2015) on the National Integrity Agency website: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/DabelaGheorgheIon_Blur.pdf .

[76] RADET Bucuresti (Regia Autonomă de Distribuţie a Energiei Termice Bucureşti) is a company subordinated to the Municipality of Bucharest supplying heat for hot water and heating to household customers and businesses in Bucharest.

[77] Romanian currency leu was denominated in 2005. The new 1 leu (RON) equaled 10 000 old lei (ROL). Amounts in the judgment are given in both units, since the investigation began before the denomination and continued until 2012.

from the coming into force of the presented law, and to make a new one within 15 days from ceasing his activity in public office. Mr. Dabela Gheorghe-Ion's failure to comply with this law led to the *ex officio* opening of the control procedure.

The Wealth Verification Commission within the Bucharest Court of Appeal, through its expert reports, found that the origin of the citizen's assets was justified. The Commission gave a decree of this statement on the 16th of June 2004.

The National Anticorruption Prosecutor's Office filed an appeal at the High Court of Cassation and Justice against the decree. The court concluded that the case will be sent back to the Commission for retrial because: Mr. Dabela Gheorghe-Ion didn't fulfill his obligations based on Law no. 115/1996 and the expert reports were not prepared properly because they were made for a longer period of time than the period set out in the Law.

After the retrial, The Wealth Verification Commission within the Bucharest Court of Appeal found and proved that the amount of 615,894,065.00 ROL (about 14,000.00 EUR) was obtained illegally. Therefore, on December 14 2010, the Bucharest Court of Appeal delivered the judgment according to which the amounts of 3,000.00 RON , 56,000.00 USD, 8,800.00 EUR, 190.00 SIT, 20.00 HRK, 840,000.00 TRL and 11,900.00 HUF were to be confiscated. Furthermore, the defendants, Dabela Gheorghe-Ion and Dabela Adriana, were required a payment of 61,589.40 RON in order to compensate the seized amount. The judgment was made based on the research of the advisory committee and other important evidence which established that there were unjustified differences between the wealth and the income gained by Mr. Dabela Gheorghe-Ion.

Against the sentence given by the Bucharest Court of Appeal on December 14 2010, Dabela Gheorghe-Ion, Dabela Adriana and The Prosecutor's Office from the Bucharest Court of Appeal made an appeal at The High Court of Cassation and Justice.

The reason invoked by The Prosecutor's Office attached to the Bucharest Court of Appeal was the misapplication of the law. It deemed that the law was wrongly implemented, because the sentence interfered with art. 304, Section 9 of the Civil Procedure Code. Therefore, the Prosecutor's Office proclaimed that the Bucharest Court of Appeal should have required the payment of 61,589.40 RON (roughly 17,000.00 USD), without compensating it with the seized amounts in different currency, because their origin cannot be justified. If Dabela Gheorghe-Ion and Dabela Adriana were requested a payment of 61,589.40 RON to compensate with the seized amount, then it would result that the defendants wouldn't have to pay anything to the Romanian state, which makes the appealed decision contain contradictory provisions.

The defendants Dabela Gheorghe-Ion and Dabela Adriana appealed the court order and requested that the case should be sent back to the Bucharest Court of Appeal for retrial because some aspects from the case needed more explanations. These matters relate to:

Firstly, the Wealth Verification Commission within Bucharest Court of Appeal was not in the position to make the assessment report and now the defendants request that the National Integrity Agency make this report (based on art. 158 Section 1, art. 159 Section 1 and art. 159[1] of the Civil Procedure Code and Law no. 144/2007 modified with Law no. 176/2010).

Secondly, the defendants affirmed that the amounts confiscated during the criminal investigation may not be seized because the amounts were taken by the criminal investigators.

Thirdly, the defendants considered that the law was wrongly implemented because the sentence interfered with art. 304, Section 9 of the Civil Procedure Code.

After the High Court of Cassation and Justice examined the evidence, the Romanian laws and the facts brought into notice by Dabela Gheorghe-Ion, Dabela Adriana and the Prosecutor's Office from the Bucharest Court of Appeal, it found that, in the sentence given by the Bucharest Court of Appeal on December 14 2010, the law provisions and the evidence were not applied properly. The decision no. 1573 of 22.03.2012 of the High Court of Cassation and Justice says the following:

The confiscation of the amounts of 3,000.00 RON , 56,000.00 USD, 8,800.00 EUR, 190.00 SIT, 20.00 HRK, 840,000.00 TRL and 11,900.00 HUF must be removed because the claim compiled by the General Prosecutor from the National Anticorruption Prosecutor's Office (in 2004) related only to opening a procedure to investigate the wealth of Mr. Dabela Gheorghe-Ion and not to seize anything.

Regarding the unjustified differences between the wealth and income of by Mr. Dabela Gheorghe-Ion (61,589.40 RON), the Court ruled that this amount is obtained in an unjustified manner and compels the defendants to pay it.

Regarding the other requests of the defendants and the Prosecutor's Office attached to the Bucharest Court of Appeal, the Court declared they were ungrounded.

To the general public and investigative journalists, the case was a sensitive topic, because the defendant was the former director of RADET Bucharest and it increased

people's trust in the efficiency of the confiscation bodies and their practices.

FILE NO. 1844/2/2012,BRĂDIŞTEANU ŞERBAN ALEXANDRU CASE, ROMANIA[78]

In this case, the National Integrity Agency claimed that the court should annul the Ruling no. 1/11 March 2011, issued by the Wealth Verification Commission (Comisia de cercetare a averilor) within the Bucharest Court of Appeal. The reason for the claim is that the Wealth Verification Commission within the Bucharest Court of Appeal has based the ruling on the fact that the research made by the National Integrity Agency had been made under the Law no. 176/2010, which led to an unlawful ruling admitting the exception of limitation of the substantial right to a court action. In this regard, the National Integrity Agency envisages that the whole procedure of verification was based on the provisions of Law no. 144/2007 regarding the establishment, organization and functioning of the National Integrity Agency, in effect at the time of the procedure initiation. Therefore, according to the principle *tempus regit actum* (time rules act), it is estimated that for this case the provisions of Law no.176/2010 are not applicable. Law no. 144/2007, under which the verification of the wealth was made, did not provide any term of limitation of the wealth verification made to the person that held a public position, the only condition is for the control to relate only to that period of time.

On the December 13 2007 the National Anticorruption Directorate solicited the Bucharest Court of Appeal to initiate the verification procedure regarding Brădişteanu Şerban Alexandru under the premises of the art. 9 of the Law no. 115/1996. Mr. Brădişteanu was accused of having violated the legal provisions and having favored certain companies, using his position of chairman of the Evaluation Committee, in the auction organized by the Ministry of Justice in the year 2001 for acquisition of medical equipment. In exchange for the favorable assessment of the companies, he received various amounts of money in foreign currency. As a result of the offence, he acquired real estate and other assets, leading to the unlawful character of his declaration of assets at the end of his mandate. On the September 17 2008, the National Integrity Agency notified the Bucharest Court of Appeal to solve the claim. On the September 28 2010, the court sent the cause to the Wealth Verification Commission within the Bucharest Court of Appeal. On the February 23 2011, the defendant invoked the exception of limitation, arguing that the Law no. 176/2010 established a three year deadline since the date of leaving the public position (he had ended the mandate of senator on the December 8 2004 and the claim had been registered on December 13 2007).

The exception of limitation admission was found unlawful by the court, which determined that Law no. 115/1996 did not provide any limitation term. The conclusion that the general 3 years limitation term would be applicable to this case is deprived of legal support because Law no. 167/1958 (which establishes the general limitation term to 3 years) targets the private legal relations, not the public ones. Therefore the court finds the appeal as unlawful and disposes the cancellation of it and, since the Wealth Verification Commission within Bucharest Court of Appeal did not exercise the control, resent the case for this purpose.

FILE NO. 186/64/2009,VELE DAN CASE, ROMANIA[79]

Parties:

- The National Integrity Agency;
- Ministry of Public Finance represented by the General Public Finance Braşov;
- The National Anticorruption Prosecutor's Office;
- S. C. Rial SA Braşov[80];
- Mr. Vele Dan and his spouse Ms. Vele Mirela Daniela.

In 2003, The National Anticorruption Prosecutor's Office (now called The National Anticorruption Directorate) notified the Wealth Verification Commission within Braşov Court of Appeal, requesting them to open a procedure to investigate the wealth of Mr. Vele Dan, former executive of S. C. Rial SA Braşov. The reason for this request was that Mr. Vele Dan had failed to fulfil the obligation based on Law No. 115/1996, namely to make a statement of his wealth within 15 days of the entry into force of the law, and to make a new statement of his wealth at the end of his activity.

Mr. Vele Dan's failure to comply with this law led to the *ex officio* opening of the control procedure.

During the settlement of the case, which was extended in time, the Law no. 244 of 21 May 2007 was enacted. The law refers to the establishment, organization and

[78] Decision no. 267 of 22.01.2013 of the Bucharest Court of Appealon the file no. 1844/2/2012, Brădişteanu Şerban Alexandru case is accessible (by January 2015) on the National Integrity Agency website:
http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/BradisteanuSerbanAlexandru_Blur.pdf.

[79] Decision no. 4836of 19.10.2011of the High Court of Cassation and Justice of Romania (Curte de casaţie şi justiţie) on the file no. 186/64/2009, Vele Dan case is accessible (by January 2015) on the National Integrity Agency website:
http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/VeleDan_Blur.pdf

[80] S.C. Rial SA Braşov is a municipal company of the Braşov Municipality responsible for business administration, sales, repair and maintenance of the estate fund owned by Braşov City.

functioning of The National Integrity Agency, therefore the investigation was continued by it.

In 2003, the Wealth Verification Commission within Braşov Court of Appeal found that the wealth of Mr. Vele Dan was obtained legally. The Prosecutor's Office attached to the Braşov Court of Appeal appealed this decree at the High Court of Cassation and Justice. The Court sent the case back to certify some important aspects.

In 2006, the Wealth Verification Commission within Braşov Court of Appeal found that the wealth of Mr. Vele Dan was not obtained legally (the documents submitted under private signature did not meet the requirements of enforceability of art. 1182 of the Civil Code) and sent the case to the Braşov Court of Appeal.

The Braşov Court of Appeal found and proved that a vehicle and a house were obtained illegally. Therefore in 2008 the Court delivered the judgment according to which the amount of 836,439.68 RON (about 188,000.00 EUR) would be confiscated.

Vele Dan and Vele Mirela Daniela made an appeal against the sentence at The High Court of Cassation and Justice and the case was sent back for retrial to the Braşov Court of Appeal, for lack of evidence.

The Court held the defendant's income, in which a loan of 158,000.00 USD was included, had exceeded his costs with 1.15%, proving the legal origin of his goods.

The General Directorate of Public Finance and the Prosecutor's Office attached to the Braşov Court of Appeal made a second appeal against this sentence at the High Court of Cassation and Justice. They claimed that the sentence was unlawful and unfounded because:

Firstly, Mr. Vele Dan had failed to fulfil the obligations which are based on Law no. 115/1996, namely to make a statement of his wealth within 15 days of the entry into force of the law, and to make a new one at the end of his activity.

Secondly, the 6 loans summing 158,000.00 USD represented a debt and an income.

Thirdly, the loan receipts presented by the defendants did not meet the requirements of art. 1182 Civil Code, which led to the conclusion that the loans were not real and thus should not have been regarded as "income". Also, The National Integrity Agency maintained the reasons described above and requested the modification of the conviction.

Analysing the case, the High Court of Cassation and Justice stated that:

According to the expert reports (made in the period from October 18 1999 to January 7 2003), the income of the defendants derived from: earnings (31,024.28 USD), incomes obtained by selling goods (89,727.00 USD), incomes obtained by loaning 158,000.00 USD from 6 individuals; while the costs made by the defendants consisted in: purchases of assets, utility bills and various expenses (amounting to a total of 175,437.20 USD);

The filed documents, named loan agreements, were not a legal proof of the defendant's total loaning of 158,000.00 USD from six individual lenders. Furthermore, the statements of this 6 individuals were not credible, because they were people with average financial possibilities, even modest (retired), all lived in apartment buildings, some claiming to be financially supported by relatives or spouses.

In conclusion, excluding this source of income (loans of 158,000.00 USD), there are clear disproportions between the actual income and the expenses made during the verification period, and The Court decided that the difference of 129,517.80 USD will be confiscated.

FILE NO. 1072/46/2009, ZIDARU DANIEL CASE, ROMANIA[81]

Parties:

- The National Integrity Agency;
- Mr. Zidaru Daniel and his spouse Ms. Zidaru Nicoleta Carmen.

On the July 30 2009, The National Integrity Agency submitted a complaint at the Pitești Court of Appeal requesting the amount of money that couldn't be justified to be confiscated from the defendants.

On the May 18 2011, the Pitești Court of Appeal admitted the complaint made by The National Integrity Agency and found the unlawful gaining of 61,650.00 EUR and 9,980.00 RON (total about 64,000.00 EUR) in the wealth of Mr. Zidaru Daniel.

Mr. Zidaru Daniel was a public servant (police sub-commissioner) who had the obligation (according to Law no. 144/2007) to declare his wealth, which he failed to fulfil for the years 2001, 2005 and 2007 and this lead to the initiations of the wealth verification procedure (according to Law no. 176/2010).

[81] Decision no. 5861 of 06.12.2011 of the High Court of Cassation and Justice of Romania (Curte de casaţie şi justiţie) on the file no. 1072/46/2009, Zidaru Daniel case is accessible (by January 2015) on the National Integrity Agency website: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/ZidaruDaniel_Blur.pdf.

According to the written records filed between 2000 and 2008, his income totalled 298,303.00 RON (approximately 67,000.00 EUR). Mr. Zidaru Daniel's immoveable property consisted of one apartment in Pitești and his movable property consisted of one vehicle and other household goods. He argued that he had been helped to buy the apartment (valued at 110,000.00 RON or 25,000.00 EUR) by his parents, Zidaru Ionel and Zidaru Senia, and the amount of money represented the equivalent of his parents' apartment which they had sold.

The Judicature found that his parents' apartment was sold one year before the defendant bought his apartment. Meanwhile, his parents moved to another house, so the amount received from selling the apartment was not given to the defendant.

Regarding his vehicle, the defendant stated that it was the outcome of successive buying and selling of other five vehicles starting from the year 2000. The questioned witness said that the price difference between the vehicles was also paid by his parents.

The Court established that the confiscation of the 61,650.00 EUR and 9,980.00 RON is necessary, even if the amount of money is seized, because this measure is based on a special law which is derogatory from the common law rules, being enough to demonstrate the existence of a disproportion between Mr. Zidaru Daniel's income and his wealth.

The defendant appealed the verdict invoking that the provisions applied were unconstitutional, that the National Integrity Agency violated the presumption of innocence and that the complaint elaborated by the National Integrity Agency and the judgment of the Court of Appeal was unlawful based on assumptions that cannot override the provisions of art. 44, section 8 of the Romanian Constitution (regarding the right to private property).

The National Integrity Agency responded to each of the defendant's statement and requested the appeal be dismissed as ungrounded.

The High Court of Cassation and Justice stated that the court ruling was based on the right interpretation and application of the law. Regarding the assumption of innocence, the Court stated that it had not been violated, the seizing of assets being an administrative procedure, distinct from penal liability, and thus not interfering with the assumption of innocence. Regarding the violation of art. 44, section 8 of the Romanian Constitution (regarding the right to private property) the norm is not imperative when the disproportion between the income and the wealth is obvious. Regarding the amount of money for the purchase of the apartment, the Court shared the conclusion of the judicature that there is no solid evidence of any contribution from the defendant's parents. Also the judge correctly stated that the turnover of the loans is unable to justify the amounts of 61,650.00 EUR and 9,980.00 RON found during the search. Regarding the monthly expenses the National Integrity Agency established an amount of 314 RON (70 EUR) per month for year 2000; 552.8 RON (125 EUR) per month for year 2001; 272.7 RON (60 EUR) per month for year 2002; 147.2 RON (33 EUR) per month for year 2003; 1,071.6 RON (240 EUR) per month for year 2004; 513 RON (115 EUR) per month for year 2005; 1,845 RON (415 EUR) per month for year 2006; 3,679 RON (830 EUR) per month for year 2007; 1,775.8 RON (400 EUR) per month for year 2008. These amounts cannot be found as unreasonable in relation with the income of Mr. Zidaru Daniel and Ms. Zidaru Nicoleta Carmen.

In conclusion the High Court of Cassation and Justice overrules the appeal as groundless.

ANNEX 6. MANAGEMENT OF SEIZED AND FORFEITED CRIMINAL ASSETS IN BULGARIA: HOW TO IMPROVE THE CURRENT MODEL

Forfeiture of property acquired through or used for criminal activity is instrumental in counteracting the perpetration of serious crimes that generate economic benefits for the perpetrators or for any natural or legal persons, entities or bodies associated with them. The proper application of such a mechanism is an expression of a radical crime prevention policy resulting from the perception that there exists a high risk of wider and deeper adverse impact of serious crime on any country's governance and development.

Given that this is a specialised policy, which should respond to the growing risk of "state capture", it is expected to restrict the margins of manoeuvre and operational scope for organised crime and heavy corruption, as well as to take away any resources, which are of a nature to jeopardize the public interest.

The issue of asset forfeiture is subject of regulation at European Union level as well. Several framework decisions have been adopted in the area of freezing and confiscation of criminally acquired property, which identify, but also differentiate the roles of the EU and of the Member States in their fight to trace, seize and ultimately confiscate criminally derived assets.

The principle set forth in the framework decisions, as adopted by the EU, stipulates that asset forfeiture should transpire in the context of criminal proceedings upon order of a competent criminal court following a final conviction for a criminal offence and in respect of property acquired through crime. The legal provisions laid down in two framework decisions, of 2001 and 2005, respectively, have been enhanced by **Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.** By referring to the specific EU acts dealing with the areas of crime specified in Article 83, paragraph 1 of the Lisbon Treaty, the Directive defines the scope of criminal offences whose proceeds are subject to freezing and confiscation under its provisions.

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union was published in the Official Journal of the European Union on April 29, 2014 and entered into force on the 20th day following that of its publication. The Directive introduced measures aiming to make it easier for national authorities to confiscate and recover the profits that criminals make from cross-border and organised crime. The United Kingdom decided not to take part in the adoption of this Directive and is therefore not bound by it in its entirety or subject to its application. Corrigendum to Directive 2014/42/EU was published in the Official Journal of the European Union on May 13, 2014 which provides as follows:

- Article 12 (Transposition): Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 October 2016, and not by 4 October 2015.
- Article 13 (Reporting): The Commission shall, by 4

October 2019, and not by 4 October 2018, submit a report to the European Parliament and the Council, assessing the impact of existing national law on confiscation and asset recovery, accompanied, if necessary, by adequate proposals.

According to Article 10 of the Directive, **Management of frozen and confiscated property:**

"1. Member States shall take the necessary measures, for example by establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent confiscation.

2. Member States shall ensure that the measures referred to in paragraph 1 include the possibility to sell or transfer property where necessary.

3. Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes."

Taking account of these provisions, Bulgaria needs to take adequate legislative measures to transpose the Directive's provisions into national law. The conclusions drawn from activities carried out in the context of this project should also be taken into account in the preparation of the relevant legislative amendments.

In view of the Bulgarian model of frozen and confiscated property management and the provisions of Article 10, the conclusions presented in the National Report "Forfeiture of Illegal Assets: Challenges and Perspectives of the Bulgarian Approach" ought to be taken into consideration as well[82].

The Forfeiture of Illegal Asset Act (FIAA) lays down rules governing the method of acquiring title to property by the State as well as rules for the proper management and disposal of forfeited property. Forfeited property management comprises all activities pertaining to preserving and deriving benefits from state-owned property and relates to its safekeeping.

MANAGEMENT OF FROZEN PROPERTY

Problems relating to safekeeping and management of forfeitable property are addressed as early as at the forfeiture proceedings phase. Under Article 81 of the Forfeiture of Illegal Asset Act (FIAA), property frozen with a view to possible subsequent confiscation may be left for safekeeping with the person being investigated, or with the person holding such property at the time of entry into force of the freezing order. The FIAA imposes on keepers obligations to preserve the property in safety exercising due diligence and acting in good faith. Incidental costs associated with the safekeeping and maintenance of frozen assets are borne by the Commission for Illegal Asset Forfeiture (CIAF). Under the FIAA, a keeper is required to inform the CIAF of any property damage, of any legal proceedings concerning the property, of any possible actions relating to transfer of property rights or creation of third party rights over the property, as well as of any danger of damage to or the destruction of the property. The FIAA provides also for the replacement of a keeper by a competent court of law in the event they have failed to fulfil their safekeeping obligations.

Such approach seems reasonable considering that at this stage of the asset identification and freezing procedures as provided for by the FIAA, the property has not yet been transformed, nor has it been acquired by the State. It does, however, pose certain risks, too, arising, on the one hand, from a possible lack of interest on the part of the person being investigated, or even an intent to destroy the property in issue, and, on the other hand, from the lack of a public authority empowered to supervise and keep the property in safety at this stage of the forfeiture proceedings.

The provisions of Article 83 of the FIAA are also apposite and serve the public interest. It provides that forfeited illicit items with a special status and placed under a special regime, are to be kept by specialised institutions and the expenses are to be met through the State budget. Such a mechanism is realistically applicable, too, considering the functions and capabilities of the institutions referred to in the FIAA. Thus, movable objects of particular cultural and historical value are to be kept at the National Museum of History or in another museum, while items of scientific value are to be left for safekeeping either with the National Library, or with the respective institute of the Bulgarian Academy of Sciences, or with an appropriate university. Articles of precious metals and gemstones are to be stored at the Bulgarian National Bank. The Ministry of Culture is vested with safekeeping works of art, i.e. items with artistic, antiquarian, or numismatic value. What is at issue here is the interaction and cooperation between said institutions and the CIAF. We consider it necessary that specific rules of procedures should be laid down regarding the organisation and coordination in their interrelations in connection with the safekeeping of chattel property of a special nature. It is necessary also to lay down additional legal provisions on the competence of these institutions as regards the management of forfeitable property left with them for

[82] The national report "Forfeiture of Illegal Assets: Challenges and Perspectives of the Bulgarian Approach" is available at: http://www.confiscation.eu/site/wp-content/uploads/2014/04/FORFEITURE-OF-ILLEGAL-ASSETS-CHALLENGES-AND-PERSPECTIVES-OF-THE-BULGARIAN-APPROACH.pdf.

safekeeping. Currently, there is no relevant regulation in place.

Furthermore, the FIAA provides for mechanisms to dispose, as early as in the course of forfeiture proceedings, of forfeitable movables liable to depreciate significantly over the safekeeping period, or whose maintenance and preservation is very costly, as well as of perishable items. Notwithstanding the absence of a title in the name of the State, with a view to preserving the property and protecting the interests of both the person being investigated and the State, the FIAA provides for the sale of said movables. The sale is carried out by permission of the competent court of law at the request of the CIAF by an enforcement officer (bailiff, enforcement agent), within a short period of seven (7) days from the receipt of the request. Disposal methods for forfeited or seized assets include open-outcry (English) auction or sale by a trader at a retail store, a consumer goods market, or an exchange specified by the CIAF. It should be borne in mind that allowing the owner of a forfeitable chattel to bid at an auction is inconsistent with the FIAA objectives. Such an option would legitimise the transfer of illicitly derived property to the patrimony of the person being investigated under the FIAA, thus casting doubt on the preventive and socioeconomic impacts of the FIAA. The amounts received from the sale of forfeitable assets are kept in a special bank account of the CIAF until the competent court of law has issued a ruling upholding the forfeiture of the illicit property that has been converted into money.

It is imperative that the above legal provisions are further developed to cover as a rule, and not as an exception, vehicles, IT equipment, major appliances (white goods, white ware), phones, technology, etc., whose prolonged storage results in technical obsolescence (desuetude) and unusability at a later stage of the forfeiture proceedings under the FIAA. Experiences with the implementation of the now repealed Forfeiture of Criminal Asset Act have shown that long-time stored vehicles are practically wrecked and rendered unusable after the court's decision to confiscate them has become final. Thus the meaning and the purposes of the Forfeiture of Illegal Asset Act to take criminal wealth out of circulation by transferring it to the patrimony of the State and using it for public interest or social purposes, as well as for compensating victims of crime as per Article 22, paragraph 1 of the FIAA, remain unaccomplished.

MANAGEMENT OF FORFEITED PROPERTY

After the court's decision has become final and enforceable, the management of property forfeited to the State is entrusted to a special authority, the Interdepartmental Board for Forfeited Assets Management, established by virtue of the Forfeiture of Illegal Assets Act. The Board is a body composed of Deputy Ministers designated by the Minister of Justice; the Minister of Finance; the Minister of Economy, Energy and Tourism; the Minister of Labour and Social Policy; and the Minister of Regional Development, respectively. It is chaired by a Deputy Minister of Finance.

The Board is administratively supported by the administrative staff of the Ministry of Finance. The Interdepartmental Board is an intermediate body tasked with administering information on confiscated property. The Board is required to put forth proposals to the Council of Ministers to adopt decisions on either assigning confiscated property to public sector organisations and municipalities to be used in the performance of their functions, or authorising the National Revenue Agency (NRA) to sell forfeited assets under the provisions of the Tax and Social Insurance Procedure Code. Realisation of seized and confiscated property in such cases is carried out under the rules laid down in the National Revenue Agency Act (NRAA). More specifically, Article 3 and Article 4 of the NRAA provide that sales of state-owned property shall be carried out under the provisions of the Tax and Social Insurance Procedure Code (TSIPC). Sales are carried out by NRA employees designated by the Agency's Executive Director or by other persons authorised by him or her. Said employees are not public bailiffs (enforcement agents) since the performance of their job functions relates to the management and disposal of state-owned property and not to enforcement proceedings for the purpose of satisfying public creditors' claims. Where all sales methods provided for in the TSIPC have been exhausted and confiscated assets have not yet been sold, the NRA sends the case file back to the Interdepartmental Board for a subsequent decision on the management and disposal of the property. Where confiscated property is assigned to a public sector organisation or a municipality to be used and managed, the assignees are required to reimburse NRA for all costs incurred in connection with the management, safekeeping, and sale of such property. Under the current seized property management model, the functions of the NRA vis-à-vis property forfeited under the FIAA are limited to the disposal of such property alone. In the area of seized property management, the functions of the NRA have been taken, rather unsuitably, by the Interdepartmental Board. Furthermore, given the lack of legal personality, laying down rules of interaction between the NRA and the Interdepartmental Board, by means of Guidelines within the meaning of Article 26 of the NRAA, is not possible either. **Said form of management and disposal of forfeited property requires the involvement of at least four authorities, i.e. the CIAF, the Interdepartmental Board, the Council of Ministers, and the NRA, which poses risks as to the promptness, availability, lack, or loss of information and the preservation of state-owned property.**

It could be questioned whether assets acquired by the State as a result of forfeiture are indeed being managed.

On the one hand, the Interdepartmental Board for Forfeited Assets Management is not a permanent body with its own administration tasked with implementing obligations under the FIAA alone. The Board consists of members who are not permanent as they are political appointees and thus are frequently replaced. This results in insufficient commitment and the Board's inability to adequately fulfil its functions. On the other hand, the Interdepartmental Board is not really a confiscated property management authority. It acts as a mediator advising and assisting the Council of Ministers in the management of forfeited property. Even if there is some further development of the legal framework underpinning the Board's power and administrative support, the efficiency of this model remains open to doubt.

Experiences with the implementation of the Forfeiture of Illegal Asset Act show that from 2012, when the Interdepartmental Board was first established, until 2014 no rules of operation were adopted. The meetings of the Board, which by law should be convened once every two months, had been rather irregular and in actual fact had not been even held at all. Following its setting up in 2012, the first meeting of the Board was held in March 2014 and in June 2014 a proposal was put forth to the Council of Ministers to assign forfeited property to State and municipal authorities, as well as to authorise the NRA to sell property under the provisions of the TSIPC. Analysis of said Decision no. 367, dated 4 June 2014, indicates that the Council of Ministers assigned the following pieces of property:

- To the municipality of Novo Selo — two plots of land, one of them zoned as green belt;
- To the municipality of Gorna Oryahovitsa — one apartment;
- To the Ministry of Agriculture and Food — seventeen plots of land, including fields, pastures and vineyards, comprised in the State Land Fund.

Currently, assets forfeited as per ninety eight (98) final and enforceable court decisions are earmarked for sale by the NRA. An asset identification and preparation process is underway so that said assets can be sold under the terms of the TSIPC.

As regards the nature of confiscated property, most of it does not fall within the category of state-owned property useable for public interest or social purposes. Being uncharacteristic of state-owned property, it could not be fully used for the purposes it is intended to serve. Furthermore, it is unclear who is in charge of safekeeping and managing forfeited property during the period of time following its initial seizure until the decision on how to dispose of it is finally rendered. An analogous situation occurs during the process of asset identification and preparation with a view to selling confiscated property under the terms of the TSIPC.

It follows from the above that the system for managing seized and forfeited assets of illicit origin is, in actual fact, dysfunctional. This results in squandering away the added value of decisions on the disposal of such property and the enforcement of the FIAA. Indeed, the very existence of a legal framework to support the government's ability to seize and forfeit illicitly derived property is a step towards social justice meant to achieve a preventive, educational and repressive effect. However, insufficient publicity and lack of adequate and efficient measures vis-à-vis the management of seized and forfeited property raise serious doubts regarding the existence of the mechanisms provided for in the Forfeiture of Illegal Assets Act.

The effectiveness of the Forfeiture of Illegal Asset Act would be far better if there existed a **single authority, competent in the management and disposal of forfeited assets, equipped with adequate human and material resources, capable to provide full information to the public about seized and forfeited property, e.g. by means of a public register, as well as to manage seized and forfeited property in a more efficient manner, i.e. at less cost and ensuring better use.** It should also be borne in mind that the type and nature of seized and forfeited property require different approaches to its safekeeping, preservation, and management. Commercial real estate, for instance, such as hotels, stores, and manufacturing enterprises constitutes property uncharacteristic of state-owned property. Their management therefore requires skills and expertise different from the typical administrative capacity of the State.

In this context, it is necessary to seek ways of including also private partners in the process of seized property management by laying down special public procedures for selecting seized property managers who would be entitled to acquire the property in issue at concessional terms. This will allow the State to preserve its property at negligible cost and even benefit from criminal property by turning it into a source of budget revenue. The State needs to show more flexibility in making decisions relating to pieces property, which are uncharacteristic of state-owned property and which in most cases would prove unsaleable anyway.

The actual seizure of illicitly derived property does not suffice to achieve the ultimate goal of the Forfeiture of Illegal Assets Act, i.e. to protect the public interest and to restore law and justice. Seized property needs to be properly managed, while its value and economic functions are well preserved. This is the only way it can be used efficiently in serving the needs of the public and the State, and in remedying harm and damage caused by the criminal activities such property was derived from.

In this regard, the key issue, right next to the issue of asset forfeiture, relates to the proper administration and

management of seized property both during forfeiture proceedings and after the court has handed down the confiscation order. The lack of an overall concept concerning the process of seized asset management, and also with regard to building preconditions for its safekeeping and preservation in the course of the proceedings, gives rise to uncertainties as to the achievement of the overall goals of this activity, namely:

- The purpose of seized asset management is to keep them preserved and maintained until they are confiscated or returned to their owner, as the case may be. Should the preservation of seized assets prove impossible, they should be liquidated in order to preserve their value.
- Seized asset management should comprise both the period of time while assets are frozen and the period following confiscation.
- The absence of rules to govern seized asset management over the period from the entry into force of the confiscation order till the State takes possession presents a serious problem.
- The provisions on frozen and seized assets management set forth in the Forfeiture of Illegal Asset Act are extremely laconic and do not in fact lay down any rules on frozen asset preservation and maintenance. **They fail also to provide for the establishment of a special authority** vested with the powers and duties of frozen assets management and supervision. In essence, said provisions reproduce the general rules on frozen asset management laid down in the Civil Procedure Code, which are woefully inadequate.
- Oftentimes, the practical effects of the absence of adequate legal framework for the management of frozen and seized assets are dissipation and despoliation, or drop in value by the time of final confiscation.
- Another shortcoming of the current legislation is the lack of provisions on liability for damages to frozen and seized property resulting from an act or omission of the safekeeper.
- **The State acquires title to forfeited property at the time of entry into force of a final confiscation order. However, there is no authority in charge of its effective preservation.** At the time of entry of a final confiscation order (and in actual fact, even before that) the former owner holds no interest in the forfeited property and has no motivation or incentive to preserve his or her former property. It could take anywhere from two to more than six months from the final confiscation order's entry into force until the State takes possession. During that time the confiscated property is left with no supervision at all. At the time the State takes possession (and frequently even as early as at the time of entry of the final confiscation order into force) the forfeited property is most often despoiled, completely devalued or destroyed, and in any case not in a condition to be used for its intended purpose or sold.
- In order to ensure the preservation and better management of forfeited property, it would be appropriate to allow also, *de lege ferenda*, for the sale of forfeitable movables that are not perishable or liable to depreciate significantly, should the costs involved in their safekeeping are equal to or more than their value.
- It is irrational to vest the powers and duties pertaining to forfeited asset management to different agencies and bodies. This is an impediment to efficient and effective seized asset management. **The Forfeiture of Illegal Asset Act should place all powers in relation to the administration and management of forfeitable assets in the control of just one authority as early as at the time of freezing the assets.**
- Another shortcoming of the FIAA is its failure to lay down an explicit obligation on the Interdepartmental Board to assign forfeited property or, where such property has been sold, the cash equivalent thereof, to be used and managed by organisations committed to helping victims of crime or to remedying harm and damage caused by criminal activity, as well as the absence of clear criteria for making decisions on the use of confiscated property.
- Unsuccessful sales experiences highlight the need to provide for more flexible statutory mechanisms for sale of forfeited assets in order to overcome the factors, currently impeding successful sale completion.
- It can be concluded that the process of managing and preserving frozen and forfeited assets' value is in bad need of a thorough rethinking and an overhaul both because of serious gaps in the legal framework and because of its inappropriate underlying principles.

In view of the above and taking account of the provisions of Article 10 of **Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union, Management of frozen and confiscated property:**

1. "Member States shall take the necessary measures, for example by establishing centralised offices, a set of specialised offices or equivalent mechanisms, to ensure the adequate management of property frozen with a view to possible subsequent confiscation." It should be noted that a centralised office does exist in Bulgaria. It is the NRA. **There is no need to set up new authorities. What needs to be done is to set up a special revenue fund (Forfeiture Fund) within the NRA into which proceeds from the sale of forfeited property could be deposited.** Under the current seized property management model, the functions of the NRA vis-à-vis property forfeited under the FIAA are limited to the realisation of such property alone while in the area of seized property management, the NRA functions have been taken, rather unsuitably, by the Interdepartmental Board. As mentioned earlier, given the lack of legal personality, introducing rules of interaction between the NRA and the Interdepartmental Board, by means of Guidelines as provided for in Article 26 of the NRAA, is not possible. It is recommended that

the NRA be vested with powers and functions in the area of seized property management. Thus, there would be, in effect, just one centralised office vested with a range of statutorily defined functions pertaining to the management of property frozen with a view to possible subsequent confiscation. The NRA is a legal entity, an "administrative authority" within the meaning of the Administrative Procedure Code, directly attached and responsible to the Minister of Finance. It is authorised to participate in EU projects and programmes in its field, and required to interact and collaborate with other government agencies. Accordingly, it would be necessary to disband the Interdepartmental Board for Forfeited Assets Management on grounds of its ineffectiveness. The next step would be to devolve to the NRA rights, responsibilities, and powers pertaining to seized assets management. The Agency would sign also agreements on inter-institutional cooperation and exchange of information with the CIAF and other government authorities. This would set up effective mechanisms to ensure interaction and collaboration.

A procedure should be laid down, which allows to 'outsource' activities pertaining to the management of forfeited assets that are uncharacteristic of the NRA, to NGOs and private companies in keeping with current legislation and with a view to preserving the public interest. Accordingly, it is necessary to delegate some powers and functions related to the management of forfeited assets and the proceeds from the sale of such assets to NGOs for public interest and social purposes while exercising strict control in such a way as to ensure transparency and publicity.

2. "Member States shall ensure that the measures referred to in paragraph 1 include the possibility to sell or transfer property where necessary." The current Forfeiture of Illegal Asset Act (FIAA) in Bulgaria also sets forth rules on the sale of forfeited property. All functions related to such sales are vested in the National Revenue Agency. The NRA is empowered to realise any realisable property under the provisions of the Tax and Social Insurance Procedure Code. In order to achieve greater public awareness about the methods used to acquire state-owned property, it is necessary to ensure that prospective buyers are reasonably well informed during sales presentations of the illicit origin of the property. This fact should be publicised in sale notices as well as by attaching stickers along the same line to the property itself. It is imperative that legal provisions be further developed to allow for expedited sale of vehicles, consumer electronics, appliances, and other goods and chattels liable to perish, be consumed or rendered worse by the keeping (perishable property).

3. "Member States shall consider taking measures allowing confiscated property to be used for public interest or social purposes." Under the current legal framework, control and management of seized property is exercised solely by assigning confiscated property to public sector organisations, government authorities, and municipalities to be used in the performance of their functions. We therefore consider it necessary that new rules should be laid down to provide for increased use of public-private partnerships and for outsourcing activities related to the management of commercial enterprises and establishments, which are uncharacteristic of the public administration. **All functions related to the management and disposal of seized illicit assets should be vested in just one authority.** A special revenue fund (Forfeiture Fund) needs to be set up within said authority. All monies in this Fund should be expended solely for public interest or social purposes.

SEIZED ASSET MANAGEMENT PRACTICES IN EU MEMBER STATES

EU Member States can be grouped into two categories according to the typology of reuse of confiscated assets:

- **Institutional reuse:** Confiscated assets are absorbed within the State budget. (Such approach is, in practice, difficult and inefficient to apply in Bulgaria due to the lack of administrative capacity of Bulgarian institutions.)
- **Social reuse:** Confiscated property is used for public interest or social purposes.

Currently there are two models of social reuse of confiscated assets in the EU:

- Direct reuse: confiscated assets are directly used for social purposes;
- Indirect reuse (a more flexible approach, hence a less expensive system): the reuse of proceeds of the confiscated assets through established specialised funds/programs that invest these proceeds for fighting drug trafficking or crime prevention, including for **public interest or social purposes.**

EU Member States applying the direct reuse approach include Belgium (Flemish region) and Italy. Member States applying the indirect reuse of confiscated assets include France, Luxembourg, Spain, and the UK (Scotland).

WHAT SOCIAL REUSE MODEL SHOULD BE ADOPTED FOR BULGARIA?

It is possible to consider a mixed model, using the good practices and aspects of the two models above. The current rules do actually provide for direct reuse, as they allow assignment of confiscated property to public sector organisations and municipalities to be used in the performance of their functions. The second model of indirect social reuse (more flexible, less expensive), as is the practice, for instance, in Luxembourg, would require that additional rules be laid down on more flexible actual management of seized and confiscated property. It would also require that a specialised Forfeiture Fund be

set up as a government institution attached to the NRA, which would receive the proceeds from the management and sale of forfeited assets. With strict rules in place, the Forfeiture Fund would be used in a targeted manner and the monies in it would be expended to:

- finance social activities (non-governmental sector stakeholders, apart from the National Association of Municipalities in the Republic of Bulgaria, who are represented everywhere, should in any event be involved as well);
- finance projects with social aim for prevention and treatment of drug addiction, or fight against drug trafficking (Ministry of Labour and Social Policy, Ministry of Health, Ministry of Education and Science);
- finance programmes for drug addiction prevention, assistance to drug addicts and their social and occupational rehabilitation;
- promote and improve measures to prevent, investigate, prosecute and repress drug related crimes;
- promote interinstitutional, national, and international cooperation on such matters.

In order to ensure transparency of procedures and activities related to the management and sale of confiscated property, there have to exist clear-cut rules for the operation of the Forfeiture Fund. Furthermore, the NRA and the Fund should be required to produce reports regarding all activities listed above. Given that the NRA is a second-level spending unit to the Minister of Finance performing functions relating to the implementation of the budgetary policies of the State, we believe that the Minister of Finance has a significant role to play in exercising control over the Forfeiture Fund and the reuse of financial resources generated from the management and sale of forfeited assets.

In light of the above, the following areas are in need of legislative and regulatory changes:

- Establish rules governing the involvement of private legal entities in the safekeeping and management of seized assets, as well as the outsourcing of certain activities outside the public sector administration. Develop clear criteria for private entity selection. Introduce registration regime and a public register to prevent any abuse by former owners of confiscated assets.
- Lay down transparency and disclosure rules to keep the public well informed of the illicit origin of seized assets in the process of their management and realisation. Introduce special property reporting requirements, as well as requirements for using 'Seized Property in Crime Cases' stickers to indicate seized assets' illicit origins.
- Set up a public register of assets forfeited to the State.
- Lay down provisions to allow for expedited sale, as early as in the course of forfeiture proceedings, of seized vehicles, consumer electronics, appliances, and other articles liable to perish, waste, or greatly depreciate in value, whose storage results in technical obsolescence and unusability, or whose value is less than the costs involved in their safekeeping.
- Ban owners of seized assets from bidding in public sales. Lay down rules to ensure that buyers do not have a criminal record and are not linked to organised crime groups.
- Adopt regulations setting forth procedures for destruction of assets that are obsolete or unfit for use, and for liquidation of unprofitable commercial businesses.
- Establish an electronic system to maintain updated lists of seized assets suitable to be assigned for management by public sector organisations. Set up a mechanism for exchange of information between public authorities and municipalities about their needs.
- Repeal provisions governing the establishment and functioning of the Interdepartmental Board for Forfeited Assets Management. Devolve to the NRA functions related to seized and forfeited property management. A special directorate or unit should accordingly be established for that purpose, which should be involved in no activity other than control and management of illicitly derived assets forfeited to the State.
- Set up a specialised Fund within the NRA. The monies in the Fund, accrued from the management and sale of seized assets, would be used in a targeted manner to finance social activities. Lay down rules on keeping the public informed of seized and confiscated assets (e.g. by virtue of a public register).
- Lay down rules to ensure publicity and transparency in the management and use of seized assets and the Forfeiture Fund. Introduce well publicised special property reporting rules. Publish reports on the activities of the NRA and the Forfeiture Fund.

The suggestions and proposals for legislative and regulatory changes above are meant to help enhance the effectiveness of the legal and institutional framework underpinning the activities pertaining to the management and disposal of seized and forfeited assets. These changes will strengthen and improve the current system. They do not require setting up new structures and/or additional operational funding. In this context, it should be taken into account that currently the NRA is the authority tasked with safekeeping, storage, management and sale of all abandoned, seized and confiscated assets. The Agency therefore has the organisational and structural units necessary to implement these functions.

NOTES

TRANSPARENCY INTERNATIONAL

BULGARIA | ROMANIA | ITALY

TRANSPARENCY INTERNATIONAL BULGARIA

50 Petőfi Sándor Str., fl. 1
1463 Sofia, Bulgaria
Phone: + 359 2 9867713
Fax: + 359 2 9867834
mbox@transparency.bg
www.transparency.bg

TRANSPARENCY INTERNATIONAL ITALY

Via Zamagna 19
20148 Milan, Italy
Phone: + 39 02 40093560
Fax: +39 02 406829
info@transparency.it
www.transparency.it

TRANSPARENCY INTERNATIONAL ROMANIA

21 Nicolae Balcescu Bvd.
010044 Bucuresti, Romania
Phone: +4 031 6606000
Fax: +4 031 6606006
office@transparency.org.ro
www.transparency.org.ro

WWW.CONFISCATION.EU