FORFEITURE OF ILLEGAL ASSETS: CHALLENGES AND PERSPECTIVES OF THE BULGARIAN APPROACH

Executive Summary
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SUMMARY OF THE NATIONAL REPORT FOR BULGARIA¹

Abbreviations

EU European Union
EC European Commission
CIAF Commission on Illegal Assets Forfeiture
CEPACA Commission for Freezing and Confiscation of Criminal Assets
FFSIAAA Forfeiture in Favour of the State of Illegally Acquired Assets Act
CC Criminal Code
NP Natural Person
LP Legal Person
CPC Civil Procedure Code

INTRODUCTION

Confiscation of property acquired through crime and the forfeiture of illegal assets are instruments for active counteraction of serious crimes that are of nature to generate economic gain for their perpetrators or related persons. The application of such mechanisms indicates a firm political will and a particular governmental policy to combat crime. It is grounded on the awareness of an existing high risk of growing organised crime and corruption and the perception for its growing negative effect on the governance and economic development of the country.

The reasons behind the adoption of legislation for forfeiture of illegal assets differ from one country to another but this specific approach should be taken as a clear policy against cumulation of assets whose legal origin cannot be proven. It aims at prevention and provides for dissuasive effect on future perpetrators.

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 (including the United Nations Convention against corruption) and multilateral treaties contain provisions with regard to forfeiture of assets.

The issue of asset forfeiture is subject of regulation on EU level as well. Several Framework Decisions have been adopted in the area of confiscation of assets acquired from criminal activity, determining and distinguishing the roles of the EU and its member states in the process for seizure of illegal assets. The principle adopted within the EU Framework Decisions provides for asset seizure as part of criminal proceedings conducted by official court of law, and after the final verdict regarding the assets acquired through crime. The legal provisions adopted in two Framework Decisions – from 2001 and 2005, are supplemented by the proposed draft Directive for freezing and confiscation of proceeds from criminal activity in the European Union. The scope of criminal activities, the proceeds of which are subject of freezing and confiscation under the proposed Directive are determined by references to the

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2 Framework Decision on Money Laundering, the Identification, Tracing, Freezing, Seizing and Confiscation of Instrumentalities and the Proceeds of Crime, Council of the European Union, 26 June 2001
specific EU acts, according to the areas of crime, set in Art. 83, Paragraph 1 of the Lisbon Treaty.

The making of a draft Directive for freezing and confiscation of proceeds from criminal activity in the European Union was accompanied by high expectations. Some even led to deliberation of the possibility for non-conviction based asset forfeiture before a final court verdict, which however did not become the general rule but rather provided for a few exceptions. The EU Directive remains on the level of conviction based confiscation but should be assessed as positive first step in the elaboration of common EU standards for confiscation of assets.

In this context, three national chapters of TI, being also EU MSs (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/weak aspects in terms of competencies, capacity, performance and integrity. The aim of the project is to support the effectiveness, accountability and transparency of asset confiscation policies and practices in Europe, allowing for improved cooperation between authorities in MSs.

The research shall provide for objective understanding of main strong and weak areas in asset confiscation legal, institutional and policy practices in BG, RO and IT, and will become the basis for the independent civil monitoring and the exchange of know-how and good practice. The addressed shortcomings and recommendations will trigger improvement of the institutional and procedural capacities of AROs on local and EU level, esp. 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 (lessons learnt) will also be disseminated via the TI network on regional and EU level. Ultimately, this means strengthened capacities of AROs and better possibilities for cooperation between MSs and civil society representatives at regional and EU-level.

**FORFEITURE OF ILLEGAL ASSETS WITHOUT FINAL VERDICT IN PLACE: THE BULGARIAN APPROACH**

In contrast to the classic models of confiscation of criminal assets the non-conviction based forfeiture (confiscation) is a useful tool in a variety of contexts, particularly when criminal confiscation is not possible or available. The adoption of the non-
conviction-based forfeiture approach should be seen as an operational instrument for a quicker reaction on the part of the state authorities as well as an effective tool for sizing and forfeiting the proceeds of crimes independently from the outcome of the criminal justice proceedings. Because a non-conviction-based forfeiture is an action against the asset itself, it can proceed regardless of death, flight, or any immunity the criminal or the corrupt official might enjoy.

Forfeiture of illegally acquired assets in favor 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: confiscation as a form of punishment for crime; confiscation as a measure of coercion provided in the Criminal Code, conviction based confiscation of criminal assets, and, non-conviction-based forfeiture of illegally acquired assets.

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. Between 2005 and 2012 a conviction based forfeiture of criminal assets regime has been applied. One of the reasons for the replacement of this concept with the non-conviction-based asset forfeiture in 2012 is the series of recommendations made by the European Commission in all its reports on progress in Bulgaria under the Co-operation and Verification Mechanism after July 2009. It was stressed as early as 2009 that legal loopholes seriously undermined the efficiency of the Commission for Freezing and Confiscation of Criminal Assets (CEPACA)’s work.³

COMPOSITION AND STRUCTURE OF THE COMMISSION FOR ILLEGAL ASSETS FORFEITURE

The Forfeiture in Favour of the State of Illegally Acquired Assets Act (that entered in force November 2012) provides for the establishment of a new Commission for Illegal Assets Forfeiture (CIAF, successor of CEPACA). The role of CIAF is to perform examination of the assets, institute proceedings for imposition of precautionary

measures, and submit a motion for an injunction securing a future action for forfeiture of unlawfully acquired assets to the district court.

CIAF is a standing independent and specialised state body, a legal person seated in Sofia. The Commission has five members, of which one chairperson and one deputy chairperson. The regional units are CIAF locally competent bodies to which some of the actual work on the implementation of the 2012 Forfeiture of Illegal Assets Act is assigned. There are five regional directorates and pursuant to Article 5, para 4 of the the 2012 Forfeiture of Illegal Assets Act they are located in the areas of the five appellate courts in the country, i.e. in Sofia, Plovdiv, Burgas, Varna and Veliko Tarnovo.

The law introduces strict rules for office incompatibility of CIAF members. To ensure impartiality and to rule out possible abuse of function, the law prohibits that CIAF members occupy this position for two successive terms of office. The incompatibility conditions are identical throughout the national legislation and aim at ensuring the independence and impartiality of the Commission members in their work.

Declaring a conflict of interest follows the terms and procedure set forth in the Preventing and Establishing Conflict of Interest Act. It refers to both incompatibility for occupying s certain position and declaring a private interest within the meaning of Article 2, para 2 of the above-mentioned Act, where a separate declaration shall be submitted for each individual circumstance.

The entry into force of an act of the Prevention and Establishment of Conflict of Interest Commission whereby a conflict of interest has been established leads to early termination of a Commission member's term of office.

Perceiving conflict of interest first as a situation in the context of decision-taking and second as a situation relevant to public spending management (or in the particular case – in relation to private funds or assets for which it is reasonable to assume that they have been acquired illegally) allows to monitor and effectively register cases and typical situations where the professional integrity of staff members may be put at risk.

For all CIAF members, as well as for all civil servants working in its administration, declaration of assets is required upon assuming office, thereafter annually and in case of resignation. Verification of the declarations by the respective competent body is of key importance. However, while in relation to the Prime Minister this verification is carried out by the General Inspectorate of the Council of Ministers, the National Assembly and the President do not avail of such internal structures. This fact objectively raises the question of the effectiveness of the exercised control.

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4 Promulgated State Gazette no. 94/2008, last amended State Gazette no. 15/2013.
The Forfeiture of Illegal Assets Act preserves the quota principle between several public bodies in the appointment of Commission members - the chairperson of the Commission is appointed by the Prime Minister, three Commission members are elected by Parliament, and one member is appointed by the President (Article 6, para 3).

An analysis of the Forfeiture of Illegal Assets Act provisions regarding constitution of the Commission demonstrates that the principle of transparency is only endorsed halfway in the law: there are no rules whatsoever regarding the selection made by the Prime Minister or the President. It is appropriate to consider, in case of future amendments of the law, introducing transparent rules for the selection of the Prime Minister’s and the President’s nominees. These rules must fully translate the principles of transparency, competitiveness and publicity of the selection. Nominees must be publicly heard and must be provided with the opportunity to present their concepts for the work of the Commission and to answer questions.

The efficiency of the Commission very much depends on its structure and functional characteristics. The CIAF is a specific decentralised structure where the CIAF’s powers are delegated on regional level without however CIAF being able to directly determine the specific activities of its own structural units.

CIAF’s most essential priority is determined by the Commission’s capacity to prove, in the framework of judicial proceedings, that the inspections performed by its regional units are complete and the conclusions made in relation to the established facts and circumstances are correct. This is why the Commission should promote and maintain such an organisation and expertise that would allow, in strict compliance with the statutory requirements, to prepare and complete comprehensive inspections that lead to successful trials in favour of the state.

The exceptional independence of decision-making of the Commission regarding opening illegal assets forfeiture proceedings in favour of the state carries alongside certain commitments regarding the institution’s liability and the effective application of the law.

The specificity of this institution is determined by a unique combination of data that is available with a broad range of public institutions and bodies, and organising this data around the actions of the inspected person over a ten-year period of time.

An extremely large volume of information reaches the Commission, including, but not only, information about available financial resources in the country and abroad and about other forms of property as defined in the law. In practice an exceptionally large and heterogeneous in nature volume of information is channeled to the Commission, and this in turn determines the specific profile of competence of the inspectors working in the system of CIAF. A particular focus in the assessment of the
Commission’s administrative capacity should be put on issues regarding the career and professional development of staff members. As long as this is a matter of human resources management, specific professional development programmes should be set in place corresponding to the specific nature of CIAF’s work.

Future legislative amendments should open opportunities for setting in place a system of statutory requirements for the asset valuers and the analyses drawn up by them as well as for structuring in an appropriate manner the overall evaluation of assets that could be the subject of such inspections.

Monitoring by Transparency International – Bulgaria performed in 2013 shows that while the staff of CIAF regional units increased in relative terms, the appropriations available to the Commission decreased. This fact seriously hinders the Commission’s effective work.

Under the current institutional model of the Forfeiture Commission the most significant deficits may be expected in the context of the interaction with other institutions.

**INTERACTION BETWEEN INSTITUTIONS IN CHARGE OF ILLEGAL ASSET FORFEITURE**

Unlike the 2005 Forfeiture of Criminal Assets Act (repealed) where there were no rules whatsoever on interaction with other public authorities e.g. context of conviction based confiscation, the 2012 Forfeiture of Illegal Assets Act provides for such regulation in a separate chapter. A specific Instruction develops it in further detail. The Instruction sets forth the terms and conditions for interaction between the Commission for Illegal Assets Forfeiture, the State Agency for National Security, the Ministry of Interior, bodies with the minister of finance and the Prosecution Office (hereinafter “the Interaction Instruction”). This legislative solution substantially enhances effective interaction, which in turn is a prerequisite for improving the effectiveness of CIAF’s entire work.

Interaction between CIAF and the other authorities is carried out through exchange of information and assisting CIAF bodies in the discharge of their duties.

The rules for interaction with the Prosecution Office are premised on the fact that a prime ground for initiating checks of assets is committing some of the crimes stipulated in Article 22, para 1 of the 2012 Forfeiture of Illegal Assets Act.
GROUND FOR ASSET FORFEITURE AND PERIOD UNDER EXAMINATION

The Law provides for two alternative grounds for the launch the examination: commission of a crime or of an administrative violation. For each of the grounds the Law provides for a detailed description of requirements, which allow the start of the examination of the property of the relevant person.

The list of crimes under Article 22, para 1 is exhaustive and includes crimes such as terrorism, organized crime, corruption, kidnapping; trafficking and embezzlement if they are of nature to generate profit.

According to experts the expansion of the list of crimes in comparison to the one under the 2005 Forfeiture of Criminal Assets Act (repealed) (the inclusion of abduction, some of the cases of negligence, conclusion of disadvantageous transactions, malfeasance and others) poses the risk of reducing the effectiveness of the work of the CIAF because the inspectors’ workload will increase and the scope of the knowledge necessary will expand to include ever more areas.

The law provides for an additional requirement which should be present at the launch of the examination. The Commission should identify the existence of a discrepancy of 250 000 lv between the property and the income of the person. This threshold is relevant only for the decision whether to start an examination or not. However it has no relevance to the amount of the confiscated assets – all assets whose legal origine cannot be proven shall be confiscated by the civil Court.

Forfeiture of Illegal Assets Act provides that the examination of assets can start as soon as charges are brought against a person for some of the crimes in the list of article 22.

However, two important exceptions exist. They aim to ensure the application of the 2012 Forfeiture of Illegal Assets Act in cases when the perpetrator of a crime has been identified but criminal proceedings cannot be initiated or have been terminated (Article 22, para 2) or suspended (Article 22, para 3). These grounds have also been listed exhaustively (pardon, statute of limitation, mental disorder which precludes sanity, perpetrator’s death, immunity, transfer of the criminal proceedings; no address known and the person cannot be found).

The second independent grounds for the initiation of an examination under the 2012 Forfeiture of Illegal Assets Act are set out in Article 24 and represent a substantial expansion of the application scope of the 2012 Forfeiture of Illegal Assets Act as they encompass numerous administrative violations which are different in type.
The grounds for the initiation of the examination are set out in Article 24 and represent a substantial expansion of the application scope of the 2012 Forfeiture of Illegal Assets Act as they encompass numerous administrative violations which are different in type. The conditions which must be in place are provided for as cumulative in Article 24, para 1 and include:

- an act of administrative violation should have entered into force;
- the administrative violation should be of a nature to yield proceeds and;
- in the specific case, the proceeds should exceed the amount of BGN 150,000.

The amount should be established in the course of the administrative criminal proceedings because the minimum threshold requirement of BGN 150,000 under Article 24, para 1 2012 Forfeiture of Illegal Assets Act is a prerequisite for the admissibility of the examination of the origin of a person’s assets which have generated the proceeds. In relation to this condition, there is a deficiency in the legal framework due to a certain discrepancy between the AVSA and this part of the 2012 Forfeiture of Illegal Assets Act.

A deficiency of the Law is that the authorities of the territorial directorates will face the need to establish the amount of the proceeds themselves in order to decide whether there are valid grounds to apply the law. The CIAF bodies have not been granted the powers to instruct the sanctioning authority which has submitted a notification that it should determine the value of the proceeds itself because the administrative criminal proceedings have already been completed – there is an act in force.

The discrepancy found at the law level poses the risk of diverse case law under the 2012 Forfeiture of Illegal Assets Act and AVSA. It is necessary to lay down express provisions assigning it to the administrative sanctioning authority to determine the amount of the proceeds generated as a result of an administrative violation.

An act of a foreign court that has been recognised could also be ground for an examination under the 2012 Forfeiture of Illegal Assets Act in accordance with Article 23.

**SUBJECT OF ILLEGAL ASSETS FORFEITURE**

Subject to forfeiture in favour of the State are any assets acquired through illegal activity (Article 1, para 1 2012 Forfeiture of Illegal Assets Act), regardless of who has them. It is not necessary for the assets to have been acquired through criminal activity – the initiation of criminal proceedings against a given person in relation to any of the crimes listed exhaustively in Article 22, para 2 2012 Forfeiture of Illegal
Assets Act is provided for only as grounds to start an examination of illegal assets against the person. All illegal assets are subject to forfeiture, regardless of their nature, location and amount.

The 2012 Forfeiture of Illegal Assets Act sets out the rebuttable assumption that any income for which no legal source has been established is deemed illegal. Most often, illegal income is generated from criminal activities. Unlike the assets forfeiture model under the 2005 Forfeiture of Criminal Assets Act (repealed), to forfeit the assets acquired through them in favour of the State, there is no need to establish a relation (direct or indirect) between the illegal assets acquired and criminal activities. Moreover, criminal activities do not exhaust the possible sources of illegal income and illegal assets and this is why the concept of “illegal activity” is broader in scope than “criminal activity.”

A serious deficiency of the Law is the dispersed legal regulation of the threshold of 250 000 lv. Its legal basis could be found in a number of legal norms, each at different place in the law.

START OF THE ASSETS FORFEITURE PROCEDURE

When the grounds are related to a crime listed in Article 22, para 1, as a rule, the initiative lies with the prosecutor’s office. The exceptions to these rules are related to some of the special cases of examinations initiated under the 2012 Forfeiture of Illegal Assets Act. When the grounds are an effective sentence of a foreign court for a crime under Article 22, para 1, the initiative to start the examination has been granted to the Ministry of Justice (Article 25, para 3). This legislative solution is premised on the fact that the Ministry of Justice is the central authority of the Republic of Bulgaria which receives information about criminal records from other countries through the Central Criminal Records Office.

The same authority – the Ministry of Justice, but jointly with the Supreme Cassation Prosecutor’s Office has been granted the initiative to notify the illegal assets forfeiture authorities in cases of transfer of criminal proceedings (Article 25, para 4 2012 Forfeiture of Illegal Assets Act). The reason lies in the powers these authorities have in the special proceedings for the transfer of criminal proceedings set out in Chapter Thirty-Six, Section One of the Criminal Procedure Code.

The philosophy of the Act to tie the initiation of an examination of assets to a previous offence (crime or administrative violation) does not allow provisions for a mechanism for the CIAF to act ex officio.
When setting out these norms at the time when the 2012 Forfeiture of Illegal Assets Act was created, the legislator expressly prohibited examinations on the basis of anonymous signals (Article 26). Keeping only the formal grounds – a person constituted as an accused party for a crime on the list and an effective act to impose an administrative sanction – in view of the said judgment of the Constitutional Court prevents, in fact, the possibility for examinations to be initiated upon anonymous signals.

**PERIOD UNDER EXAMINATION**

By virtue of an express legal norm – Article 27, para 3, the examination should cover 10 years back as of the date of its start. The authority performing the examination does not have the right of discretion, nor may it reduce or extend this period.

The past period the examination covered should not be deemed retroactive effect of the Act. Both the crime and the administrative violation which make up the grounds for the initiation of the examination precede it objectively. The going back in time by 10 years before the start of the examination aims solely to achieve the goal of establishing the origin of the assets of the person examined.

Whether the 10-year period set out in the Act is sufficient is a question to be answered in a certain time to monitor the application of the Act. Only then will the conclusions be sufficiently grounded which will also allow for objectivity of the evaluation.

**OBJECT AND SUBJECT OF ILLEGAL ASSETS FORFEITURE**

Subject to forfeiture in favour of the State are any assets acquired through illegal activity (Article 1, para 1 2012 Forfeiture of Illegal Assets Act), regardless of who has them. It is not necessary for the assets to have been acquired through criminal activity. The forfeiture procedure under the 2012 Forfeiture of Illegal Assets Act is targeted at the illegal assets (in rem) generated from criminal or illegal activities and not personally at the person who has acquired them through illegal activities.
Any assets with regard to which no legal source of acquisition has been established are deemed “illegal” (Article 1, para 2 2012 Forfeiture of Illegal Assets Act). The Act does not clarify the concept of “legal source.”

The lack of a legal source is not synonymous with the lack of legal grounds to acquire the respective assets or with a legal deficiency entailing the invalidity of the legal grounds for their acquisition within the meaning of civil law. The contents of the illegal assets include ownership rights and items which have been acquired on the basis of valid legal grounds set out in the law (agreements for purchase, replacement, lease, production, etc.); otherwise, the respective item cannot become part of the estate of the person examined under the law and, hence, be forfeited in favour of the State.

It is possible, however, to receive income from sources which are prohibited by law – corruption, trafficking in human beings and narcotics, tax evasion, smuggling, etc. The illegal nature of these sources will render illegal the income they have generated, respectively the assets acquired through the income, which constitutes grounds for such income or assets to be forfeited in favour of the State. Due to the danger of having the illegal income forfeited, its sources are not disclosed and this makes it difficult to prove the illegal source of the income. In this regard, Article 1, para 2 2012 Forfeiture of Illegal Assets Act sets out the rebuttable assumption that any income for which no legal source has been established is deemed illegal. Any sums from the sale of assets acquired through an illegal or unidentified source are not income from a legal source even though their specific source has been established.

To forfeit any assets acquired from illegal income in favour of the State, there is no need to establish a relation (direct or indirect) between the illegal assets acquired and criminal activities.

What matters in determining the (il)legal character of certain assets is solely their source, regardless of whether it is known to the CIAF or whether it has been declared before the National Revenue Agency (NRA). In this regard, legal will be any undeclared income acquired from a legal source; respectively the declared income from an illegal source will not render it legal.

All illegal assets are subject to forfeiture, regardless of their nature, location and amount. The place of their acquisition or location is irrelevant to the forfeiture. Subject to forfeiture are assets located both on the territory of the Republic of Bulgaria and in another country.

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5 Within the meaning of § 1, item 1 of the 2012 Forfeiture of Illegal Assets Act, Supplementary Provisions, “assets” means assets of any type which have a cash equivalent – both tangible (money, movable and immovable items, limited real rights, etc.) and intangible.

6 See J-283-2012, SCC, IVth Civil Division.

7 Also in this sense is J-1254-2009, PDC, Civil College, 1st panel.
Forfeited will be both assets exceeding by BGN 250,000 the net income of the person examined for the respective period and assets below this amount. The amount of BGN 250,000 under § 1, item 7 2012 Forfeiture of Illegal Assets Act, Supplementary Provisions does not define the amount of illegal assets subject to forfeiture; it has been introduced as a criterion to determine if there is a substantial discrepancy between the assets and the net income of the person examined\(^8\).

*De lege ferenda* it is recommendable for the law to provide also that all proceeds received through illegal assets will be forfeited from the person examined (increased market value of the assets, any lease, interest, dividends received, etc.).

In view of the assets forfeiture model used in the 2012 Forfeiture of Illegal Assets Act, forfeiture is related to the illegal nature of the assets and not to the person from whose activity the assets have been acquired. In this respect, subject to forfeiture are any illegal assets, regardless of who holds them or controls them at the time of forfeiture. Subject to forfeiture are not only the assets held by the person examined as of the time of completion of the examination but also any illegal assets the person has transferred to other persons (third parties).

The constituting of a person as an accused party for a crime under Article 22, para 1 2012 Forfeiture of Illegal Assets Act is the time when the assets to be examined are identified in an indisputable manner. As a rule, only after the initiation of the proceedings and the establishment of the illegal nature of the assets acquired by the person does the law allow the CIAF to institute proceedings to forfeit the said assets, even when they have been later acquired by third parties.

The consideration about the existence of illegal assets and their amount is made aggregately and abstractly as the value difference between the total value of the assets acquired and disposed of and the net income\(^9\) of the person examined for the period under examination\(^10\); the amount of the assets held at the time of completion of the examination is irrelevant. However, to forfeit specific items from the assets, it should be proven that, at the time a specific item was acquired, the net income of the person examined (i.e. the person’s legal income net of the expenditure on maintenance of the person and the person’s family) was not sufficient to acquire the

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\(^8\) Under the 2005 Forfeiture of Criminal Assets Act, subject to forfeiture was only the part of the illegal assets which significantly exceeded the legal income of the person examined – see J-56-2012, SCC, IVth Civil Division, J-89-2012, SCC, IVth Civil Division. At present, given the not quite clear provisions of the 2012 Forfeiture of Illegal Assets Act, there is a debate in legal theory about the amount of assets subject to forfeiture. One opinion holds the view from the case law under the 2005 Forfeiture of Criminal Assets Act. In the other opinion, which I subscribe to, subject to forfeiture are all illegal assets, including the part which does not exceed the amount of BGN 250,000 which sets the threshold for the existence of a substantial discrepancy between the assets acquired and the legal net income of the person examined. The practical significance of the issue necessitates an immediate legislative intervention which would provide an unambiguous answer with regard to the amount of illegal assets subject to forfeiture.

\(^9\) In accordance with § 1, item 5 2012 Forfeiture of Illegal Assets Act, Supplementary Provisions, “net” is any income, revenues or sources of financing net of the amount of the customary and extraordinary expenditures incurred by the person examined and the members of the person’s family. Pursuant to item 6, “customary” are the expenditure on maintenance of the person and the members of the person’s family in view of the data by the National Statistical Institute. Under item 3, “family members” are spouses, de facto cohabitants and the children who have not attained majority.

\(^10\) In the same sense, see J-89-2012, SCC, IVth Civil Division and J-231-2012, SCC, IVth Civil Division.
Should the CIAF fail to prove that a specific item from the assets was acquired with funds from an illegal source, the court will not forfeit the item but the cash equivalent of the illegal assets (Article 72 2012 Forfeiture of Illegal Assets Act), including through cashing out the legal assets of the person examined.

In terms of time, subject to forfeiture are any illegal assets acquired and/or transferred within the period of examination of their origin; the period is set out imperatively and covers 10 years back as of the date of the start of the examination (Article 27, para 3 2012 Forfeiture of Illegal Assets Act). In view of this, subject to forfeiture may also be assets acquired before the date of entry into force of the 2012 Forfeiture of Illegal Assets Act (§ 6 2012 Forfeiture of Illegal Assets Act Transitional and Final Provisions) but not any assets acquired before the beginning of the period under examination.

Subject to forfeiture may also be assets acquired before the date of entry into force of the 2012 Forfeiture of Illegal Assets Act but not any assets acquired before the beginning of the period under examination.

Quite often, the 10-year period under examination will cover assets acquired by the person examined (and third parties) years before the committing of a crime under Article 22, para 1 2012 Forfeiture of Illegal Assets Act which constitutes the grounds to start the examination and, in practice, to open the illegal assets forfeiture proceedings.

VALUATION OF THE ASSETS UNDER EXAMINATION

The valuation of the assets of the person examined and the time as of which they are valued are essential to the initiation of forfeiture proceedings – proceedings will be initiated only if the CIAF finds a substantial discrepancy in the assets of the person examined because only then may it make a reasonable assumption that the assets of the person examined are illegal (argument of Article 21 2012 Forfeiture of Illegal Assets Act). A substantial discrepancy is in place if the value of the discrepancy between the assets and the net income of the person examined exceeds BGN 250,000 for the period under examination (Article 21 and § 1, item 7 2012 Forfeiture of Illegal Assets Act, Supplementary Provisions). The valuation of the

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11 Under the 2005 Forfeiture of Criminal Assets Act, there was diverse case law on this issue which is key in terms of the allocation of the burden of proof of the illegal nature of the specific item acquired in view of its forfeiture in favour of the State. According to some courts (J-89-2012, SCC, IVth Civil Division), this fact should be proven by the CIAF and not by the respondent to the forfeiture action. According to others (J-506-2012, SCC, IVth Civil Division), to forfeit a specific item it is sufficient for the CIAF to prove that the total value of the assets acquired and disposed of for the entire period under examination exceeds significantly the respondent’s legal income. In such a case, the respondent should prove that they acquired the item with legal income to avoid its forfeiture.
assets is also important in terms of the scope of the measures which will be imposed on the assets of the person examined to secure the future assets forfeiture action.

The assets under examination are valued at their actual cost at the time of their acquisition or disposal (Article 69, para 1 2012 Forfeiture of Illegal Assets Act) to determine whether there is a substantial discrepancy in the assets. The value of the assets as of the time of the examination or issuance of the forfeiture judgment is irrelevant.

A deficiency of the law is that it fails to set out a unified methodology to valuate the assets which is to be applied to the individual cases of illegal assets forfeiture. Competent to make the valuation is the director of the respective CIAF territorial directorate which collects information about the assets under examination.

In accordance with Article 21, para 2 2012 Forfeiture of Illegal Assets Act, the consideration whether there is a significant discrepancy in the assets of the person examined takes into account all of the person’s assets acquired during the period under examination. It is irrelevant whether the assets have been disposed of and who holds the ownership rights to them at the time of completion of the examination.\[12\]

The consideration will take into account any assets transferred by the person examined to other parties, any assets acquired jointly with the person’s spouse, the personal assets of the related parties under Article 63, para 2 2012 Forfeiture of Illegal Assets Act and any assets a third party has acquired at the expense of the person examined under the terms of Article 67 (arguments of Article 57, para 1 and Article 61, para 1 2012 Forfeiture of Illegal Assets Act). It is irrelevant whether the transfer transaction in the event of an asset transfer for value was put down in writing as to be able to consider the State a third party or not (in the first case, subject to forfeiture will be the equivalent of the assets transferred). As a rule, these assets are also subject to forfeiture if forfeiture proceedings are instituted and the assets of the person examined are forfeited because, albeit indirectly, they were acquired as a result of illegal activities.

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**SUBJECTS OF THE FORFEITURE PROCEEDINGS**

As mentioned above, the forfeiture proceedings are targeted at the illegal assets and not at the person who has acquired them. This is why such proceedings may be

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\[12\] In the same sense see J-231-2012, SCC, IVth Civil Division.
initiated against any person who holds illegal assets – including against a (third) party who has acquired the assets from the person examined through a transformation. A necessary condition for such proceedings to be initiated is to establish criminal activities of the given person (person examined – argument of Article 21 2012 Forfeiture of Illegal Assets Act) and (with the exception of the cases under Article 67 and 71 2012 Forfeiture of Illegal Assets Act) illegal assets forfeiture proceedings to be instituted against this person.

Only if forfeiture proceedings against the person examined are initiated does it become possible to initiate assets forfeiture proceedings against other (third) parties to whom the person examined transferred the illegal assets or who hold on other grounds all or part of the assets. In this regard, as a rule, the initiation of illegal assets forfeiture proceedings against third parties is accessory and premised on the initiation of the main forfeiture proceedings against the person examined. Parallel forfeiture proceedings will be initiated against these parties in view of the purpose of the law to restrict the possibility to dispose of illegal assets and of the idea that no one may acquire more rights than the grantor of the rights.

This person is an obligatory subject without whom the proceedings may not be initiated. As a rule, the person examined may only be an individual and not a legal entity. The Act should provide for new grounds to initiate an examination of the illegal assets held by legal entities.

The persons engaged in criminal activities often transfer the assets acquired through them to third parties or conceal their acquisition by concluding various transactions in order to avoid the forfeiture of the assets. To counter this practice, the law allows for the examination of the origin of the assets of the person examined to cover also the assets of third parties who have acquired illegal assets and, in certain conditions, declares the transactions in illegal assets concluded with third parties invalid with respect to the State (Article 64 2012 Forfeiture of Illegal Assets Act).

Unlike the relative invalidity of transactions challenged by means of Actio Pauliana under Article 135 OCA, in this case there is a special relative invalidity of a transaction concluded which comes about ex lege without the need to establish it in a constitutive action while the transaction gives rise to no legal effect with respect to the State. This necessitates an even greater protection of the interests of third bona fide parties and their creditors who have acquired rights under the transaction declared invalid in comparison to the need for their protection under Article 135,

13 An exception to this are the cases of forfeiture of assets acquired by a third party at the expense of the person examined and when the person examined passes away in which case the proceedings will be instituted against the person's heirs (Article 67 and 71 2012 Forfeiture of Illegal Assets Act).
The family members (spouses, de facto cohabitees and the children who have not attained majority – § 1, item 3 2012 Forfeiture of Illegal Assets Act, Supplementary Provisions) have the strongest quality of relatedness to the person examined. They have the greatest interest with respect to acquiring and keeping the illegal assets and this is why they bear the greatest impact when forfeiture proceedings are initiated against the person examined.

The assumption that the personal assets of the family members are also of illegal origin and subject to forfeiture unless they prove their legal origin is discriminatory in character and unjustifiably infringes upon their property sphere; this is why it is recommendable that Article 63, para 2 2012 Forfeiture of Illegal Assets Act be repealed.

Subject to forfeiture are illegal assets which the person examined transferred during the period under examination to a spouse, a de facto cohabitee, a former spouse, lineal relatives up to any degree of consanguinity – both descending (regardless of whether they are of age or not) and ascending, collateral relatives up to the fourth degree of consanguinity, affines up to the second degree of affinity inclusive (Article 65 2012 Forfeiture of Illegal Assets Act). Irrelevant to the assets forfeiture is whether these persons acted in good faith with regard to the acquisition of the illegal assets or whether they acquired the assets in a gratuitous transaction or a transaction for value.

Article 64 2012 Forfeiture of Illegal Assets Act sets out the conditions for the forfeiture of illegal assets which the person examined transferred through a legal transaction in the period under investigation to third parties unrelated to them. Any such transactions are invalid with respect to the State and any assets provided under them are subject to forfeiture but under different conditions depending on the nature (for value or gratuitous) of the respective transaction.

The confiscation of property acquired by third person at the expense of the inspected person is also admissible.

The illegal assets forfeiture proceedings under the 2012 Forfeiture of Illegal Assets Act are an independent legal form of protection of the public interest which is used independently of criminal proceedings. Its aim is not to prove the authorship of a crime and the perpetrator's guilt with the means and tool of proof of criminal proceedings but to establish the (il)legal origin of the assets of the person examined with the means and tools of proof provided for in civil proceedings. The 2012 Forfeiture of Illegal Assets Act is a special civil law which does not have a repressive

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14 However, the law does not always provide for sufficient protection of the third parties – see above, note 13.
character and this is why it does not apply the protection guarantees typical of the Criminal Procedure Code. Hence, it sets out lower standards of proof in comparison to those under the Criminal Procedure Code, allows for restructuring of the burden of proof and the presumption of not guilty unless proven otherwise is not applied in the forfeiture proceedings under it.

A number of 2012 Forfeiture of Illegal Assets Act articles use rebuttable presumptions to prove certain facts – Article 2, para 1, Article 21, Article 63, para 2, Article 64, item 2, 65, 66 and others. Their introduction is reasonable in view of the special subject of the proceedings to establish illegal assets and the difficulties in proving their origin. These assumptions are necessary, appropriate and proportionate to the purpose of the law even when through them the law assigns it to the respondent in the forfeiture proceedings to prove a fact that is favourable to them.\(^{15}\)

Along with the restriction of the fundamental rights of the participants in forfeiture proceedings, the 2012 Forfeiture of Illegal Assets Act provides for a number of guarantees to protect these rights against the danger of their restrictions exceeding the purposes which have necessitated the restrictions imposed:

### STAGES OF THE FORFEITURE PROCEDURE

Generally, the forfeiture proceedings can be divided in four stages: 1) administrative proceedings to establish the illegal assets and take measures to safeguard and manage it; 2) trial to establish and forfeit the assets; 3) forfeiture of the illegal assets; and 4) management and disposal of the assets forfeited.

**Establishment of illegal assets and measures to safeguard and manage them**

The first stage of the procedure takes place before the CIAF in accordance with the special administrative proceedings within which information is collected about the assets of the person examined and the sources of their acquisition, and action is taken to impose precautionary measures on the illegal assets established.

The second stage takes place before the civil court under the constitutive claim proceedings in which the CIAF takes part as the claimant and the parties whose interests are impacted by the forfeiture of the illegal assets also participate.

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\(^{15}\) In this sense, see item IV, 5 of Judgment No. 13 of 13 October 2012 of the Constitutional Court in constitutional case No. 6/2012.
Chronologically, the establishment of the assets by the CIAF is a procedure which starts immediately after the matter is duly referred to the special authority and ends with a CIAF decision which determines the further development of the proceedings.

The establishment takes place through an examination by the respective territorial directorate. Thus, the examination of the assets of a person is only a pre-condition for the forfeiture proceedings which depend entirely on its result\textsuperscript{16}.

When any of the grounds under Articles 22 – 24 2012 Forfeiture of Illegal Assets Act are in place, the director of the respective CIAF territorial directorate (hereinafter referred to as “the authority under Article 13, para 1 2012 Forfeiture of Illegal Assets Act") initiates an examination of the assets of the person examined\textsuperscript{17}. Therefore, the notification for existing reasonable cause for start of check against the examined person should be sent to the authority.

The director does not have the right to discretion but is obligated to initiate the examination when a notification is received from the competent government authority, nor has the right to initiate the examination ex officio. The power to take a decision to initiate an examination is granted to the director of the territorial directorate and not the CIAF.

The law does not provide explicitly for an obligation that the director should notify the CIAF about the initiation of an examination or how one unfolds. The asset forfeiture depends entirely on the CIAF’s ability to prove, during the trial, that the examination was complete and the data, respectively the summaries, are true. The reliability of the data collected by the inspectors and the conclusions made by them are the object of examination during the proceedings before the CIAF and before the court.

The examination of the assets by the CIAF should be complete, independent, impartial and special. As for the scope of the examination under the 2012 Forfeiture of Illegal Assets Act, it should not only establish the assets of the person examined but also the manner of their acquisition.

The scope of the examination is practically unlimited. The greater part of the CIAF’s examination is documentary.

The time when a crime under Article 22, para 1 was committed for which the person examined is constituted or could be constituted as an accused party is irrelevant to the 10-year period. The authorities under Article 13, para 1 2012 Forfeiture of Illegal Assets Act perform the examination in secret and without the person examined taking

\textsuperscript{16} Pursuant to Article 21 2012 Forfeiture of Illegal Assets Act, the CIAF initiates proceedings when a reasonable assumption can be made that certain assets are illegal; such an assumption is in place when, following an examination, a substantial discrepancy in the assets of the person examined is found.

\textsuperscript{17} The law does not set out the director of which CIAF territorial agency (of the five) must initiate the examination – as a rule, their competence will be determined by the local competent government authority which submits a notification about the existence of grounds to start an examination of the assets of the person examined.
part or knowing. However, in view of the unilateral nature of the examination, the law protects the rights of the person examined by means of a number of imperative provisions in the course of the examination.

There are no provisions for a term within which the CIAF should take its decision after receiving the report; this makes it possible for the CIAF to delay the initiation of forfeiture proceedings. The 2012 Forfeiture of Illegal Assets Act does not provide for a possibility to appeal against the decision to refuse to initiate assets forfeiture proceedings; this turns the CIAF into the only, furthermore uncontrollable instance on the issue whether illegal assets forfeiture proceedings should be initiated.

The establishment of actual assets of the person examined amounting to less than BGN 250,000 or even of no assets at the time of completion of the examination does not prevent the conclusion that there is a substantial discrepancy in the assets.

The decision to initiate the proceedings is not notified to the person examined, is not announced and is not subject to appeal.

In the course of inspection, the Commission deploys a number of information sources (persons’ civil registration, commercial register, property register, etc.); information contained within registers and archives; information requiring authorization of a judicial authority for disclosure; specific information requiring cooperation with other state bodies in order to be disclosed.

The Commission has in possession sufficient legal mechanisms to obtain necessary data in order to perform full check of the financial standing of the inspected person. In the scope of the check data is collected also for persons related to the inspected person, thus allowing solely the Commission to gain full picture for a given financial standing and its development over time. The law places the CIAF in the position of an administrative analysing authority whose work is not operational.

**Imposition of precautionary measures on illegal assets**

The imposition of precautionary measures aims to prevent the persons who hold or control illegal assets from performing legal or factual action whereby they could thwart the forfeiture of the assets after the forfeiture judgment enters into force. In this regard, the action to secure the future forfeiture act will be targeted not only at the person examined but also at any other persons who hold or control illegal assets which are also subject to forfeiture if forfeiture proceedings are initiated.

Again in view of the goal to impose precautionary measures, the proceedings before the court to allow them develop unilaterally – without the respondent to the action to impose precautionary measures knowing or taking part in them. This is why a copy of
the action to secure the future action is not served on the respondent (Article 395, para 1 CPC).

The CIAF’s right to secure the future forfeiture action is a procedural right to receive securing protection by imposing a precautionary measure. It is targeted at the court and is realised in the course of the securing procedure which encompasses two proceedings – proceedings to allow securing of the future forfeiture action and proceedings to impose the securing allowed.

District courts are generally competent to hear requests to secure a future illegal assets forfeiture action. Local competence is assigned to the district court as per the person’s permanent address, respectively the registered office of the legal entity which will be the respondent to the assets forfeiture action. However, if the assets include real estate, the local competence to hear the securing request is granted to the district court as per the location of the real estate.

The ruling to allow the securing is subject to immediate enforcement – a complaint submitted against it does not suspend the enforcement and the imposition of a precautionary measure (Article 38, para 3 and 4 2012 Forfeiture of Illegal Assets Act).

However, no rules have been provided for distress on intangible benefits in the assets of the respondent (industrial models, trademarks and service marks, patents – Article 57, para 1, item 1 2012 Forfeiture of Illegal Assets Act, know how, etc.) or on aggregations and goods in circulation which would render it impossible to impose distress on such items in the respondent’s assets and raise concerns about safeguarding them till the entry into force of the illegal assets forfeiture judgment. The gap in the legal framework cannot be filled by the CPC provisions which also lack rules about securing such intangible benefits.

Unlike the general rules (cf. Article 400, para 1 CPC), to impose it there is no need for an inventory list, valuation and delivery of the item to be safeguarded\(^\text{18}\), but the enforcement agent needs to make an inventory list, valuation and deliver the item only if requested by the authorities under Article 13, para 1 2012 Forfeiture of Illegal Assets Act (Article 43, para 3 2012 Forfeiture of Illegal Assets Act). This rule is ill-suited.

The register with information about assets secured is not public but is used only by the CIAF only. It is recommendable that it be made public to protect the security of civil circulation in view of the consequences the imposition of the precautionary measures has with respect to the third parties.

\(^{18}\) The above does not apply for distress on cash in the national or a foreign currency which is imposed by making an inventory and seizure of the cash and its depositing in a special CIAF bank account (Article 48, para 1 2012 Forfeiture of Illegal Assets Act).
It is a deficiency of the law that it does not provide for the participation of the members of the family of the person examined in the proceedings before the CIAF even though they are affected by the forfeiture proceedings in a greater degree in comparison to the other third parties concerned.

**Illegal assets forfeiture proceedings**

Illegally acquired assets may be forfeited only by virtue of a court judgment following constitutive claim proceedings which ensure equal possibility for participation and protection for all persons affected. To this end, the CIAF submits actions for the forfeiture of illegally acquired assets in favour of the State. Special rules for the actions and the forfeiture proceedings themselves have been laid down in Chapter Six, Section IV while the CPC rules apply for any issues that have not been provided for.

The main action is against the person examined who has committed criminal or other activities under Articles 22 – 24 2012 Forfeiture of Illegal Assets Act and, in the event of the person’s death, against the heirs by devise or the heirs who have accepted the inheritance. The subject matter of the action is to establish the illegal nature of the assets and to forfeit them in favour of the State.

In parallel to the main action, the CIAF should submit forfeiture actions against any third parties who hold or control illegally acquired assets as of the time of submission of the actions. In practice, the court will join these actions to the main one against the person examined to be heard in one proceeding – the person examined and the third parties under Articles 64 – 67 and 71 are constituted as respondents to the illegal assets forfeiture proceedings (Article 76, para 2 2012 Forfeiture of Illegal Assets Act).

Along with the constitutive illegal assets forfeiture actions, the CIAF should also submit against the third parties who hold or control illegal assets under a transaction concluded with the person examined actions to establish this circumstance and to declare the transactions concluded invalid with respect to the State. Any such actions are preliminary with regard to the forfeiture actions submitted against those persons – the court will grant the constitutive action only if it has granted the establishment action against the third person. With a view to completing the illegal assets forfeiture proceedings quickly, it is recommendable for the two actions to be joined for hearing by the court. The 2012 Forfeiture of Illegal Assets Act does not provide for the possibility to join objectively the two actions and, under the general rules set out in Article 210 CPC, such a joining will not always be possible\(^{19}\). In this regard, it is

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\(^{19}\) One of the requirements of Article 210 CPC for objective joining of several claims from one claimant against the same respondent is for the claims to be subject to hearing by the same court as per the rules of general and local competence. In this regard, the general competence to review the illegal assets forfeiture action is assigned to the district court while, if the value of the claim to establish the invalidity of a transaction concluded by the person examined with a third party is up to BGN 25,000, the general competence to review the claim will be attributed to the regional court (Article 104, para 4 CPC). In such a case, the two claims may not be joined for a common review by the district court which will have to suspend the case under the illegal
recommendable for the 2012 Forfeiture of Illegal Assets Act to provide expressly that the claims to declare invalid transactions concluded between the person examined and third parties are subject to review by the court which hears the illegal assets forfeiture actions.

It is recommendable for the 2012 Forfeiture of Illegal Assets Act to provide expressly that the claims to declare invalid transactions concluded between the person examined and third parties are subject to review by the court which hears the illegal assets forfeiture actions.

To have the forfeiture action rejected, the respondents to the case should refute the presumption of the illegal origin of their assets by proving that the assets (or a specific item in them) were acquired from legal sources, respectively that the respondents did not know and could not have presumed that the assets had been acquired illegally by the person examined.

To establish the value and the origin of the respondent’s assets, the court assigns an economic expert opinion on the case. It does not recognise the conclusions of the expert opinion drawn up by the CIAF experts because this assessment was assigned by a party to the case and it is presumed that it is not objective. The assignment of the expert opinion makes the forfeiture procedure more expensive and longer; on the other hand, quite often, the assessment of the value of the illegal assets in the conclusion of the experts assigned by the court is significantly lower than the one of the CIAF experts.

The court may grant the forfeiture action and forfeit, in favour of the State, the illegal assets held or their equivalent, or it may reject it. As a rule, the court will forfeit the assets of the respondent – the third party only if it finds that the main respondent to the forfeiture action (the person examined) has acquired illegal assets and sentences them to hand over the assets to the State. The judgment is subject to appellate and cassation appeal by the dissatisfied party to the case within a certain period as of receipt of the notice that the judgment has been issued.

To speed up the completion of the illegal assets forfeiture proceedings, Article 79 2012 Forfeiture of Illegal Assets Act provides for the possibility of a settlement between the claimant and the respondent.

**Forfeiture of the illegal assets**

The entry into force of the judgment to forfeit the illegal assets (respectively, the settlement between the parties to the case approved by the court) does not
automatically lead to the forfeiture of the assets awarded to the State but it is the legal grounds for their forfeiture from the person who controls or holds them. To this end, the CIAF should immediately provide the Registry Office with the judgments for forfeiture of real estate that have entered into force to be recorded and to submit a request to the first-instance court which reviewed the case to issue writs of execution which are needed to enforce the forfeiture judgments (Article 88, para 2 and 3 2012 Forfeiture of Illegal Assets Act). Only when the forfeiture judgment does not envisage the forfeiture of items but their cash equivalent does the court issue ex officio the writs of execution in favour of the State (Article 405, para 5 CPC).

The court issues a writ of execution by a ruling after it has become convinced that the forfeiture judgment that has entered into force is valid from an external point of view and that it evidences an enforceable receivable against the debtor. The ruling whereby the request for the issuance of a writ of execution is granted or rejected is subject to appeal by a private complaint within a two-week period which runs, for the requestor, as of the service of the ruling and, for the respondent, as of the service of the invitation for voluntary enforcement. The appeal against the ruling granting the request does not suspend the enforcement of the judgment (Article 407 CPC).

In accordance with the CPC general rules, the enforcement of a judgment that has entered into force is entrusted to the enforcement agent. The enforcement agent will undertake coercive enforcement of the judgment on the basis of a request filed by the interested party on the grounds of a writ of execution presented (Article 426, para 1 CPC). However, the general rules will only apply to a judgment that has entered into force concerning forfeiture in favour of the State of the cash equivalent of the illegal assets.

All documents needed for the enforcement of the forfeiture judgment (forfeiture judgments that have entered into force, writs of execution issues based on them and other documents) and their sending within three days to the Interdepartmental Council for the Management of Assets Forfeited (hereinafter “the Council”). From then onwards, the procedure of coercive enforcement of the forfeiture judgment will take place upon the Council’s initiative.

The Council is a collective authority which consists of five Deputy Ministers designated respectively by the Ministers of Justice; Finance; Economy, Energy and Tourism; Labour and Social Policy; Regional Development and Public Works. It is not a standing body but is convened once every two months; at its sessions, it adopts decisions by an ordinary majority following rules it has set for the organisation of its work (Article 89 2012 Forfeiture of Illegal Assets Act).

The Council’s main function is to manage (in the broad sense) any assets forfeited in favour of the State. However, before exercising its main function, the Council should
carry out the necessary activities of coercive forfeiture of the assets from the person convicted and taking possession of them.

The problem is that the Council’s composition and its statutory powers are not adequate for the performance of the functions assigned to it. This is true especially about the function to manage the assets forfeited which are enormous in value\(^\text{20}\) and heterogeneous in nature.

The Council should request, under Article 426, para 1 CPC, of the enforcement agent to begin coercive forfeiture of the assets based on the writ of execution issued in favour of the State. On the basis of the request, the enforcement agent will forfeit coercively the movables awarded to the State, collect the receivables and transfer the possession of any real estate awarded to the State. In the cases when no specific assets are forfeited but their cash equivalent, the enforcement agent will carry out a compulsory sale of the items of the personal assets of the person convicted on which distress and injunctions have been imposed and transfer the amounts collected from the sale to an account of the State.

The division of the powers in relation to the forfeiture of illegal assets between the CIAF and the Council is inappropriate because it will slow down and make the procedure of assets forfeiture in favour of the State more expensive; in addition, it will inevitably result in shocks in the forfeiture process related to the technical difficulties of handing over (by the CIAF) and taking over (by the Council) of the work performed in relation to the forfeiture.

**MANAGEMENT AND DISPOSAL OF FORFEITED ASSETS**

The actual forfeiture of illegally acquired assets does not achieve in full the objective of the law to protect the public interest and restore lawfulness and justice. Forfeited assets need to be well managed and their economic functions well preserved so that they can be used effectively to public ends as well as for compensation for damage caused by the crime that generated the illegal assets. In this regard the main question once the assets have been forfeited concerns their administration and management.

The lack of an overall concept for managing forfeited assets and of prerequisites for the assets’ safekeeping during the forfeiture proceedings creates certain insecurity as regards the overall objectives of forfeiture.

\(^{20}\) According to the 2012 CIAF Annual Report, the assets forfeited in 2012 under judgments that entered into force amounted to BGN 12,369,345 or EUR 6,400,000.
Assets management should cover both the period of freezing the assets and the period after the assets forfeiture. The main problem concerns the lack of rules regarding management of assets from the moment the court forfeiture order takes effect until the state is put in possession of the assets.

The legal regulation of frozen assets management in the 2012 Illegal Assets Forfeiture Act is extremely concise and in practice does not provide for rules for safekeeping and maintenance of the frozen assets. The regulation does not provide for a special body in charge of managing and supervising frozen assets.

The lack of adequate legal regulation regarding management of frozen assets often translates in practice into dispersing and plundering of the assets, or into decrease in their value by the time of their forfeiture in favour of the state.

Another deficiency of the legal regulation is that it fails to provide for liability for damage caused to the frozen assets by the person who has been entrusted with keeping the assets. At the moment of entry into force of the forfeiture order, the defendant’s assets are frozen and s/he is entrusted with their safekeeping thereby assuming that assets would be best cared for by their owner. However, upon entry into force of the forfeiture order (and in fact even before that), the former owner is no longer interested in preserving the assets.

A good two to six months or even longer can pass from the entry into force of the forfeiture order until the state is put into possession of the property (through the Interdepartmental Board’s facilitation), during which time the forfeited property remains completely unattended. As a result thereof at the time of entry into possession of the property (and often even as early as at the time of entry into force of the forfeiture order), the forfeited assets are in practice already completely impaired or destroyed and not good to be used as intended or sold.

In view of more efficient management of the confiscated assets should be admitted de lege ferenda for items that are not perishable or subject to substantial decrease in value, but the costs for whose safekeeping are equal to or exceed their value.

It appears illogical to split management powers between different persons. This prevents effective management of assets. In this connection it is advisable that powers regarding safekeeping and preservation of assets subject to forfeiture are concentrated solely in the Interdepartmental Board from the very moment of freezing the assets. The Board should respectively avail of the required capacity, means and mechanisms for safekeeping and preserving the assets, including sealing of assets and managing their safekeeping until the assets are sold or transferred to a public organisation.

A deficit in the law is that the Interdepartmental Board is not required extend the forfeited assets or the proceeds from their sale to organisations assisting victims of
crimes or to repair crime-related damage, as well as there are no rules for allocating management of the forfeited assets.

The practice of unsuccessful sales requires more flexible mechanisms for the sale of forfeited assets that would overcome the factors preventing successful bids.

As a final conclusion, the process of management and safekeeping of the value of the freezed and forfeited assets needs overall review because of the serious deficiencies in the legislative framework, as well as because of its inappropriate principles.

CONCLUSION

The successful model for forfeiture of illegal (or criminal) assets depends on the non-admission of political pressure on the work of the authorities that implement procedures for freezing and confiscation. The principles of integrity, transparency and accountability should underpin the activity of such bodies and their work should provide for guarantees for the right for fair trial and the protection of the fundamental human rights.

Often the stages related to the management of seized or confiscated property prove to be crucial for evaluation of the efficiency of the forfeiture procedures and the assessment of the capacity of institutions to achieve their legitimate goals. The preventive and dissuasive effect of asset forfeiture procedure and its use in public interest is vital to increase citizen trust in institutions and to restore the sense of justice in society.