TRANSPARENCY INTERNATIONAL – BULGARIA

"GALEV BROTHERS" CASE STUDY

MONITORING REPORT, BULGARIA

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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 organized 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[1]. 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 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

[1] 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.

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.