

ILLEGAL ASSET CONFISCATION

TRANSPARENCY INTERNATIONAL – ITALY

THE CASE OF “VILLA BERCETO”

MONITORING REPORT, ITALY

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

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

Although the first part of the confiscation procedure was also fairly covered by the national news, it was indeed thanks to the phase of confiscated asset management that the case experienced a climax in popularity. The main newspapers in Italy covered the news of this mansion virtuously reused as public library, fitness centre and available for educational courses and events on the topic of promotion of the culture of legality¹. Such case was definitely acclaimed as an example of truly good practice in the management of illegal confiscated assets.

PHASES MONITORED

1. *Identification of illegal assets*

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

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

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

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

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



- the State Attorney of the Milan District Attorney’s Office, Mr. Musso.

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

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

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

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

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

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

Overall assessment of the phase

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

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



Recommendations

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

2. *Preservation of the illegal assets*

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

- the Judge for Preliminary Investigations (JPI), Mrs. Donadeo, of the Milan District Attorney’s Office;
- the State Attorney (SA) of the Milan District Attorney’s Office, Mr. Musso;
- the Antimafia District Directorate (ADD) of the Milan District Attorney’s Office (Judicial Police Carabinieri);
- the Independent Department of Preventive Measures of the Court of Milan;
- the Judicial Administrator Mrs. Pesce, named by the JPI Donadeo.

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

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

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

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



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

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

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

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

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

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

Overall assessment of the phase

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

Recommendations

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

3. Asset forfeiture judgment

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



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

From the point of view of the duration of the judicial phase, the Italian legislation does not provide a standard timeframe for the development of judicial proceedings; therefore, in this phase law determines no specific time limits. In order to have a clear overview of the length of the judicial phase, it is important to remember (as it has been suggested other times along the report) that the judicial phase has been parallel to phases 1, 2 and 4. **Indeed, the judicial phase has lasted a round three years (July 2009 – beginning 2013), and the trial has gone through all the judicial steps provided by the Italian judicial system.** Unfortunately, the documents obtained by the judicial Courts do not provide the requested information about the number of court hearings concerning the case. The trial involving the confiscation of Villa Berceto went through all steps of judicial litigation, being all intermediate Court rulings challenged by the accused.

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

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

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

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

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

Overall assessment of the phase

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

Recommendations

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



Cassazione). A fast renovation of the judicial documents data bases is therefore highly recommended.

4. Enforcement of the judgment, actual assets forfeiture

The authorities responsible for the phase of judgment enforcement are:

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

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

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

As Mrs. Pesce writes in her report, in March 2011 the Carabinieri of Villa Berceto notified her the interest and will of the town administration to get in charge of the reuse of the villa. After that, and with the authorization of the JPI Mrs. Donadeo, the judicial administrator stipulated a “free of charge lease agreement” with the Town of Berceto, allowing for the free leasing and the management of the villa by the local administration. Such contract was signed on March 22 2011 and is valid for six years. The contract is available online on the website of the Town of Berceto.

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

From the point of view of the duration, this phase of the procedure has undergone a great speed-up, if compared with most part of confiscation cases (indeed, as mentioned above, the lease contract preceded the final confiscation of the asset). The major reason for the shortening of the general duration of this phase is mainly due to the virtuous behaviour of the local administration of Berceto,



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

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

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

Overall assessment of the phase

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

5. Management of forfeited assets

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

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

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



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

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

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

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

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

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

Overall assessment of the phase

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



Recommendations

The main recommendation for this phase concerns the activity of the ANBSC in regard to the management and supervision of the confiscated assets; its work should indeed be much more thorough, organized and transparent. However such institution is currently in a period of complete stalemate.

A second recommendation could be made: it would be a good practice for the institutions and companies involved in the management of the asset to draft and issue publicly available reports about the evolutions, improvements and successes concerning the asset that is being managed.

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

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

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

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

OVERALL ASSESSMENT OF THE CASE

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

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



strengthen (a still weak) public awareness about corruption and organized crime.

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

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

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

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

