TRANSPARENCY INTERNATIONAL – BULGARIA

TOSHKO PACHEV - THE 'BLACK LOTTO' MASTERMIND CASE STUDY

MONITORING REPORT, BULGARIA

January 2015

The present publication is published with the support of the Prevention and Fight against Crime Programme of the Directorate-General Home Affairs of the European Commission within the Enhancing Integrity and Effectiveness of Illegal Asset Confiscation – European Approaches Project. The publication reflects the views only of the authors, and the Commission cannot be held responsible for any use which may be made of the information contained therein

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

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

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

This case has been selected for yet another reason: this is one of the first cases under the new law. Criminal proceedings were initiated in December 2012, and the Commission for Illegal Asset Forfeiture was notified by the Prosecution Office in the end of April 2014 (outgoing correspondence date 24 April 2013 and incoming correspondence date 30 April 2014 respectively). This is why proceedings in this case followed the new law and a lot of procedural actions were taken under the new law, which allows for a better and fuller analysis.

STAGES OF MONITORING

1. Identification of the illegal assets

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

- The first hypothesis is that criminal proceedings for some of the offences specified in Article 22 FIAA have been initiated. The second hypothesis for opening proceedings under FIAA is a profit-driven administrative offence established by a final administrative order, where the profit from such offence exceeds BGN 150,000 (EUR 75,000) at the time it was obtained and which may not be forfeited under different procedures (Article 24 FIAA). What is characteristic of this hypothesis is the following:

(a) only the administrative sanctioning body that has issued the administrative order is authorised to refer the matter to the Commission for Illegal Asset Forfeiture ("the Commission"); (b) the administrative offence must be indisputably established, that is by a final administrative order (this is the difference with the first hypothesis for which pressing charges suffices and it is not required that these charges are proven); (c) the offence must have enabled generating profits above BGN 150,000. The statutory threshold is apparently substantial and in most cases more than just one administrative offence is required to cross it. However a combination of administrative offences the aggregate profit of which exceeds BGN 150,000 is not a ground for starting proceedings; (d) the last condition is that the specific profit may not be forfeited under different procedures. The legislature deemed that it was not justified to set in motion the cumbersome and costly civil confiscation mechanism if a person committed a single administrative offence, even driving substantial profit from it. Only where all of the above-mentioned prerequisites are met, may proceedings under FIAA be initiated[1].

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

FIAA speaks of three types of decisions that the Commission takes: for starting proceedings (Article 27, para 4, item 3); for freezing illegal assets (Article 37) and for forfeiting illegal assets (Article 61, para 2, item 2). This is left behind from the former law which did not provide for express rules concerning the probes to be conducted. At present the decision to start proceedings is redundant. The Commission has interpreted the law in the sense that the legislature has not specifically envisaged a decision to request interim measures to preserve the assets. This is why the consistent practice of the Commission is to incorporate the two decisions in a single document. In other words acting upon a single decision the Commission launches proceedings and entrusts its chairperson with seeking with the court to apply interim measures. In the case at hand the probe was launched on 30 April 2013, and the decision to seek interim measures was adopted on 21 May 2014, that is **the Commission has exceeded by 21 days the statutory limitation of one year**. The data contained in the case file do not contain any decision of the Commission for extending the time for concluding the probe. It remains to be seen how the court will consider this procedural violation. By all means this omission on the part of the

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

Commission may be used by the defendant and may lead to invalidating the Commission's decision and dismissing its claim. It must be noted that for the purposes of conducting the probe the Commission may rely only on official information, i.e. data provided by the competent government authorities. Banks are the only exception to this rule. Hence the Commission depends on these authorities and whether they would reply within the prescribed periods. The Commission may not receive data from other sources due to the confidentiality of information. At this stage of the proceedings keeping them a secret is the most essential issue. Even if delays in the work of the regional directorate may be justified, failing to adopt a decision for extending the time for concluding the probe prior to 30 April 2014 is not justified, and neither is noting this fact in the claim filed in court.

By 21 May 2014 the inspectors at the Burgas regional directorate submitted to the Commission a detailed reasoned report proposing that forfeiture proceedings be launched. The report makes inventory of all assets acquired by the person in question over the time period covered by the probe, that person's usual and extraordinary expenses, public duties paid and obtained income. The data presented per year. The assets were objectively valued by external experts, certified valuators. The following omissions in the proceedings attract attention:

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

b) In 2006 the National Revenue Agency audited the person in question. The audit results were laid down in a certificate of audit whereby the competent authority established that the funds for the real estates acquired by the end of 2004 had been granted to the inspected person by his parents and his mother's brother. The certificate of audit is final and constitutes an official document. The inspectors at Burgas regional directorate and the Commission members concluded that the proceedings under the Tax and Insurance Procedure Code were not reliable and the findings made by the tax authorities were not credible and could not stand as evidence for the Commission. Such an approach is extremely dangerous as it leads to direct confrontation between government authorities, one doubting the quality of the other one's work and refusing to endorse the issued document as an official one. This type of conduct could not but affect citizens as well: if the State fails to acknowledge, without any specific reasoning, the probative value of a document issued by it, natural persons may also do so.

Furthermore, if such a hypothesis serves the Commission in the particular case at hand, what will happen if the National Revenue Agency establishes a particular mismatch? And what will happen if the Commission chairperson issues an administrative order for a profit-driven administrative offence where the profit exceeds BGN 150,000? Will the Commission refuse again to acknowledge it? This double standard is unjustified and counter effective for establishing and maintaining the rule of law in the state. It should not be tolerated and it should not be applied by government authorities, let alone recognised by the judiciary.

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

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

e) The Forfeiture of Illegal Assets Act does not expressly specify the manner of acquisition of a property that would deem that property illegal. The legislature's logic must have been that only proceeds of crime are subject to forfeiture, i.e. the funds with which the property has been acquired are of an illegal source. This should mean that for every particular inspected period, for example one year, the Commission should consider whether the inspected person availed of income sufficient to acquire the property in question or not. In the case at hand the inspectors have not run such a parallel; they compared year per year the income and expenses of the inspected person and checked how these match. It is clear to the side observer who is not involved in the probe that some omissions have been made. For example section 1 entitled "Income, revenue and other sources of financing" on page 23 of the decision to file a forfeiture claim mentions only one sale of a vehicle, in market value terms. No evidence has been collected (or at least there is no evidence to that end enclosed in the case file) that the inspected person's parents' income has been probed into. If the National Revenue Agency data indicates that the inspected person has received donations from his relatives over the inspected period, the Commission, even in the event it does not trust this data, should have checked it. No tax declarations of the parents have been enclosed, or any bank documents to ascertain whether sums have been transferred or not. These bank documents would have made two things clear, namely whether the mother has made donations to her son; and whether any money has been paid for transferring the property and if so, to what amount. It cannot be safely assumed that the inspected person has paid the market value of the acquired real estates unless evidence to that end is presented. It is a usual practice for parents to transfer real estates to their children where the purchase and sale are simulated, and the donation is made under disguise. This is done in order not to violate the other

heirs' right to a reserved part of the inheritance since a transaction is harder to challenge. It is mandatory for the Commission inspectors to make the respective checks as this would be the main venue the defence would take in a court trial.

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

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

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

the quality of case work. In this way Commission members would have a genuine and comprehensive oversight on the work of the Commission.

General assessment of this stage

The work carried out by the regional inspectors is truly voluminous. It does not become clear from the Commission decision how many and who the officials who have worked on the case are. Some of the enclosed documents point to basically two officials. Despite the voluminous work done, this review has pointed to some essential defects in the proceedings such as delays in conducting the probe without a due decision extending its time period; or failure to comply with an official document issued by another government authority within its statutory powers etc. There is no data in either the case file or media publications that deficiencies were due to corruptive practices or conflicts of interest. Most probably this is a practice that the Commission members apply in relation to their subordinate directors and inspectors. It is mandatory for the Commission to carry out genuine economic analyses. The studied case does not call for a detailed analysis (since the inspected person did not control any legal persons), not that such was made. It would however facilitate the work of the Commission and the court in the trial phase and would rule out cases where the inspected person does not possess illegal assets within the meaning of the FIAA (i.e. assets for which a mismatch of more than BGN 250,000 is established). The inspectors should carry out probes also in relation to data contained in documents other than official checkups as well as such acquired through other sources. The legal work on the case is evident but the quality of the economic work calls for a number of questions. Supervision by a Commission member could indeed enhance the quality of the work done.

2. Freezing of assets

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

The analysis of the case at hand brings us to some discrepancies between the law and the state at play. The materials in the case file show that the Commission took a decision to launch proceedings on 21 May 2014, while the interim measures were granted by the court on 26 May 2014, i.e. after two working days. Even if we assume that Burgas regional directorate inspectors could not file their claim on 21 May 2014 for purely technical reasons such as the distance between the two cities (the Commission meets in Sofia, while the competent court is Burgas District Court, there is no objective explanation for the lapse of the next two working days. Such an omission allows the inspected person,

especially in case of information leakage, to carry out the respective dispositions with his or her assets in part or in whole, and thus substantially to impede the work of the Commission and the court. With its first ruling the court granted one month to the Commission to file its application; this term was then extended by three months by a new ruling of 29 May 2014. The reasons of the Commission or the court are not clear as no copy of the requested extension has been presented, while the court ruling only states that the request is justified, without any comments on the merits. This is why no analysis can be made here. The Commission actions after interim measures were granted are summed up by the mandatory service of a declaration allowing the persons involved to acquaint themselves with the case materials. If these persons avail themselves of the statutory possibility to protect their rights at this stage, they may refer to evidence concerning the source of their income and/or submit such evidence to the Commission. The Commission then must study the objections raised and the submitted evidence and decide whether to seek forfeiture or to terminate the proceedings. This is usually the reason to request a longer term for filing the application as at the time interim measures are granted the declaration has not been served yet and the Commission does not know which course the proceedings will take.

Unlike the repealed law, the Forfeiture of Illegal Assets Act provides for an individual section governing management of frozen assets. The principle is that attached property is left for safe keeping with the inspected person or with the person keeping it at the time the interim measures are granted. If the Commission deems it necessary, it may leave the property with a specially assigned person to safe keep it at the expenses of the plaintiff. This is similar to the former regulation. The new element is the express provisions to leave different types of assets for safe keeping with respective institutions. For example moveable property of historic value must be left with the National Museum of History or another museum; moveable property of scientific value must be left with the National Library, the Bulgarian Academy of Science or a university etc. To that end Commission officials must inspect the property, i.e. they must enter the residence of the inspected person in the presence of Ministry of Interior officers and witnesses and search for objects of cultural, historic or scientific value. Currently only checkups are made with banks to establish whether a person has concluded an agreement for the use of a safe deposit box; such safe deposit boxes are opened in the presence of the respective persons. By exception the Commission inspectors search the place itself. It should be borne in mind that often the inspected persons have a safe at home and keep there weapons, valuables, etc. It is recommended that such searches and inspections are carried out as well, all the more that the law expressly provides for these. There is no data in the case file in question that the inspected person's residence was searched.

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

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

General assessment of this stage

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

However there are some omissions in the work of the Commission. There is a delay in seeking interim measures. It has been stated already that expediency at this stage of the proceedings is essential as it helps keep the proceedings secret and prevents the inspected person from disposing with the property. A delay of two working days has been incurred in this particular case (four days otherwise), during which time the inspected person could carry out transactions at ease and have them registered by a notary. Another omission is not checking up whether the inspected person continued to lease his property and those receivables were not attached. Even if there had been no such receivables, i.e. the inspected person had not leased his property, there is no such data in the case file (of any checkups being made to this end), which casts doubts about certain omissions in the proceedings. Next, Burgas regional directorate inspectors did not search the property after interim measures had been granted. They should have visited the property, search it, seize goods, seek distress warrant and turn the goods over for storage in the respective institutions. No action was taken (there is no data to this end in the case file) to turn over a vehicle (Audi A8, initial registration of 1 October 2003) for safe keeping by another person. Leaving the vehicle in the possession of the defendant in forfeiture proceedings could cause damage or destruction of the moveable property. There is no data in the case file that the competent officials inspected the vehicle and turned it over to the inspected person with a protocol establishing the current condition of the vehicle. In this way a deterioration of its condition could not possibly be established.

3. Trial for forfeiture of illegal assets

The law provides for a three month period from granting interim measures by the court to bringing an action for forfeiture of illegal assets. During this period the Commission must serve the declaration to

the inspected person and allow him or her to get acquainted with the materials in the case file and to refer to or submit evidence. Following the action taken by the inspected person, the inspectors at the regional directorates must study and analyse the new evidence in order to decide what recommendations to make in their report to the Commission: to bring an action for forfeiture or to terminate the proceedings.

Subject to forfeiture under FIAA are illegal assets of the inspected person. Pursuant to Article 63, para 2 FIAA, these include the following: personal property; property acquired jointly by the spouses or the cohabitants; property belonging to persons under age; property belonging to the spouse or cohabitant, regardless of the modality of property relations. In addition, subject to forfeiture is gratuitously transferred property, onerous deeds where the other party is mala fide (i.e. it knew or could have known of the illegal source of the assets), as well as property that is transferred or acquired through a controlled legal person. In all other cases subject to forfeiture is the equivalent of the market value of the alienated property.

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

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

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

At present no analysis of the trial phase may be made due to lack of information. The action was brought in court on 18 September 2014. The court must initiate a case and publish a notification to that end in the State Gazette. The low provides for three-month period from the moment of notification publishing to the first court hearing, so that third interested parties who allege property

rights or other rights in relation to the property of the inspected person may bring their claims to court. This period could not expire before 26 December 2014 (in purely technical terms initiating a case and publishing a notification to that end in the State Gazette cannot take place earlier). This is the shortest possible period and it is very likely, although there is no data about it in the case file, that it has not yet expired (as of January 2015). No evidence in this regard has been presented by the Commission; no reply to the action has been presented either, in case the defendant filed such. There is no data that a first hearing has been convened in the case. This is why at present no analysis of the trial phase is possible.

Summary assessment of this stage

Presently it is not possible to make a comprehensive and detailed analysis of the trial phase of the illegal asset forfeiture proceedings. No court hearings have taken place, respectively there are no records to serve as a basis for assessing the work of the Commission. The actions taken so far and secured by steady information indicate two problems. The first one concerns the expired time limit for bringing the action. The delay of almost a month is a ground for the future defendant to seek withdrawal of the attachments made. We leave alone the fact that the court should have withdrawn these attachments *ex officio* but failed to do so. It does not matter who is the defendant and who is the plaintiff in a case. The law provides for an express obligation of the court and the latter enjoys no discretion how to proceed in such a case. The second possible defect is that the Commission did not study (or at least there is no such data) the origin of the property transferred by the inspected person's parents, in order to make a well-founded proposition that it is of illegal origin. The purpose of the law is not to forfeit all the property of a person but only this property which is of unlawful origin. It does not become clear from the case file whether the defendant's inaccessible assets have been left aside. FIAA expressly lays down that inaccessible assets are not subject to freezing. *A fortiori* they should not be subject to forfeiture even under the special law (under the Civil Procedure Code inaccessible assets are never subject to forfeiture).

4. Management and disposal of forfeited assets

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

OVERALL ASSESSMENT OF THE CASE

The Commission acted lawfully and did not exceed its statutory powers. The case file is not voluminous and there is a good reason for that: the inspected person has hardly turned 30 years of age, which shortens the period of the probe; he is not married and there is no data that he is cohabiting with another person; the civil registers do not reveal any children of his; the inspected person has no shares in and has not transfered any property to legal persons, nor is he registered as a sole trader. For all these reasons the scope of related persons is very limited, and the inspected period is 10 instead of 15 years. In view of all these facts it is surprising that the probe took 21 extra days beyond the time limit, with no decision to that end. Equally surprising is exceeding the time limit set by the court for bringing the illegal asset forfeiture action. The inspected person did not fill in the declaration under Article 57

FIAA, nor made any objections or produced or offered new evidence. This is why the inspectors at Burgas regional directorate did not have to take any extra investigative action. The action should have been brought in court by 26 August 2014 and not on 18 September 2014.

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

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

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

RECOMMENDATIONS

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

- The number of decisions that the Commission takes in the framework of every proceedings must be clearly laid down.

- To guarantee fair forfeiture, the hypotheses where the inspected person is acquitted in criminal proceedings must be laid down. Forfeiture no longer requires a final conviction and an indictment suffices instead. The law remains silent however what happens if in the course of forfeiture proceedings the indictment is revised and no longer complies with the requirements set for in FIAA or the person is acquitted because someone else committed the offence, for example. Under the current regulation this is not a ground for terminating civil confiscation. Differences in the hypotheses for terminating criminal proceedings should be taken into account.

- A procedure could be envisaged for assigning a member of the Commission to supervise the work of the inspectors throughout the proceedings. In this way the Commission members would be more involved with the work of the Commission and the inspectors would act more conscientiously.

Assigning a Commission member to a particular regional directorate is not a good idea as this could lead to establishing relations that facilitate corruptive practices.

- The law must clearly specify which particular assets of the inspected person are subject to forfeiture. The BGN 250,000 mismatch is currently established in relation to the entire property that falls within the inspected person's estate or has been part of it. Some of this property however could have been acquired through legal means and it should not be subject to forfeiture. Any mismatch should be established after the estate has been reduced by the legally acquired property and the one acquired gratuitously (unless the Commission establishes a colour of title).

- The procedure for disposal of the forfeited assets should be eased and shortened. At present it is very cumbersome and time consuming, which leads to depreciation of property and lowers the public benefit.

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

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

- The inspectors should exercise in full the powers they have been granted by law. There is no impediment, once interim measures have been granted, for the inspectors to enter the property of the inspected person and search it, seizing goods where appropriate.

- The inspectors should be disciplinarily liable for every unjustified failure to discharge their duties. It is unacceptable that in a relatively easy case time limits have not been respected twice, a fact of considerable significance, and there is no data of any disciplinary liability assumed.

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