

ILLEGAL ASSET CONFISCATION

TRANSPARENCY INTERNATIONAL – ROMANIA

CASE STUDY ANALYSES

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

FILE NO. 371/2/2009, DABELA GHEORGHE-ION CASE¹

Parties:

- The Prosecutor’s Office from the High Court of Cassation and Justice (Curte de casație și justiție);
- Mr. Dabela Gheorghe-Ion, former director of the municipal company RADET Bucharest² and Ms. Dabela Adriana;
- The Ministry of Public Finance of Romania;
- The National Integrity Agency.

In 2004, the General Prosecutor from the National Anticorruption Prosecutor's Office (Parchet Național Anticorupție), now called the National Anticorruption Directorate (Direcția Națională Anticorupție), notified the Wealth Verification Commission (Comisia de cercetare a averilor) within Bucharest Court of Appeal, requesting them to open the control procedure to investigate the wealth of Mr. Dabela Gheorghe-Ion, former director of RADET Bucharest. The reasons for this request were discovered through the investigation made in a criminal case (the object of this case was corruption offences), in which the defendant was Dabela Gheorghe-Ion. The investigation showed that Dabela Gheorghe-Ion and his wife, Dabela Adriana, had multiple houses, domains and amounts of money (3,000.00 RON³, 56,000.00 USD, 8,800.00 EUR, 190.00 SIT, 20.00 HRK, 840,000.00 TRL and 11,900.00 HUF – total about 360,000.00 EUR). Other valuable assets, such as jewelry, fine art and electronics, with a total value of 1,150,000,000.00 ROL (25,000.00 EUR), were also found. Therefore, the investigation showed unjustifiable differences between the wealth and the income of Mr. Dabela Gheorghe-Ion. He had also failed to fulfill the obligations based on Law no. 115/1996, namely to make a statement of his wealth within 15 days from the coming into force of the presented law, and to make a new one within 15 days from ceasing his activity in public office. Mr. Dabela Gheorghe-Ion’s failure to comply with this law led to the *ex officio* opening of the control procedure.

The Wealth Verification Commission within the Bucharest Court of Appeal, through its expert reports, found that the origin of the citizen’s assets was justified. The Commission gave a decree of this statement on the 16th of June 2004.

The National Anticorruption Prosecutor's Office filed an appeal at the High Court of Cassation and Justice against the decree. The court concluded that the case will be sent back to the Commission for retrial because: Mr. Dabela Gheorghe-Ion didn’t fulfill his obligations based on Law no. 115/1996 and

¹ Decision no. 1573 of 22.03.2012 of the High Court of Cassation and Justice of Romania (Curte de casație și justiție) on the file no. 371/2/2009, Dabela Gheorghe-Ion case is accessible (by January 2015) on the National Integrity Agency website: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/DabelaGheorghelon_Blur.pdf.

² RADET Bucuresti (Regia Autonomă de Distribuție a Energiei Termice București) is a company subordinated to the Municipality of Bucharest supplying heat for hot water and heating to household customers and businesses in Bucharest.

³ Romanian currency leu was denominated in 2005. The new 1 leu (RON) equaled 10 000 old lei (ROL). Amounts in the judgment are given in both units, since the investigation began before the denomination and continued until 2012.



the expert reports were not prepared properly because they were made for a longer period of time than the period set out in the Law.

After the retrial, The Wealth Verification Commission within the Bucharest Court of Appeal found and proved that the amount of 615,894,065.00 ROL (about 14,000.00 EUR) was obtained illegally. Therefore, on December 14 2010, the Bucharest Court of Appeal delivered the judgment according to which the amounts of 3,000.00 RON , 56,000.00 USD, 8,800.00 EUR, 190.00 SIT, 20.00 HRK, 840,000.00 TRL and 11,900.00 HUF were to be confiscated. Furthermore, the defendants, Dabela Gheorghe-Ion and Dabela Adriana, were required a payment of 61,589.40 RON in order to compensate the seized amount. The judgment was made based on the research of the advisory committee and other important evidence which established that there were unjustified differences between the wealth and the income gained by Mr. Dabela Gheorghe-Ion.

Against the sentence given by the Bucharest Court of Appeal on December 14 2010, Dabela Gheorghe-Ion, Dabela Adriana and The Prosecutor’s Office from the Bucharest Court of Appeal made an appeal at The High Court of Cassation and Justice.

The reason invoked by The Prosecutor’s Office attached to the Bucharest Court of Appeal was the misapplication of the law. It deemed that the law was wrongly implemented, because the sentence interfered with art. 304, Section 9 of the Civil Procedure Code. Therefore, the Prosecutor’s Office proclaimed that the Bucharest Court of Appeal should have required the payment of 61,589.40 RON (roughly 17,000.00 USD), without compensating it with the seized amounts in different currency, because their origin cannot be justified. If Dabela Gheorghe-Ion and Dabela Adriana were requested a payment of 61,589.40 RON to compensate with the seized amount, then it would result that the defendants wouldn’t have to pay anything to the Romanian state, which makes the appealed decision contain contradictory provisions.

The defendants Dabela Gheorghe-Ion and Dabela Adriana appealed the court order and requested that the case should be sent back to the Bucharest Court of Appeal for retrial because some aspects from the case needed more explanations. These matters relate to:

Firstly, the Wealth Verification Commission within Bucharest Court of Appeal was not in the position to make the assessment report and now the defendants request that the National Integrity Agency make this report (based on art. 158 Section 1, art. 159 Section 1 and art. 159¹ of the Civil Procedure Code and Law no. 144/2007 modified with Law no. 176/2010).

Secondly, the defendants affirmed that the amounts confiscated during the criminal investigation may not be seized because the amounts were taken by the criminal investigators.

Thirdly, the defendants considered that the law was wrongly implemented because the sentence interfered with art. 304, Section 9 of the Civil Procedure Code.

After the High Court of Cassation and Justice examined the evidence, the Romanian laws and the facts brought into notice by Dabela Gheorghe-Ion, Dabela Adriana and the Prosecutor’s Office from the Bucharest Court of Appeal, it found that, in the sentence given by the Bucharest Court of Appeal on December 14 2010, the law provisions and the evidence were not applied properly. The decision no. 1573 of 22.03.2012 of the High Court of Cassation and Justice says the following:



The confiscation of the amounts of 3,000.00 RON , 56,000.00 USD, 8,800.00 EUR, 190.00 SIT, 20.00 HRK, 840,000.00 TRL and 11,900.00 HUF must be removed because the claim compiled by the General Prosecutor from the National Anticorruption Prosecutor's Office (in 2004) related only to opening a procedure to investigate the wealth of Mr. Dabela Gheorghe-Ion and not to seize anything.

Regarding the unjustified differences between the wealth and income of by Mr. Dabela Gheorghe-Ion (61,589.40 RON), the Court ruled that this amount is obtained in an unjustified manner and compels the defendants to pay it.

Regarding the other requests of the defendants and the Prosecutor's Office attached to the Bucharest Court of Appeal, the Court declared they were ungrounded.

To the general public and investigative journalists, the case was a sensitive topic, because the defendant was the former director of RADET Bucharest and it increased people's trust in the efficiency of the confiscation bodies and their practices.

FILE NO. 1844/2/2012, BRĂDIȘTEANU ȘERBAN ALEXANDRU CASE⁴

In this case, the National Integrity Agency claimed that the court should annul the Ruling no. 1/11 March 2011, issued by the Wealth Verification Commission (Comisia de cercetare a averilor) within the Bucharest Court of Appeal. The reason for the claim is that the Wealth Verification Commission within the Bucharest Court of Appeal has based the ruling on the fact that the research made by the National Integrity Agency had been made under the Law no. 176/2010, which led to an unlawful ruling admitting the exception of limitation of the substantial right to a court action. In this regard, the National Integrity Agency envisages that the whole procedure of verification was based on the provisions of Law no. 144/2007 regarding the establishment, organization and functioning of the National Integrity Agency, in effect at the time of the procedure initiation. Therefore, according to the principle *tempus regit actum* (time rules act), it is estimated that for this case the provisions of Law no.176/2010 are not applicable. Law no. 144/2007, under which the verification of the wealth was made, did not provide any term of limitation of the wealth verification made to the person that held a public position, the only condition is for the control to relate only to that period of time.

On the December 13, 2007 the National Anticorruption Directorate solicited the Bucharest Court of Appeal to initiate the verification procedure regarding Brădișteanu Șerban Alexandru under the premises of the art. 9 of the Law no. 115/1996. Mr. Brădișteanu was accused of having violated the legal provisions and having favored certain companies, using his position of chairman of the Evaluation Committee, in the auction organized by the Ministry of Justice in the year 2001 for acquisition of medical equipment. In exchange for the favorable assessment of the companies, he received various amounts of money in foreign currency. As a result of the offence, he acquired real estate and other assets, leading to the unlawful character of his declaration of assets at the end of his mandate. On September 17, 2008, the National Integrity Agency notified the Bucharest Court of Appeal to solve the claim. On September 28, 2010, the court sent the cause to the Wealth Verification Commission within

⁴ Decision no. 267 of 22.01.2013 of the Bucharest Court of Appeal on the file no. 1844/2/2012, Brădișteanu Șerban Alexandru case is accessible (by January 2015) on the National Integrity Agency website:

http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/BradisteanuSerbanAlexandru_Blu_r.pdf.



the Bucharest Court of Appeal. On February 23, 2011, the defendant invoked the exception of limitation, arguing that the Law no. 176/2010 established a three year deadline since the date of leaving the public position (he had ended the mandate of senator on December 8, 2004 and the claim had been registered on December 13, 2007).

The exception of limitation admission was found unlawful by the court, which determined that Law no. 115/1996 did not provide any limitation term. The conclusion that the general 3 years limitation term would be applicable to this case is deprived of legal support because Law no. 167/1958 (which establishes the general limitation term to 3 years) targets the private legal relations, not the public ones. Therefore the court finds the appeal as unlawful and disposes the cancellation of it and, since the Wealth Verification Commission within Bucharest Court of Appeal did not exercise the control, resent the case for this purpose.

FILE NO. 186/64/2009, VELE DAN CASE⁵

Parties:

- The National Integrity Agency;
- Ministry of Public Finance represented by the General Public Finance Brasov;
- The National Anticorruption Prosecutor's Office;
- S. C. Rial SA Braşov⁶;
- Mr. Vele Dan and his spouse Ms. Vele Mirela Daniela.

In 2003, The National Anticorruption Prosecutor's Office (now called The National Anticorruption Directorate) notified the Wealth Verification Commission within Braşov Court of Appeal, requesting them to open a procedure to investigate the wealth of Mr. Vele Dan, former executive of S.C. Rial SA Braşov. The reason for this request was that Mr. Vele Dan had failed to fulfil the obligation based on Law No. 115/1996, namely to make a statement of his wealth within 15 days of the entry into force of the law, and to make a new statement of his wealth at the end of his activity.

Mr. Vele Dan's failure to comply with this law led to the *ex officio* opening of the control procedure.

During the settlement of the case, which was extended in time, the Law no. 244 of 21 May 2007 was enacted. The law refers to the establishment, organization and functioning of The National Integrity Agency, therefore the investigation was continued by it.

In 2003, the Wealth Verification Commission within Braşov Court of Appeal found that the wealth of Mr. Vele Dan was obtained legally. The Prosecutor's Office attached to the Braşov Court of Appeal appealed this decree at the High Court of Cassation and Justice. The Court sent the case back to certify some important aspects.

⁵ Decision no. 4836 of 19.10.2011 of the High Court of Cassation and Justice of Romania (Curte de casație și justiție) on the file no. 186/64/2009, Vele Dan case is accessible (by January 2015) on the National Integrity Agency website:

http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/VeleDan_Blur.pdf

⁶ S.C. Rial SA Braşov is a municipal company of the Braşov Municipality responsible for business administration, sales, repair and maintenance of the estate fund owned by Braşov City.



In 2006, the Wealth Verification Commission within Braşov Court of Appeal found that the wealth of Mr. Vele Dan was not obtained legally (the documents submitted under private signature did not meet the requirements of enforceability of art. 1182 of the Civil Code) and sent the case to the Braşov Court of Appeal.

The Braşov Court of Appeal found and proved that a vehicle and a house were obtained illegally. Therefore in 2008 the Court delivered the judgment according to which the amount of 836,439.68 RON (about 188,000.00 EUR) would be confiscated.

Vele Dan and Vele Mirela Daniela made an appeal against the sentence at The High Court of Cassation and Justice and the case was sent back for retrial to the Braşov Court of Appeal, for lack of evidence.

The Court held the defendant's income, in which a loan of 158,000.00 USD was included, had exceeded his costs with 1.15 %, proving the legal origin of his goods.

The General Directorate of Public Finance and the Prosecutor's Office attached to the Braşov Court of Appeal made a second appeal against this sentence at the High Court of Cassation and Justice. They claimed that the sentence was unlawful and unfounded because:

Firstly, Mr. Vele Dan had failed to fulfil the obligations which are based on Law no. 115/1996, namely to make a statement of his wealth within 15 days of the entry into force of the law, and to make a new one at the end of his activity.

Secondly, the 6 loans summing 158,000.00 USD represented a debt and an income.

Thirdly, the loan receipts presented by the defendants did not meet the requirements of art. 1182 Civil Code, which led to the conclusion that the loans were not real and thus should not have been regarded as “income”.

Also, The National Integrity Agency maintained the reasons described above and requested the modification of the conviction.

Analysing the case, the High Court of Cassation and Justice stated that:

According to the expert reports (made in the period from October 18, 1999 to January 7, 2003), the income of the defendants derived from: earnings (31,024.28 USD), incomes obtained by selling goods (89,727.00 USD), incomes obtained by loaning 158,000.00 USD from 6 individuals; while the costs made by the defendants consisted in: purchases of assets, utility bills and various expenses (amounting to a total of 175,437.20 USD);

The filed documents, named loan agreements, were not a legal proof of the defendant's total loaning of 158,000.00 USD from six individual lenders. Furthermore, the statements of this 6 individuals were not credible, because they were people with average financial possibilities, even modest (retired), all lived in apartment buildings, some claiming to be financially supported by relatives or spouses.

In conclusion, excluding this source of income (loans of 158,000.00 USD), there are clear disproportions between the actual income and the expenses made during the verification period, and The Court decided that the difference of 129,517.80 USD will be confiscated.



FILE NO. 1072/46/2009, ZIDARU DANIEL CASE⁷

Parties:

- The National Integrity Agency;
- Mr. Zidaru Daniel and his spouse Ms. Zidaru Nicoleta Carmen.

On the July 30, 2009, The National Integrity Agency submitted a complaint at the Pitești Court of Appeal requesting the amount of money that couldn't be justified to be confiscated from the defendants.

On May 18, 2011, the Pitești Court of Appeal admitted the complaint made by The National Integrity Agency and found the unlawful gaining of 61,650.00 EUR and 9,980.00 RON (total about 64,000.00 EUR) in the wealth of Mr. Zidaru Daniel.

Mr. Zidaru Daniel was a public servant (police sub-commissioner) who had the obligation (according to Law no. 144/2007) to declare his wealth, which he failed to fulfil for the years 2001, 2005 and 2007 and this led to the initiations of the wealth verification procedure (according to Law no. 176/2010).

According to the written records filed between 2000 and 2008, his income totalled 298,303.00 RON (approximately 67,000.00 EUR). Mr. Zidaru Daniel's immovable property consisted of one apartment in Pitești and his movable property consisted of one vehicle and other household goods. He argued that he had been helped to buy the apartment (valued at 110,000.00 RON or 25,000.00 EUR) by his parents, Zidaru Ionel and Zidaru Senia, and the amount of money represented the equivalent of his parents' apartment which they had sold.

The Judicature found that his parents' apartment was sold one year before the defendant bought his apartment. Meanwhile, his parents moved to another house, so the amount received from selling the apartment was not given to the defendant.

Regarding his vehicle, the defendant stated that it was the outcome of successive buying and selling of other five vehicles starting from the year 2000. The questioned witness said that the price difference between the vehicles was also paid by his parents.

The Court established that the confiscation of the 61,650.00 EUR and 9,980.00 RON is necessary, even if the amount of money is seized, because this measure is based on a special law which is derogatory from the common law rules, being enough to demonstrate the existence of a disproportion between Mr. Zidaru Daniel's income and his wealth.

The defendant appealed the verdict invoking that the provisions applied were unconstitutional, that the National Integrity Agency violated the presumption of innocence and that the complaint elaborated by the National Integrity Agency and the judgment of the Court of Appeal was unlawful based on assumptions that cannot override the provisions of art. 44, section 8 of the Romanian Constitution (regarding the right to private property).

The National Integrity Agency responded to each of the defendant's statement and requested the appeal be dismissed as ungrounded.

⁷ Decision no. 5861 of 06.12.2011 of the High Court of Cassation and Justice of Romania (Curte de casație și justiție) on the file no. 1072/46/2009, Zidaru Daniel case is accessible (by January 2015) on the National Integrity Agency website: http://www.integritate.eu/Files/Files/HotarariDefinitSiIrevocabile_InstanteJudecata/Confiscari%20avere/ZidaruDaniel_Blur.pdf.



The High Court of Cassation and Justice stated that the court ruling was based on the right interpretation and application of the law. Regarding the assumption of innocence, the Court stated that it had not been violated, the seizing of assets being an administrative procedure, distinct from penal liability, and thus not interfering with the assumption of innocence. Regarding the violation of art. 44, section 8 of the Romanian Constitution (regarding the right to private property) the norm is not imperative when the disproportion between the income and the wealth is obvious. Regarding the amount of money for the purchase of the apartment, the Court shared the conclusion of the judicature that there is no solid evidence of any contribution from the defendant’s parents. Also the judge correctly stated that the turnover of the loans is unable to justify the amounts of 61,650.00 EUR and 9,980.00 RON found during the search. Regarding the monthly expenses the National Integrity Agency established an amount of 314 RON (70 EUR) per month for year 2000; 552.8 RON (125 EUR)/month for year 2001; 272.7 RON (60 EUR) per month for year 2002; 147.2 RON (33 EUR) per month for year 2003; 1,071.6 RON (240 EUR) per month for year 2004; 513 RON (115 EUR) per month for year 2005; 1,845 RON (415 EUR) per month for year 2006; 3,679 RON (830 EUR) per month for year 2007; 1,775.8 RON (400 EUR) per month for year 2008. These amounts cannot be found as unreasonable in relation with the income of Mr. Zidaru Daniel and Ms. Zidaru Nicoleta Carmen.

In conclusion the High Court of Cassation and Justice overrules the appeal as groundless.

