



## MANAGEMENT AND DISPOSAL OF CONFISCATED CRIMINAL ASSETS

### Policy Brief No. 33, February 2012

Confiscation of proceeds from illegal activities is a widely applied mechanism in combating organized crime. The introduction and application of this mechanism is defined in several international and European acts<sup>1</sup>, and is motivated by the need to restore social justice.

Both the *UN Convention against Transnational Organized Crime* and the *UN Convention against Corruption*<sup>2</sup> address the disposal of confiscated assets and recommend its use primarily for compensating the victims of crime. A number of European countries have implemented respective measures and mechanisms like: distribution schemes for compensation of victims of crime, financing of programs for fight against drug use, social re-use of confiscated property.

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<sup>1</sup>The *UN Convention against Transnational Organized Crime* (15.11.2000), *The UN Convention against Corruption* (31 October 2003), *The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Decision 2007/845/JHA* (06.12.2007) of the Council of the European Union' *Framework Decision 2006/783/* (06.10.2006) of the Council of the European Union, etc.

<sup>2</sup> Article 14 from the *UN Convention against Transnational Organized Crime* and article 57 of the *UN Convention against Corruption*.

#### KEY POINTS

- The management and disposal of confiscated assets are important aspects of the overall process of confiscation, but they still remain marginal to the public debate in Bulgaria.
- The existing legal and procedural gaps impede the effective management of confiscated property, frequently causing its plundering or demolishing.
- The sale of confiscated real estate is further complicated by problems with mortgages and executive charges, incomplete property documentation, reputation of the former owner, and unfavourable market conditions.
- The Bulgarian legislation concerning the allocation of proceeds from the sale of confiscated property is not in compliance with the relevant ratified UN conventions, which recommend using these revenues for compensation of the victims of crime.
- The legal possibilities provided by Bulgarian law for re-use of confiscated property for socially beneficial purposes are seldom applied and are not sufficiently publicised among the potential beneficiaries.
- Among the important legislative gaps is the lack of a specific procedure for the transfer of confiscated real estate. The introduction of such an instrument could facilitate the utilization of these assets for the public benefit.

## Overview of the Bulgarian Asset Recovery System

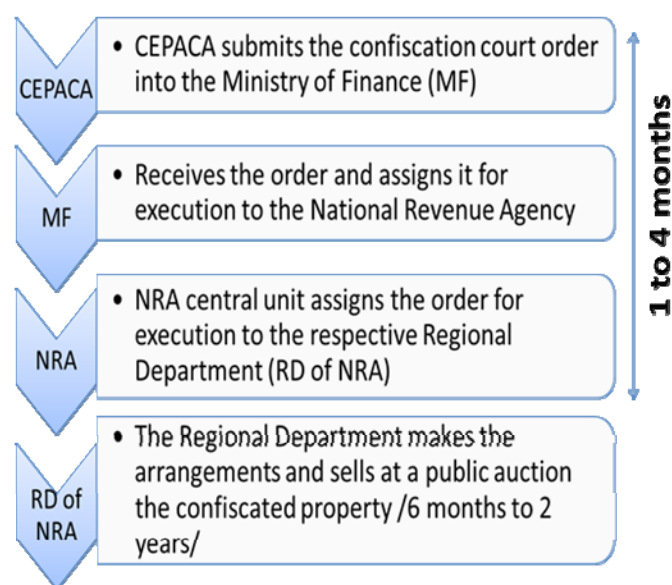
According to Bulgarian law, the seizure of proceeds from crime is done by the Court upon claims by the Prosecution Office under the provisions of the Penal Code, and upon claims from the Commission for Establishing the Property Acquired from Criminal Activities (CEPACA) in compliance with the provisions of the Law on Forfeiture of Proceeds of Crime (LFPC). The issued court orders on forfeiting assets acquired from criminal activities for the benefit of the state are sent for execution to the National Revenue Agency (NRA). The NRA is focused on selling the recovered property, though the law also provides the option for transferring confiscated assets to budgetary organizations. The latter option is applied mostly to confiscated motor vehicles.

The first court orders on confiscating assets following claims from CEPACA in accordance with the LFPC came into force in 2009, with proceeds amounting to 677,198 BGN. The following year eleven court decisions were issued (for a total value of 6,798,434 BGN), and 25 more followed in 2011. These decisions provided for the confiscation of both moveable property and real estate – e.g. in 2010, 44 real estate properties and 20 motor vehicles were confiscated.

Data from the NRA Sales Directorate shows that by the end of 2011 the number of case files on confiscated real estate amounted to 175: 47 of them were confiscated following claims under the Penal Code and 122 on claims under the LFPC, while 6 properties were confiscated on other legal grounds. In 2010 – 2011 the NRA did not manage to sell on public auctions none of the confiscated assets. Instead, in 2011, the title of one of the real estate properties was transferred from the NRA to the Plovdiv administrative region. In addition, the NRA Sales Directorate transferred the titles of 48 motor vehicles in 2010 and 76 more in 2011 to several state and local government institutions.

### Problems with the management and safeguarding of seized real estate property following court orders

After a court order for confiscating proceeds from crime is issued, the assets become public property. The court order execution is carried in accordance with a joint instruction of CEPACA and NRA (see Figure 1).



**Fig.1 Procedures for enforcement of a court order for confiscation**

Usually, communication and coordination between the different departments in charge of implementing the court orders take between one and four months. The time immediately following the issuance of a court order is **critical in safeguarding the confiscated assets**. This is due to the fact that the existing procedure creates a ‘grey period’, during which no institution is in charge of safeguarding and managing the confiscated property. Moreover, in the majority of the cases the seized proceeds are left for management and safeguarding to the investigated persons themselves. The court’s logic is that until the case is closed, the investigated persons remain bona fide

owners and therefore most capable of safeguarding their own property.

With the issuance of the confiscation order the convicted owners are no longer interested in safeguarding their former property, and as a result it usually gets plundered or destroyed during the so called 'grey period'. Furthermore, there are other legal gaps, for example the fact that the experts from the NRA Sales Directorate are not specifically empowered to seal off the entrance to the confiscated real estate property to prevent intruders.

## Sale of Confiscated Property

### 1. The current situation

The public sale of confiscated property under the provisions of the Penal code and the LFPC is currently arranged by the NRA Sales Directorate following a procedure defined in the Law on the NRA<sup>3</sup> and in accordance with the Tax and Social Insurance Procedure Code (See Figure 2).

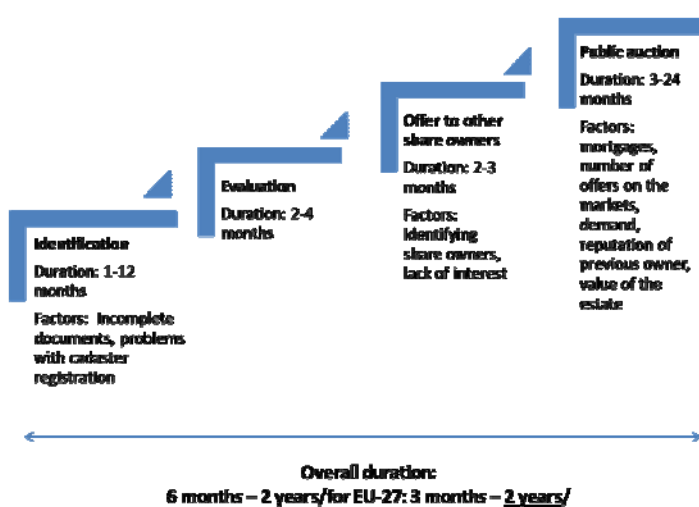


Figure 2 Procedure for sales of confiscated property according to the Tax and Social Insurance Procedure Code.

The sales procedure for confiscated property in compliance with the Tax and Social Insurance Procedure Code takes between 4 months and 2 years. Available data shows that the average period for

<sup>3</sup> Article 3, paragraph 1, item 1 and paragraph 4 of the Law of NRA

selling confiscated property in the EU member-states is 15 months, but that usually it takes 24 months to complete the deals<sup>4</sup>. This fact indicates that lengthy procedures are not an exception in other countries as well.

### 2. Key obstacles for sales of confiscated property

*Problems related to the property ownership (mortgages and shared ownership of property)*

The most frequently encountered problem in the process of selling the confiscated property is the **existence of real estate mortgages**. When the state acquires such a property, it also inherits the burdens upon it. Since the market value of the mortgaged properties fell after 2009, in most cases the creditors have been reclaiming the entire proceeds from the sale of the confiscated asset. Most often the NRA is not successful in selling the mortgaged confiscated properties, leaving the state with the obligation to cover the expenses for their management and safeguarding. On the other hand, putting this type of real estate property under state ownership denies the creditors the right to start enforcement proceedings to collect their dues. Therefore mortgaging becomes one of the successful money laundering strategies of the persons pursued under the provisions of the LFPC. In case their property is confiscated they find themselves relieved from the obligation to repay their mortgages to the bank and leave the state with a mortgaged property, which would hardly bring any revenue.

Another frequently encountered problem with real estate is the sale of shares in **shared ownership of property**. In these cases the NRA is under the obligation to first find the co-owners and offer them

<sup>4</sup> Assessing the effectiveness of EU Member States' practices in the identification, tracing, freezing and confiscation of criminal assets, Brussels: European Commission, 2009, p.63

to buy the state owned shares in the property. This process is often marred by difficulties in finding the co-owner/s and by their efforts to prolong the procedure, in addition to the expenses related to the management of such property.

*Procedural problems (related to incomplete / inaccurate ownership documents)*

The most frequent difficulties in this respect come from **incomplete or inaccurate documentation required for the identification of the property** – e.g. lack of registration in the cadastral register, missing or inadequate data about the property in the court orders and/or in the ownership documents of the previous owner, etc. These difficulties are even more severe when shared ownership is concerned. As a rule, these problems lead to extended sales procedures and higher expenses for safeguarding and managing the property.

These problems are exacerbated by type of **procedure** applied by the NRA, which was **generally intended for collecting unpaid taxes and social or health insurance fees**. The lack of specific legal procedure under the Tax and Social Insurance Procedure Code covering public auctions of confiscated property creates various ‘grey zones’ and legal gaps affecting the practical outcome of the sales.

*The owner’s reputation*

**The owner’s reputation** also influences to a great extent the outcome of the sales at auctions. In the cases when a property owned by members of organized criminal groups is offered, seldom any buyer can be found.

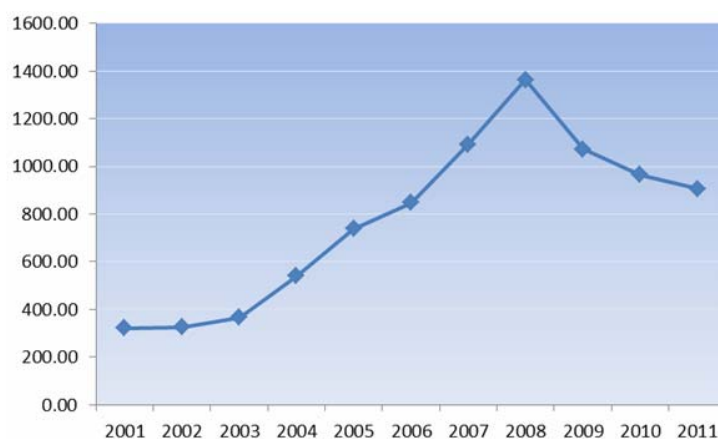
*Market conditions (number of real estate offers, demand at the market, and price of the property)*

**Market factors such as the demand and the value of real estate** have major impact on the ability of the NRA to sell the confiscated property. During the last several years the falling rates of real estate values and

the contraction in the market<sup>5</sup> was among the main barriers to successful sales. This period coincided with the first successful confiscations of criminal assets. The boom in real estate development prior to 2008 and the sharp decrease in prices in the period after resulted in an increased supply of real estate. The ‘buyers’ market situation allowed many buyers to have sufficient choice and low prices so as to avoid high-risk acquisitions, such as properties of owners with criminal reputation. Moreover, public auction of real estate assumes that **the buyer pays the whole sum in cash when closing the deal**, which also narrowed the number of potential buyers.

**The type and value of the real estate property itself** also define the chances for selling it at a public auction. The more expensive and luxurious the property, the less likely it is to be sold, especially in the economically underdeveloped regions of the country.

**Figure 3: Average market prices of real estate in Bulgaria in BGN per square meter (National Statistics Institute)**



<sup>5</sup> According to the Bulgarian Registry agency the number of real estate sales drop from 40906 deals in 2008 to 21787 deals in 2010.

### 3. The distribution of revenues from the sale of confiscated property

In accordance with the UN conventions on transnational organized crime and on corruption, some of the EU member-states have developed distribution schemes for redirecting of the revenues from the sales of confiscated property to financing of different programs – for example programmes for combating drug abuse (Spain, France) or crime preventing crime programmes.<sup>6</sup> Such schemes aim to support the victims of crime and more broadly to compensate society and especially the local communities for any related harms. The existing Bulgarian law, however, does not provide for such opportunities, which is a serious gap in the existing procedures, as it does not comply with the overall goal of the confiscation as a means for restoring of social justice.

## Possibilities for the use of confiscated property for social purposes

### 1. The existing procedure

In Bulgaria, the Act for the National Revenue Agency also provides a possibility for re-use of confiscated assets, including re-use for social purposes (see Figure 4). Until now, however, this procedure is applied mainly for confiscated movables (motor vehicles), and to a much lesser extent for real estate property.

The focus on sales, the relatively limited number of confiscated property and the lack of awareness among the potential beneficiaries are some of the most important reasons for the low level of real estate property re-use in Bulgaria.

<sup>6</sup>Ibidem



Figure 4 Transfer of confiscated property for re-use by a budget/public organization

The use of confiscated property for social purposes (or the so-called ‘social re-use’) is a widely established practice in Italy. The procedure includes transfers of confiscated real estate to local authorities on the condition that the property would be used for delivering social services and with involvement of community based organisations. There are several reasons for opting for such an approach. The most important among these are the difficulties of finding buyers of this type of property and the existing risk the property to be bought back by organised crime accomplices at a minimal price. Another reason is the urge to resist the ‘culture of crime’, which makes criminals popular role models. Last but not least, it is the idea to bring back to local communities the wealth accumulated by the criminals at their expense<sup>7</sup>.

<sup>7</sup> *Antimafia: The Italian experience in countering organized crime* (in Bulgarian), Sofia: Center for the Study of Democracy, 2011.

## 2. Preparedness of municipalities and NGOs to apply for and manage confiscated estates.

The above mentioned procedure for transferring real estate property for re-use in the public interest is mainly focused on facilitating the administrative needs of state institutions and does not sufficiently address those of municipalities and NGOs. On the other hand, the falling prices of real estate and the low market demand are additional incentives for a wider application of the existing possibilities for re-use of confiscated property for social purposes.

The municipalities and NGOs generally express willingness to benefit from the confiscated property, which is driven by the lack in most of the cities of appropriate premises suitable for delivering social services. On the other hand, they raise the concern that it would be difficult to secure additional financing for renovation and reconstruction, if such properties are transferred to them.

Generally, the municipalities list several conditions for expressing interest in acquiring confiscated property:

- The real estate must be lent without any additional payments or burdens;
- the municipalities must have the discretion whether to express interest in a property, i.e. property will be transferred to them only if there is a specific need identified in the municipality;
- the property could be remodelled according to the identified needs and comply with the existing standards for delivering social services;
- clear legal procedures should be introduced regarding transfer and re-use of confiscated property;
- That the state secures additional financial resources needed for reconstruction and renovation of the premises according the existing

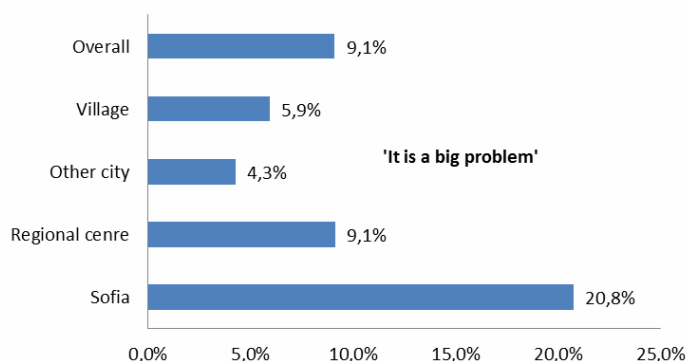
standards, in addition to finances for providing the social services themselves.

The main parameters of the NGO's interest in acquiring confiscated property include:

- The estate should be suitable for carrying out the specific social services provided by the NGOs;
- The period over which the NGOs will obtain the right to use the property should be at least 5 to 10 years, to guarantee sustainability of the services delivered;
- The introduction of a transparent and objective procedure for applying for use of confiscated property, which will guarantee fair conditions to all NGOs interested in social re-use of confiscated property;
- Coupling the lending of property with the existing opportunities for applying to the European operational programs and to state financing for delegated public services.

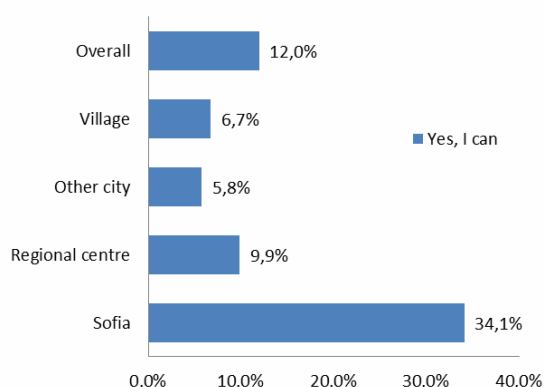
## Public attitudes to the re-use of confiscated real estate property

Public attitudes towards the management and disposal of confiscated real estate property are closely linked to the perception of organised crime in the country as a whole. A small proportion of the respondents perceive organized crime as a serious problem for their city, though the bigger the city the higher the perception of threat. Thus, citizens at the capital indicate 3 times more often the organised crime as a problem compared to people living in villages (Figure 5).



**Figure 5: To what extent organized crime presents a problem in your city? (CSD Survey, 2012)**

Fear from organized crime is to a great extent moderated by the level of public visibility of local criminal figures (see Figure 6). This level is higher in the capital as a result of the greater exposure of such persons through the media, while in the regional cities and the smaller towns similar information is gathered mainly through personal networks and individual experience. For example, a higher number of respondents in the capital indicate that they have learned about gangsters from the electronic media (32,1%), from the newspapers (21,5%), and through internet (9,2%).



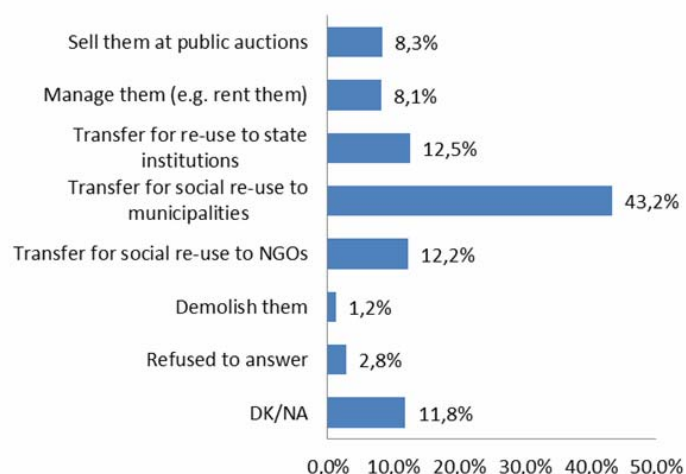
**Figure 6: Can you name a person from the underworld in your city? (CSD Survey, 2012).**

On the other hand, in regional cities it is the informal networks ('according to rumours in the city...') that

constitute the main source of information (8,2%), followed by electronic media (3,1%) and newspapers (2,8%). Finally, in small towns the informal networks provide 6,7% of such an information, followed by individual experience (2,4%) – which means that people know personally the main criminal figures.

The major part of the citizens are not informed about specific cases of real estate property frozen and confiscated in their town – only 8,3% admit they know about such cases. Despite such a poor publicity, most of the respondents support the policies of re-use of confiscated real estate for social purposes.

**Transferring of confiscated real estate property to municipalities for social re-use** is supported by a majority 4 to one in comparison to options like sale of property, managing it by the state or simply demolishing it. This public support is strong not only in the capital, but also in the regional centres and in the smaller towns, which means that public attitudes are unanimously in favour of introduction of appropriate procedures and mechanisms for transferring such property to the municipalities (Figure 7).



**Figure 7: What should the state do with the confiscated real estate property? (CSD Survey, 2012)**

## Recommendations for management and disposal of confiscated real estate property

### Recommendations for improving the safeguarding of confiscated estates

- The court order for confiscation should also determine compulsory sealing off of the property and continuous security protection of the estate effective from the date the confiscation order is issued.

### Recommendation for the sales procedures and the distribution of proceeds from property sales

- The existing procedure for public auctions of confiscated property according to the Tax and Social Insurance Procedure Code should be preserved in the new act on forfeiture. It should not be preconditioned that the confiscated property cannot be sold at a lower price than the initial one. Neither should the number of public auctions be decreased.
- A possibility should be introduced for demolishing those estates which cannot be sold, for which there is no interest for their re-use, or their use is impossible.
- The former owners, whose property was confiscated, and their relatives, should be barred from participation in public auctions for their ex-property.
- The revenues from the confiscated property should be re-distributed to the annual budgets of the NRA, the Ministry of Justice, the Ministry of Interior and the Supreme Judicial Council and these institutions should be obliged to use these additional amounts to cover expenses for managing confiscated properties, compensating victims of crime and implementing programs for crime prevention.

- The body upon which the newly submitted draft law on forfeiture lays the responsibility for managing of confiscated property (the so-called Interdepartmental Council) should coordinate relevant measures for safeguarding the confiscated property even before the issuing of the court order.

### Recommendation for transferring of confiscated real estate property for social re-use

- Transfers of confiscated property with the purpose of social re-use through contracts for donation or through contracts for establishing of limited property rights should be introduced. Among the potential beneficiaries should be the municipalities, the state institutions, and the non-profit legal entities registered for the public benefit.
- A public online register for the confiscated properties should be introduced, containing all estates suitable for social re-use.
- A follow-up control to be exerted by the respective regional governors should be introduced on all cases of transferring of confiscated real estate property for social re-use.
- The transfers of such property should be carried upon selection through competitive procedure based on transparent and objective criteria for participation.