

Challenges and Perspectives Before CEPACA

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The adoption of the new law on the Commission for Establishing of Property Acquired from Criminal Activity (CEPACA) in 2005 has led to an increase in the investigations and court cases for asset forfeiture. For the first two years of its existence, CEPACA has filed to court 50% more cases compared to the number of cases filed by the Prosecution under the Law on the Property of the Citizens for the entire period between 1997-2005. Despite this rise in investigations and trials in the last five years, CEPACA faces a number of challenges.

Deficits in the Commission's Work

A study conducted by RiskMonitor confirms that CEPACA faces serious difficulties with regard to its human resource capacity. The Commission has to deal with a high staff turnover, which affects negatively its daily management and functioning. On the other hand, CEPACA has also suffered serious budget cuts, especially in the last couple of years, consequence of the economic crisis. Derived from the first two, but also the result of poor long-term planning, is also the lack of an adequate information management system, vital to the Commission's efficient work. There is also critical disproportion in the workload as distributed among the Commission's regional offices, which affects negatively the institution's overall performance level.

The consequences of this state of affairs are paramount. The most important have to do with the lack of a unified methodology for the appraisal of the property and assets under investigation, and the Commission's dependence on external experts to issue such appraisals. The outcome is the significant discrepancy between the appraisals done for the Commission (usually setting higher property values) and those done by order of the court. Manipulating the actual value of the confiscated property in this way, CEPACA has essentially falsified its annual reports, lying about its own accomplishments and performance level. Aside from this, the Commission has paid the external experts huge amounts of money, that is, taxpayer's money, to conduct the appraisals.

Inconsistent Court Practice

In the last five years, the Commission's work has also been challenged by the inconsistent court practices related to asset forfeiture, in particular, as concerns establishing the links between the predicate crime and the acquired property. The ambiguities in the law have led to situations when different judges presiding, or even judges from the same court division, have issued various interpretations of the same legal provision.

Managing the Confiscated Property

A significant issue for civil asset forfeiture is the ineffective management of the confiscated property. Often, it is purposefully or inadvertently damaged during the pre-trial proceedings, or afterwards, due to inadequate measures for its protection. Consequently, the property becomes practically impossible to sell and in a lot of cases, also impossible to use any longer. Indeed, the purpose of civil asset forfeiture is depriving the criminals from resources to commit further crimes and also returning the unlawful assets to the state; therefore, damaging the property in such irresponsible manner simply cannot be tolerated.

Public Control

A further issue is the lack of public control over the Commission's activity. CEPACA is comprised of five members, nominated on a 3:1:1 quota principle, respectively by the National Assembly, the Prime Minister, and the President, whereby the person nominated by the Prime Minister becomes also the Commission's chairman. This model of constitution presupposes lack of responsibility, strong dependence from the Prime Minister, lack of accountability, and ultimately, poor efficiency and underperformance. The parliamentary oversight is conducted by all members of parliament, instead of being assigned to a dedicated committee or subcommittee. Consequently, CEPACA only comes under the spotlight in the case of public scandals, usually announced by the media, which is also one of the reasons for the

lack of a distinct and recognizable [positive] public image of CEPACA.

Recommendations for Improvement

In order to overcome the deficiencies in the Commission's work, it is necessary to take measures for its institutional restructuring that need to go hand in hand with the measures of rethinking the principles of civil asset forfeiture in Bulgaria.

It is necessary to provide guarantees for a strong public control of the Commission's activity, namely, its members must be elected by the National Assembly (as is the procedure for nominating members of the State Audit), as well as introducing a mechanism for the recall of the Commission's members when deemed so by Parliament. The Committee on Internal Security and Public Order of the Parliament should be given a mandate to conduct ongoing parliamentary control, in the same way it is done for the State Agency for National Security (SANS).

The Commission needs to cut down its regional offices, reducing their number to three. Further specific actions need to be taken to increase the professional qualifications and motivation of the staff. A new amendment in the law must stipulate that service in the Commission for those from the legal professions (attorneys at law, legal counsels, etc.) will count as judicial practice, and the other employees will be granted the status of public servants.

It is also necessary to build an information management and storage system, establishing a specialized department for analysis and report, staffed with well-trained professionals for information management.

CEPACA must develop a unified methodology for property appraisal and asset evaluation, based on market prices applicable at the time of acquiring the property; expert appraisals should be conducted by the Commission's employees. Recommended is the establishment of a specialized inter-departmental council for the management of confiscated assets, involving representatives of CEPACA, the Ministry of Finance, the Revenue Agency, and the Bulgarian National Bank.

The new bill on civil asset forfeiture should include provisions regarding the inconsistencies in the court rulings on forfeiture cases, specifically as concerns the link between the predicate crime and the acquired property.