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SOCIAL REUSE OF CONFISCATED ASSETS IN THE EU:
CURRENT EXPERIENCES AND POTENTIAL FOR ITS
ADOPTION BY OTHER EU AND NON-EU COUNTRIES

(СОЦИЈАЛНА РЕУПОТРЕБА НА КОНФИСКУВАН ИМОТ ВО ЕУ:
МОМЕНТАЛНИ ИСКУСТВА И ПОТЕНЦИЈАЛИ
ЗА ПРИЛАГОДУВАЊЕ ВО ОСТАНАТИТЕ ДРЖАВИ
ВО ЕУ И НАДВОР ОД НЕА)

Abstract

An effective and efficient disposal of assets confiscated from criminals is crucial to ensure that confiscation policies reach their expected objectives. If any problems arise in the last phase of confiscation proceedings, the efforts made by the criminal justice system in tracing, seizing and confiscating criminal assets can be brought to nought. Notwithstanding its importance, only limited attention has been given to the topic. Recently, EU institutions have shown an increasing interest toward a peculiar form of disposal, which involves giving criminal proceeds back to the communities affected by crime and promoting their use in line with communal needs: social reuse. So, for example, Directive 2014/42/EU invites Member States to ‘consider taking measures allowing confiscated property to be used for public interest or social purposes’. This article responds to these questions: which Member States envisage the social reuse of confiscated assets? Could other Member States adopt it and, if so, under which conditions? And what about acceding countries, using the Republic of Macedonia as a case study?

Key words: disposal of confiscated assets, social reuse, EU Member States, Republic of Macedonia

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1. Introduction

At the end of any judicial procedure aimed at removing the proceeds from crime, the issue of what to do with them arises. These issues are dealt with in the disposal phase, which is the phase in which a final confiscation order is enforced and confiscated assets are disposed of. Different forms of reuse are possible. In addition to the traditional transfer of ill-gotten gains into the State budget, some Member States envisage a more innovative form of disposal that is attracting increasing attention at the EU level: the reuse of confiscated assets for social purposes.

After providing a definition of social reuse (section 2), this chapter answers the following questions: which Member States envisage the social reuse of confiscated assets (section 3)? Could other Member States adopt it and, if so, under which conditions (section 4)?⁹⁹³ And what about acceding countries, using the Republic of Macedonia as a case study (section 5)? Some conclusions are finally drawn (section 6).

2. Defining social reuse of confiscated assets

Sale is the main disposal option in practically all Member States. However, about two-thirds of Member States envisage, though almost never as first choice, different forms of reuse of the assets/proceeds, via their transfer to state/local institutions ('institutional reuse', via incentivisation schemes) or to society/non-government organisations (NGOs) ('social reuse').

Social reuse involves giving the criminal proceeds back to the communities affected by (organised) crime and promoting their use in line with communal needs. Its attractiveness is the visibility of confiscated assets among citizens.

The key social reuse experiences within the EU are in Belgium, France, Hungary, Italy, Luxembourg, Scotland and Spain. Before analysing them,

⁹⁹³ In answering these two questions, the chapter presents the results of the EU-funded project RE-CAST (Reuse of Confiscated Assets for Social Purposes: Towards Common EU Standards). The project was awarded to the Department of European Studies and International Integration at the University of Palermo by the European Commission, DG HOME under the 2010 ISEC Programme. It was carried out in the period November 2011–November 2014 in co-operation with the Center for the Study of Democracy and the FLARE Network, and with the support of Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata and UNICRI. Its aim was to promote the development of common European standards on the reuse of confiscated assets for social purposes. Barbara Vettori took part in it as Project Manager.

these experiences can be seen to fit one of the following two models: direct and indirect social reuse.

Direct reuse operates in Italy, Belgium (Flemish region), and Hungary. With direct reuse, assets are reassigned for the public benefit through a change in their intended use (e.g. conversion of the house formerly belonging to a criminal boss into a playgroup). Indirect social reuse is where the proceeds of crime (or from the sale of confiscated assets) are distributed via specialised funds that use them either a) in crime prevention projects or b) in incentivisation schemes for law enforcement agencies, so that these entities may have a further incentive to keep on fighting crime - always, even if indirectly, in the interest of society. Under this mechanism confiscated assets are not straightforwardly passed on to society, rather the proceeds from their sale are. In addition, the proceeds may not always be reused for the immediate, but rather mediate (via incentivisation schemes) interest of society. This model is in place in France, Spain,⁹⁹⁴ Luxembourg and Scotland.

3. Current social reuse experiences within the EU

In Belgium, social reuse is envisaged in the Flemish Region only. The Decree containing the Flemish Housing Code of 15 July 1997, at article 90, provides for the right of the municipalities to temporarily manage unsuitable, uninhabitable or abandoned property of negligent owners on the condition that the property will be restored or renovated and used for social housing for a certain period of time. The owner keeps his rights over the property, but the municipality acquires the right to temporarily manage it for nine years or longer. The idea of applying this regime to confiscated real estate came about after the Federal Public Service of Finance had confiscated some derelict properties with illegal occupants and did not know how to handle them. Social management appeared as a win-win option: on the one side, it provided the local authorities with a chance to invest in the properties, recouping their investment via rents while improving the housing problem; and on the other side, the federal government benefited by stopping further deterioration and ultimately regaining it renovated and free of illegal occupants, whilst bearing no management costs.

In France, MILDT (*Mission interministérielle de lutte contre la drogue et la toxicomanie*) manages the fund (*Fonds de concours*) established by Decree 322/1995 to collect the proceeds confiscated in connection with

⁹⁹⁴ The Spanish model envisages both direct and indirect social reuse. In practice the second option is predominantly used, and for this reason Spain is herein classified in the related category.

drug trafficking. A final confiscation order, including a statement that certain movable or immovable assets were confiscated in relation to drug crimes, is forwarded to MILDT. AGRASC (*Agence de gestion et de recouvrement des avoirs saisis et confisqués*)⁹⁹⁵ manages the auction sale of the assets and the related proceeds are transferred from AGRASC's bank account to MILDT's. Proceeds are distributed as follows: 60 per cent to the Ministry of Internal Affairs; 20 per cent to the Ministry of Justice; 10 per cent to the Ministry of Economic Affairs and Finances; and 10 per cent to MILDT. MILDT distributes its share to several entities (including the Ministry of Social Affairs, Ministry of Health, Ministry of Agriculture and Ministry of Education). While the quotas assigned to the other ministries can be regarded as an incentivisation scheme, MILDT's 10 per cent quota is used directly for social purposes.

In Hungary confiscated goods may be offered for charity purposes, based on Act XIII of 2000 and on Government Decree 65/2000. These pieces of legislation have set in place a procedure for offering these goods to charity purposes. It applies to personal assets only, and cannot cover either vehicles or real estate. Goods suitable for social reuse must fulfil one of the following purposes: nutrition, clothing, sleeping gear and fixtures, grooming/hygiene, cleaning, washing, education or culture. Also, assets falling into one of the following categories can be socially reused: provisional housing, house maintenance, home equipment, household appliances and tools, kitchen equipment and utensils, communications equipment, toys, leisure sport. In practice, 98 per cent of all goods offered for charity purposes are counterfeited commodities (clothing, shoes or toys). The recipients are people in need (individuals only, not public institutions or private organisations). The Charity Council is the body in charge of initiating and co-ordinating these proceedings. All its members are highly experienced charity organisations with proven logistics capabilities and a wide network of local offices that collect requests for donations, so they have good knowledge of local needs.

In Italy, social reuse has been envisaged since mid-90's (Law 109/1996). Relevant regulations are now contained in Legislative Decree 159/2011 (Antimafia Code), and subsequent amendments. The key institution involved in the decision-making process is ANBSC (*Agenzia nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati alla criminalità organizzata*).⁹⁹⁶ Assets suitable for social reuse are immovable assets, movable

⁹⁹⁵ AGRASC is a public administrative body under the Ministry of Justice and Ministry of Budget, established by Law 768 of 9 July 2010. It is vested with various tasks designed to improve seizure, management and confiscation; it also plays a key role in the disposal of confiscated assets, since it is tasked with the sale or destruction of all assets that AGRASC previously managed.

⁹⁹⁶ ANBSC was established by Law Decree 4 of 4 February 2010. It is tasked with, amongst others things, the management and disposal of assets confiscated from organised crime.

(and registered) ones and companies. Real estate may be transferred to state institutions or, for institutional purposes or social reuse, to local entities (the municipality where they are located, or, alternatively to the province/region; local entities may manage the assets/assign it for free to social communities/associations). Companies can be rented to worker cooperatives for free. Movable assets (and also registered ones) can be used by ANBSC in institutional activities or can be assigned to other state bodies, local entities or charities.

In Luxembourg, the Law of 17 March 1992 (article 5) set up the *Fonds de lutte contre le trafic de stupéfiants*. It is made up of all real and personal property confiscated under section 8-2 of the Act of 19 February 1973 on the sale of medicinal substances and the fight against drug abuse, as well as under article 5, paragraph 4 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Following the enactment of the Law of 27 October 2010, article 5 has been modified so as to cover other crimes, such as money laundering and other serious crimes. Due to this amendment, the Fund has been renamed as *Fonds de lutte contre certaines formes de criminalité*. The Fund is therefore the government institution that receives confiscated proceeds from drug trafficking and money laundering, and supports programmes in fighting ‘certain forms of criminality’. Its beneficiaries include international organisations, national institutions and NGOs. Since it was set up in 1993, the Fund has funded projects worth over €40 million.⁹⁹⁷

In Scotland, recovered criminal assets are invested in the CashBack for Communities programme.⁹⁹⁸ It is a Scottish government programme that takes the ill-gotten gains of crime, recovered through the Proceeds of Crime Act 2002, and invests them in community programmes, facilities and activities largely, but not exclusively, for young people at risk of turning to crime and anti-social behaviour as a way of life. It is intended to be: (i) positive (healthy, fun, active, engaging); (ii) open to all (accessible, well advertised, free of charge, of interest to all, irrespective of age, gender, ethnicity, etc); (iii) developmental (it aims at changing behaviours and attitudes, and at developing skills); and (iv) sustainable. An independent external evaluation of the programme was published in September 2017:⁹⁹⁹ it suggests that approximately 357,000 young people were involved in CashBack activity in the period 2014-2017, and that the programme was able to support those most in

⁹⁹⁷ See Grand Duché de Luxembourg, Fonds de lutte contre certaines formes de criminalité, *Rapport d'activité 2016*, Luxembourg, June 2017, p. 2.

⁹⁹⁸ See <https://www.cashbackforcommunities.org/>.

⁹⁹⁹ Research Scotland, *Impact Evaluation of the Cashback for Communities Programme, Phase Three, Final Report*, Glasgow, September 2017.

need. Overall, more than 5,500 young people moved into positive destinations of employment, education, training or volunteering.

In Spain, the disposal of proceeds from drug trafficking is disciplined by Law 17 of 29 May 2003, which further develops rules originally contained in Law 36 of 1995 (the so-called *Ley del Fondo*). It has established a Fund (*Fondo de bienes decomisados por tráfico de drogas y otros delitos relacionados*) financed out of the assets confiscated in drug cases, as well as in drug contraband, and to be used 1) to finance programmes for drug addiction prevention, assistance to drug addicts and their social and occupational rehabilitation; 2) to promote and improve measures to prevent, investigate, prosecute and repress drug related crimes; 3) to promote international cooperation on such matters. The fund's beneficiaries are: law enforcement agencies charged with counter-narcotics activities; NGOs and non-profit organisations working in the substance abuse field; regional and local governments and authorities; the *Delegación del Gobierno para el Plan Nacional sobre Drogas* (DGPNSD); and international organisations and institutions. DGPNSD is in charge of this social reuse mechanism. Unless the assets have to be abandoned or are definitively assigned to the law enforcement agencies authorised by the court to temporarily use them pending legal proceedings, two key options are foreseen: (i) sale, with the profits from the sale flowing to the fund (indirect social reuse); or (ii) assignment for free to potential beneficiaries (direct social reuse), upon their request. In practice, most assets are sold.

4. Potential for adoption of social reuse within the EU

In order to assess the potential for adoption of social reuse of confiscated assets by other Member States, the following topics were analysed: (i) level of knowledge about existing social reuse experiences in the EU and public debate about it; (ii) feasibility of adoption of social reuse by the country, taking into consideration the overall benefits it could bring about, as well as the potential obstacles; and (iii) advisability to develop EU standards on this issue, and key principles for future EU regulation.

Data were gathered via a data collection protocol. Of the 20 EU countries not having any, or not having a well-developed, social reuse system in place (unlike the Member States analysed in depth in the previous section), 12 participated in the survey: Austria, Bulgaria, Cyprus, Estonia, Finland, Ireland, Latvia, Lithuania, Netherlands, Poland, Portugal and Sweden.

Regarding the level of knowledge about social reuse experiences in the EU, the majority of the above countries reported the lack of any debate, either because institutions and other stakeholders were not acquainted with

the existing experiences (Cyprus, Lithuania, Poland, Portugal, Sweden) or because the current disposal regime is regarded as efficient enough and there is no need to change it (Finland, Latvia). The only exceptions are Estonia, where there is a debate on the overall effectiveness of the current system for management and disposal at the expert level within responsible institutions, which was provoked by the potential social and economic impact of social reuse; the Netherlands, where the Minister of Security and Justice was recently asked to inform the Parliament about the possibilities of setting up a fund to invest part of the confiscated proceeds in supporting police and public prosecutor activities; Bulgaria, where there is a debate on the overall effectiveness of the current system for management and disposal at the expert level within responsible institutions, provoked by the potential social impact of social reuse; and Ireland, where there is still a debate (though not a very active one) on the introduction of social reuse, mainly in the form of media reports, public discussion in the media and parliamentary debate. It has been provoked by the social aspects of social reuse and by its usefulness especially in relation to drug abuse rehabilitation. What is mainly discussed is the direct social reuse of confiscated assets.

Regarding the potential benefits that social reuse could bring about, the following have been reported by respondents from 11 of the above 12 countries: meeting certain social needs (especially via direct social reuse), also considering that the system may help victims get compensation or social treatment, or help socially vulnerable people; making explicit the willingness of the state to combat crime; greater awareness of asset seizure and confiscation; more effective communication about confiscation ('crime does not pay') to the wider public; making more visible to the public the activity of law enforcement agencies, prosecution offices and courts, thus raising public interest and support in fighting crime; better reuse of certain assets that would otherwise not be used and would be damaged if not reused (e.g. perishable goods, cars, even real estate, especially when associated with serious organised crime).¹⁰⁰⁰ One of the respondents could hardly see any real benefits, and ex-

¹⁰⁰⁰ This was also noted by the Belgian respondent when commenting on the Flemish social reuse experience. In his opinion, social reuse is an option preferable to sale for real estate in unattractive areas: in Belgium, many of the confiscated properties are located in 'problematic' areas. Hence, sale to the general public proves difficult and often results in property going back in the hands of organised crime. In this regard, social management seems to be an alternative that prevents confiscated properties from going back to organised crime via sale while, at the same time, still providing value for money. It also seems to be an option preferable to sale for low-value real estate: in Belgium, much of the confiscated real estate has a very low value, because of its poor condition. Handing such assets over to the local authorities, the Patrimonial Services can reduce the operational costs for their management, and get the real estate back renovated and with a higher value at the end of the procedure. At the same time, municipalities can address the need for more affordable housing.

pressed a concern, i.e. the risk that such a system could create an unnecessary administrative burden compared to the current situation.

Regarding potential obstacles to the adoption of this mechanism, both economic factors and political and legal factors have been reported. As regards economic factors, Ireland, for example, has recently experienced an economic crisis; allocating monies on a social reuse basis would not allow the proper reallocation of funds in line with that as set out in government policy. In Bulgaria, confiscated assets are often in poor condition, so the state must use additional budgetary expenses to repair them so that they can become usable; the same applies in Latvia and Lithuania. In Estonia, because of their poor condition, assets are often not usable and extra money from the State budget might be needed for their restoration; this could result in them being more burdensome than beneficial. In Portugal, appropriate logistics and public investment might be needed to enable reuse, especially in relation to some goods (real estate, cars, chips or aircrafts); also, in a significant number of cases, the goods are in very poor condition, potentially making it difficult to socially reuse them.

As regards political and legal factors, in Ireland, for example, choosing certain social or other causes to award assets to could cause difficulties in the selection process by giving preference to one cause/beneficiary over another. In Bulgaria, there are legislative restrictions on the implementation of budgetary resources (legislation on state aids, budget, control, etc). In the Netherlands, the current system is proceeds based, so it is not compatible with certain social reuse regimes; secondly, budgetary rules prescribe that confiscated assets go to the Ministry of Finance. In Cyprus, the confiscation system is proceeds based and confiscated proceeds go to the State budget or are returned to victims. Regarding Finland, in the current system, fines or confiscated property are not earmarked for any specific purpose, and social reuse could be poorly compatible with the Constitution, according to which the Parliament decides on the State budget.

Regarding the overall feasibility of introducing social reuse in their countries, respondents from seven (Ireland, Netherlands, Latvia, Austria, Sweden, Finland, Poland) out of the 12 countries think that, overall, adoption of this form of disposal is currently not feasible; those from the remaining five (Bulgaria, Cyprus, Lithuania, Portugal, Estonia) countries think the opposite.

All but one of the respondents highlighted that, if one had to make a choice, the social reuse model that would best fit the needs of other countries is the indirect reuse model (reuse of proceeds), rather than the direct reuse of the assets. This is attributed to a variety of reasons: for example, not all assets can be directly reused (e.g. Rolex watch), and should therefore be sold and the related proceeds used (Ireland); and proceeds are preferable because of

flexibility and simplicity of use (Estonia, Poland, Portugal). A confiscated house could in some cases be of little interest; for example, conventional usage might not meet expectations/needs. In most cases, the reuse of proceeds is likely to be simpler, and will better satisfy the diverse and general needs of citizens or institutions. It also overcomes problems typically associated with the reuse of assets. Furthermore, the reuse of the proceeds of confiscated assets through specialised programmes is regarded as more effective and expedient (Lithuania). Finally, it can be more easily incorporated in value-based confiscation systems as well (Cyprus). The Bulgarian respondent advocated a mixed approach, stating that it is appropriate to apply both models of social reuse simultaneously, together with the possibility of choosing one or the other depending on the specific type, conditions and intended purpose of the asset, as well as in accordance with all the other factors that determine the presence or lack of interest towards its reuse.

Regarding the advisability of having EU standards on the social reuse of confiscated assets, one-third of the respondents (Austria, Finland, Ireland, Netherlands) believe that EU regulation would not be advisable. The other two-thirds of the respondents (Bulgaria, Cyprus, Estonia, Latvia, Lithuania, Poland, Portugal, Sweden) believe, instead, that EU regulation would be advisable.

5. Potential for adoption of social reuse beyond the EU: the Macedonian case study

5.1 *Disposing of the proceeds from crime in Macedonia: law in the books, law in action*

Current legal framework. The disposal of assets confiscated within criminal proceedings is regulated, in the Republic of Macedonia, in the Law on Management of Forfeited Property, Proceeds and Seized Items in Criminal and Misdemeanor Proceedings, enacted in 2008 and amended several times since then.¹⁰⁰¹ The Law regulates the establishment, operation and status of the Agency for the Management of Seized and Confiscated Property, together with the procedure for management and disposal of seized and confiscated assets. This law establishes two disposal options for confiscated assets.

The first possibility is sale and is regulated by articles 33 to 50 of this Law. Confiscated assets are sold on public bids organized by the Agency,

¹⁰⁰¹ Official Gazette of the Republic of Macedonia No. 98/2008, 145/2010, 104/2013, 187/2013, 43/2014, 160/2014, 97/2015, 148/2015 and 64/2018.

except for gold which is transferred to the National Bank. The money gathered from the assets sold on public bids is considered as income to the State budget and the Law does not contain any provisions for possible structural and specific allocation of this income to specific state agencies.

The second disposal option is the direct transfer of confiscated assets to the Government or to state bodies and agencies, as regulated in articles 51 and 52 of the Law. Confiscated assets can be transferred for free to the Government, local municipalities, state institutions, state agencies, and other agencies, funds and directorates established by the State (article 52).

Furthermore, this article provides the possibility for renting (article 38-a) confiscated assets to other third parties, not considering the defendants from whom the asset has been confiscated. The rent will be considered as an income to the State budget.

We can conclude that despite the fact that there is possibility for transfer of confiscated assets in order to socially reuse them, the Macedonian law provides this option only to the State or State-organized institutions. The Macedonian law does not contain provisions for transfer of these goods to NGO's or other non-profit organizations.

Law in practice. When analyzing the practical implementation of the confiscation and freezing of the property, proceeds and instrumentalities which have derived from crimes in the Republic of Macedonia one must bear in mind that there are insufficient data and no available statistics regarding the implementation of these measures into the criminal justice system.

Due to this fact in most cases the conclusions are questionable and not consistent with the actual situation. For example in some high profile cases, the courts issue press releases stating that in a given case assets from the defendants in net worth more than 9 million euros were confiscated,¹⁰⁰² and on the other hand there is no available data to confirm this information through the State Statistical Bureau, nor through the Agency for the Management of Seized and Confiscated Property.¹⁰⁰³ Furthermore we do not have any available statistical information regarding whether the confiscated assets were

¹⁰⁰² See for example the press release for the confiscation of assets worth over 1 million euros from only one of several co-defendants in the high-profile case "Bachilo": https://faktor.mk/archives/18424?utm_source=rss&utm_medium=rss&utm_campaign=%25d1%2581%25d0%25bb%25d1%2583%25d1%2587%25d0%25b0%25d1%2598-%25d0%25b1%25d0%25b0%25d1%2587%25d0%25b8%25d0%25bb%25d0%25be-%25d1%259c%25d0%25b5-%25d1%2581%25d0%25b5-%25d0%25bf%25d1%2580%25d0%25be%25d0%25b4%25d0%25b0%25d0%25b2%25d0%25b0-%25d0%25b8%25d0%25bc%25d0%25be%25d1%2582%25d0%25be%25d1%2582

¹⁰⁰³ See the annual reports from these State bodies available at www.stat.gov.mk and www.odzemenimot.gov.mk

partly used to compensate damaged parties or rather considered as an income to the State budget. Since there are no statistical data from the courts,¹⁰⁰⁴ or from the other State agencies, we can only guess the number of cases where confiscation has been ordered.

In this fashion it is interesting to note that on the website of the Agency for the Management of Seized and Confiscated Property - which according to article 6 of the Law on Management of Forfeited Property, Proceeds and Seized Items in Criminal and Misdemeanor Proceedings¹⁰⁰⁵ is tasked, amongst other things, with the management of seized and confiscated assets, the enforcement of confiscation orders, and the sale of seized property - there are no official data, nor annual reports. Furthermore, in one publicly available document, called Strategy for the period 2014-2016, it is stated that the Agency has provided income to the State budget for over 2 million euros.¹⁰⁰⁶ However, in the subsequent document, Strategy for the period 2018-2020, there is no information regarding the previous period, similar to the previous report.¹⁰⁰⁷

From the overall opinions of the judges, it seems that confiscation is not a very popular measure, since most of them, when answering to the question “why don’t you use confiscation more frequently?”, provide several similar answers, such as: they do not have sufficient information regarding the defendant’s assets, do not know the epilogue of the confiscated asset and/or they are not sure who is the real owner of the things that should be subjected to the measure.¹⁰⁰⁸ In addition, they have stated that in most cases public prosecutors do not specify which items should be confiscated, nor there are any previous financial investigations.

Due to these circumstances, in most of the cases judges use confiscation only when the facts are undisputed that a given asset stems from a crime, while

¹⁰⁰⁴ See the annual report of the biggest Criminal Court in the Republic of Macedonia, Basic Court Skopje 1, available at <http://www.vsrn.mk/wps/portal/osskopje1/>

¹⁰⁰⁵ See the Law on Management of Forfeited Property, Proceeds and Seized Items in Criminal and Misdemeanor Proceedings, Official Gazette, No. 98/2008 of 4.8.2008, available at <http://www.slvsnik.com.mk/Issues/BE79420C2BA6AF4DA6B3A9F3E3DDC87F.pdf>.

¹⁰⁰⁶ See, on the web page of the Agency, <http://www.odzemenimot.gov.mk/VPP/Documents/%D0%A1%D1%82%D1%80%D0%B0%D1%82%D0%B5%D0%B3%D0%B8%D1%81%D0%BA%D0%B8%20%D0%BF%D0%BB%D0%B0%D0%BD%20%D0%BD%D0%B0%20%D0%90%D0%A3%D0%9E%D0%98%202012-2014.pdf>

¹⁰⁰⁷ See <http://www.odzemenimot.gov.mk/str%D0%B0t%D0%B5gii.aspx>

¹⁰⁰⁸ These problems were raised by the focus groups made up of judges and prosecutors for the Evaluation and Presentation of the Toolkit for the Practitioners, Vettori, B., Kambovski, V. and Misoski, B., Implementing Proceeds from Crime Confiscation in the Aftermath of the 2009 Reform in the Criminal Code, A Toolkit for Practitioners, OSCE Mission to Skopje, Skopje, 2010; also see Misoski, B., Petrovska, N. *Implementation of the Fair Trial Standards*, “Coalition All for Fair Trials”, Skopje, Macedonia, 2017, pp. 34-36.

they do not use the provisions for extended confiscation or confiscation from third parties. This means that confiscation is usually adopted in cases when for the court it is obvious or without any hardship easy to identify the property, proceeds or instrumentalities and these are in the defendant's possession.

Due to these reasons judges do not enter into the complicated schemes of determining the proceeds of crime if they are mixed or transformed with legally obtained assets, since they do not have proper evidence provided from State institutions (or they are missing) such as extensive financial expert's opinions regarding these circumstances of the case. Furthermore complex financial investigations are not common in the court cases, and courts do not have information how to determine the amount of property for confiscation in these fraudulent crimes cases.¹⁰⁰⁹ Unfortunately within the Macedonian criminal justice system besides the financial police, which is severely understaffed, there is no other State body responsible for undertaking these ongoing financial investigations. Furthermore the special investigation teams have not yet been established as part of the public prosecution offices.¹⁰¹⁰ Hence, there is no proper coordination between the State bodies to share information about the defendant's financial situation.¹⁰¹¹

This conclusion can also indirectly be drawn from the available statistical data for the cases which were adjudicated in front of the Macedonian courts available both from the State Statistical Bureau¹⁰¹² and Court's Annual Reports.¹⁰¹³

Considering the epilogue of confiscated assets, judges often use confiscation for property which can be easily transformed or given to State in-

¹⁰⁰⁹ However, in several high profile cases handled by the Prosecution for Organized Crime and Corruption, several multimillion assets were confiscated. See informational PPT from the Macedonian Ministry of Justice: www.pravda.gov.mk/documents/konfiskacija_nova_0209010_2.ppt

¹⁰¹⁰ See article 45 of the CPC, regulating the investigation centers as part of the public prosecutor's investigation team. Official Gazette of the RM, No. 150/2010.

¹⁰¹¹ See Conclusions from the round table regarding the Practical implementation of Confiscation, 08.06.2018, conducted by Network 23+, available at <http://www.merc.org.mk/aktivnost/48/di-jalog-za-politika-konfiskacija-na-imot-i-nelegalno-steknata-imotna-korist>

¹⁰¹² See <http://www.stat.gov.mk/PrikaziSoopstenie.aspx?rbtxt=14>

¹⁰¹³ See http://www.vsrn.mk/wps/portal/osskopje1/sud/izvestai/svi!/ut/p/z1/pVJBbsIwE-HxLDz4GLyWxnd4CpagQVImCSH1BieOEIbCHxEDb19dQLpWKhdS97WpmZzx-ezHGEeRUfijzWhari0vRvnKx8eCTd_gDCIwlIEEwXw3AxeH6HnouXZwBcqQAwT_Dn3oVPRq4LbAlhe531IRgCZXM_ABjS2_gWAL_F_xV9Rsn_9I0At8czPgMs7zc_ULz-vdjzAXKhKyw-No3qfIVYbTcI2n2KoFZC6ipGcJCtLhCkWer5wqWOK6HnuMQnTsx05n-hdQTORycRPyWnxfTmdTHPM61ivnaLKFI5uoi4xt9kePcEFYLSL24ZT8CaZvFTJzxEG-VdJjxmkjM9nIprNvzHitdd0-IEBwPB47uVJ5KTtCbRH8RVmr1kT3G4nr7cJU9BXXKpbO-Zsc9emd99A7r7MFE!/dz/d5/L2dBISevZ0FBIS9nQSEh/?uri=nm%3Aoid%3AZ6_90D61B-COLOK780AMUELUGIJL54

stitutions for further use, such as instrumentalities of the crime (particularly vehicles) which can be transferred and used *pro futuro* by State bodies; they are not very keen on ordering confiscation for real estate, since in most cases it is not easy to establish its real value, and upon this to execute value confiscation. Things have improved since the setting up of the Agency for the Management of Seized and Confiscated Property, which usually sells these properties on public auctions.¹⁰¹⁴

Another weak point affecting the implementation of confiscation in Republic of Macedonia, stated by the State authorities, is the length of criminal proceedings. These are rather lengthy and in most of the cases temporary measures, such as freezing, are not useful since the time limit for their adoption is significantly shorter than the time limit for completing the criminal procedure. Due to this, although a given asset can be temporarily frozen, at the end of the lengthy criminal procedure the very same asset might be either transformed or mixed or even lost and due to this its confiscation is no longer an option.¹⁰¹⁵

And finally, in many cases the reason for the infrequent use of confiscation is the determination of the ownership of the assets. In most cases judges do not have sufficient information regarding the real owner. This is due to the fact that in some cases there are mortgages, multiple owners or other relations between the defendant and third parties which overburdens the possibility for confiscation of the asset by the court. In addition to these cases, when there is a request for indemnification from a damaged party, this is rarely satisfied with confiscated assets since the damaged party is instructed to exercise his/her right in a civil litigation procedure.¹⁰¹⁶

Additional problems affecting the practical implementation of the Criminal Code's provisions on confiscation depend on the clarity of such provisions. In this fashion it is highly notable the standards of grounded belief that the property was obtained from crime in the case of extended confiscation used in the Criminal Code. This is due to the fact that "grounded belief" is not common standard of suspicion or proof used in Macedonian Criminal Code and Criminal Procedure Code which operates with the standards: "grounds for suspicion", "grounded suspicion" and proof "beyond reasonable doubt".¹⁰¹⁷

¹⁰¹⁴ See <http://www.odzemenimot.gov.mk/%D0%BEGl%D0%B0si.aspx>

¹⁰¹⁵ See op. cit.: Conclusions from the round table regarding the Practical implementation of Confiscation, 08.06.2018, conducted by Network 23+.

¹⁰¹⁶ See further readings in Kalajdizev, G., Misoski, B., Ilikj, D., *Effective Defence in Criminal Proceedings in the Republic of Macedonia*, Foundation Open Society Macedonia, Skopje, 2014.

¹⁰¹⁷ Kalajdizev G., Buzarovska G., Misoski B., Ilikj, D., *Criminal Procedure Law*, Faculty of Law Iustinianus Primus, Skopje, 2015.

Another issue contributing to the unpopularity of this measure is public perception. In most cases not only the expert public, but also the general public is not convinced that confiscation is really an effective tool to fight crime. Furthermore, the general public is not convinced that confiscated assets can really be further used and that the measure is an effective deterrent to the commission of future crimes.

Due to this it is also important to provide higher visibility of the work of the Agency for the Management of Seized and Confiscated Property in order to show to the public that the crime does not pay and that the Macedonian law enforcement agencies are effective and efficient in cutting or eliminating financial profits deriving from crime.

5.2 Potential for adoption of social reuse by the Republic of Macedonia

A Macedonian focus group made up of 10 judges, 6 public prosecutors and 5 defense lawyers answered a set of questions regarding the potential for adoption of social reuse in the Republic of Macedonia. The same data collection protocol developed for the RECAST Study and mentioned in section 4 was used. One conclusion is that there is no or there is no sufficient public debate regarding social reuse, since in Macedonia most legal practitioners are not aware of this disposal option.

The above mentioned pool of practitioners stated that the state institutions are not familiar with social reuse, and that in most cases when an asset is confiscated they do not know the epilogue of the procedure performed by the Agency for the Management of Seized and Confiscated Property, or they do not have any further insight whether the confiscated asset is sold, destroyed, reused or reused in any other way.

Macedonian legal practitioners were unanimous that introduction of any kind of social reuse of confiscated assets would be beneficial to the Macedonian criminal justice system. Furthermore, having in mind the above mentioned problems regarding the staffing of State agencies and practical issues regarding the management of confiscated assets, they stated that the best option for Macedonia would be the French model (indirect social reuse). This would make it possible to immediately convert the items subject to confiscation into money, thus minimizing any possible problems regarding their management.

However the respondents stated that in Macedonia we should also consider the Italian model (direct social reuse), since in some cases, considering the size of the Macedonian State and the small number of its inhabitants, some confiscated assets could hardly be sold due to the lack of interested buyers.

In such cases assets could be transferred to State institutions or NGOs that could arrange for their subsequent reuse.

Finally, increased implementation of confiscation or improvement of this tool via the introduction of several models for the social reuse of these assets will increase the efficiency of the criminal justice system. It could in fact provide criminal justice actors, particularly judges, with a clear vision of where confiscated assets were used for, as well as with a better understanding of the societal benefit from their work. This fact should endow judges and other law enforcement agencies to put additional effort in investigating the proceeds from crime and ultimately to use confiscation more frequently. A second benefit would be through the fact that the message will be sent to the criminals that in most of the cases crime will not pay, which might be detrimental for undertaking future criminal activities.

6. Conclusions

An aphorism says that “not only must justice be done; it must also be seen to be done”. Though this originated in a case that has nothing to do with the issues here dealt with,¹⁰¹⁸ it can be used and adapted to what we are talking about. Using confiscated assets for social purposes in fact manifestly shows to citizens that ‘crime does not pay’. Citizens who are well aware of this message and who can concretely see how the administration of justice can respond to the needs of their communities will tend to value legality over illegality, be more likely to trust the state, report suspicious activities/behaviours and raise law-abiding children; in short, they will be the most effective barrier to crime. For all these reasons, social reuse can be seen as a disposal mechanism that may incentivise local communities to take a stance against (organised) crime, thus activating a ‘social fight’ against it.

Some key principles could inspire future EU regulations on this innovative disposal option. These have been agreed upon by the respondents to the data collection protocol discussed earlier, as well as the experts who took part in the RECAST final working seminar.

First of all, effectiveness, particularly by promoting the sale of highly depreciable/not easily reusable seized assets. Furthermore these assets should be immediately reused after seizure.

The second key principle is transparency and accountability, e.g. by establishing independent committees to prevent political influencing in the

¹⁰¹⁸ This was the 1924 English case *R v Sussex Justices, Ex Parte McCarthy*, dealing with the impartiality of judges.

identification of priorities for confiscated assets/proceeds allocation; by promoting standardised procedures and adjudication criteria; and by setting up regular monitoring mechanisms following the allocation of the assets/proceeds, with sanctions in case of misuse.

Another principle is doing this publicly. This means that the application forms for social reuse should be easily available to the general public on the internet, together with clear guidelines; also, the list of assets available for social reuse and of awarded social reuse projects should be made available.

Ensuring safeguards against the misuse of social reuse that might be in direct violation of the rights concerning ownership according to the European Convention on Human Rights is another main principle that future EU regulations should ideally incorporate.

Last but not least, is the necessity for the regular production of statistics on this disposal option, as well as the strengthening of inter-agency co-operation, the development of NGO networks and their involvement in social reuse, and the launching of partnerships at the local level amongst all involved private and public stakeholders.

To conclude, the benefits that social reuse could bring are widely recognized, but considering these principles it is obvious that there are concerns about the possible misuse of social reuse regimes, and that a system can be good and operational only insofar as every stakeholder in it is good and operational. Some reservations related to the legal and, above all, economic implications of this disposal strategy are well based. In this sense, one of the biggest concerns is how to guarantee fairness in the selection process. Another significant issue relates to the overall economic efficiency of such systems, which seems to be impaired by the bad conditions of confiscated assets in most countries, with the consequence that extra money from the State budget might be needed to restore them. Costs might exceed benefits, in economic terms, in the end. Of course, this shall be weighed against overall benefits of social reuse, including the cultural message that it spreads and the contribution that it could make, in the long run, to the fight against crime. Needless to say, these intangible benefits cannot be measured, but they are still there and should somehow be taken into account.

EU regulations could encourage a diffusion of social reuse across the EU and help resolve some of the above issues by promoting social reuse systems that are both effective and fair, with transparent procedures for assigning the assets and for monitoring them after assignment, for making all information publicly available, and with procedural safeguards for everyone involved. Last but not least, the existence of such legal instrument could pave the road for further acceptance of this disposal mechanism within candidate countries (such as the Republic of Macedonia), in order to reach the above mentioned goals.

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