

SIX STORIES  
ABOUT REUSE  
ON CONFISCATED  
ASSET  
IN EUROPE



**FLARE**

FREEDOM LEGALITY AND RIGHTS IN EUROPE



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*Reuse of Confiscated Assets for social purposes: towards common EU*  
*A project co-funded by the European Commission*

# INTRODUCTION

How much do European citizens know about confiscation of criminal assets and their legal re-use? What do they think about the social re-use of these properties? Six investigative reports on confiscation of goods belonging to mafia members answer to these questions. Three freelance journalists, Matteo Tacconi, Sandro Mattioli and Riccardo Christian Falcone, lead the first journalistic report on awareness of criminal assets into European civil society.

Thanks to the investigations, they discovered what happened after the confiscation of assets and during the process of the re-use in Spain, Belgium, Italy, Romania, Bulgaria and France. Their reports have also deepened into citizens point of view on the matter: what they know about the process and what they expect it has to be done with the apartments, factories, cars, fields or other assets belonged to mafia, in their nations. Journalists also asked NGO's leaders opinion about confiscation and re-use of illegal assets. It came out that, according to them, some countries didn't have a database on the exact number and geographic position of the assets. In other countries the confiscation law is not even being fully applied: the selling of the confiscated assets is a priority while the social re-use is just a rare option. Finally, from each report some important non-profit organizations requests came out: to be more involved into information and decisions regarding confiscation, and a better collaboration between institutions and citizens against illegal economy and mafia violence in Europe.

# BULGARIA

*Matteo Tacconi*

**Organized crime in Bulgaria.** The rise of organized crime (OC) in Bulgaria is directly connected to the fall of the communist system and the transition to democracy and free market. In this sense, Bulgaria does not represent an exception in Eastern Europe's recent criminal trends. A large number of gangs that emerged beyond the old Iron Curtain in the early Nineties exploited the economic opportunities fostered by the transition, marked in its early stages by legal nihilism. Russian, Ukrainian, Albanian and Serbian groups, viewed as the most influential among those active in the region, accumulated many resources during early stages of the transition, thus paving the way to a further criminal escalation in terms of financial strength.

This process could not be successful without the will of resorting to violence and a significant rate of cooperation – often driven by corruption – with judicial, security and political authorities. But this is nothing new, in the evolution of organized crime. Such a dynamic took place in Bulgaria

too. The first step of the Bulgarian mafia escalation was the formation of gangs made up by former members of security structures, wrestlers and petty criminals. The fall of the communist regime left agents of the intelligence without a salary, as new authorities disbanded all of the repressive organs of the previous illiberal system. Since the market could not absorb them, some of those who worked for secret services began a criminal career. They rapidly adapt to new conditions a know-how already developed in trans-border crime, corruption schemes, financial frauds and foreign commerce, issues that sometimes had been manipulated to drive political struggles in Bulgaria and also to increase tensions in the region.

Wrestlers and athletes practicing heavy sports, which are very popular in Bulgaria, were somehow other victims of the collapse of the regime. They had been hugely supported by communist authorities, as sport successes were seen all over the pro-Soviet bloc as a tool to win international prestige. The collapse of the macroeconomic scenario, an unavoidable consequence of the transition, pushed the state to freeze financial resources channelled to sports. Thus, athletes did the same choice made by former agents of the intelligence. As for criminals (mainly thieves), they were granted amnesty after 1989 political earthquake and joined newly formed gangs. Criminal groups started operating in the protection market. At that time, legal guarantees for private companies were weak, because the market ran faster than law. Protecting business became essential. Criminal groups offered protection to entrepreneurs (former wrestlers worked as bodyguards), often threatening them if they did not accept such services. Basically, this was how



Bulgaria's criminal saga began.

Two new developments came soon. The first was the Yugoslav dissolution, which gave Bulgarian mafia the chance to play a significant role in regional smuggling, which flourished as a consequence of the international embargo imposed to Belgrade. It caused shortage of goods, both in Yugoslavia proper and in the whole Balkan region. Bulgarian criminals smuggled oil, food, drinks, medicines and many other things missing in the market. At the same time, the risky scenario in the Balkans prompted a revival of drug routes. The region has always been a key route for heroin, a bridge connecting Central Asia and Turkey to European markets. Since the broke of the war in the former Yugoslavia flows of drugs have remarkably increased. As Bulgaria is a transit country, criminal groups found did find their way in the business.

As for the second development, the state promoted in the early Nineties a law that legalized private security business. The aim of the measure was curbing growing illegal racket and provide a chance to get a job for thousands of former intelligence agents who were left out of the market. But it also was a great assist for criminals, who could set foot in the legal economy, although it still was largely grey. Of course, this did not mean that they forgot illicit markets and profits connected to them.

In the mid-Nineties a big change occurred. A powerful company, VIS-1, emerged as a monopolist in the private security sector, gathering around itself many groups working on local basis. At one point, the state tried to downsize its widespread influence. The company changed name (VIS-2) and field of activity (insurance). Basically, it was just a way

to bypass new legislative restrictions. Racketeering continued to be practised.

Meanwhile, some members of the VIS-2 split, due to business contrasts. They formed an analogue company, called SIK. Each Bulgarian small and medium criminal groups, with just few exceptions, joined one of the two big umbrella organizations.

By the end of the Nineties the structure of Bulgarian organized crime changed once again, due to the stabilization of political and economic landscape, which led to the eradication of some segments of grey economy. Analysts argue that at that time the state and criminal groups arranged a sort of compromise aimed at putting an end to killings (although there have been many mafia-related homicides until 2007-2008) and looking for status quo between gangs, as well as between gangs and State. Thus, criminal groups became more and more involved in legal activities, while VIS-2 and SIK duopoly turned in a plurality of oligarchies.

Today oligarchies are considered as the vertex of the criminal pyramid. They work to get shares in key sectors of public and private economy, agreeing deals with white collars and state officials through means like corruption, clientelism and intimidation, as well as elections and social consensus. After all, dispatching some affiliates in both regional and national institutions, plus buying local communities trust by providing jobs, is a constant purpose of each mafia, not just in Bulgaria. This should not be forgotten.

Such a oligarchic structure does not imply that there are no more groups dealing with narcotics, racketing, human smuggling and other illegal activities. There are still many gangs making business in these fields, especially in narcotic

market, where the focus has recently shifted from heroine to cocaine. According to some reports issued by several international anti-crime agencies Bulgarian criminals have also developed a high know-how in cyber-crime in recent years.

### **The path to the forfeiture of criminal assets.**

In 2012 the EU Commission issued a progress report on Bulgaria. There is a passage in the file stating that Bulgaria, more than in other EU State Members, organized crime activities pose a serious risk for democracy and freedom of market.

«Organised crime is an important challenge for Bulgaria. According to Europol, Bulgarian organised crime groups are active in 15 EU Member States and therefore among the most widespread in Europe [...] While their role and impact outside Bulgaria is comparable to that of other organised crime groups, their role inside Bulgaria is unique. It differs from the situation in other EU Member States in a sense that still today they exercise a considerable influence over economic activities in the country. From an economic perspective, this restricts competition and deters foreign investment. It also gives these groups a platform from which to influence the political process and state institutions».

That aim of that paper was assessing efforts made by Sofia to curb organized crime and secure a more aggressive fight against corruption in the framework of the Cooperation and Verification Mechanism (CVM), a scheme under which Brussels established both a pre-accession and post-accession instrument of conditionality for Romania and Bulgaria. The CVM was included in the Treaty of Accession to the EU, signed by the two countries in 2005. They

joined the bloc in 2007.

The CVM deployed a sort of sticks-and-carrots game, through which the EU stimulated Bucharest and Sofia to make reforms to speed up convergence between their laws and the whole EU legal structure. The mechanism envisaged that if Romania and Bulgaria did not respect the road map to strengthen their laws, the EU could sanction them within three years since accession to the EU, with decisions like freezing the flow of EU structural and cohesion funds, which are key to new comers' economies. However these measures can be taken also beyond this period, if fundamental commitments are not fulfilled.

As for Bulgaria proper, the CVM covers both fight against corruption and organized crime, differently from Romania, which was just asked to improve its standards in terms of tackling corruption. The different approach stems for the high rate of influence of Bulgaria's OC over economic activities, as the EU itself has emphasized several times. In 2005, the year Bulgaria and the EU agreed on the CVM, the Forfeiture of Criminal Assets Act came into force. It foresaw freezing and confiscation of assets before a civil court, thus introducing a non-conviction based forfeiture of criminal assets that, as well as elsewhere in Europe, allows to seize assets regardless the outcome of trials. The law did not create contrasts with the procedures foreseen in the Criminal Code, which were introduced in 1982.

Assessing goals achieved under the law approved in 2005 is not easy, as its period of applications was short. In fact, it was replaced by a new law – the one currently in force – in 2012. A positive fact was the growing number of confiscated assets, as well as their market value. The first court

ruling for forfeiture of assets was issued in 2008 and the value of that asset was 340,000 EUR. In 2010 there were 11 court order and the value of seized properties was 3,4 million EUR. In 2011 the number of orders rose to 25. By contrast, some negative results emerge too. The first court order came only three years since the law became effective, while in 2010 and 2011 the National Revenue Agency (NRA), which is the national body tasked with selling confiscated assets through public auctions, did not manage to sell any confiscated real estate. Some problems emerged during the period 2005-2012 were related to the chairmanships of the Commission for establishing property acquired through criminal activity (CEPACA), a body representing the state interest in civil trials. The first chairman, Stoyan Kushlev, was fired in 2011. He was appointed in 2005, once the law on forfeiture became effective, by Simeon Saxe-Coburg, the Prime minister at that time. In 2010 Kushlev was confirmed as President of CEPACA by Boiko Borisov, who won general elections in 2009. Before getting involved in politics Borisov ran a successful security company (Ipon-1), which provided services for important entrepreneurs and politicians, among them the former communist leader Todor Zhivkov and Simeon Saxe-Coburg.

Kushlev, who before being appointed head of CEPACA had been the president of Hunters and Fishers association, was fired because he had participated in some NGOs activities without declaring them. The statute of CEPACA did not assign such right. Media reports about Kushlev's salary sparked some controversies as well. It emerged he was the richest civil servant of the country, earning from 6,000 to 9,000 BGN monthly, a salary more than two times higher

than the Prime Minister's one

Todor Kolarov, a forty-something lawyer with a good international experience, replaced Kushlev in April 2011. Yet he resigned in February 2012, after Borisov and his party (GERB) watered down in the Parliament a measure, backed by Brussels, that could remarkably boost CEPACA powers to investigate on seized assets. Kolarov complained for the lack of political support and left the job. He also pointed out that CEPACA members were not enough reform-minded and did not do anything in exchange for hefty salaries, a Novinite, a Sofia-based press agency, reported at that time.

**The current law.** A new law on civil forfeiture was approved by the Parliament in May 2012, as consequence of a progress report released by the EU Commission in February. It pushed for more efforts in terms of fighting corruption and organized crime. Once again, the CVM showed its sticks-and-carrots function. The new law introduced some changes enforcing the procedure to seize assets. It also established the Commission for Illegal Assets Forfeiture (CIAF), which is the successor of CEPACA and has some broader powers compared to the latter. «The new law can be efficient and deprive OC of benefits from illegal activities. Technically, it is aimed at taking away the incentives to commit serious crimes and indicate a political will to contrast the accumulation of illegal assets», states the office of Transparency International Bulgaria, which in early 2014 released a report highlighting technical and legal aspects of the law, as well as results achieved so far. Although specifying that more time is needed for giving a comprehensive assessment about seizures, Transparency Bulgaria welcomed

progresses made in this field. In 2013 the value of assets forfeited in favour of the state by CIAF is 12,615,740 BGN, the highest ever.

As for legal and technical aspects, Transparency Bulgaria explained that although the new law paves the way to a more coordinated and effective action to seize illegal assets, some doubts must be cast about some specific parts of the law. Here are some points remarked in the study carried out by Transparency Bulgaria.

- An analysis of the 2012 Forfeiture of Illegal Assets Act provisions regarding constitution of the Commission demonstrates that the principle of transparency is only endorsed half way in the law: there are no rules whatsoever regarding the selection made by the Prime Minister or the President.
- The procedure for election of CIAF members by Parliament is scarcely regulated as compared to similar procedures in Parliament for the constitution of other bodies or the election of their members respectively.
- The lack of an overall concept for managing forfeited assets and securing their storage during the forfeiture proceedings causes uncertainty as regards the overall objectives of illegal assets forfeiture.
- A deficiency of the law is that it does not provide for the possibility to forfeit legal assets transferred by the person examined to a third party in order to avoid their forfeiture when the illegal assets of the person examined are concealed or transferred to other parties and cannot be forfeited.
- Forfeiture Act is extremely concise and in practice does not provide for rules for safekeeping and maintenance of the frozen assets. The regulation does not provide for a special

body in charge of managing and supervising frozen assets.

- The lack of adequate legal regulation regarding management of frozen assets often translates in practice into dispersing and plundering of the assets, or into decrease in their value by the time of their forfeiture in favour of the state

**Social re-use: NGO's point of view.** The most recurrent trend in Bulgaria is selling seized assets through public auction. The National Revenue Agency is the body charged with this procedure. Resources coming from the selling of criminal assets are channelled to the national budget. However the process meets several hurdles. Documentation to identify the property is often incomplete, while mortgages – state institutions inherit them – decrease the market value of the asset. One more point is related to the fall of the real estate market experienced in Bulgaria due to the global crisis. Revenues that NRA can secure through selling seized apartments, villas and whole buildings are thinner than before. Time is another barrier. Sales procedures take too many months. This, coupled with the lack of clear rules to safeguard and manage the asset, as Transparency Bulgaria noted in its research, pushes further down its market value, while in many cases nobody even shows a concrete interest to buy it. Furthermore «people are afraid to buy properties previously belonged to criminals», Transparency Bulgaria makes clear.

As stated by the Centre for the Study of Democracy (CSD), a Sofia based think tank advocating institutional reforms and a more influent role for Bulgaria's civil society, difficulties in selling assets might suggest to re-use them for social purposes, by transferring forfeited properties to mu-



nicipalities and NGOs.

There is a certain consensus, among the society, to move on this path. The CSD conducted a survey in 2012, right before the new law came into force, to assess what citizens think of this chance. It emerged that 43% of Bulgarians interviewed supported the transferring of seized assets to local institutions in order to promote social re-use. Municipalities expressed the will of managing forfeited properties, as this provide a chance to cut costs, if properties are in good condition. The sense is that a municipality can get a whole property instead of allocate money to restore a structure already belonging to it or building a new one. Municipalities also showed an interest to cooperate with NGOs. Their involvement in social re-use of seized assets was one of the pillars of a campaign conducted by CSD while the Parliament was drafting the new law.

Somehow the campaign was successful, since the law included the idea of social re-use. Yet it did not foresee the involvement of NGOs. «The explicit argument was that confiscated assets are public property, and that they should remain in order to avoid embezzlement and poor management. The same thought was used to justify the narrowed circle of potential beneficiaries, basically central government and local institutions. NGOs are not in the list», says Atanas Rusev, a researched from CSD. He adds that this also reflects a complex relation between public institutions and civil society groups. «Among public institutions there is not a high esteem for the non-governmental sector, although this attitude has begun to change in recent years».

This lack of consolidated trust is the reason behind the thin flow of public money channelled to NGOs, whose

budgets mainly depends on foreign donors. If they want to manage a seized asset, NGOs would need resources other than those granted by international donors, as maintaining the property can be highly expensive. Yet, public institutions – as mentioned – do not adequately fund civil society organizations. To sum up, many NGOs might not have enough resources to manage seized assets. «There are certain legal and budgetary aspects that need to be carefully addresses in order to make NGOs feasibly benefit from the asset re-use regime», Rusev argues, implying that some amendments to the law are required.

According to Transparency Bulgaria the part of the law that needs more changes is the one dealing with the management of the forfeited asset. «This aspect presents some deficits. In our report we made a big number of recommendations aimed at improving this regime. We also think that including NGOs in the framework of social re-use is a good idea, another thing that should be examined seriously for future amendments to the law».

By contrast, Pavleta Alexeieva, a lawyer working as legal expert for the Bulgarian Center for Non-for-Profit Law (BCNL), suggests an alternative. «As a lawyer I think that instead of transferring to NGOs forfeited assets it would be better if the property is sold and then the money is used to fund activities deployed by NGOs for social purposes».

Such a scheme was discussed, yet the end of the story did not satisfy the non-governmental sector. Initially the bill foresaw the transfer of part of the proceeds from the disposed criminal assets to the Social Protection Fund, which grants financial support to providers of social services. However the idea was later abandoned. Because of ad-

ministrative obstacles, unfavourable market conditions and other problems, revenues from public auctions managed by NRA were scarce, while the costs for administration of the confiscated properties kept on rising. Thus, as one of the main goals of Borisov cabinet was fiscal discipline (likely the current coalition, led by the Socialist Party, thinks the same), collecting as much money as possible from selling forfeited assets became the priority, thus weakening the social re-use option.

**Two stories.** The law does not enable NGOs to manage seized assets. As for municipalities, there have not been shacking news about a local government using a forfeited property for social purposes since the new law came into force in October 2012. However there are two stories, occurred before the new law became effective, that give a convincing evidence of all the difficulties met by local administrators when they get a seized property.

The first one occurred in Plovdiv, Bulgaria's second biggest city. In June 2012 the state delivered to the municipality a luxurious seven-floor hotel previously belonged to Glanchev Group, a company owned by the father of the famous rapper Ivan Glanchev, also known as Vanko 1, who in 2003 was convicted to 12 years for human beings traffic and prostitution. The penalty was later reduced to 4 years, thanks to a law that cut that kind of penalties, sparking many controversies. The hotel was confiscated in December 2011. The process to seize it was opened in 2008 by CEPACA, as a big discrepancy emerged between profits and spending declared by Glanchev Group in a period ranging from 1981 and 2006. Since the Glanchevs did not show enough proofs

to explain the gap between incomes and investments, the hotel, a 3000 square metres building in the city centre, with an estimated value of more than 400,000 EUR, was seized.

Between 2008 and 2012 the hotel, which was not yet completed, was completely abandoned, and homeless people settled in the building. This was a consequence of the absence of clear rules disciplining the management of assets between the opening of the process leading to the seizure and the seizure itself, a problem that affects the new law too.

The council for urban development of the Plovdiv municipality decided in December 2013 to restore the hotel and transform it in an administrative building. According to the plan municipal units dealing with eastern neighbourhoods of the city and local traffic will move in the structure. Works, started in April 2014, will cost approximately 750,000 EUR. To sum up, this story has due faces. On the one hand, a hotel built with grey money got back to the community and will be used for public purposes. This is a positive thing. On the other hand, due to the uncertainty of the law, which does not deploy efficient tools to protect seized assets before they are delivered to public administrations, Plovdiv municipality has to invest a large amount of money to restore the hotel.

The second story took place in Sungulare, a small town in Burgas province, in the eastern side of Bulgaria. The municipality asked for managing a seized villa, previously owned by Dimitar Zhelyazkov. Born in 1972, he is considered one of the most prominent Bulgarian drug-dealer. He supposedly joined VIS-1, one of the most influential crime network rose in Bulgaria after the fall of the communist system. He was arrested in 2007 and then convicted in three different trials. In the first two ones he was sentenced to 4

years and 6 months and 4 years and 9 months respectively, due to his active role in a couple of drug cartels. The third trial (money laundering) ended in spring 2010 with a penalty to 4 years and 10 months and the confiscation of his villa in Sungurlare, valued around 1,1 million EUR, where he lived until he was arrested. His mother was registered as the owner of the house, which was forfeited under a procedure initiated in 2008 by CEPACA.

The villa was put up for auction five times, yet nobody bought it. Likely, potential buyers were afraid of taking over a building owned by such a powerful criminal, Bulgarian media reported. As the villa remained unsold, the mayor of Sungurlare, Georgi Kenov, came out with the idea of managing the house and use it as a centre for rehabilitation of disabled citizens under 16 years old, which according to him are around 150-200 out of 500 disabled people living in the municipality.

National authorities conceded the use of the villa, but in the meantime it was severely vandalized. The mayor and local police blamed each other of having not secured the building during the process of transferring it to the municipality. Police said the mayor did not ask for securing the villa, while the latter stated that fiscal authorities and police did not carry out measures to avoid the damage of the building. Finally, the municipality gave up the idea of using the villa for social purposes. The mayor said that restoring it would have been a too heavy burden for local finances. Once again, the lack of detailed provisions for securing the asset before it is transferred to a local administrator affected an attempt to re-use a seized property for deploying activities serving the public.

# ROMANIA

*Matteo Tacconi*

### **Organized Crime and Corruption in Transitional**

**Romania.** As in the case of Bulgaria, for Romania the collapse of the communist regime and the process of 'transition' towards a free market economy provoked the appearance and strengthening of a vast phenomenon of organized crime. Many researchers, in fact, have pointed out how during the nineties organized crime and grey economy grew « to alarming levels, fuelled by inflows of illegal capital », obtained through a wide variety of frauds and illicit activities. Organized crime was able to acquire a huge wealth and a growing presence thanks to « the absence of economic reforms, the slow pace of privatization, and the weak legal framework.

The criminals were able to exploit these weaknesses and use [their] illegal profits obtained in the process to further develop and sustain illegal activities. State corruption has played an important role in such development, allowing criminals to often benefit from support and protection from high

ranked government or local administration officials » (1).

As a matter of fact, the errors committed by the government in the course of the process of privatization were crucial in reinforcing the connections between the three spheres of crime, politics and economy.

During the decade 1991-2001, especially during the social democrat leadership, Bucharest decided to sell its own public assets giving priority to domestic buyers. As a result of this measure, the capital acquired by criminal organizations was massively re-invested in the Romanian economic system. It's what P. O' Rourke, in an analysis for *'Foreign Policy'*, synthesized as 'the Godfather decade': « until the end of the nineties, 76% of the industrial sector was run by the government », writes O' Rourke. « The public administration had promised reforms, and small businesses had been privatized. But 80% of the buyouts were the usual post-communist shady deals » who profited criminals and the old Ceausescu's nomenclature.

In 2006, Romania was still described by the German *'Der Spiegel'* as « a country dominated by mafia and corruption ». Today, six year after becoming EU member (in 2007), the country is still struggling to fight against organized crime. Bucharest was, under many respects, a « bandit state », undermined by widespread criminal activities, such as trafficking of illicit goods (drugs, cigarettes, alcohol and spirits) and human beings, internet frauds, and corruption.

Today, Romania still has a long way to go: the grey economy accounts for 28,4% of the total GDP (131,7 billion €) and corruption is a major problem, with 93% of Romanian citizens thinking that this is a wide-spread phenomenon compared to an average of 73% in the rest of EU countries.



Romania is still one of the most corrupted countries in Europe, according to *'Transparency International'*, the only ones in a worse position being Italy, Bulgaria and Greece.

To complete the dim picture, even more worrying is the fact that only 27% of the citizens think that the government is effectively fighting this problem: Bucharest ranks as the worst European government as far as the control of corruption and effectiveness of action are concerned, says the World Bank. Actually, Romanian government's attitude towards fighting these problems is, under many respects, contradictory: on the one hand, Bucharest is undoubtedly trying to adhere to European standards and has put into function a mechanism of national agencies effectively dealing with corruption and crime; on the other hand, the government has put in place measures to protect corrupted public officials.

This is the case, for instance, of a law that the Romanian parliament tried to adopt in December 2013, abolishing the status of 'public officials' for MPs, ministers and lawyers. As a consequence of this decree, they wouldn't be accountable any longer for «abuse of office, bribery, conflicts of interest and other corruption crimes».

These revisions were approved despite the open opposition of the President of the Republic, Traian Basescu, who said they represented «ten years of regress» for the country. Eventually the decree was abolished by the Constitutional Court, following also the critiques by international observers, who defined it «a step back on transparency and rule of law», since «it was passed with no consultation, no debate, and no opportunity for judicial authorities or civil society to respond to the proposed amendments».

Another example of this kind is the new criminal code, which was approved in 2013 and will reduce the sentences for acts of corruption, together with the ability of the PM to collect evidences about crimes, especially in the case of phone conversations and interceptions.

**The Legislation on Asset Confiscation and the Impact of the EU Accession.** Such examples clearly suggest one of the major problems of the country, i.e. the ambiguity of Romanian political class when it comes to deal with corruption and establish the rule of law. The risk, for the country, is that this attitude of protecting the interests of the political *élite* may actually jeopardize all the efforts done in addressing the problem so far. From an historical point of view, Bucharest started its fight against corruption and organized crime between the end of the nineties and the beginning of the 21st century. The main goal was to better comply with the EU standards.

Already in 1999, Bucharest started the accession talks with Brussels, hoping to join the union in 2004. As part of these discussions, Romania came under pressure to reduce bribery, and approved an anti-corruption strategy in 2001.

This eventually led to the establishment of the National Anticorruption Directorate (DNA, specialized in combating large and medium corruption) and the Directorate for Investigating Organized Crime and Terrorism (DIICOT, specialized in combating and investigating terrorist offenses and organized crime) within the General Prosecutor's Office. These efforts, however, proved not to be successful enough, and «because of a lack of preparedness due to corruption in the areas of judiciary and public administration,

Romania did not join the EU in 2004».

Eventually, Bucharest had to wait until 2007, but still it is not part of the Schengen area, due to high concerns about corruption and organized crime, despite spending more than one billion euro only for this purpose, during the whole period 2007-2014.

The current discipline on asset confiscation underwent new improvements since 2007, following the approval of the 2007 EU directive on Asset recovery offices and, in 2009, the creation of the Stockholm Strategy, which between its priorities had the implementation of a coordinated approach between member states on confiscation and recovery of proceeds of crime and corruption. In 2007, Bucharest created the National Integrity Agency (NIA), whose first aim was to fight corruption among public officials. Romania then established its own asset recovery office, officially named National Office for Crime Prevention and Cooperation with EU Asset Recovery Offices (ONPCCRCI), an agency formally dependent from the Ministry of Justice. The '2013 *Transparency International Country Report*' explains the different modalities of assets confiscation.

At the level of Romanian Law, the confiscation procedure is enforced on the basis of an injunction issued by a criminal or civil court during the judgment, in accordance with *Law 144/2007 on the Establishment, Organization and Functioning of the National Integrity Agency*. Confiscation may be the result of a criminal offence or infringement, or it may be enforced as an outcome of the work of the NIA, which functions as an autonomous administration authority whose duty is «to verify the assets, conflicts of interest and compliance with the legal regime governing incompatibilities in exercising

public office».

The expropriation of assets is carried out by the authorities who ordered it, and their capitalization is made by the Ministry of Economy and the Ministry of Public Finance through the National Agency for Fiscal Administration, ANAF). The seized amounts of money, as well as the amounts obtained from the capitalization of the confiscated assets shall become part of the state budget.

Once we make a first, partial evaluation of the work done by Romanian authorities on Assets Confiscation so far, it becomes clear that the European Union had a positive impact on the improvement of the Rule of Law and transparency, although the work of communitarian institutions was not free from critiques. After all, the asset recovery agenda became a priority for Bucharest only in the last two years, especially because of the recommendations provided by European Commission to Romania in the framework of Cooperation and Verification Mechanism.

However, the cooperation with Brussels has also shown its limits, since the European Commission decided not to include organized crime in the CVM mechanism, thus marking a huge difference with the case of Bulgaria.

**Re-use of criminal assets, NGO: “A central database is urgently needed”.** In regard to the issue of seizure and confiscation of illegal assets in Romania, one of the main problems for researchers is the lack of reliable statistics or data. The Government doesn’t produce any report, nor database: «let me be clear, the point is that we just don’t have any kind of information», says sharply Iulia Co panaru, who works for *Transparency International Roma-*

nia' (TIR) in Bucharest.

«We do believe that this lack of researches is one of the domains where the Government has to improve its action, without any further delay.

We also started lobbying in order to obtain, finally, a central registry for confiscated assets, or something equivalent. The dialogue between the institutions and us goes on ... but we haven't seen any improvement so far».

The opaqueness of the public administration in this field is one of the main concerns of civil society and its representatives: according to TIR, 80% of Romanian NGOs think that a central database on confiscated assets is urgently needed. Apparently, a first step has already been made: the Romanian authorities have announced the establishment of a on-line database which should present all the collected data on organized crime, corruption and seizure of related assets, together with a day-to-day update of the ongoing cases. «We confirm that currently there's no report nor study about the Government's progress in the field of assets confiscation», say the researchers who work for the '*Center for Legal Resources*', a local NGO. «This lack of transparency on recovered assets comes from a poor data collection system, insufficient interagency cooperation and exchange of information».

Collecting information on this issue thus remains a difficult task. In spite of these difficulties, in 2013 the *Center* produced a research which tried to highlight some approximate statistics on assets' recovery, on the basis of public annual reports whose content could not be verified by the organization. Between 2008 and 2011, corruption caused to the State a total loss of 1,13 billion €; the real figure could

be considerably higher, as these numbers only take into account those cases of corruption brought to justice.

In the same period prosecutors seized assets worth 532 million €.

The State can only partially recover from impairments provoked by bribery and organized crime. Once the victims and third parts get a proper compensation for the damage they suffered, very little is left. A study by Transparency International underscores the striking difference between the value of the sequestrated assets and the actual amount obtained by the State from their confiscation between 2010 and 2012.

Stage	2010	2011	2012
Amount of <b>the prejudice</b> retained in the indictment	546.404.151 €	719.814.031 €	764.130.891 €
Value of <b>sequestrated</b> assets	82.882.699 €	228.586.018 €	416.967.437 €
Value of <b>confiscated assets</b> according to the notifications sent by ANAF	1.573.129 €	4.813.204 €	7.765.703 €

(Source: *Transparency International, 2013*)

The State can only recover a small portion of the total value of sequestrated assets. Despite assets' confiscation growing in absolute value during the last years, according to ANAF, «the effective recovery rate of money coming from the activities of confiscation has recorded a sharp decline», due to a parallel increase of the amount of the prejudice retained in indictments.

In Coșpanaru's opinion, this is mainly the result of huge inefficiencies which are unfortunately still present in the Romanian legal framework. «Romanian justice works too slowly and it's not effective enough», stresses Coșpanaru. «Moreover, we don't have an adequate legislation when it comes to confiscation from third parties, who are not married nor relatives of the indicted. This means that, very often, when somebody must face a process for organized crime or corruption and they don't want their properties to be seized, they just need to transfer their items to some 'friend', and it becomes practically impossible to recover those assets». Another major problem is the execution of verdicts, especially when they refer to high ranking politicians and officials.

The ANAF, the fiscal authority which is currently in charge of executing the decision of the judges, usually doesn't do it. «Basically there are really a lot of judgments which 'remain on paper', and never become executive», concludes Coșpanaru.

«High-ranking officials usually get by with substantial impunity», agrees Laura Ștefan, from *'Freedom House'*.

Laura is an international expert in the area of judicial reform, anticorruption and money laundering. She's been working for the European Commission and other interna-

tional organizations such as UNDP and OECD. «In our country, if you are a normal person, a process for corruption can generally take up to three years. But if you are a politician, your case will be covered up with time, it always goes that way».

According to Laura, Romanian institutions should work actively to speed up the normal length of criminal processes. «That's something which will help to reinforce the Rule of Law and the process of confiscation and seizure of assets», she says. Another crucial point, according to Laura's view, would be the definitive establishment of an autonomous agency specifically dealing with the recovering of assets. Although Romania has already created some specific offices, Laura doesn't think that they've managed to work properly until now. In fact, her opinion about their work is extremely critical: «the ANAF and the ONPCCRCI, which so far have been in charge for the process of confiscation, don't work so well, particularly when we talk about the need for preservation of the value of seized assets».

Conserving the value of the seized assets is crucial to ensure that they will be sold at a reasonable price. Laura tries to explain the situation with the help of a concrete example: «let's take, for instance, a car seized by Romanian authorities.

If we take into account our current situation, considering our way of working, basically nobody thinks about preserving the original value of the car.

Nobody pays for the insurance, nobody cares about its ordinary maintenance. The risk is that, by the end of the process, the value of the car will have decreased a lot ... and so does the money you can make by selling it».



This is particularly true for perishable goods with high amortization costs. The creation of a unique agency dealing with the recovery of assets is supposed to facilitate also the reutilization of seized assets for social purposes, a possibility which is granted by the law, but it is still not implemented so often. «Romania, until now, uses five main disposal methods» for seized goods: «selling assets to the general public, transfer of assets to state institutions or local authorities, transfer of assets to other beneficiaries such as churches or NGOs, destruction and restitution», summarizes the *Center for Legal Resources*.

This disposition is regulated by the Government Emergency Ordinance n. 14/2007, which establishes the modalities «of assigning certain categories of assets fallen under the private possession of the State, free of charges». According to this Ordinance, «the Ministry of Public Finances can propose to the Government the free of charge assigning of assets to certain physical or juridical entities», such as the Government itself, ministries, local administrations, religious institutions, the Red Cross in Romania, nurseries, kindergartens, retirement homes, soup kitchens, libraries, and other institutions with social purposes.

While conducting this research, everybody agreed on the fact that even though the law envisages this possibility, in practice there's no concrete example of a seized item reused for social purposes. «It's a possibility which until now, in Romania, has never been exploited», states Copanaru, «and the complications of the legal and institutional system are clearly part of the problem», she says.

In some cases, it seems that the institutions themselves are resisting the idea of giving part of the items to civil society

organizations or stakeholders.

«Romanian institutions actually don't like too much the idea of social re utilization of criminal assets, because they don't want to deprive themselves of the value of those goods», explains Ștefan.

«The government actually fears that this would damage too much the seized items: they claim the properties could be spoiled or ruined ... there's definitely a lack of trust in civil society organizations». Once again, the question of the involvement of institutions arises. Eventually the problem for Romania is not the lack of laws, rather the lack of political will to put them into practice. «Politicians and lawmakers here in Romania have not understood yet how much important it is to improve the practices of confiscation of criminal assets: for them, this is still not a priority», synthesizes Coșpanaru.

«The problem is therefore not a matter of legal system, but a lack of adequate mentality».

In addition, Bucharest in the next two years will have to adapt its national legislation to the recent European directive n. 121/13, «on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union». «Member States should consider taking measures allowing confiscated property to be used for public interest or social purposes», reads the document: «that obligation to consider taking measures entails a procedural obligation for Member States, such as conducting a legal analysis or discussing the advantages and disadvantages of introducing» this kind of measures.

Will Romania be able to adapt to European standards and integrate the directive in its own legislation? «The his-

tory of the Cooperation and Verification Mechanism so far shows that progress is not straightforward, so that advances in one area can be constrained or negated by setbacks elsewhere», we can read in the last report from the EU on Romania: «the core principles and objectives of reform are still being challenged. This makes it particularly difficult to assess the sustainability of reform and to judge how much domestic momentum exists to ensure that a broadly positive trend is assured».

«There's no doubt that our legislative system is totally able to keep the pace of the European *acquis* and to respond to Brussels' stimulus», says Ștefan.

«However, the problem is, once again, if our political class will understand the situation and accept to improve the Rule of Law in our country, abandon personal privileges, and fight corruption and organized crime once and for all».



# ITALY

*Riccardo Christian Falcone*

**From the signs of power to the power of the signs.**

By signing a petition promoted by Libera in 1996, more than one million Italian citizens have led the Parliament to approve a series of dispositions regarding the management and the destination of seized and confiscated assets of the mafia-type organizations. Those were the following years after the season mafia killings. Cosa Nostra had decided to move the bar up and done it in the most dramatic possible way, killing some men, symbols of the fight against the organized crime. But not only. Bodies without life, also of unarmed people had left on the pavement, common citizens killed by the mafia TNT in Florence and in Milan. The law 109/96 introduced an historical novelty of extraordinary values, which linked the concept of forfeit with the social purpose, fixing an ethical foundation in support of the legal framework.

The social reuse of criminal assets and the return to the society ended up being the real discriminating element in

fighting the illicit accumulation of wealth. It was essentially to introduce an ethical dimension in the legislative system capable to modify the value system fed by the mafia culture; it was no longer sufficient get out the assets off the criminals but it was necessary giving to this process an ethical and symbolic value which would go further the repression action.

That law, even more significantly due to the gestation from the bottom, was the last act of the normative process that has been underway for years in Italy and concluded with 646/82 law. This was a culmination of a dream of those, such as Pio La Torre and Virginio Rognoni, who had paid with their life the commitment in the fight against the criminal organizations and, in particular, in the confiscation of the immense wealth illegally accumulated on the blood of hundreds innocent victims. Pio La Torre could not see the approval of this law because it was approved five months later his assassination and ten days after the death of Carlo Alberto dalla Chiesa. The 646 law, adopted the 13 of September 1982, was based on the normative framework dating back to 1965, when the law 575 was approved once again after the Ciaculli massacre on June 30, 1963, and which represented the first step of a process, that have achieved over the years significant results in terms of crime repression and social and ethical redemption.

**The italiana model: from preventions measures to social re-use.** The 1965 law (Dispositions against Mafia-type criminal organizations, including foreign ones) represents still now, the core of the anti-mafia Italian legislation. But with the Rognoni- La Torre law, there is a real quali-

tative leap thanks to the introduction of 416 bis, which allowed the largest contrasting action by the State against the criminal organizations. For the first time this article, which defined the Mafia-type association, sets the mafia crime, stating the nature and its features. Pio La Torre understood that was no longer sufficient arresting the criminals but was fundamental hit the real essence of the organizations, that is the capacity to make business and accumulate capitals which allow its survival and the power consolidation. Hence the idea to embezzle the mafia assets which could not be proved the lawful origin. In this way, in addition to the preventive measures provided by the law of 1975 and before by the 1423 law of 1956 (special supervision of the public safety and the stay obligation in habitual residence or municipality), new patrimonial measures, such as the seizure and the confiscation are introduced, especially for those assets whose lawful origin could not be proved, which belong to family members or parents.

After the 646 approval, other legislative actions have been introduced in order to define the modalities and the field of application, without addressing the problem of destination and reuse. As mentioned, it will take a long time and other killings to make this fundamental step.

In December 1987, the “maxi” trial of Palermo ends; the pool headed by Antonino Caponnetto and by Giovanni Falcone and Paolo Borsellino, asks for 19 life sentences and more than 2600 years of prison, introducing for the first time the changes provided by the Rognoni-La Torre law, including the property legislation.

On 31 January 1992, the Supreme Court confirms the sentence. Cosa Nostra is in check and reacts raising the bar

up; the Capaci and D'Amelio street massacres and then the bombing in Florence, Milan and Rome shock the country. But at the same time, they provoke an extraordinary civic reaction. It is in this movement that takes shape the experience of Libera.

It is no coincidence that the first experience of this national network is a collection of signatures asking for, among other things, the introduction of the social reuse principle for confiscated assets in the Italian law. To the management of confiscated property is assigned the task of making visible the state action against the mafia economy; fighting against the organized crime and spreading the culture based on legality as the primary antibody against the mafias.

Different stages over the years have marked a further development of the legislation on confiscation and social reuse of seized assets. Among these, the approval of the Decree-law n°4 in February 2010 (converted into law with the approval n°50 of 31 March 2010) which set up the “Agenzia Nazionale per l'amministrazione e la destinazione dei beni sequestrati e confiscati (ANBSC)”, holder of important political decisions on the management and allocation of assets, since the moment of seizure, even if its functioning has still now problems and significant weaknesses.

The seized property restitution process towards the community takes place with a judicial process which starts from a series of assets investigation, whose aim is diving much more deeply into the suspect standard of life, in his financial resources and more in general, in his estate. The judicial authority may also extend the verification, through the tool of banking inquiries, also to natural and legal person which may serve as a cover for illegal traffic. At the end of



the investigation stage, the first measure envisaged by the law comes into action: the seizure. The following step is a further temporary measure, the first instance confiscation, which confirms the seizure, until the second instance decision of the court. At this point, the final destination is decided by the National Agency (ANBSC) which may decide to keep it and use it for justice, public order purposes or may decide to transfer it to the local municipalities, provinces or regions. Local authorities could decide to run directly the property or alternatively, assign it through a free loan, to cooperatives and associations which will guarantee the management for social purpose.

Different is the case for the movable property. It is the case for cash and checks, marketable securities, personal loans (bills, checkbooks, bonds), motor vehicles, vessels and movable assets not associated with the firm estate. Usually, the amount of money seized or raked from the sale of other movable property are aimed at the active managing of other confiscated properties. According to the latest amendments of the legislation (Legislative Decree 159/2011, anti-mafia Code, Article 48), these sums of money flow into the Single Fund for Justice (FUG).

The question becomes even more delicate with firms and companies; obviously this is one of the major source of money laundering. Seizures and confiscations cover a wide range of sectors: construction, food processing, catering and entertainment, tourism, retail, health care, information technology and social services. When the State is dealing with these types of property, it may decide to rent these assets to public or private companies or to entrust the management freely to cooperatives developed by the work-

ers. Unfortunately figures are clear; only 5 companies have been rent to private enterprises and only the “Calcestruzzi Ericina” has been given freely to a cooperative of workers from the same company.

This is a very sensitive sector, in which the stakes in the game between the mafia and the State is dangerously high. It is to dispel the myth according to which the mafia gives job and the State takes it away.. Bankruptcies, liquidations and mass layoffs are used by the criminal organizations to grow consensus and increase their power. It is therefore essential increasing the efforts to transform these assets, as well as for the others, in wealth for the State and in redemption opportunity and development for the community. Protect employment levels and guarantee the production continuity and the companies competitiveness of companies confiscated to the mafia are the real challenges that the State has to face and win. In this context it becomes increasingly important the figure of the judicial administrator called to divest the simple role of caretaker to cover the role of manager able to make income and revenue. Some partnership initiatives with other associations willing to put at the service of the State their professionalism and expertise, are going in this direction. And in this directions there is also the popular initiative born with the campaign “Io riattivo il lavoro – I reactive the job”, which seeks to approve new measures able to promote the emergence of the legality and the protection of seized enterprises’ workers.

So there are many and complex open issues and obstacles to overcome. The case of seized and confiscated enterprises show it clearly. The risk is that the confiscated issues remain unused, proving the failure of the State. That requires a

renewed responsiveness and a further commitment to facilitate the reuse and the effective use of the confiscated assets. There is still a long way to go, and uphill. It is necessary taking awareness of the limits that, despite the international legislation, characterize the system. Too long delays, lack of sensitivity, competences, resources and investments, difficult access to loan, squatting, loopholes in the legislation, slow-down to update the legislation are only few obstacles that can be met on the path. The entry into force of new Anti-mafia laws code on 13 October 2011 (legislative Decree 6 September 2011, n° 159), does not have the desired effect but rather there is a dangerous backing down concern some sensitive issues.

The latest news in the legislative field have been introduced with the 2013 Stability Law (Law n°220 of 24 December 2012). Among these, there is the enlargement of the people willing to manage the seized assets, such as local municipalities and voluntary associations; there is the possibility to exempt taxes and duties, and the protection of other people, in order to reach the correct management of an asset, purified of any problems.

Although there are some obvious limitations, it is undeniable the scope of these legislative interventions and, with them, also the experience settled since 1982. These laws and practices have the authority to be reference for the construction of an European model concerning the property intervention. It was the sense of Giovanni Falcone, who suggested a new approach to the mafia investigations putting the attention on cash-flows. And in this insight, takes shape the following development of the prevention process, which has been increasingly characterized as a real process

on the estate, parallel and complementary to the penal process, fixing in this way the importance of the assets. At the legislative level, the best possible response to the evolution of the mafias and to their growing and recognized ability to enter into the legal economy and into the financial and industrial cycles of the country. This skill is widely proved also at the international level, as the crime facts and grim news stories show now unequivocally.

The 109/96 law effects are under the eyes of all to almost twenty years of its entry into force. Today decades of houses and lands come to life in the name of those innocent victims, at the service of the community, which few years before associated that assets as the tangible sign of the mafia domination. Today these assets get an opportunity for the social and economic development of those areas, offering job opportunities for hundreds of young people and instrument for solidarity and commitment. The Libera Terra are the result of young cooperators and volunteers' hard working, who in their daily life or during the Libera summer camps, create a network of educative and productive actions aiming to claim that there is a chance to defeat the criminal organizations.

**Sign of hope and changing: positive cases ad good practices.** Besides the difficulties that come along the confiscation and reuse processes, there is a silent and industrious world that is moving. It is the world of the social anti-mafia, associations, voluntarism, cooperatives. It is this world that take the responsibility to return the ill-gotten gains to society through the memory of tens of innocent victims, whose name is given to the seized assets, from Piemonte to Sicily. Is

this world that represents the most beautiful and meaningful experiences of social reuse from North to South. Good practices which are placing as a model to respond with solidarity and justice to the mafia culture.

It is true that the mafia is born in Italy. And from here are spreading all over the world, building alliances, strengthening relations, colonizing markets. But it is also true that, besides the mafia, is born an extraordinary experience of civil militancy which is concrete and daily commitment in the opposition of the mafia violence. Here are born men and women, who with courage and determination, have choose the path of justice and truth. And always here the most advanced legislative system against the mafia organizations is born. A system, able to became a model for those, also in Europe, have not understood for long time that the mafias have arrived everywhere, simply by following the money. Cosa Nostra, Camorra and maybe more than any other, 'Ndrangheta are not an Italian problem anymore. Even if they have stop shooting, they have continued to forge new relations, feeding corruption and dishonesty. Hit the wealth, following the rivers of dirty which run through Italy and Europe, are never as today, the best way to punish interests and giving back villas, buildings, businesses, gardens and lands to the citizens.

In Italy and in the territories affected by a strong presence of the Mafia, are born and raised extraordinary stories of social reuse, unthinkable only few years ago. This is the case of Libera Terra. Experience of which we speak with Valentina Fiore, director of Libera Terra Mediterranean, the consortium born in 2008, whose aim is to bring together Libera Terra's cooperatives and other actors who

have married this cause. “Libera Terra (Free Land) – say proudly Valentina Fiore – was created with the aim of enhancing beautiful but difficult territories, starting from the social and productive recovery of those assets freed from the mafia in order to achieve high-quality products through environmentally friendly methods and respecting people’s dignity. It also play an active role on the territory, involving other producers who share the same principles and promoting organic cultivation of the land”.

A real mark of quality which accompanies the enterprise’s work able to bring into the market good and fair products, creating job, social redemption, wealthy and dignity. Lentini, Corleone, Castel Volturno, San Giuseppe Jato, Naro, Isola di Capo Rizzuto, Mesagne, Gioia Tauro: here there are Libera Terra’ nine cooperatives born with public invitation. On such lands, which represent the overwhelming power of mafia, are produced pasta, olive oil, legumes, mozzarella, juices and conserves.

“The attention – says Valentina – is all aimed to rediscover typical flavors of the territory: in the management of the vineyards, sited in the Alto Belice Corleonese and in Salento, suitable areas for grape varieties production or in the choice of producing pasta, legumes, extra-virgin olive oil, mozzarella, fresh-fruits, conserves and limoncello according to ancient and artisan methods. Starting from the confiscated assets we want to give dignity to our territories through autonomous social self-sustained cooperatives able to provide job, create a positive income and able to propose a virtuous economic system based on legality, social justice and on the market. At the root there is the respect of natural raw materials: the brand Libera Terra is a guarantee

for the origin of the products and the commitment of those who work there”. But that’s not all because “the cooperatives are also places for educational experiences, accessible to hundreds of people through voluntary work camps, environmental education and trips proposed to school according the responsible tourism criteria”. And here is the point that best clarify the sense of these experiences from the point of view of civil society. “In the territories liberated from the mafia, the awareness of having a better life in social and economical terms, is slowly growing”. Open these territories means triggering a circle of legality and quality in these places. This idea led to the creation of Libera, il g(i)usto di viaggiare, “a tour on seized land confiscated of mafia bosses, today scenery of a fair local development of the territory, based also on the promotion of the excellent local food and wine. This short tour starts in Corleone in the Portella della Ginestra’ agritourism, close to the memorial of the massacre of the 1<sup>st</sup> May 1947, then continues in the shop “Bottega dei sapori e dei saperi”, ending in the vineyards cultivated by the cooperatives and in the winery CentoPassi at San Cipriello. Following the path of memory and commitment, in Salento is possible visiting the seized land managed by Terre di Puglia’ cooperative, the historical center of Mesagne, symbol of the fight against organized crime, and ending with the visit of a big villa confiscated from the Sacra Corona Unita mafia, surrounded by Negroamaro vineyards”.

One of the Libera Terra cooperative, located in Castelvoturno and dedicated to the memory of Don Peppe Diana is headed by Massimo Rocco. “The project that I represent – say to us – is designed in order to put in practice

the 109/96 law about the social reuse of seized assets, not only taking away resources from the organized crime but being possibility of development and growing of the territory through a virtuous economic model which can guarantee employment, since an high rate of unemployment and the resulting poverty provide fertile ground to the criminal organizations”.

With the other members of the cooperative, Massimo runs a social enterprise which produces buffalo mozzarella. In his words , there is a deep and true sense of what the cooperative has represented for these territories: “I am only one of the privileged and ex unemployed, who had the only merit to understand the occasion provided by the public call for the constitution of the first Libera Terra cooperative in Campania. We are lucky because we have a great occasion to live as protagonists the social-economic redemption project which is involving the civic society of our country”.

In what he says there is also the weight of the responsibility for such choices: “learning how to turn buffalo milk in high-quality mozzarella, being administrator of an ethic and responsible enterprise, respecting workers’ rights, building and protecting the dignity of those involved, especially disadvantaged people, protecting the environment in a territory where has been raped for long time, discovering the landscape beauty of our country, are only some aspects that this job and this project has offered to me”.

This responsibility also means courage to be witness of legality in a territory not easy at all. “The path towards the affirmation of the legality in our area – says the President – is still very long and full of obstacles represented by the fact that the majority of citizens, entrepreneurs and public



administrators are indifferent and prefer to be not informed or bad informed, focusing on their own private well-being. The cooperative members that I represent did this stark choice and put it in practice with their daily work”.

Despite its complexity, Libera Terra is a truly amazing experience of social reuse. And not the only one. The data collected, during the regional and inter-regional Forum on the confiscated assets from organized crime promoted by Libera between December 2013 and February 2014 are very encouraging. The forum's aim was to monitor and meet all the individuals granted of confiscated assets and gain experience, challenges, new ideas, good practices and proposals for legislative changes. These figures have been published during the National Conference which was held in Rome on March 1, which closed this analysis that has made different stops in Calabria, Campania, Puglia, Sicily, Rome and Milan. It is the first Census of the positive experiences of seized assets managed by the third sector, the voluntary sector and cooperation.

A census which, although not exhaustive, tells 395 social experiences which everyday shape new path of social reuse. 65.8% of these experiences is located in the south of Italy, 25% in the north and 9% in the center. 99 Sicilian good practices open this ranking, followed by Lombardia region (75) and Campania (64). More detailed, the 58.5% of the total is represented by experiences linked with the associations, the 23.4% cooperatives and the 2.3% foundations and municipalities. Concerning the intervention sectors, the 22% of these realities work with minors, 13.4% with disabled people, 13% in the field of re-employment. 5.8% of these surveyed experiences work with drug-dependent

people, 4% with elders and migrants and 2.7% with abused women. The remaining 29.6% work in other areas.

It is a picture of a world that does not give up and that shows how the results arrive when State and civil society work in the same direction. Results which are the best answer to the demand of legality that citizens are asking for. These are experiences that show how it is possible developing employment and services for the territory, representing at the same time a multiplier of trust for the citizens. The social reuse remains the only possible alternative, on the ethic field, to contrast the illegal accumulation of mafia wealth. A model that seem to be more and more consolidated in the Italian society.

The “Con I loro occhi. L’immaginario mafioso tra I giovani” research datas is an example of what is written above. This is the result of three surveys conducted by Libera between 2010 and 2012 in the high schools of Tuscany, Lazio and Liguria region, from which emerge clearly the priorities of young people in fighting against the mafia economical interests and in the importance of the social reuse of the seized assets.

“In the majority of those interviewed – writes Nando dalla Chiesa in the post face of the research – it seems very much alive the idea that such assets should be conferred to organizations and associations that perform functions of social promotion and education to legality and citizenship. Neither the sell to reduce the budget deficit, nor the reuse in the form of State structures (barracks, schools); but the devolution for purely social purpose. It is stated in this attitude – said the honorary President of Libera – the idea that criminal organizations stole especially social goods and

values. And that they have to give back what they have taken away in quality of life through the illicitly accumulated assets”.

These are obviously partial data (also from the geographical point of view) but still interesting if included in the more general context of the public opinion which seems to be particularly sensitive to the issues of the Mafia assets’ attack. This is demonstrated by the emphasis put everyday from newspapers and television to announce new measures for seizure and confiscation of huge capitals, in the form of luxury cars, villas, houses, hotels, commercial activities. Everything ended up in the hands of the mafia.

A media hype that always more pushes institutions to take charge of the problem and arrange the necessary tools in order to close the circle that from the confiscation leads to the social purpose.

Another research, quite interesting, is mentioned by Fabio Giuliani, from Ponticelli, close to Naples, since years involved in confiscated assets for Libera either in Campania and in Italy. “In 2008 – says Fabio – we published a research on the ethical and symbolic dimension of seized assets. The witnesses we interviewed (administrators, social workers, teachers) were particularly interested in the Camorra confiscated assets’ social reuse, highlighting the various benefits that such use could be determined. On one hand, it is remarked the symbolic value, seen as an agent of cultural change, on the other side it is thought of the practical advantages for the entire community”. There were some specific proposals but from the interviews read, it became clear that many suggestions came from an emotional wave referable more to their personal experience than to a sur-

vey linked with the needs of the local context. An approach that “confirms the tendency to value resources as single opportunities, not integrated within a broader participated planning”. Obviously it is a limit in the perception of the complexity of the issue, which we call for explanation Fabio. It is interesting follow his argumentation in order to deeper understand the dynamics linked with the perception of the social reuse processes of seized assets. “The fact is that in the imagination of the political, social, cultural, and religious representations there are some aspects from the territorial realities that appear uniformly problematic: inadequate structural conditions to the productive implementation; social drift produced by forms of exclusion; inability to live moments of daily sharing; the heritage left by administrations that have produced underdevelopment and degradation rather than wealth and growth. At the same time, the sample showed a strong awareness of what are the principles on which we build path of improvements the basic conditions for social, economic, cultural welfare of the community, sometimes describing them as real needs”.

But why – we ask him – despite the presence of all these emerging issues, are you supporting the thesis of a complexity disregarded by the research sample? “It is clear that the lack of a deepening process on development and social integration issues doesn’t come from a lack of motivation or desire of improvement from the social actors. Indeed. The problem seems to have another origin. A complex thought and reflection of the growing self-conscious and a reflection spontaneously exhaustive of the social problems derive from a steady accumulation of experience progressively more complex. But these experiences are possible only if there are

structural conditions quite consolidated. And this is what is missing! Basic conditions that, apparently, all interviewed reported absent or at least inadequate. People interviewed do not think in term of participatory practices because they do not live basic conditions necessary to put these practice in place. This lack in the territories does not help the arising of participative models and the lack of participatory models does not allow complex reflections on the development and cohesion. And the circle is closed, explaining the reason for the lack of complexity. If in the studied territories, it does not seem to have found the emergence of an ethic of responsibility fully applied to the development strategies and choices, appears strong, with the protagonists of the studied areas, the demand for a responsible way to act in time". In such context, the issue of seized assets becomes relevant. "They – say Fabio – are not the unique solution, neither for the development, nor for the social cohesion, nor for the defeat of organized crime. They could become a concrete moment of shared construction representing in both its form: the tool for thinking "responsibly in the first person" choices for growth and integration through a concrete project of reuse; a moment of participatory practice in which is concretely possible testing a self-conscious growth based on ethical responsibility towards the social sector. These are practices that could not be solved only with sporadic participation but in a synergistic way with the ideation of models such as "Libera Terra". That means , in essence, using the assets with coherence in accordance with the identity characteristics of the territory in which they are part; make it as a place of recovery for young people increasingly at risk of exclusion from public life; exploiting their potential for

aggregation in order to meet that need of network; allowing these place to reborn as moments of real cultural struggle as well as against the Camorra' assets.

Fabio Giuliani proposed a level of analysis very complex, which highlights the need for a constant and deep action on these issues. Yet, despite the difficulties which we have spoken, the feeling is that, since 1996 till now, this revolution has taken place in a social context which progressively caught the meaning and the scope of what was happening. And so he stopped being afraid, he reacted and he has been shown to believe in the possibility to build new development, job, dignity opportunities. And this is in those area where the mafia has historically built its fortune and in other areas of the country where the criminal organizations had over time stretched their obstacles.

Telling all these success stories would be impossible. But it is important to know that there are many everywhere, become symbol of territories, which around them, have built or rebuilt a new identity. The experience of Libera Terra is once again the experience in which we can sum up the meaning of this revolution, trying to grasp the quality of the social response to the processes of social reuse of seized assets. Today in these cooperative are working young people born in these territories. Their toil and their sweat are the nicest and most genuine sign of the change of perspective: from the signs of power to the power of signs.

Believe that all this could happen or will happen again without obstacles would be an error or a naivety. The history of seized assets' social reuse is also composed by more or less violent attempts to break this virtuous circle: fire, intimidations *but* also silences and complicity. And yet it is in

these moments that civil and responsible society is able to give the best answer to those who tried to get across. Whether the need arose, from all over Italy, thousands came to say that they would never come back: after the fire, they have returned to sow, the means put out of action have been replaced; to the gunshots the responds was street protests. And this has always happened. Perhaps the truest sense of how communities have lived these beautiful stories of commitment and responsibility are in the words of Valentina Fiore. On May 24, 2012, the day of the State funeral of Placido Rizzotto, the trade unionist killed in 1948 in Corleone, Valentina turned directly to him: “We wanted to take the responsibility for your heritage. With the same your fears and insecurities. But this time things are going differently. The fear and the insecurities of many people make a security; the security that today we are not alone, and today you would not be alone. It was not useless. It will not be. We know that you will be on our side and to that of all those who together decide and will decide to not surrender and give up.

# SPAIN

*Sandro Mattioli*





**Organized Crime in Spain.** *There are many different organized crime groups present in Spain – the Italian Mafias, of course, Eastern European gangs, Latin American drug cartel affiliates, motorcycle gangs – just to name a few. And in their efforts to combat these forms of organized crime, Spanish law enforcement authorities do make use of the confiscation instrument, too. Spanish media also deliver their contribution to assert the demonstrative impetus of socially reusing criminal assets through their regular reporting about the existing cases in Spain. However, things did not always work out well.*

Italian Mafia groups preserve a legend, which attributes the birth of Italian organized crime in Sicily to the arrival of three Spanish knights named Osso, Mastrosso e Carcagnosso. They are said to have killed a man after he had a sexual relationship with their sister and thus had stained their honor. According to the legend, Osso, Mastrosso and Carcagnosso were sentenced to 29 years of imprisonment. During the time of their confinement, they developed the regulations for a future criminal organization that later be-

came a kind of model for other organized crime groups. After their release, the three brothers became the founders of Italy's three major crime groups: Osso is said to have established Cosa Nostra in Sicily, Mastrosso the 'Ndrangheta in Calabria and Carcagnosso the Camorra in Naples.

Until today, these groups have spun their networks almost all across the world. And Spain is considered to be one of the very important bases for their businesses.

Taken as a whole, police registered 2 268 867 crimes in Spain in 2010, conforming to Eurostat reports. Among them were 364 homicides and 116 906 violent crimes. 161 per 100 000 inhabitants were staying in prison in 2010. Law enforcement agencies revealed 14 509 cases of drug trafficking in that same year.

Even though Spain became an entry point for the Colombian drug trafficking cartels as early as in the 1980ies, the debate about organized crime has largely been dominated by the topic of terrorism for many years. The central government devoted its efforts to combatting separatist movements such as the "Basque Homeland and Freedom" organization ETA, and did not pay very much attention to international and transnational organized crime. As a result, a number of anti-terrorism-bills were passed. Even though terrorism and organized crime sometimes did overlap, the fight against the latter got into focus only during the last decade.

In 2004, José Luis De la Cuesta, a professor for criminology, stated that

- "organized crime policy in Spain is more the result of specific interventions than a comprehensive way of systematically approaching this complex

phenomenon. Since social debate is completely absorbed by the terrorism issue, no special debate on organized crime policy can be found in the media”.

This rather comes as a surprise taking into account that Spain became a center of attraction for organized crime groups soon after the Spanish dictator Francisco Franco had died in 1975. There are various explanations and reasons for this: not only has the Iberian Peninsula a long standing history as an entry point for contraband goods because of its geographical vicinity to Africa and its well-established links with Latin America. In addition, Spain’s prostitution market is rampant and, last but not least, has the fast growth of its economy in the last two decades been a factor that drew criminal groups’ attention to the country. These determinants have been laid out in different analyses, as, for instance, in a study financed by the European Commission entitled “Examining the links between organized crime and corruption” that was carried out by the Sofia-based Center for the Study of Democracy in 2010, just to name one.

In 2004, a shooting took place in Marbella that in a sense became the turning point in the Spanish anticrime policy. In this act of violence, two persons who were in no way related to any criminal business or organized crime were shot, the owner of a beauty store and a ten-year-old boy. The day after, the Spanish interior minister announced a new police unit in that region. Later on, a few prosecutors, specialized in organized crime, in Malaga, Alicante and on the Balearic Islands started to work on the issue. Since then, the Spanish government has reinforced its fight against organized crime and the topic has become part of the political agenda.

Today, especially the city of Marbella is known to be a residence for arms traffickers. Moreover, Spanish ports often serve as entry and transit points for drugs, which are then distributed further to other parts of Europe. Other businesses include the trafficking in human beings, prostitution and real estate.

### **Confiscation in Spain**

One distinctive feature of confiscation in Spain is that it is mostly connected to drug trafficking. A special fund created in 2003, the “Fundo de Bienes Decomisados”, collects all confiscated property. By looking at its regulations, its focus on criminal activities related to drugs and drug trafficking becomes obvious.

“El Fondo de Bienes Decomisados, regulado por la Ley 17/2003, de 29 de mayo, está integrado por los bienes, efectos e instrumentos decomisados por sentencia firme en procesos por narcotráfico y otros delitos relacionados. El producto de estos bienes está destinado a intensificar las actuaciones de prevención, investigación, persecución y represión estos delitos, prevención de toxicomanías, asistencia e inserción social y laboral de drogodependientes y cooperación internacional en la materia, siendo beneficiarios de las cantidades integrantes del Fondo las Comunidades Autónomas, Corporaciones Locales, Organizaciones no gubernamentales o entidades privadas sin ánimo de lucro, los Cuerpos y Fuerzas de Seguridad del Estado, El Departamento de Aduanas e

Impuestos Especiales de la Agencia Estatal de Administración Tributaria, la Fiscalía Especial para la Prevención y Represión del Tráfico Ilegal de Drogas, la Delegación del Gobierno para el Plan Nacional sobre Drogas, otros organismos o entidades públicas de la Administración General del Estado, los organismos internacionales con competencias en la materia, y las entidades supranacionales y gobiernos de otros Estados extranjeros.”

*<http://www.pnsd.msc.es/en/Categoria4/bienes/home.htm>*

These regulations date back to 2003 and contain the idea of socially reusing confiscated assets, already comprising an explicit link to civil society and NGOs. El Real Decreto 200/2012, de 23 de enero, por el que se desarrolla la estructura orgánica básica del Ministerio de Sanidad, Servicios Sociales e Igualdad regula en detalle, en su artículo 7, las funciones que le corresponden a la Delegación del Gobierno:

1. Corresponde a la Delegación del Gobierno para el Plan Nacional sobre Drogas las funciones de dirección, impulso, coordinación general y supervisión de los servicios encargados de la actualización y ejecución del Plan Nacional sobre Drogas. [...]
2. En particular, le corresponden las siguientes funciones: [...]
3. e) Impulsar la participación de las empresas y entidades sociales en las actividades del Plan Nacional sobre Drogas, promoviendo la incorporación de programas sobre drogas y drogodependencias al desarrollo de la responsabilidad social corporativa.

4. f) Administrar, gestionar y enajenar, bajo la dirección y supervisión de la mesa de coordinación de adjudicaciones, los bienes integrados en el Fondo de bienes decomisados por tráfico ilícito de drogas y otros delitos relacionados, regulado por la Ley 17/2003, de 29 de mayo, y prestar apoyo técnico y material a dicha mesa.

*<http://www.pnsd.msc.es/en/Categoria1/presenta/home.htm>*

In 2006, a Central Office for the Fight against Organized Crime was created, the Centro de Inteligencia Contra el Crimen Organizado (CICO) (*<http://www.intelpage.info/centro-de-inteligencia-contra-el-crimen-organizado.html>*). It was designed in analogy to the Centre to Coordinate Action against Terrorism (Centro Nacional de Coordinación Antiterrorista) and functions under the direction and supervision of the Ministry of the Interior.

For 2012, CICO has granted access to some statistics on organized crime in Spain which were published by the “Grupo de Investigación y Estudios Avanzados” of Rey Juan Carlos University on their website *[www.giea.org](http://www.giea.org)*. According to the data, CICO recorded the following criminal offences in 2012: 209 cases of money laundering, 114 cases of drug trafficking, 67 cases of fraud, 23 cases of scam, 18 cases of counterfeiting and 25 cases that were not attributed to any of the given categories.

Interestingly, Spanish authorities have been receiving a growing number of confiscation requests from other countries: In 2010, the office was asked to execute confiscations in 245 cases, 106 of which were carried out and 139 were rejected. In 2011, the office registered 311 requests, 115 were put into effect, 197 denied. In 2012, the number of requested confiscations had grown to 340. 135 of these re-

quests were met, 205 refused. The number of confiscation requests has thus seen an increase of almost 39 per cent in only two years. According to the newspaper *La Cerca*, 50 per cent of all requests for confiscation from European member states are directed to Spain.

From 2010 to 2012, the five countries with the highest numbers of requests were the UK, the Netherlands, Belgium, France, Germany and Scotland. Most of them were submitted by the UK: 162 in 2010, 166 the year after. In 2012, the UK asked for confiscation in 129 cases. Although this means a reduction of 37 cases in comparison to 2011, the number is still relatively high. The Netherlands has almost tripled their requests within the same period: from 18 in 2010 the number has risen to 46 in 2012; France doubled their pleas, from 17 to 35 over the same time period. In 2012, Scotland asked Spain in 21 cases to execute a confiscation, two years before it were only six requests. In addition, Germany discovered confiscation as an instrument in the fight against organized crime: 0 cases in 2010, 19 in 2011, and in 2012, German authorities asked their Spanish colleagues 21 times to work for them and confiscate organized crime assets in Spain. Only the numbers of requests made by Belgian officials remained more or less on the same level as in the years before, with 36 cases in 2012.

These rising numbers of confiscations correspond to a growing number of people and legal entities under investigation. In 2010, 560 persons were under investigation in Spain, two years later their number had grown to 912. The number of investigations against legal entities increased fivefold over the same time: from 48 to 237.

As stated earlier, most of the confiscated assets relate to

drug trafficking: In Andalusia, the region with the highest number of seized goods, authorities counted 644 assets related to drug trafficking (2010: 737; 2011: 693). In the region of Madrid, 338 assets figure in the list (2010: 187, 2011: 344). Number three come the Canary Islands with 153 assets in 2012, followed by Valencia (104 assets) and Catalonia (79 assets).

In 2009, the Spanish labor union CIG complained that the coast of Galicia in the northwest of Spain was a weak spot in the fight against drug trafficking. The union stated that the region did not have the necessary resources at its disposal to combat the problem and, in the same breath, cited the large amounts of money confiscated. An outstanding example for the awareness of the social reuse of seized assets is Carmen Avendaño Otero, whose sons fell into drug addiction and who have been serving their prison sentences until this day. Avendaño Otero is the founder and president of the association Érguete-Integración and a foundation of the same name. Both organizations employ about 100 members of staff. Based in the Galician towns of Vigo and A Coruña, they offer different programs to assist drug-addicted people. In a rehabilitation centre in Vigo, for example, affected persons receive counseling, legal advice and vocational training.

Mrs. Avendaño remembers the early phase, when drug trafficking started to affect Galicia, a region that had always been an entry point for contraband, including medicine in times of a tuberculosis epidemic, and, as a precursor to drugs, tobacco, which at the same time is her homeland. “In the Seventies, we heard disturbing stories about young people, but we did not understand what was happening”, she



explains. Avendaño recalls how many Galician adolescents were perceptibly changing: many of them withdrew from public life and started to conceal things from their parents. “Naturally, we didn’t know much about drugs. But suddenly, the problem was there, right in front of us and in the midst of our lives.”

While the authorities did not pay much attention to the problem and a number of people was directly or indirectly involved in and profiting from the drug trafficking, Avendaño together with other affected mothers started to get active. In a first step, they collected as much information as possible to educate themselves about drugs and their use. Then the group of activist women organized a public meeting. “At this meeting, we gave a description of our situation to the public and also dared to denounce the prevailing complicity of drug traffickers and policemen. The strongest reactions, however, were unleashed by a list that we confronted the administration with, a list of 38 places, where one could buy drugs without a problem – not only marihuana, but also heroin and cocaine. This hit the scene like a bomb. Since then our group and our concerns started to be really taken notice of.”

In the beginning, Avendaño and her fellow campaigners were not taken seriously, sometimes even depicted as “mad”. At the same time though, the mothers were living in fear. Once, Carmen Avendaño even got the brakes of her car manipulated. However, the group was able to rally important support: it was cooperating with Spain’s highest court and a few prosecutors. Particularly, the judge Baltasar Garzón and his contributions to the fight against organized crime must be acknowledged in this respect. “We played an

important part amongst the architects of the new Spanish penal code”, Avendaño says. “We lobbied these people to take up our concerns, who on their behalf influenced the legislators to assure that organizations working on the drug topic would be given the proceeds when confiscated goods are auctioned. In this way, such not-for-profit organizations came to dispose of their own resources which they could use to hire psychologists, lawyers and social workers or to rent office space.

After a large Galician wine-growing estate, el Pazo de Baión, had been confiscated in 1995, Carmen Avendaño was asked if her organization would be interested in managing the vineyard and manor. “We declined, because we neither had the capacities nor the necessary infrastructure”, she explains. Nonetheless, her group did play an active role in designing the contract for potential buyers. “Our goal was that part of the corporate profit would be directed to the national anti-drug fund and that people who are rehabilitating from drug use or who have overcome it would work there.”

Today, Carmen Avendaño is very proud of the achievements her movement was able to accomplish. But despite all the progress made, she also criticizes the current situation. Last year she called for more transparency regarding the use of confiscated monies and contacted the minister in charge. “At the outset, they installed a commission with political groups and civil society representatives but that did not work out. Today, we do not know much about the allocation of confiscated assets and the criteria according to which this process is organized.” At least the dates of the auctioning of confiscated assets have recently been made

public via newspapers, she says.

The necessity of more transparency became evident after conducting an investigation in Galicia about the process after the actual confiscation of assets and their auctioning. “It seems to be common practice that drug traffickers in our region whose property is confiscated oftentimes manage to get it back.” She argues that today “there is tremendous opacity” concerning the allocation of the proceeds from such auctions. “In theory, a part of that money is earmarked for non-governmental organizations working in drug abuse prevention and treatment programs and another part allotted to law enforcement, but the truth is that we do not know what is really happening with the money.”

One specific example she refers to is Contes de Albarei, a well-known cooperative winery that cultivates vineyards on confiscated land in exchange for a share of its annual profits payable to national antidrug funds. Information about these payments should be public domain, insists Avendaño Otero, urging the competent authorities for more transparency.

Susana Luaña, a Galician journalist, is familiar with the struggle of Carmen Avendaño and her movement.

Luaña is working for the newspaper La Voz de Galicia in Vilanova de Arousa and has been writing about confiscation for some years now.

She points out the two most prominent cases in Vilanova, where confiscated assets are nowadays being used in a socially beneficial way: first, the confiscation of an old estate called Vista Real, and second, the confiscation of the aforementioned winery el Pazo de Baión – with a value of about 15 million Euros probably the most outstanding case ever dealt with in Galicia.

According to Luaña the awareness in Spain for the need to socially reuse assets of criminal origin is growing every day. She criticizes the slow pace of the judiciary often hampering the confiscation and social reuse of criminal property. She witnessed cases where the auctioned objects, such as cars and boats, even yachts were in poor condition. Therefore, it is the management of confiscated assets that needs to be improved, too. Yet another problem consists in the confiscation without conviction, reports Susana Luaña: “Some judges put up goods for auction before even arriving at a verdict. If the former proprietor is not convicted at the end of a trial, the new owner is obliged to restitute the assets. This frequently happens with boats, cars and artworks that are demised to social entities.”

In general, the concept of reusing confiscated assets enjoys broad support, asserts Luaña. People believe that it constitutes one way society can be compensated for all the damage inflicted on families and the communal social fabric by selling drugs to minors. In Galicia, she adds, there were many associations like Érguete, the organization led by Carmen Avendaño, who fought for its legal enforcement. “The photographs of her under the gates of the manor of Baión made history. Finally, they handed it over!”

But, as mentioned before, judges face many difficulties in managing these assets. For this reason institutions are working to create an entity charged with that very task, the so-called Asset Recovery Office. “It doesn’t make much sense that a judge or prosecutor pays the neighbors for taking care of a confiscated apartment, for example, but this is what’s happening”. She shares Carmen Avendaño Otero’s critical view on the distribution of the proceeds of auctioned assets,

but considers this to be a general problem of the Spanish judiciary: according to her, a lack of transparency prevails within the system.

**Four examples of the social reuse of confiscated assets.** Generally speaking, the idea of socially reusing confiscated assets is present in Spanish public debates. Media coverage on the existing cases is high, also due to the popularity of prosecutor Baltasar Garzón, a very active and important figure in this domain. Last year, a broad public discussion about the social reuse of confiscated cars emerged. Some judges had proposed to transfer confiscated cars of people who were repeatedly caught driving without a license to organizations working with traffic victims. And in fact, with the reform of the Spanish penal code clauses were included that enable judges to do so. Even if a small quantity of illegally caught fish or slaughtered cows is confiscated, the authorities have the possibility to carry out measures necessary to bring these goods to a social use.

Because the country is very active in confiscation, the Spanish situation is also of interest on an international level, although a bit less in socially reusing these assets. From a civil society perspective, some very interesting projects have materialized, four of which are described subsequently.

But prior to their examination, another project also deserves a comment, as it was *not* successful and thus illustrates some of the existing problems with confiscated assets. Taniel Oniani, the suspected head of the Russian-Georgian part of Izmailovskaya mafia in Spain, owned an enormous building in the prestigious Pedralbes neighborhood in Barcelona, a luxurious suburb that is home to politicians and fa-

mous football players. He held shares of a Georgian airline and ran a construction company employing illegal Georgian immigrants until in 2005, Spanish police conducted a large-scale operation against his organization. Oniani was charged with money laundering, human trafficking and organizing a criminal gang, but he managed to evade his detention. He escaped from prosecution to Russia where he later was arrested. In 2011, Russia extradited Oniani to Spain, where he is serving his sentence until the present day.

In 2008, a judge ordered the confiscation of Oniani's house in Barcelona. It was offered to different NGOs and public administration but no one was willing to assume responsibility and liability for this prime property. In the meantime, a company registered in Gibraltar, to whom the building had been signed over, was claiming damages for the loss of value because members of the leftist Movimiento Okupa had started to occupy the place. Without any restoration work, argued the company, its market price was decreasing. In 2011, Spanish police finally raided the building and in the end makes use of the property itself: today, it houses a local police station.

### **Laureano Oubiña's wine-growing estate Pazo de Baión in Vilanova de Arousa, Pontevedra, Galicia.**

Back in 1995, Spanish authorities confiscated a beautiful vineyard estate, the so-called Pazo de Baión. A castle-like mansion with a medieval tower is part of the property next to agricultural lands with an extension of 287 hectares. Eight years before, drug trafficker Laureano Oubiña together with his accomplices Sito Miñanco and Pablo Vioque bought the winery for the price of 275 million Pesetas

(1.653.000 Euros). At that time, Carmen Avendaño, leader of a group of mothers of drug users, which later on evolved into the foundation Érguete, became famous for her fight against drug dealers and for rallying against the perpetrators right at the gates of Oubiña's property.

However, in 1995, Spain was not in any way prepared to take care of confiscated assets. To solve the problem, the Pazo de Baión was passed into the care of the wine-producing company Freixenet, who managed the estate for thirteen years.

Remarkably, the daughter of Laureano Oubiña claimed that the vineyard was part of her mother's heritage, but in the end the European Court for Human Rights dismissed the case and authorized the auctioning of the property. Four companies were admitted for bidding, including Freixenet. But as the then manager did not bid enough, the company was excluded in the first round.

In June 2008, the cooperative Condes de Albarei paid 15,1 million Euros and has been running the vineyard since then. The company is contractually obliged to contribute five percent of its annual corporate profit to the fight against drugs; in addition, it is bound to grant employment to former drug users. In the year of the sale agreement, seven men and one woman worked to bring in the grape harvest. In 2013, the cooperative paid more than 100 000 Euros to the Plan Nacional sobre Drogas, the National Fund against Drugs. Moreover, it affirms that former drug users spent more than 1 200 working days on the vineyard in the same year. The estate has become a hotspot for tourism and offers insights into the production of its well-known white wine. Gerardo Herrero even shot a cinema film there in

2005, named “Heroine”. The Spanish director tells the story of Carmen Avendaño Otero and her fight against drugs, filmed right at the spot where the struggle of this courageous woman took place.

Patricia Oubiña, spokesperson of Condes de Albarei, stresses that the origin of the Pazo dates back to 15th century. “The drug dealer whom the property was confiscated to, was only one of the owners for a period of 10 years”, she says. The social mission of Condes de Albarei is intrinsic to its birth in 1995, as Condes de Albarei is a cooperative, she adds. “There was not any doubt in the advantage of applying this model to Pazo Baion. This social commitment from a private company is very unusual but here the value lies. The owners were aware of its importance from the beginning”. Apart from that, Pazo de Baión was – according to Patricia Oubiña - one of the few confiscated assets that was a value enhancement before its total deterioration. “In this sense, the procedure is sometimes very slow so a faster procedure will help to promote the social reuse”. Condes de Albarei is very satisfied with the results of their commitment and the social and labor reintegration of ex drug-dependent. As a condition to acquire Pazo Baión, at least 400 workdays should be offered annually. “It was such a positive experience that our annual average is more than 800 work days for ex drug-dependent persons”, Oubiña says. “Each year, there are about 10 people belonging to this group that work in Pazo Baión mainly in vineyards, especially at harvest time in September. However, some people work in the winery the whole year. They are taking care of gardens, during pruning time, and so on”.

El Pazo de Baión is not the only case in Vilanova de Arou-



sa: as reported by Susana Luaña, another old estate was confiscated in the same year, a hacienda called Vista Real. The property was home to Manuel Charlín Gama, the boss of the “Charlínés” Clan, and his family, who had purchased it in 1991 with monies originating from his criminal activities, mostly drug trafficking. Altogether, the auctioning of assets confiscated from this clan released almost 2.4 million Euros. The most expensive property was an old Galician house, a so-called Pazo, worth more than one million Euros. A few country residences, known as fincas, formed part of the confiscated assets, as well as two barges for cargo. The sales returns amounted to 220 000 Euros each. Media reports suggest that the tax agency as auctioneer expected more and higher bids to come in. One explanation for the low participation rates may be the ongoing presence of members of the Charline Clan in the region. Even the beautiful Vista Real did not seem to be of great interest to bidders: in the end, it was the municipality of Vilanova de Arousa itself who put in the highest offer. The town bought the Pazo to open up a retirement home for elderly people there. The park belonging to the villa was opened to the public soon after its acquisition. The proceeds of the auction is destined to settle the clan’s debts. The gang still owes salaries to 57 employees of their former company Charpo, which was closed in 1999.

### **Gennadi Petrov’s villa in Calvià, Mallorca.**

Gennadi Petrov had a beautiful house: it was spacious, about 500m<sup>2</sup>, and very well-equipped - even the dog kennel was connected to central heating. Such luxury has its price: the value of Petrov’s villa is estimated to be around three

million Euros. The property in Mallorca, in the Avenida de Portals Vells #5, is nowadays in use by Amadip Esment, a not-for-profit organization offering its wide-ranging services to people with special needs.

The basis for the social reuse of Petrov's villa was provided by the so-called Operación Troika, that comprised two years of collaborative investigative efforts conducted by different national agencies that prosecute organized crime – the US-American FBI, the German BKA as well as Russian, Swiss and Belgian investigative forces. Petrov was accused of numerous offences: money laundering, arms trafficking, extortion, drug delivery, forgery, smuggling of cobalt and tobacco. In addition, he was allegedly in contact with different murderers. Since 1988, Spanish investigators have listed Petrov's movable and immovable assets, which amount to 30 million Euros altogether. The investigators also found out more details about the mansion: the money to buy it came from five companies all registered in the fiscal paradise of the Virgin Islands. Tax havens like the Virgin Islands, the Cayman Islands and San Marino are frequently used to launder money from drug trafficking. As a result of Operación Troika, investigators froze 90 bank accounts that belonged to companies without any activity. In June 2008, Petrov was imprisoned in Spain but released on bail later on. Conforming to Spanish media reports the 600 000 Euros were collected in only four days. In May 2012, Petrov was granted permission to attend the funeral of his mother-in-law in Russia. He never came back. The famous prosecutor Baltasar Garzón confiscated the mansion in 2008, but authorities allowed Petrov's family to further use the property. When Petrov did not return from Russia, the

judge Pablo Ruz transferred the building to an organization working with handicapped people, an idea that the *Fiscalía Anticorrupción* de Baleares, the prosecution against corruption of the Balearic Islands, had brought into play. The organization Amadip Esment is now administering the finca. Ten employees with handicaps are working to maintain the premises where the association organizes meetings and offers consultative services. As return service, the NGO has to take on the utility charges report every three months on all activities carried out. Amadip Esment is one of the biggest organizations working with people with special needs on the Balearic Islands and represents, by its own account, about 800 people. In Palmas' city center, it operates a restaurant. In San Ferriol, the association cultivates fruit and vegetables.

**Francisco Javier Martínez Sanmillán's Mansion El Campell in Pedreguer, Alicante, Valencia.** Francisco Javier Martínez Sanmillán, called "El Franky", has been one of Spain's most wanted gangsters. He was born in 1962 in San Pedro Bercianos in the León region and made himself a rich man through the trafficking in drugs. In 1996, he acquired a big mansion, the chalet Sanmillán in Pedreguer, Alicante, located in the district of La Torre in the middle of surrounding farmland. In this tranquil environment, Martínez Sanmillán settled down with his family – his then-wife, his father and two children – and lived there undercover and with false documents. The estate covers an area of about 10 000m<sup>2</sup>. Orange trees encircle the old chalet. Martínez Sanmillán altered the finca in line with his own ideas and needs: in the basement, he installed a sauna, a

Turkish steam bath and a swimming pool. Underneath the basement a bunker was built. The property's value was estimated at 3,5 Million Euros. In 1997, Martínez Sanmillán signed the estate over to a company from Tarragona, namely Loc Sea SL. In the summer of 2006, police arrested "El Franky" after 14 years of clandestine living. Massive security forces closed in on his house. He refused identification and even underwent surgery to deform his fingerprint in order to avoid being conclusively identified. But the investigating officers still managed to uncover his trickery. While searching the house, bills for jewelry amounting to almost 100 000 Euros were secured. In 2007, the property was finally confiscated.

Martínez Sanmillán was sentenced to 13 years of prison in 2009. The verdict was added to an earlier long-term sentence: already in 1992, Spain's national court sanctioned his drug trafficking activities with a sentence of 17 years of custody, but Martínez Sanmillán was able to escape. He was one of 54 individuals arrested during the 1989 Nécora Operation, a massive investigation against drug cartels in Galicia. As has been described earlier, the region is one of the historic places of origin for drug trafficking in Spain: first, the coast with its many hidden bays attracted mobsters to unload contraband tobacco. Later, the Colombian Medellín-Cartel discovered Europe as a market – a welcome investment opportunity as their traditional markets had reached saturation. Besides, did their business in the US come under intense pressure because of the security forces' war on drugs. The cartels therefore started trafficking hashish to Europe and cocaine later on. El Franky was part of this business in Galicia. In 1999, he was convicted for

importing 11 000 kilograms of cocaine and 200 kilograms of heroin. Most of these drugs arrived in Galicia by ship, on board of a boat named Tammsaare.

At first, not only the Town of Pedreguer but also the Region of Valencia showed interest in administering the property. “The idea to socially reuse the confiscated finca was borne by the Ayuntamiento (i.e. town council)”, Andrés Ferrer, former mayor of Pedreguer, explains. “Given that the situation of impasse could go on for years with the consequence of continuous deterioration of the infrastructure, I decided to initiate the legal proceedings for the property and its facilities to be managed by the Ayuntamiento.” Some members of the town council started negotiating with the court and finally achieved their goal of having the court cede the use of the El Campell to the Ayuntamiento of Pedreguer. Prior to the procedure the decision had already been taken that charitable organizations would be the beneficiaries, Ferrer says. “The council had to deal with the demands of the citizens. At that time, the association ADIMA (Association of mentally ill people of la Marina Alta) also needed a place to develop their daily activities.” The town’s administration exposed the situation to all the councillors, he recalls. “They immediately approved of the idea and we invested an amount of 80 000 Euro from municipal funds in order to adequately adapt the facilities to the needs of their new users”. Today, four organizations are working on the premises that once belonged to El Franky: ADIMA, as cited before, is an organization offering services to people with special needs, that, also cultivates fruit and vegetables in the finca’s orchards. AMADEM (Asociación de Amigos de la Marina Alta de Ayuda a las personas con enfermedad

mental), a mental health charity, has its office in Sanmillán's villa and uses the finca's rooms to work with its clients. Other organizations use the spaces more selectively and on a demand basis. A team of archeologists who are excavating a site close to Pedreguer find accommodation at the chalet. Sometimes organized groups of handicapped people come to spend their holidays at the beautiful place.

At present, Mr. Ferrer is working as a lawyer again. However, he still remembers letters of gratitude that he received from these organizations. "I personally feel that this project was one of the most important of my legislature. With a minimum financial investment and much effort in coming to an agreement with the judicial authorities, we obtained a space near the town and seized the opportunity to give a social service to the associations that require such conditions". Esther Escrivà, a psychologist, has been working with AMADEM since 2003. While other groups come whenever they need the space, her organization uses the chalet on a daily basis, she says. "Some of the other associations have other locations at their disposal. We only have this place here." The Municipality of Pedreguer covers all expenses for electricity, water and taxes.

"The allocation of this place to our organization has improved our situation a lot", Escrivà asserts. "We now have much more space available for activities with our clients; we can grow vegetables and fruit in our kitchen garden. In the summer, we use the swimming pool; in the garage, we have installed a gym. It is very quiet, here in the countryside, and that is nice. Most of the people that come here are surprised how big and luxurious the estate is". Every day, AMADEM offers workshops for its clients: sports on

Tuesday afternoons, an arts class on Wednesday mornings, and cognitive stimulation on Thursdays. Some guests come only once a week; some attend several workshops. A few special events such as barbeques are open to the public. Just recently, 250 guests attended the Calçotada on El Campell, a traditional local celebration.

AMADEM is offering its services to people from all over the province of Alicante, a sparsely populated area with scattered villages. The finca is located close to Pedreguer, but still outside the village, lacking any public transport connection. Who wants to get to the facility needs to organize him- or herself a car ride. According to the psychologist, guests from outside the town of Pedreguer are delighted with the estate and call it a “perfect” place. However, not everyone in the municipality shares this point of view. The costs for the property’s maintenance are considerably high as the estate is large and the finca itself is more of a luxurious palace than a holiday cabin. While the community of Pedreguer is bearing the full utility charges for the mansion, other communities are profiting from its use. Some argue that Pedreguer should therefore spend the money on other public services. As far as she knows, the municipality of Pedreguer did indeed ask the regional authority for subsidies, Esther Escrivà says. “It would be easier if all of these communities would work together but it this is hard to achieve. Maybe responsibilities for the estate should not be borne by the municipality alone but be placed at a superior political level, which would be the provincial government.”

But in general, Esther Escrivà is very positive towards confiscation. “I see a lot of advantages. It is also a moral question and an act of justice that the damage drug traf-

fickers caused to society is somehow compensated for by confiscating their illegitimately acquired assets and handing them over to the people.” Is she scared when working in a place that once belonged to a criminal? “No. We have been asked this question before. But the area is very calm and we have never noticed anything strange. It was the Guardia Civil who confiscated the house, now the municipality is its proprietor and the former owner is in prison. The only way to try and get it back would be via legal means. He can’t just come here and take it back”.

**The ship *Laión*, used for drug trafficking, in Mur-os, A Coruña, Galicia.** The Colombian drug cartels were highly organized crime organizations, with their own army and a perfectly organized drug supply chain. In the late 80ies/early 90ies, for example, Canadian intelligence observed these groups importing large amounts of cocaine into Canada by private aircraft or ships directly from the countries of origin and from the US. However, they wanted to fly at higher game and therefore searched for new outlets. The European markets attracted them. To supply their wares, the Colombians applied the same methods for multi-ton-shipments to Europe as they did in Northern America. The Galician criminal networks became their partners in the late 1980ies, according to the criminologists Cyrille Fijnaut and Letizia Paoli. In their book “Organised Crime in Europe: Concepts, Patterns and Control Policies in the European Union and beyond” the authors described this evolution of the process.

Finally, in 2001, Spain became third (after the United States and Colombia) amongst the highest-ranking coun-



tries in terms of cocaine seizures in the world.

On July 4<sup>th</sup>, 1999 during the so-called Operation Temple, Spanish security forces seized ten tons of cocaine on board of the M/V Tammsaare off the Canary Islands. A few days later, they found another five tons of cocaine in Pontevedra and 208 kilograms of heroin in Madrid in two warehouses linked to the same Colombian organization. Both the masterminds as well as the seamen of the Tammsaare were regarded guilty and put to prison. Boats were the major mean to transport drugs. Another boat that transported drugs is the *Laión*. On July 6<sup>th</sup>, 1998 it was searched in international waters and 600 kilogram of cocaine were found on board of the 13-meter long ship. Police forces confiscated the ship together with a sailplane.

The story of the *Laión* turned into a happy ending and a story of friendship: the friendship of Domingo Desio and Ramon Sestayó Lestón. Both of them grew up in the same hamlet, a traditional fishing village close to the place where the *Laión* was confiscated. Both of them always had close ties to the sea. When Ramon Sestayó Lestón heard the news that customs officer confiscated a boat that was used for drug transportation, he immediately decided to take a look at it with some friends of his organization called ADISBISMUR. “We knew the owner of the boat and we knew more or less the drug traffickers in our area”, he said. Nonetheless, nothing could prevent Sestayó Lestón from following a vision: using this confiscated boat in future to empower handicapped people to sail the seas. Thus, he started to talk to people at the ministry of justice and other competent bodies. When there was a call for proposals, ADISBISMUR, like a few other organizations, submitted a detailed

description. A year had passed before the group received a positive answer: The authorities had decided to hand over the *Laión* to Ramon Sestayo Lestón's small organization ADISBISMUR (Asociación de Discapacitados da bisbarra de Muros), which is a member of a bigger organization called COGAMI (Confederación Gallega de Minusválidos or Confederación Gallega de Personas con Discapacidad).

"We were totally surprised that we succeeded", Ramon Sestayo Lestón reported, "but then we drove there to fetch the boat. It was completely out of the water. The double bottom was fully destroyed and all electronic equipment was removed. Yet it was a nice boat, with wooden interior, but...."

The organization subsequently worked hard on its restoration, and then they started to adapt it for handicapped people. Today, its previous owners would probably not recognize it anymore: the elegant sailing yacht is now equipped with a crane. This helps passengers to board who usually do not get any possibility to enter a small sailing boat. People in need of a wheelchair, for example. An electric winch is supporting the steering and the bathroom has been adapted to the needs of its new passengers. Special seats have been installed. All these means had to be newly designed, as there are no precursors for specially equipped sailing boats for people with handicaps such as the *Laión*.

Since almost twelve years now, the *Laión* sails the sea, not with drugs on board, but for the project GAVEA (Galicia Vela Adaptada) and with handicapped people as passengers. The boat has a capacity of ten people per trip. About 3300 passengers have enjoyed a boat ride in the meantime. Six handicapped passengers at a time can stay on board. However, the *Laión* does not only enable handicapped peo-

ple to go on board, but also to take control of the ship and thus get a very new experience. The new owners of the ship have modified the steering to this purpose.

The staff of ADISBISMUR and COGAMI started to organize boat trips for people with handicaps. Initially, they sailed along Galicia's coast. Then they went on further trips and travelled whole Spain, later also France. The Laión and its handicapped crew have also participated in major sailor events on national and international level such as the Gira nautica Costa da Morte, Regatta S.A.R. Infanta Elena and the main race of the Volvo Ocean Race.

Maria Acuña is part of the Laión's staff. "We get in touch with the local organizations and tell them, when we will be at their place, and then we organize the trip together", she says. ADISBISMUR and COGAMI want to bring sailing close to people with special needs and in the same time underline that people with handicaps can play an active part in society. "The organizations want to focus on potentials", Maria Acuña says, "not on deficits. This approach is successful", she says, "Everyone participating in a tour is so enthusiastic about it, that he or she will come back". Galician summers usually being quite short, the Laión is crossing the waters only three months per year. Afterwards, she stays in her homeport in Ares. In April and May, the staff is preparing her for the season.

"COGAMI is financing this project, including my job", states Maria Acuña, "but we do need a lot of sponsoring, too." The crew is working without any salary; usually the ports where the Laión berths at the quay renounce from taking money, too. Still the project costs a lot of money. "We are constantly presenting our project, we are constantly on

tour to find new sponsors and supporters”, Maria Acuña stresses.

“Especially in times of crisis, it is hard to find financial support”, Ramon Sestayó Lestón adds. “As far as I know, the Laión is unique in Europe”, Acuña says. She heard of an Italian catamaran steered by a paralyzed man. Nevertheless, that catamaran has not been confiscated from organized crime. “We hope that our project can be an example for others and we are happy that it is respected also outside Spain”. In Spain, COGAMI is promoting sailing for people with special needs with training seminars for potential boat-leaders. Sailing clubs in three cities are offering these courses in the meantime.

**Conclusion.** “What would we do with a Porsche they give to us? I think it is advisable to consider carefully what can be useful to achieve a goal and what not.

Sometimes organizations tend to accept any offer they get while they should keep their feet on the ground. For instance, a boat like COGAMI uses would ruin my organization”, says Juan A. González Pérez, director of Foundation Erguete. “We have to distinguish between those items useful for organizations. The rest has to be auctioneered and the funds should be given to organizations for developing charitable projects”. The quote is an answer Juan A. González Pérez, President of the Fundación Erguete, gave in an interview. It highlights some central aspects of the confiscation of criminal assets in Spain. First, it stresses the singularity of every case.

There is no fits-all-solution dealing with confiscated assets. That makes it so complicated. On the one hand, we

have an asset meant to be used for specific purposes. On the other hand, we have an organization with its needs. In most cases it is not instantly clear how both can be combined.


The social reuse of a confiscated asset always has to be individually assigned. A difficult process, laborious and, in economic terms, costly. At this point individual commitment becomes important. As the example of the sailing ship *Laión* shows, to successfully reuse confiscated assets for social purposes requires the creativity of individuals. Specific ideas are necessary to lead to promising projects and they have to be adapted to a specific local context with specific local needs.

If Domingo Desio and Ramon Sestayo Lestón, for example, would not have had the idea of using the *Laión* for persons with special needs, project GAVEA would never have come into being. The confiscating authorities, though, have to keep close contact with charity organizations to guarantee a successful reuse. It is equally important to take a close look at the post-confiscation stage and the distributed assets. Not only in terms of controlling if goal of the intended designation has been met, but also in terms of supporting the social organizations in their efforts.

Not only the beneficiaries of confiscated assets, but also the disposers contribute with their individual commitment to the successful reuse of a confiscated asset. Many charitable projects would not have been possible without the best efforts of Baltasar Garzón. Many Interviewees named the judge. Surely, Spain can be a model for other European member states.

# FRANCE

*Riccardo Christian Falcone*



**Against mafia in France.** Niccolò is 32 years old. Since 2010 he lives in France, in Paris, where he got a doctorate in history of the countryside and agriculture, which has led him to explore the topic of cooperation. But his heart beats also for his country, Italy. In Novara, where he was born and grew up, Niccolò Mignemi has brought his desire to fight against mafia and lawlessness. Thus, together with a group of girls and friends, he decided to carry the flag of Libera across the Alps. Started in 2007, through the efforts of Maria Chiara Prodi, currently president of Libera France, the experience led to the formal establishment of the association in June 2013. He is its treasurer. This antenna wants to remind everyone, even to the French people, that the mafias are no more just an Italian problem; that criminal organizations have learned to internationalize, to follow routes that do not pay attention to borders and languages anymore. Anywhere it is possible doing business, wherever it is possible launder money, the mafias can get there. And

they arrive.

In France, Libera tries to export the keywords which are its true essence: memory and commitment. A concrete commitment to build a new level of awareness of the pervasiveness of the global mafia. «The French» Niccolò tells us in a conversation through Skype «continue to believe that the problem of mafias is not their problem, that France is not Italy». As this conviction is a stereotype, however investigations and international researchers have witnessed the significant presence of the mafias on the French soil: Camorra and 'Ndrangheta for decades have taken root across the Alps. And they have accumulate wealth. They did in by investing in enterprises such as bars, restaurants, and clubs. But even in the world of construction. «Since time we have been committed to strengthen in France the idea that the confiscation of the assets is the real frontier of the fight against the mafias» says Niccolò «We do this by raising awareness through initiatives that are often related to the world of school and education. However we are facing with the absence of specific legislation and especially with the difficulties associated with the attempt to introduce in the legislative system, the principle of social reuse». The recently adopted EU directive could somehow give a new impetus to the debate on this issue. But the challenge, as confirmed from Paris, it's all open and presents many difficulties.

**The legislation in force.** The mainstay of the French legal system in the confiscation of the assets is the Law 2010-768 of 9 July 2010, established with the specific aim of modernizing and facilitating the procedures for seizure and confiscation of the proceeds and instruments of crime.



The new legislation has intervened to clarify some existing articles of the Code of Criminal Procedure, making it faster and more efficient, affirming the conservative nature of the seizures and expanding the scope and type of assets that can be seized and confiscated: movable and immovable property, as well as intangible assets such as bank accounts. The law of 2010 also established the Agence de gestion et de recouvrement saisis et des avoirs confisqués (AGRASC), a public administrative body that operates under the joint supervision of the Ministries of Justice and Finance. The organization Agency and its function were detailed in two circulars of the Ministry of Justice: the circular dated 22 December 2010 and the circular dated 3 February 2010. The Agency's role is essentially to improve the judicial treatment of seizures and confiscations in criminal matters. In addition to these functions, the Agency also plays a general role of support, advice and orientation on seizure and confiscations. The legislature has in substance intended to entrust the Agency a role of coordination and centralization of procedures, ensuring good management of property that is under seizure subsequently, final confiscation. The Agency is also responsible for the transfer of the proceeds of sale of confiscated property to the general budget of the State, for a number of programs of information and education and to maintain a centralized national database. It's interesting to see the list of crimes punishable by confiscation; from crimes against humanity to human trafficking, exploitation of prostitution, terrorism, drug trafficking to money laundering, child pornography and counterfeiting. In general term, the French penal system has established an effective mechanism which gave significant results. Remain

open, however, some important issues. First of all there isn't the Italian mechanism of administrative confiscation. This tool is essentially a criminal nature and to seize certain property, it is fundamental demonstrate that it is the result of an infringement. Moreover, from the point of view of the destination of assets, the legislation does not contain specific provisions regarding the function of the assets after seizure and confiscation, their destination and their assignments. More in particular, the French system does not contain specific provisions regarding the function of these assets after seizure and confiscation, their destination and their assignment neither a specific rule related to the social reuse. A mechanism that can remember the principle of social reuse introduced in Italy by Law 109/96 with regard to seizures and confiscation for crimes related to drug trafficking. Proceeds from sales of confiscated property to persons punished for crimes related to drug trafficking in France contribute to feed a fund that partially finance public projects and services aimed at combating drug trafficking. The funds are managed by the Interministerial Mission for the Fight against Drugs and Drug Addiction (MILDT). A very interesting case that in some way, may be an important precedent for future and desirable extension of the principle of social reuse in other areas and to other types of crime including even those of mafia association.

**The role of civil and organized society.** «The point» Niccolò tells us «is that it lacks a specific policy initiative on the issue of confiscated assets and their social reuse». And this affects the actual opportunity to give life to a similar law such the 109/96, the law of popular initiative that in

Italy introduced the ethical principle of social reuse and the return to the community of the assets that the mafias build illegally on the blood of innocent victims. «Some attempts to bring the issue to the public and to the political attention have been made and are being made» says the activist of Libera France «but it is clear that here, in France, anti-mafia issues have not the same impact which has characterized the action and the mobilization of the Italian civil society and later the legislature». From this point of view it must be reported however the initiative of Marcel Hipszman, involved since time in the French social economy organizations and member of the international organization Culture contro la Camorra, in order to introduce an amendment to the draft law on social economy and solidarity which is currently under discussion in the Assemblée Nationale. It is an important task, especially in a moment in which «the world of the social economy» says Niccolò «are trying to get greater recognition through a specific legislative action which is attracting the attention of public opinion and policy on these issues». In the framework of the law 2010-768 and in application to the recent European directive, the amendment would allow the social reuse of assets and resources, definitely confiscated, thanks to a coordinated action between AGRASC and public institutions on the territory.

If the presentation of the amendment does not succeed, the idea is still to take the initiative forward in another form, wheatear it be a specific measure or within a different legislative project (for example, a financial law). Anyway, the project is to transform the seized assets into an opportunity and in a concrete resource able to strengthen the social economic organizations. Libera France intends to collaborate

and accompany this project in the future, although it is a somewhat different perspective comparing with that one which underlies the intervention of social enterprises in the process of social purpose of confiscated assets in Italy. Here the world of cooperation and social economy has become an irreplaceable tool in the management of assets, creating so new job opportunities, development and ultimately, wealth, without ever losing sight of the commitment and the educational function of social reuse within the horizon of combating mafias.

In short, the idea that organized crime can compensate the civil society is new in France. This is demonstrated by the fact, certainly significant, that to promote campaigns and events to raise awareness on these issues in France, and especially in Paris, is for the most a group of Italian volunteers who gathered around the experience of Libera, with the aim of building up a network of relationships around the anti-mafia issues. The experience of the presidium Libera led by Maria Chiara Prodi, and accompanied by the experience of Ethicando: born from an idea of Caterina Avanza and Ludovica Guerreri, the shop has helped the dissemination of products born on land confiscated from the mafia in Italy and the result of the work of cooperatives in prisons. It was also an usual place to meet and to study anti-mafia topics, confiscated assets and perspectives of modernization of the legislation beyond the Alps. Here have been organized debates, conferences and seminars, thanks to the effort of Flare, the international network of Libera. The three initiatives “Libera France, Flare and Ethicando” have always worked together in a joined effort based on sharing the same project. «The concept of confiscation here in France is different» explained Ludovica and Caterina in an interview published some time ago by Linkiesta «because

it a criminal confiscation and non-governmental as in Italy. And we are very distant in terms of figures: here are confiscated assets for about 300 million euro per year, which goes mainly to the police and the Ministry of Justice». In Italy, however, as is well known, the confiscated property has a huge economic value and are reassigned to local municipalities, cooperatives and associations. A disproportion which is explained through the diversities of social and economic contexts. This is well known by Fabrice Rizzoli, for years engaged in Flare. «The preventive seizure» explains in the interview «allows to order the confiscation of the assets without waiting for the criminal conviction of the owner. This is a procedure declared in conformity with the presumption of innocence by the European Court of Human Rights. Indeed the justice allows the owner to prove any time that the confiscated assets have been purchased with legal funds. In contrast, with the criminal confiscation, justice has to prove that the assets are the result of a crime committed by a person. And this is difficult to prove in order to ensure the presumption of innocence». Together with a group of Libera and through a series of contact and initiatives promoted by the European network of Cultura contro la Camorra (Culture against Camorra) and by Observatoire de Geopolitique des Criminalites (OGC), Rizzoli has put several times to the attention of the French public opinion, the theme of social reuse of confiscated assets.«The fact» explains Nicolò Mignemi «is that even here there is a different way of understanding and living the relationships between citizens and institutions, State and an autonomous action of civil society». We ask him to go deeper on this point, which is crucial in the perspective of civil society pressure compared with the possibility of reaching an agreement on a new and more stringent legislation on the topic of confiscation and

social reuse, as it happened between 1995 and 1996 in Italy. On the issue of the fight against organized crime, for example, the impression is that in France there is often a tendency towards delegation of the intervention and of the repressive action of the public authorities. In substance, lacks an idea widespread of social anti-mafia. «To do this we have to add a general mistrust, even by progressive forces, regarding to what is the European Union. Do not forget, from this point of view, the victory of “NO” in 2005 referendum on the European Constitution».

Niccolò tells us it to explain why, according to him, it will not be easy either the recently adopted EU directive on assets confiscation bear fruit quickly. In the meantime, however, should not be neglect that sometimes appears in the public debate the topic of confiscation of the so-called “bien mal acquis” in France, that is wealth and personal fortunes illegally accumulated by powerful people and by their families within the context of dictatorial regimes, especially in countries of the south of the world. About French people Niccolò ends «these issues have probably more importance rather than confiscated assets and social reuse».

Well, certainly in France we are not at year zero. Yet it is quite a strong feeling that there is too much to do for a real leap in quality that points, in particular, to introduce into the social conscience as well as in the legal system, the ethical principle of assets social reuse in order to return to the society what the mafias have taken illegally. It is a feeling in some way enhanced by the difficulty with which Niccolò replied to our request to tell us some very significant experience related to the world of confiscated assets. The presence of Libera and few other associations, always at-

tributable to the Italian experience, and engaged in processes of awareness is, from this point of view, a sign of hope. Certainly it is necessary to insist why, beyond the specific topic of confiscation and social reuse, the problem is mainly to convince the French, like many other Europeans, that the mafia problem affects them more than they can feel it. And not from today, but since thirty years, when some boss of 'Ndrangheta and Camorra, set their foot on French soil tightening and strengthening collaborative relationships and businesses with local organizations, including in particular that with Marseilles. Despite some signs of attention on the issues of organized crime, including the establishment in 1992 of a parliamentary committee, the sensitivity of this issue has been and is still warm. Strengthen this sensitivity will be the indispensable precondition to germinate a more vigorous political initiative that reaches awareness awareness of the problem and decides to deal with it in a more determined way. In this game, the role of the civil and responsible society will be crucial. This is demonstrated by the Italian case, where the half-heartedness, the silences and the delays of politics and institutions have been balanced by a truly, efficient and effective action of organized citizens.



# BELGIUM

*Sandro Mattioli*



**Organized Crime in Belgium.** According to Eurostat, Belgian police recorded 1.073.773 crimes in total, including 182 homicides and 120.362 violent crimes. 101,2 persons per 100.000 inhabitants were imprisoned in 2010. 12 561 cases of drug trafficking were registered in 2010 according to Eurostat.

In its annual report of 2010, the Belgian civilian intelligence service Sûreté de l'État, defines Organized Crime as follows: « Par organisations criminelles, la loi entend « toute association structurée de plus de deux personnes, établie dans le temps en vue de commettre de façon concertée des crimes et délits, pour obtenir, directement ou indirectement, des avantages patrimoniaux, en utilisant l'intimidation, la menace, la violence, des manœuvres frauduleuses ou la corruption, ou en recourant à des structures commerciales ou autres pour dissimuler ou faciliter la réalisation des infractions. » which, roughly, translates to English: “By criminal organizations, the law understands “any organized group of

more than two persons, established in order to premeditatedly commit crimes in order to obtain, directly or indirectly, any pecuniary gain by means of intimidation, threats, violence, fraud or corruption, or by using commercial or other structures to conceal or facilitate the offense.” The cited report attributes a number of different activities to organized crime groups: trafficking in human beings, illegal immigration, forgery, bribery, money laundering, arms trafficking, drugs trafficking or trafficking in diamonds. In the original report, this inventory is followed by “...”, meaning that the given list is incomplete and extendable.

In 2012, two journalists of *Le Vif*, a Belgian magazine cooperating with the French journal *L’express*, published a document revealing some numbers Belgian authorities are dealing with:

1. Sexual exploitation: of about 23.000 prostitutes counted in Belgium, 80% of whom are victims of exploitation and 10% of extreme exploitive conditions [...]. The turnover of this sexual exploitation is estimated at € 1.9 billion per year.
2. Economic exploitation: in 2009 (latest figures available), 2.963 illegal foreign workers were identified through checks carried out by social inspection services. Though it is estimated that there are at least 21.000 illegal workers in Belgium. Hotel and catering, housecleaning and transportation are the most affected sectors.
3. Trafficking in human beings: in 2009, almost 30.000 people were intercepted and the phenomenon is constantly evolving. IPNS, the national security police’s overview,

highlights the growing number of criminal organizations involved in human trafficking particularly those with Chinese, Indian, Afghan or Belgian-Dutch backgrounds.

4. Computer crime: the number of cases recorded by the police increases by 28 % each year. In 2010, more than half of all Belgian internet users have experienced at least one computer virus spread by malware. The financial loss attributed to this crime perpetrated mainly by organizations from China and Eastern Europe is calculated to amount to approximately one billion Euros. Modern information technologies such as the internet offer new opportunities for criminal organizations, including the distribution of illegal goods or the recruitment of henchmen.

5. Cocaine trafficking: with 13 tons of merchandise and a turnover of 430 million Euros, Belgium is one of the leading importers of cocaine in Europe.

6. Burglary: 90.000 cases are recorded each year, which estimatedly corresponds to only 40% of all cases. 22,000 offenses are comitted by so-called nomadic groups.

7. Trafficking in synthetic drugs: Belgian-Dutch organizations are heavily involved in the synthetic drugs market: each year 22 tons of amphetamines and 18 tons of ecstasy are poured onto the world market as finished products, which exceeds local consumption by far.

200 different criminal organizations were identified in 2009 by way of police investigations. <http://www.levif.be/info/>

[actualite/belgique/crime-organise-voici-les-vrais-chiffres/article-4000132537789.htm](http://actualite/belgique/crime-organise-voici-les-vrais-chiffres/article-4000132537789.htm)

This list is organized according to the severeness of the crimes, meaning that the most alarming activity is listed first. It is not very much surprising that no so-called white-collar crimes form part of the catalogue, as, for example, investments in real estate with a criminal background. Moreover, the extortion of protection monies does not seem to be amongst the biggest problems caused by organized crime. However, these statistics do not make any reference to the hotspots of organized crime. But publicly available data on this topic is scarce. Journalists complain that it is becoming harder to obtain information. Some sources claim that this was easier some years ago but apparently authorities have become more rigid in the meantime. There have also been cases of journalists whose houses and offices were searched by police in order to find out who their informants were. In Belgium, only a few journalists occasionally report about organized crime, two of whom may be called experts, namely Joris van der Aa and Douglas Coninck. Only a few scholars are dealing with organized crime topics, among them Cyrille Fijnaut, professor for criminology at the University of Tilburg who authored one of the standard works: “De Italiaanse Maffia in België”. Another important academic in the domain of criminology is Letizia Paoli from the University of Leuven, author of a book on confiscation in Italy. Unfortunately, none of the two continues to investigate the issue. Frank Verbruggen, professor for criminal law at the University of Leuven and expert on organized crime also deals with problems concerning confiscation.

According to Joris van der Aa who has been writing about the topic for more than a decade, there are a few hotspots of organized crime in Belgium: “If you’re talking about Italian organized crime you have some groups in the South of Belgium, near Charleroi and Liège, who have more or less links with Italian organized crime. Other groups are present in the North of Belgium, in the Flemish speaking parts, in Limbourg, the province with the border to Germany and the Netherlands. And of course you also have organized crime groups in Brussels and Antwerp”.

Joris van der Aa was among the first journalists in Belgium to report on organized crime. He co-authored “Georganiseerde misdaad in de lage landen. Over Oude En Nieuwe Georganiseerde Misdaad In Nederland En België” (Organized Crime in the Benelux-states. About old and new organized crime), a collection of reportages and analyses written together with his Dutch colleague Koen Scharrenberg and published in 2011. In spite of its relatively small territory, a mix of a few different groups is present in Belgium, says Joris van der Aa: “There is a significant presence of Russian speaking organized crime groups in Antwerp.

Their activity was more intense during the 90ies. In the years after the Iron Curtain fell a lot of Russians came to Antwerp. They already had a base there but many Russians invested their money in real estate then. Maybe you know Ricardo Fanchini; he was quite a relevant criminal. He had Polish and Italian roots, but he was active in the Russian Mafia, he was also active in Berlin and in New York.

They were involved in drug trafficking, but also cigarette smuggling, alcohol. Then there are the drug trafficking groups from Albania. There is a lot of activity also coming

from Holland, the presence of synthetic drugs as ecstasy, then cocaine and of course cannabis, hashish, too”.

Douglas De Coninck, another writer with a focus on organized crime, describes Belgium as “a country that is very generous for OC, a very open border country”. De Coninck is working for *De Morgen*, a daily newspaper from Asse, located not very far from Brussels. Lately, De Coninck says, there have been some significant changes as, for example, in the nightlife of Brussels. Albanian groups were overtaking bars, which were previously owned by Belgians. “They created a lot of tension, they go for prostitution, drugs, very local, on a very small scale, but very visible”.

Next to Brussels, there is one very specific hotspot of organized crime: Antwerp. Like every other seaport, the coastal city attracts a number of criminal groups. Following Rotterdam, Antwerp’s port is the second largest in Europe.

Ports do play an important role for all kinds of illegal trafficking. About eight million containers pass through Antwerp’s port annually and only a marginal proportion, namely 1, 2 per cent, are checked.

Consequently, no authoritative statistics or forecasts are available and it is impossible to construct serious estimations regarding the scale of all illicit imports. The city’s port serves as one of the main transition routes between Europe and South America, which makes it an indispensable part in organized crime’s supply chains. Antwerp has been a hotspot for drug smuggling, but also for counterfeit cigarettes import and arms trafficking. Until 1997, world-famous arms trafficker Victor Bout used the city of Ostend as a base for his activities. He was arrested on a Belgian warrant – not for arms crimes but for passing counterfeit

money.

Joris van der Aa remembers one spectacular case of drug trafficking: “Antwerp is a hotspot of drug trafficking in Western Europe. You do have the traffics in Holland, but there is also this harbor. I can give you some ciphers: 2012 Belgian police seized more than 80 tons of cocaine in the harbor of Antwerp, which is almost a world record. The biggest seizure counted eight tons at one time. That’s enormous. A corrupt Belgium customs officer was involved in that organization: They had someone at the center of the customs who said that containers had been cleared and controlled while they were not. It was a sort of cocaine pipeline they were running”.

Brussels-based magazine *Mondiaal Nieuws* cites the spokesman of the Belgian Federal Department for Finance, the authority responsible for customs, Francis Adyns, on this topic: “A classical rip off only lasts a few minutes. Cocaine is usually packed in sport bags. You cut the fence and enter a terminal where thousands of containers are stored, looking for the one which contains drugs. It is crucial to know where it is located. We presume that some dockworkers earn an extra income once in a while.”

Furthermore, Antwerp is a city where many diamond traders settled who bring along their own type of crime, as Douglas De Coninck states: “The diamond industry almost never pays taxes, they commit tax frauds within the diamond business. And what they also do is that they rob themselves. It’s a public secret. They do this to get the insurance money”. In fact, Antwerp serves as base for diamonds smuggling. They are used as currency to pay arms shipments and deals. They also provide means for money

laundering activities; reports on this topic are numerous. Does organized crime also invest in legal businesses? Joris van der Aa says yes, they do: “Let’s say: if you speak with people from the police they see there’s a growing amount of money invested in legal businesses. One of these businesses is real estate. But we also had cases of Russian criminals investing in the oil industry. I remember a case that Belgium police seized an oil refining company in Russia, they seized complete oil fields in Russia as well because it was financed with money that was laundered in Antwerp”.

He also remembers other cases as, for example, large-scale investments made by organized crime groups in the communication sector. An obvious but important fact to acknowledge is that agriculture is not among the activities of organized crime in Belgium, which makes a big difference in comparison to organized crime groups in Italy.

**Confiscation in Belgium.** Surprisingly, it is not Italy who is the real pioneer of the social reuse of confiscated assets, even though the Southern European country became famous in this domaine because of the NGO Libera, an organization that cultivates fruit, grain and vegetables on confiscated agricultural land that used to belong to Mafia clans. No, the real pioneer is Belgium, as Frank Verbruggen, professor at the Institute of Criminal Law of the University of Leuven, explains. As a matter of fact, Belgian legislation had permitted the social reuse of confiscated assets in the early 20th century: one specific law dates back nearly one hundred years, to the 1920s, and it was only applicable to gambling houses. “In Belgium we don’t have many cases in that field”, says Verbruggen, admitting that he is not fa-



miliar with the details of this specific issue. “I only know it because it is always used as a historic example. It is the only case in which real property could be confiscated before 1990.”

But ‘social purposes’ in this case does not refer to the handing over of confiscated property to non-profit associations or private foundations. Instead, the law foresaw the municipality of the city or village to become the new owner of the former gambling house. According to Verbruggen, a so-called Council for Local Welfare would become its new owner. The council, which existed in every city, was itself however not obliged to put the house to a use but was free to decide to sell the building and use the profit for social purposes. Yet, this law hardly ever was applied. But does its referencing in scientific literature mean that the social reuse of confiscated assets is at least discussed within the Belgian scientific community ? No, that is not the case, states Verbruggen, “not at all.” As in most EU member states it is not much of an issue in Belgium.

In addition, there is a law in the Flemish region that enables confiscated assets to be reused for social purposes, but it is limited to real estate. The Flemish House Decree allows municipalities as well as public welfare centers and social housing associations to manage confiscated houses in this sense. But the story is more complicated because there is no change of ownership: the municipality is given the right to temporarily manage the confiscated building – for up to nine years only. So far, there has been not a single example of confiscated organized crime real estate used for social purposes. The social reuse of confiscated buildings does exist, but these were not part of criminal organizations’

property and confiscated for other reasons. In general, the Belgian rationale of confiscated criminal asset management is to sell them as quickly as possible.

One detail in Belgian law is particularly interesting: a fund for victims, as Douglas De Coninck describes it. In its final report, the Special Committee on Organized Crime, Corruption and Money Laundering, the so-called CRIM commission established by the European Parliament “encourages the Member States to promote the reuse of seized criminal assets for social purposes such as redirecting these proceeds to victims and communities which have been devastated by drugs and organized crime, and to use them to fund crime fighting locally as well as cross border actions by law enforcement agencies, and suggests that funds be released to finance measures to keep those assets intact;”

To some extent Belgian law corresponds to this appeal. Asked if social reuse for confiscated assets does exist in Belgium, Douglas De Coninck answers: “Oh, no, I can assure you that this is not the case. But it sounds like a terrific thing. What happens in Belgium is that we do have public funds for victims. I should check it, but in a way you may see confiscated goods in sort of balance where you have the criminal money confiscated on one side and these public funds for crime victims who can’t be compensated by the opposite party on the other side. These victims are then paid by the Belgian state. So it exists but it only takes a few more procedural steps. But maybe both concepts are not completely comparable”. Joris van der Aa, on the other hand, does not see the necessity to socially reuse confiscated assets: “I think there’s no real need for this in Belgium”, he says.

One problem may be that the perspective on social reuse

of confiscated assets by those who read about it seems to be dominated by the idea that the Italian association Libera incorporates, which relates to the cultivation of fruit and vegetables on confiscated land. But there are many other possibilities to put seized assets to a socially beneficial use. The Sicilian anti-racketeer organization Addio Pizzo, for instance, has set up its headquarters in a former mafia warehouse. The NGO Osservatorio sulla 'Ndrangheta in Reggio Calabria has been assigned a villa that once belonged to a mafia bosses' property where nowadays the organization is administrating the Museo della 'Ndrangheta.

As stated by Frank Verbruggen, confiscation in Belgium is mainly perceived as a form of punishment – which seems understandable due to the fact that in Belgium confiscation is a penalty that follows conviction. A look into the *Crimineel Klachtboek* in the archive Leiden, where every court decision from 1533 to 1811 is recorded, reveals that already in the 17th century confiscation was used for punishment, together with branding, flagellating and expulsion.

During the last decade, Belgian judiciary has developed a well-functioning confiscation system. Not only was the Central Office for Seizure and Confiscation established, but legislation was adapted to new challenges as well. An OECD report on bribery concludes that Belgium has a “highly developed confiscation system”. Belgian judges are regularly imposing confiscation on convicted individuals, states the OECD. From 2001 to 2003, one out of four corruption cases related to Belgian public officials involved measures of confiscation.

Generally speaking, confiscated assets end up in the general budget of the Belgian state. But conforming to Frank

Verbruggen, a “critical view of confiscations as just another means of the Belgian government to get money” is not infrequently put forward. The professor for criminal law points to the downside of confiscation. On one hand, Belgian laws appear quite progressive: under certain conditions they even allow for a special form of extended confiscation. But unfortunately, things are not as bright as they appear. According to Verbruggen, “quite often assets are not actually cashed, either they’re abroad or they’re gone or whatever”. Therefore, he designates these incomplete confiscations “symbolic” acts. But this is what they can be called in Italy, too, as the social reuse of confiscated assets adds a great symbolic momentum to the entirely legal act because it demonstrates a shift of power, away from criminal Mafia clans to an actively involved civil society.

Verbruggen however rather hints at the apparent deficits of the system, saying that these confiscations do exist only on paper, not in practice. “In many cases, the assets haven’t been seized before the trial. Once you have the confiscation, you have to go look for the assets and by then they’re often gone, hidden or transferred”. To avoid this situation, a new law has been discussed and voted, though it has not yet been published in the official bulletin and therefore still awaits its coming into force.

This new piece of legislation will offer a variety of instruments to law enforcement authorities to conduct financial investigations after the conviction of a criminal. “Then the Belgian police forces will have special investigative powers to look where the money has gone or where the person condemned might have some hidden assets.” Police may then use different methods to retrieve those assets, such as

wire-tapping or investigating bank accounts.

The new law enables security forces to do the same, checking bank accounts, for example, not only for the person condemned, but also for those close to the individual. “This law has been quite controversial because it gives a lot of power to the police and other investigative authorities to do that kind of inquiries”, Verbruggen summarizes. And still, this remains distant from Italy’s practice regarding its comprehensive and far-reaching legislation on confiscation – but, nevertheless, it is a step in the same direction.

Joris van der Aa remembers some interesting cases of confiscation: “In some years, Belgian police confiscated more than two hundred million Euros of assets. It varies from year to year. If you have one very successful year, then your ciphers will explode. In some years, it was 70 million Euros, in some years it was 100 million Euros.

In some record year, it was more than 200 Million Euros; that had also to do with one big fraud scheme they were investigating: a suspect invested its money in real estate but also in arts, so there were a few works of Picasso confiscated. And in this year, of course, you see this in the results”. Van der Aa tells a story about a confiscated Ferrari, too. He speaks of about two dozens of luxury cars that were confiscated and brought to a hangar used by the COSC, where they are stored before being sold. “I don’t see any social use of a confiscated Ferrari, nor of luxury apartments or diamonds that were confiscated”, he admits.

Unfortunately, statistics about confiscated goods and their utilization are not within the public domain. As the following correspondence with a COSC officer illustrates, it was impossible to obtain valid data on this topic: “Dear Sir,

- If there are any statistics on confiscated goods in Belgium you could send me, especially interesting would be how many cases of confiscations were done in foreign countries, as this is a special case. No statistics available on national level in Belgium.

- How high the amount of money is which the Belgian state released by selling the confiscated goods, either in the last year or since the beginning of this year, or the last five years etc.

Unknown.

- If there is any reuse of confiscated assets for social purposes, and if so, which assets have been confiscated and how they were used afterwards.

All confiscated assets for the Belgian State are dealt with by Finance department (Receiver). There is no legislation in place that makes reuse possible for social purposes”.

### **The confiscation of assets in Belgian newspapers.**

The number of newspapers in Belgium is – in absolute terms – not very high: about 30 different newspapers are published and printed in the country. But considering its population of 11 million inhabitants, Belgium does offer a broad and quite diverse media landscape. Due to Belgium’s ethno-linguistic distinctiveness, newspapers are published in Dutch, in French and some minor newspapers in German.

As a result, it is not surprising that one won’t find much reporting on the topic of social reuse of confiscated assets in Belgian media. It does not make a difference whether the archive of Belgium’s biggest and Brussels-based newspaper *Het Laatste Nieuws*, with approximately 290 000 copies printed, is searched, or those of smaller newspa-

pers, nor whether the analysis focuses on newspapers in organized crime hotspots like Antwerp (Gazet van Antwerpen, [www.gva.be](http://www.gva.be)) or on those of less urban areas of Belgium – there are no reports to be found about the social reuse of confiscated assets of organized crime groups in Belgium, not even a debate about the concept of doing so. What can be traced are, in fact, a few articles describing the Italian model of reusing confiscated assets for social purposes as well as some reporting on Libera's experience, Italy's biggest network of organizations working with confiscated assets. One story, for example, cites a Libera project in Corleone where patients of a psychiatric clinic are working on confiscated agricultural fields:

“They were formerly called the ‘mad cooperative’.

Thirteen people, including five psychiatric patients, who run a farm in the town of Corleone in Sicily. What makes the cooperative even more fascinating is that they work on Cosa Nostra's land. That way, the cooperative is also a weapon in the fight against the Mafia. “In the beginning our friends kept avoiding us. So were our children. They called us crazy cooperative”, said Francesco Ancona, a member of the *Lavoro e non solo* (“Not just work”) cooperative. They grow corn, tomatoes and chickpeas, cultivate almond trees and a vineyard. But that is only half of the story.

The other half is that of the Mafia. “Every morning we need to pass through the lands of a notorious mafia boss to get to our fields”, says Ancona. *Lavoro e non solo* was created in 1998 to resocialize psychiatric patients back into society with the help of agricultural activities. Since the year 2000, the cooperative has obtained 15 acres of land that authorities have seized from the Cosa Nostra, the Sicil-

ian mafia. ‘Our work with psychiatric patients has a social function’, says Ancona. ‘But we also want to promote an anti-mafia culture in our region [...]’ (<http://www.hln.be/hln/nl/960/Buitenland/article/detail/1112270/2010/05/31/Psychiatrische-patienten-worden-boer-op-maffiagrond.dhtml>).

In some articles, Belgian media also informs its readership about other Italian Anti-Mafia-NGOs, particularly in Sicily. Addio Pizzo, for instance, is mentioned, an association that engages in anti-racketeer work. Confiscation itself is a recurring topic in all of the analyzed newspapers.

One article that was published by “Sud Presse” also demonstrates the generally positive attitude towards this legal instrument. This specific newspaper is located in Namur, a city with 110 000 inhabitants in the southeast of Brussels. Measured by readership it is Belgium’s fourth largest newspapers: «Peines de prison et lourdes confiscations pour cinq Tournaisiens poursuivis dans le cadre d’un trafic de drogue». «Le tribunal correctionnel de Tournai a condamné, mardi, cinq jeunes Tournaisiens poursuivis dans le cadre d’un trafic d’héroïne et de cocaïne sur Tournai, entre juin 2010 et novembre 2011. Si le tribunal s’est montré relativement clément sur le volet pénal, le montant des confiscations est énorme: 843.640 euros» “Five Tournaisiens prosecuted for drug trafficking sentenced to prison and heavy confiscations”. “The Criminal Court in Tournai on Tuesday sentenced five young Tournaisiens pursued for heroin and cocaine trafficking in Tournai between June 2010 and November 2011.

Even if the court was relatively mild on the criminal case, the value of confiscated assets is enormous: 843,640 euros!” (<http://www.sudinfo.be/785312/article/regions/tournai/ac->



*tualite/2013-08-13/peines-de-prison-et-lourdes-confiscations-pour-5-tournaisiens-poursuivis-dan 14.08.2013, retrieved 28.3.2014).*

Obviously, the exclamation mark emphasizes the large amount of money that public authorities were able to seize and how this comes as a positive surprise to observers.

In conclusion, it can be summarized that: *A.* There is only basic knowledge about the social reuse of confiscated goods in Belgium. Whenever social reuse of confiscated assets is discussed, it is exclusively related to Italy's practice.

To be more precise, media reporting on the topic is limited to practices in Southern Italian regions that have been negatively impacted by criminal activities of the four largest Italian organized crime groups, the 'Ndrangheta, the Camorra, the Cosa Nostra and the Sacra Corona Unita. *B* The idea of promoting the social reuse of confiscated assets as practiced in Italy does not seem to be an issue in Belgium.

It is not easy to understand the conditions that lead to this situation. Paradoxically, European politics are generally not paid too much attention by the Belgian population.

This also means that the efforts of the European Commission to adopt and implement a framework for confiscation and, in addition, the social reuse of confiscated assets may be unknown to a wider audience.

So far, there is no lobby for the social reuse of confiscated assets in sight, neither as a part of Belgian civil society nor in the national political sphere. The newly formed NGO *Cultura contra Camorra* engages in the fight against organized crime but tries to have its voice heard in EU rather than Belgian policy making.

To mention another important aspect, Belgium as a welfare state is perceived as such, contrary to Italy where wel-

fare is traditionally perceived to be a private responsibility that remains within family structures. In addition, trust in public authorities in Northern Europe is generally higher than in Southern Europe. We will get back to this later. To understand why the social reuse of confiscated assets is hardly considered, a closer look at organized crime groups in Belgium is needed.

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