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## Research Article

# INTERNATIONAL LEGAL ASPECTS OF SEARCH AND REPATRIATION OF ILLEGAL ASSETS

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## ABSTRACT

The article analyzes the international legal aspects of the search and return of illegally exported or stolen assets. When analyzing this topic, attention is paid, first of all, to the processes and methods of asset recovery, thereby studying the international experience of states and organizations in countering money laundering, attaching importance to the role of the international regulatory framework on this issue, for example, the UN Convention Against Corruption. Also, the issues of trends in the search and repatriation of illegally exported assets and legal regulation in the Republic of Uzbekistan were considered. In addition, the article provides international statistics on the volume of bribes received annually by officials in developing countries and countries with economies in transition. The main purpose of the article is to reveal the legal essence of the international legal aspects of the search and repatriation of illegally exported assets. Based on the research done, a legal conclusion was made on the scientific topic of the article.

## KEYWORDS

International cooperation, anti-money laundering mechanism, international experience, repatriation of assets, corruption offense, fight against corruption, international organizations, UN Convention against Corruption, StAR Initiatives, FATF recommendations, the trend of search and repatriation of illegally exported assets, legal regulation in the Republic of Uzbekistan.

**“With corruption, we will never be able to achieve our goals”**

**Sh.M. Mirziyoyev**

## INTRODUCTION

### Search and repatriation of stolen assets:

Repatriation of assets or confiscation of assets outside of criminal proceedings is a way of seizing income and property that have been lost by criminal means, namely, by carrying out corrupt mechanisms of abduction or acquisition hidden in foreign jurisdictions. This tool is used in a situation where the offender cannot be prosecuted, for example, in the event of the death of an attacker, his concealment from justice or the criminal's legal immunity. Assets can be considered cash in bank accounts, securities, real estate, vehicles, art objects, as well as precious metals. If the application of the confiscation measure in criminal proceedings is impossible, then in this case the return of assets is an effective measure to combat the theft of property[1]. International organizations and State bodies of countries returning stolen and exported assets from developing countries need to take into account the existence of a certain set of problems, that is, the provision of evidence and evidence for investigation and prosecution in foreign jurisdictions, incomplete legal and procedural framework for cooperation at the international level, the enforcement of foreign court rulings, the need for dual jurisdiction and protective measures, lengthy procedures due to formalities and implementation problems due to differences in confiscation systems.

## MATERIALS AND METHODS

The process and methods of asset recovery are the following[2]:

1. Collection of information and evidence, asset tracking;
2. Ensuring the safety of assets;
3. International cooperation;

4. Court proceedings;
5. Execution of resolutions;
6. Return of property.

### International legal acts:

The sphere is regulated by a set of international acts, among which are:

- UN Convention against Corruption (2003);
- Shanghai Convention on Combating Terrorism, Separatism and Extremism (2001);
- UN Convention against Transnational Organized Crime (2000) (Palermo Convention);
- UN International Convention for the Suppression of the Financing of Terrorism (1999) (New York Convention);
- The Council of Europe Criminal Law Convention on Corruption (1999);
- The OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions (1997);
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime (1990) (Strasbourg Convention);
- UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention).

### UN Convention against Corruption:

The UN Convention against Corruption (UNCAC), which entered into force in 2005, recommends that States parties to the Convention adopt legislation to ensure the return of stolen public funds. The fundamental principle of the Convention is asset recovery, and thanks to this principle, the States

parties undertake to cooperate with each other and assist each other in this matter to the maximum extent possible. For the practical implementation of this principle, UNCAC provides mechanisms for the return of misappropriated assets, as well as tracking, freezing, arrest, confiscation and return of stolen property. A separate chapter is devoted to this issue in the Convention, which sets out the principles of tracking and seizure of stolen assets.

According to the Convention against Corruption, there are the following mechanisms for asset recovery[3]:

- Measures to monitor financial institutions for suspicious transactions with bank accounts of officials and their family members (UNCAC, article 52);
- The procedural stages necessary for a State party to be able to act as a private person in the courts of another State Party (UNCAC, article 53);
- National legislation allowing the recognition of confiscation orders issued by courts of other countries. Further, investigations should be carried out, as a result of which property acquired through corruption mechanisms in other countries is frozen and confiscated (UNCAC, article 54);
- Measures deemed necessary to authorize the confiscation of property that are not included in the criminal case, in particular, in cases of death or flight of a criminal (UNCAC, article 55).

In addition, the UN Convention establishes the basic principles for the disposal of property confiscated by one State Party at the request of another State Party, in accordance with the relationship between the requesting State Party and this property. Particular attention is paid to the laundering of embezzled and misused public funds. According to the Convention, the requested State Party is obliged to return the

confiscated property to the requesting State. UNCAC also calls on each State Party to develop national legislation to ensure the return of stolen public funds, but also obliges it to consider the return of confiscated property to the requesting

State, the previous rightful owner or compensation to victims of crimes as a priority issue when special rules cannot be applied. In addition to the above principles, the Convention provides that the requested State may deduct reasonable expenses incurred in the course of any investigation, prosecution or judicial proceedings leading to the return or disposal of confiscated property. The participating States may also consider the possibility of concluding agreements or mutually acceptable arrangements on the final disposal of confiscated property in each specific case.

The Stolen Asset Recovery Initiative (StAR Initiative):

The World Bank, in collaboration with the United Nations Office on Drugs and Crime (UNODC), launched the Stolen Asset Recovery Initiative (StAR) in September 2007 to address the problem of stolen public funds in developing countries. The Program recognizes that the return of stolen assets to their rightful owners requires the concerted efforts of all members of the international community. The issue of the return of stolen assets is central to the program, namely: the removal of barriers to the return of misappropriated assets in large financial centers, the creation of mechanisms to facilitate the return of assets by affected countries, as well as measures aimed at preventing the transfer of assets and the creation of "safe zones" for corrupt individuals. The program was developed by the UN Security Council resolution (UNSCR). The drafters urge states to ratify the UN Convention against Corruption. In his speech in 2007, UN Secretary-General Ban Ki-moon noted that the initiative promotes cooperation between

developed and developing countries, as well as between the public and private sectors. Such cooperation will lead to the return of assets to their rightful owners. The result is a publication that analyzes these issues in detail. The program's activities include[4]:

- Informing about the provisions and procedures for the repatriation of stolen public funds;
- Development of national mechanisms for asset recovery (for example, measures for filing claims for asset recovery, methods of asset confiscation);
- Tracking of used returned assets on request.

#### Research results

##### International experience in asset recovery:

- Indonesia. Under President Suharto, funds worth \$10 billion were stolen. Australia returned 3 million, 920 million frozen. The remaining funds are in banks in Hong Kong, China, the Cayman Islands and the British Virgin Islands.
- Philippines. The former president of the Philippines Ferdinand Marcos took about \$5 billion out of the country.

- Nigeria. The Department of Justice announced that it has transferred

\$311,797,876.11 to the Government of the Federal Republic of Nigeria in accordance with the tripartite agreement between the Governments of the United States, Nigeria and the Bailiwick of Jersey dated February 3, 2020 on the repatriation of assets to the United States. In 2014, U.S. District Judge John D. Bates of the District of Columbia ordered the confiscation of approximately \$500 million held in

accounts around the world, as a result of a civil complaint by the Ministry of Justice for the confiscation of more than \$625 million that may be related to money laundering related to the corrupt income of the Nigerian military and statesman, Lieutenant General Abacha. After appeals in the United States were exhausted in 2018, the Jersey Government enforced the U.S. court's decision regarding funds located in that jurisdiction. The confiscated assets represent corrupt money laundered during and after the military regime of General Abacha, who took office as President of the Federal Republic of Nigeria as a result of a military coup on November 17, 1993 and held this post until his death on June 8, 1998. The complaint alleges that General Abachi, his son Mohammed Sani Abachi, their associate Abubakar Atiku Bagudu and others embezzled billions of dollars from the Nigerian government and others, and then laundered their criminal proceeds through American banks[5].

Jersey's cooperation in investigating, deterring, and enforcing the U.S. court's decision, along with the valuable contributions of Nigeria and other law enforcement partners around the world, has been instrumental in recovering these funds. Under a trilateral agreement signed in February, the United States and Jersey agreed to transfer 100 percent of net confiscated assets to the Federal Republic of Nigeria to support three critical infrastructure projects previously authorized by the Nigerian Government. In particular, in accordance with this agreement, the returned funds will help finance the construction of critical infrastructure in key economic zones, including the Second Bridge across the Niger, the Lagos-Ibadan Expressway and the Abuja-Kano Road. This investment will benefit the entire Nigerian people.

The agreement includes key transparency and accountability measures, including the management of



funds and projects by the Nigerian Sovereign Investment Authority (NSIA), financial analysis by an independent auditor, and monitoring by an independent civil society organization with expertise in engineering and other fields. The agreement also excludes spending funds in favor of alleged perpetrators of corruption or to pay for unforeseen expenses of lawyers. The agreement reflects the robust principles of transparency and accountability in the recovery and disposal of recovered assets adopted at the Global Forum on Asset Recovery (GFAR) in December 2017 in Washington, DC, which the United States and the United Kingdom organized with the support of the Stolen Assets Recovery Initiative of the

### **U.S. Department of Justice.**

The World Bank and the United Nations Office on Drugs and Crime. In addition to the more than \$311.7 million seized in Jersey, the Department of Justice is seeking enforcement of its decision to confiscate approximately \$30 million held in the UK and more than \$144 million in France. The United States continues to seek the confiscation of more than \$177 million of additional laundered funds held in trusts whose beneficiaries are Abachi, Abubakar Atiku Bagudu, the current governor of Kebbi State and his relatives. The United States entered into a trilateral asset repatriation agreement in Jersey because of its long-standing commitment to asset recovery for the benefit of the peoples of countries affected by corruption and the important guarantees enshrined in the agreement. The transfer announced today demonstrates the US commitment to asset recovery and responsible repatriation in accordance with its obligations under the trilateral agreement. This case was initiated as part of the Kleptocracy Asset Recovery Initiative by a team of dedicated prosecutors from the Anti-Money Laundering and Asset Recovery Division of the Criminal

Division, working in partnership with the FBI. As part of the Kleptocracy Asset Recovery Initiative, the Justice Department and federal law enforcement agencies are seeking to protect the U.S. financial system from money laundering and recover proceeds from corruption by foreign officials. Where appropriate and possible, the Department seeks to use the returned proceeds of corruption in the interests of people affected by acts of corruption and abuse of public trust.

### **Anti-money laundering mechanism:**

Over the past two decades, International Anti-Money Laundering (AML) mechanisms have been significantly expanded and improved. Initially, the member States of the Organization for Economic Cooperation and Development (OECD) created anti-money laundering standards. Today, these measures are applied in more than 100 countries, including all major financial centers and organizations. The motive for most criminal actions is the intention of making a profit by the attacker. All criminals who want to evade the investigation of law enforcement agencies do not want law enforcement agencies to discover the proceeds of their criminal actions. However, in some cases, when law enforcement agencies manage to detect proceeds of crime, these criminals do not want to be associated with these assets. As a result, criminals and many specialists who provide services to them seek to launder the proceeds of crime in order to hide their illegal origin[6]. In a general sense, money laundering is the transformation or transfer of property by persons who know that this property was obtained as a result of a financial crime, in order to conceal or disguise its illegal origin. Consequently, corruption crimes belong to the category of serious crimes, which, in accordance with international standards, should be considered as predicate crimes for money laundering.

The Financial Action Task Force on Money Laundering (FATF), headquartered in Paris, France, is considered to be the main developer of international anti-money laundering standards. The Group for the Development of Financial Measures to Combat Money Laundering (FATF) is an intergovernmental organization established in 1989 by decision of the Cabinet of Ministers of the Group of Seven countries. The FATF's mandate is to set standards and promote the effective application of legal, regulatory and operational measures against money laundering and terrorist financing[7]. In cooperation with other international stakeholders, the FATF is also working to identify gaps and inconsistencies at the domestic level of countries in order to protect the international financial system from abuse, the FATF Recommendations are a comprehensive and consistent document. The FATF recommendations establish a comprehensive and consistent system of measures that countries should use to combat money laundering and asset recovery. Countries cannot take unified measures to combat these threats because they have different legal, administrative and operational structures and different financial systems. Therefore, countries need to adapt the FATF Recommendations, which set international standards, to their conditions. FATF Recommendation Measures that States need to follow for the following purposes[8]:

- risk identification, policy development and internal coordination;
- prosecution of money laundering and terrorist financing.;
- application of preventive methods in the financial sector and other specific sectors.;
- establishment of powers and responsibilities of competent authorities (for example, investigative, law enforcement and regulatory authorities) and other institutional mechanisms.;

- strengthening of openness, transparency and accessibility of information on beneficial ownership of legal entities and formations;
- ensuring mutual assistance at the international level.
- The current international anti-money laundering mechanism consists of the following main elements related to the purposes of asset tracking:
- Criminalization of money laundering;
- Measures for due diligence of clients of financial institutions and established non- financial enterprises and professions;
- The requirement to submit reports on suspicious transactions to the Financial Intelligence Unit (FIU);
- Accounting requirements;
- Oversight of financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs).

Bodies and organizations dealing with legal issues of asset recovery:

Interpol and its branches (Europol, Asiapol, Americapol), the Egmont Group, the World Customs Organization, the Camden Interdepartmental Network for Asset Repatriation (Camden Assets Recovery Inter-Agency Network, CARIN), the Interdepartmental Network for Asset Repatriation for South Africa (Camden Regional Office) (Asset Recovery Inter-Agency are engaged in the search for stolen assets Network for Southern Africa), Arab Network of Integration and Fight against Corruption (Arab Anti-Corruption and Integrity Network), European Judicial Network, Eurojust, etc. At the international level, the problem of regulating this topic is dealt with by the World Bank, the UN represented by the Office of Drugs and Crime (UNODC), as well as the OECD and FATF, which have issued a number of guidance documents.

The Group of Supervisory Authorities of International Financial Centers (Group of International Finance Centre Supervisors) also actively encourages measures to improve the effectiveness of regimes that promote systematic and timely asset recovery, highlighting them as a priority. In December 2014 The Group confirmed its position by making a public commitment set out in the Statement of Obligations for Asset Repatriation. The topic is at the intersection of the areas of regulation of the fight against corruption, money laundering and terrorist financing, and also concerns international financial cooperation, information exchange, transparency, tax evasion, etc. The return of stolen assets to the state can give amazing results, provided that funds are spent rationally. Even part of the money may be enough to finance vital social programs or infrastructure improvement projects. For example, \$100 million is enough to fully vaccinate 4 million children or build a water supply system for 250 thousand households.

The trend of search and repatriation of illegally exported assets and legal regulation in the Republic of Uzbekistan:

In Bern, on August 16, 2022, Switzerland and Uzbekistan signed an Agreement "On ways to return illegally acquired assets confiscated on the territory of the Swiss Confederation for the benefit of the population of the Republic of Uzbekistan". The assets will be used for the benefit of the population of Uzbekistan with the help of the UN Trust Fund[9]. Asset restitution will have a positive impact on bilateral relations between the two countries and will make a significant contribution to the implementation of the 2030 Agenda for Sustainable Development. The President of the Swiss Confederation Ignazio Cassis and the Minister of Justice of Uzbekistan Ruslanbek Davletov signed an agreement on asset restitution,

which the Federal Council had previously approved at its meeting on June 22, 2022.

"The agreement will shape and strengthen relations between our two countries in the long term," Mr. Kassiss said at the signing of the agreement. The agreement provides for the creation of a new UN multilateral trust fund. "The Swiss and Uzbek authorities have collaborated constructively with the UN to create an innovative and transparent fund that will make a very real contribution to the implementation of the Sustainable Development Goals (SDGs) in Uzbekistan. The fund will allow the return of the returned assets to be used for the benefit of the population of Uzbekistan," Mr. Kassiss said. The Fund will be used not only for the currently available US\$ 131 million, but also for any assets finally confiscated in the future as part of the ongoing criminal case against Gulnara Karimova. Funding will be provided for projects that comply with The United Nations Sustainable Development Cooperation Framework. (UNSDCF) for Uzbekistan. The projects will be implemented by the UN agencies participating in the fund in cooperation with various implementing partners. They will be monitored in accordance with the monitoring and evaluation system established for the fund, as well as the rules and regulations of the UN system. Civil society organizations will act as consultants. The chosen approach corresponds to the Swiss asset recovery strategy, which includes freezing, confiscation and return of stolen assets. The Fund starts working immediately after the parties sign the agreement.

In accordance with the Agreement, the key principles for the return of illegally acquired property are[10]:

- openness and transparency, open publication of information related to restitution to the public;
- participation of civil society in this process;



- the final use of the returned funds in the social sphere, in particular, for education and health care;
- maintaining a constant, fruitful and respectful dialogue on restitution issues between Uzbekistan and Switzerland.

Special attention should be paid to the mechanism of restitution, which is trilateral with the participation of Uzbekistan, Switzerland and the UN. The restitution will be carried out through the Multi-Partner Trust Fund "Vision of Uzbekistan 2030", which is part of the UN Multi-Partner Trust Fund system. The Foundation has the following administrative and organizational structure with the corresponding functions and powers: The High-level Strategic Committee (one high-ranking representative from Uzbekistan and Switzerland) - makes strategic decisions on the activities of the Fund The Steering Committee (one representative from Uzbekistan, Switzerland and the UN) - makes decisions based on full consensus on the operational activities of the Fund, including consideration and approval of projects. In addition, the organizational structure also includes an Advisory Council of Civil Society – consisting of representatives of civil society of Uzbekistan and Switzerland, as well as international NGOs that exercise public control over the activities of the Fund, and which will carry out its activities on a voluntary basis and without salary. The projects approved by the Steering Committee will be implemented by the relevant UN agencies in Uzbekistan jointly with the Uzbek side. All information about completed and ongoing projects will be published and made available to the general public. Such a system minimizes corruption and other risks, as well as ensures transparency and accountability of spending. The signing of this Agreement is an important step in further building friendly and mutually beneficial relations between Uzbekistan and Switzerland.

### Statistics:

Experts estimate that the amount of bribes received annually by officials in developing countries and countries with economies in transition ranges from \$20 to

\$40 billion, which is equivalent to 20-40% of the funds allocated to these countries as official aid. Embezzlement has taken on such a large scale that it threatens the economic and social development of States. As L. Davis points out, stolen funds are difficult and sometimes impossible to find if appropriate measures are not taken in a timely manner[11]. This money enters the international financial system, moves almost instantly from one country to another, its "origin is lost in a tangle of electronic transactions, it is transferred from account to account, hidden, divided into small amounts that... they withdraw it and put it back into another bank account, covering their tracks."

### CONCLUSION

According to the analysis done above, the mechanism for tracking stolen assets is multi-stage, and no investigation for the purpose of tracking assets is similar to another. In this regard, there is no standard guide or action plan for the most effective conduct of an investigation in order to track assets, so it is necessary to prepare and adapt to each unique investigation, get information about the investigator's experience and about the use of tools for detecting, collecting and evaluating information. Asset repatriation processes always depend on the conditions and circumstances in which the investigation is conducted. Since assets and funds are moved around the world in such a way as to cover their tracks, the problem for the investigator is that circumstances are constantly changing. Thus, it seems



appropriate that the investigator and the client have the opportunity to rely on a global network of related organizations that can join the investigation in all cases when traces of stolen assets lead to foreign countries and, consequently, to other jurisdictions. But even in this case, there are many problems and limitations that the investigator has to face in order to successfully withdraw and return the stolen assets to their rightful owner. However, it is precisely such problems that make the work of tracking assets really interesting and worthwhile for investigators. As a result, this topic is much researched and developing in the field of international law, for this reason, in order to effectively achieve the result of practical measures in this industry, the international community primarily develops flexible and modern mechanisms at the international level to combat money laundering and their repatriation, so that in the future states cooperate with each other and international organizations, applying international acts, by implementing them into national legislation and implementing international obligations at the domestic level.

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