

Asset recovery in practice

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The Swiss policy of asset recovery, which the section on politically exposed persons introduced, developed through a series of cases that tested the limits of the law. The Marcos case showed that a freeze by the Federal Council could secure assets quickly, but restitution required a judicial basis. In 1997, the Federal Supreme Court allowed the transfer of the Marcos assets to an escrow account in the Philippines, subject to a final confiscation decision by a Philippine court. The funds were eventually released to the Philippine government. The case established the principle that Switzerland could return assets before a final foreign judgment, provided adequate guarantees were given.¹

The Abacha case followed a different path. After the death of the Nigerian ruler Sani Abacha in 1998, Nigeria requested mutual legal assistance, whereupon the Swiss authorities froze accounts connected with his family and associates. Following decisions of the Federal Office of Justice and the Federal Supreme Court, Switzerland returned several hundred million dollars to Nigeria in the 2000s. Further amounts confiscated in later proceedings were returned under an agreement that provided for monitoring by the World Bank, which was to ensure that the funds were used for social programmes.²

The Duvalier case revealed a gap in the law. Haiti, a state whose institutions had largely collapsed, was unable to conduct the criminal proceedings that mutual legal assistance presupposed. In 2010, the Federal Supreme Court held that the assets could not be confiscated in the assistance procedure because the underlying offences were time-barred. Parliament responded with the Federal Act on the Restitution of Illicit Assets, known as the Lex Duvalier, which entered into force in 2011. It allowed confiscation through an administrative court procedure in which the origin of the assets was presumed to be illicit if certain conditions were met. The Foreign Illicit Assets Act of 2016 later absorbed this mechanism.³

The freezes after the Arab Spring showed the limits of the instrument in a different way. The Federal Council acted quickly after the fall of the regimes in Tunisia and Egypt, with a speed of reaction that was widely noted. The restitution of the frozen assets proved far slower, because it depended on criminal proceedings in the countries of origin and on evidence linking specific assets to specific offences. Some of the frozen assets were eventually returned. Others were released after the freezes expired or the proceedings were discontinued, a result that disappointed the countries concerned and showed that a freeze is a measure of protection and cannot replace proof.⁴

More recent cases have refined the model of restitution through agreements with the country of origin and international partners. Assets confiscated in Swiss criminal proceedings concerning bribery in the telecommunications sector of Uzbekistan were to be returned under an arrangement involving a United Nations trust fund, designed to ensure that the money benefited the population. The case illustrates the current Swiss approach: restitution is linked to transparency, to monitoring and to the involvement of civil society. In such agreements, the expertise of organisations such as the International Centre for Asset Recovery in Basel is often called upon.⁵

1 Notes

1. On the Marcos case, the decision of the Federal Supreme Court of December 1997 permitting the transfer of the assets to an escrow account in the Philippines subject to a final confiscation judgment, and the later release of the funds (approx. USD 680 million), see the publications of the FDFA and the case law of the Federal Supreme Court. Date and amount to be verified. ↩
2. On the Abacha case, the restitution of approx. USD 700 million to Nigeria in 2005 following decisions of the Federal Office of Justice and the Federal Supreme Court, and the later restitution of further funds (approx. USD 321 million) under a 2017 agreement with monitoring by the World Bank, see the publications of the FDFA and the Federal Office of Justice. Amounts and dates to be verified. ↩
3. On the Duvalier case, the judgment of the Federal Supreme Court of 12 January 2010 (statute of limitations in the mutual assistance procedure) and the Federal Act of 1 October 2010 on the Restitution of Illicit Assets of Politically Exposed Persons (RIAA, "Lex Duvalier"), in force from 1 February 2011 until replaced by the FIAA in 2016, see the relevant legislation and FDFA publications. To be verified. ↩

4. On the freezes ordered by the Federal Council in January and February 2011 concerning Tunisia and Egypt, the subsequent restitutions to Tunisia and the lifting of the freeze concerning Egypt after the discontinuation of the Swiss criminal proceedings, see the publications of the FDFA and the Office of the Attorney General of Switzerland. Status to be verified. ↩
5. On the framework agreement between Switzerland and Uzbekistan of 2022 on the restitution of assets confiscated in Swiss criminal proceedings (approx. USD 131 million) through a United Nations multi-partner trust fund, see the publications of the FDFA. Amount and status to be verified. ↩

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