

Marcos, Duvalier, Arab Spring: the other cases

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The Swiss asset-recovery framework was built on cases several of which are not African. Comparing them sheds light on the African situation. The Marcos affair, opened in 1986 with the freezing of the assets of the deposed Philippine president, was the first in which the Federal Council ordered a precautionary freeze before any request for mutual assistance. Its restitution, completed after years of proceedings, established the practice. The Duvalier affair, in which the assets of the Haitian dictator remained frozen for more than twenty years for want of judicial cooperation from Haiti, led in 2011 to the adoption of a special law allowing confiscation where the state of origin fails to act, the forerunner of the 2015 Act. As for the Arab Spring freezes of 2011, directed at the assets of the deposed Tunisian and Egyptian presidents and their entourages, they demonstrated the speed of the framework and the slowness of restitutions.¹

These cases carry a common lesson: freezing is fast, restitution is slow. This slowness lies with the state of origin, whose courts must establish the illicit origin of the funds and whose successive governments have not always had an interest in doing so. The African cases — Abacha, Mobutu, whose assets were ultimately returned to the heirs for want of proceedings in Congo, Angola — followed the same pattern. The Swiss framework has evolved to reduce this dependence, with the presumption of illicit origin and confiscation where the state fails to act, but it cannot take the place of the courts of the countries of origin. Part of the assets frozen in Switzerland for decades will remain so.

1 Notes

1. Federal Act on the Restitution of Illicit Assets, known as the “lex Duvalier”, which entered into force on 1 February 2011 and allowed the confiscation of assets frozen since 1986 amounting to some CHF 5.7 million (“‘Lex Duvalier’ enables Switzerland to confiscate and repatriate illicit dictator assets”, MercoPress, 2 February 2011); freezes against Ben Ali and Mubarak of 19 January and 11 February 2011 according to the Federal Department of Foreign Affairs, cited above; on the Marcos affair, Federal Department of Foreign Affairs, “Restitution des avoirs illicites” (Restitution of illicit assets), cited above, which cites it as the first freezing case (1986). ↩

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