

ASSET RECOVERY OVERVIEW: UKRAINE

KEY FINDINGS

Adequacy of Legal Framework

Ukraine's legal framework is largely adequate following 2015 -2016 amendments. Ukrainian legislation provides for mechanisms of timely freezing and confiscation of assets, proceeds and means of crime with no regard to the formal title of the ownership. Some changes are required to guarantee rights of third parties in the cases of confiscation through plea bargain conviction as current legislation limits their participation in trials, and preconditions potential appeals to the European Court of Human Rights.

Adequacy of Institutions and Political Will

The institutions charged with asset recovery are not adequate to the task. In particular, the General Prosecutor's Office (GPO) of Ukraine and judicial system are slowing or sabotaging key investigations. The newly established anti-corruption bodies, National Anti-corruption Bureau and Specialized Anti-corruption Prosecution, show higher integrity and commitment in investigation of grand corruption cases..Overall there is a lack of resources for asset recovery work.

The general political will is targeted at showing quick results through pre-trial settlements that can bring political gains but not just and transparent prosecution. This transforms into the slow pace of investigation and prosecution of corruption cases, limited resources allocated, and low reporting to the public about the course of investigating grand corruption and asset recovery.

Transparency and Participation

Given the considerable public interest in the investigations related to former President Yanukovich and the fact that they have started three years ago back in 2014, the information on the progress of investigations is not timely and fully provided to the public. The CSO's only can access information through information request or open court registry, which is not always giving the entire picture of investigation.

There are no political will or established legal mechanisms to actively involve the CSOs to process of asset recovery in terms of accepting CSOs investigations as evidence or involving them during the discussion of the future use of the recovered assets.

Enforcement Experience

Case of Confiscation of 1.5 bln USD

On 28 April 2017, the GPO announced the confiscation of approximately of 1.5 billion USD held in government bonds previously frozen during the investigation of corruption crimes of Yanukovich and his associates. The bonds were confiscated using the plea bargain deal with a nominal director of one of the companies involved in money laundering schemes of the Yanukovich's group. There were no formal court hearings of the case, and the nominal owners of the bonds (offshore companies) could not present their case in court. Moreover, the GPO used the legal loophole limiting the right of the parties to appeal the plea bargain conviction. The confiscation is questionable due to lack of proven legal grounds for the confiscation and violation of the rights of legal owners of the assets. Furthermore, contrary to legal requirements, this judgment is not published in the open registry for more than 5 months (as of August 2017) , so CSOs and experts cannot examine either the legal tools and arguments which were used by the court, nor even verify the exact amount of confiscated assets and names of its owners.

ASSET RECOVERY OVERVIEW: UKRAINE

So far the only existing cases of asset recovery were enforced through non-transparent and questionable plea bargain deals and settlements. The settlements were made in violation of the due process standards and the relevant court decisions are kept in secrecy. There are only three reported cases of asset recovery in Yanukovich cases, namely confiscation of 1,5 bln USD in governmental bonds and confiscation of Odesa Refinery Plant (enforced through the plea bargain deals with minor executives), and recovery of 0,5 mln USD in the US pretrial settlement details of which is unknown

RECOMMENDATIONS

Legal Framework

- Need to guarantee rights of third parties while taking judgments based on plea bargain conviction especially in cases of confiscation

Institutions and Political Will

- Prompt reform of prosecution and judiciary
- Expedient introduction of anti-corruption courts

Transparency and Participation

- Disclosure of the exact number of criminal proceedings both in Ukraine and abroad concerning Yanukovich and his associates as well as key information regarding each proceeding e.g. description of a crime and legal qualification, main legal decisions, amount of damages etc.
- Disclosure of amount of assets frozen abroad in course of criminal investigations under the foreign sanctions imposed over Yanukovich and his associates
- Need to include CSOs in the process of asset recovery and decision-making process over the use of recovered assets

Case of Lifting Sanctions from Ivaniushchenko

Yuriy Ivaniushchenko was MP during Yanukovich's Presidency and one of his closest allies. In 2014 he was included in the EU sanction list. The GPO investigated illegal enrichment regarding 72 million Swiss francs, which were found in his accounts. Around 200 million USD on the accounts of companies of Ivaniushchenko were previously seized in Monaco and Switzerland. Since 2014 there were only few investigative actions in this case carried out by the GPO and the indictment was not prepared according to the law. On 27 January 2016, the court ordered the prosecutors to close the case against Ivaniushchenko. On 3 March 2017, the EU lifted sanctions from Yuriy Ivaniushchenko presumably due to the absence of an investigation in Ukraine. Presumably, the frozen assets were released.