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THE IMPORTANCE OF FULL IMPLEMENTATION OF THE PROVISIONS OF ASSET RECOVERY IN THE FIGHT AGAINST CORRUPTION

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ABSTRACT

The fight against corruption has no effect if from the perpetrator of the corrupt act have not been confiscated the goods or assets that he acquired illegally.

This paper highlights the obstacles to international cooperation for the return of the stolen asset. It is a fact that in the past, almost two decades, since the adoption of UNCAC, a lot has been done in the field of prevention, criminalization, as well as international cooperation, but in the area of asset recovery, greater results are missing.

It is basically property acquired in a corrupt manner, mainly in developing countries and transferred to developed countries. In this way, criminals gain enormous wealth, and on the other hand, poverty in the country of origin increases due to loss of resources.

The paper presents specific examples of asset recovery. These are cases where the procedure lasts for many years, involving high political figures, and huge sums of money.

The paper gives several recommendations for improving the internal regulations of the countries, but also for the international cooperation in order to increase the detection of cases of stolen asset taken in other countries.

Rapid honest cooperation between requesting jurisdiction and requested jurisdiction is essential for detecting, seizing, freezing, confiscating and returning a stolen asset.

The importance of the StAR Initiative is great, but still the dark number of corrupt acts with a stolen asset, transferred to another jurisdiction, is large.

KEYWORDS: asset recovery, corruption, international cooperation, rule of law, criminal justice

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INTRODUCTION

„Withholding of illegally acquired property gains in a criminal manner undermines justice and stimulates crime"

If an analysis is made of the fulfillment of the UN Convention against Corruption (UNCAC) adopted in 2003, it will be noticed that there is no equal realization of its pillars. Namely, in the past 17 years a lot has been achieved in the field of international cooperation, also in the pillars for criminalization and prevention, but the pillar for asset recovery requires additional engagements.

Cooperation between UNCAC member states is more difficult when it comes to returning material goods – treasures that have been criminally acquired and transferred from one (damaged) country to another. This is actually the general hypothesis of this paper, in order to propose potential solutions to improve the situation.

Numerous obstacles, of normative and operational nature, disable or slow down stolen asset return procedures, which has a negative impact on both the fight against corruption and international relations and cooperation.

Due to the above obstacles, it is considered that huge fortunes have been taken out of developing countries by former or current political leaders, thus the challenge is in developed countries: to prevent money laundering, to return funds to jurisdictions of origin, to help of developing countries in strengthening institutional capacity.

RESEARCH METHODS

Within the paper, the method of content analysis is applied in order to determine the details that are obstacles in the practical implementation. Then a comparative method is used in order to show the differences between the countries in the application of the existing solution.

The statistical method, through data analysis, as well as the historical method also take their place.

The paper presents several case studies, which reflect the problems in practice. The author of the paper, in the final part and the conclusions, offers solutions to improve the situation and overcome the problem.

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1. NORMATIVE STRUCTURE - UNCAC

Corruption poses a significant threat to security and stability. It undermines democracy, destroys the rule of law and undermines citizens' trust in government institutions. Corruption hinders social and economic development, discourages investors and threatens the market.

Corruption is a great threat to the common values of civilization, it creates instability and violates many aspects of action in the security, economic and human dimensions.

Chronologically, the fight against corruption has always been important, but the current one is created in the early 90s of the last century, after the end of the Cold War.

The issue of prevention and repression of corruption has become relevant since 1990, due to the negative impact of corruption on all segments of life, rule of law, human rights, democracy, economic stability and development. Since 1990, significant international legal acts for the prevention and repression of corruption have been adopted by several global and regional organizations.

Thus, on October 31, 2003, the UN General Assembly adopted the Convention against Corruption (UNCAC), signed in Merida, Mexico, on December 9, 2003. By mid-2020, the Convention has been signed by 181 UN member states. Its main goal is to promote and strengthen measures for effective and successful prevention and fight against corruption. The Convention is a global mandatory response to corruption and other unlawful acts that adversely affect the rule of law.

The Convention consists of four pillars and an Implementation Mechanism: Preventive measures, Criminalization and law enforcement, International cooperation, Asset recovery, and Technical assistance and information exchange.

Unlike the previous partial approaches (eg. only prescribing criminal offenses) UNCAC systematically approaches the fight against corruption. UNCAC obliges signatory members to build a legislative and institutional framework for the implementation of its provisions.

At the third UNCAC Implementation Meeting, held in Doha, November 2009, a UNCAC Implementation Evaluation Mechanism was established, and UNODC is responsible for implementing and evaluating UNCAC implementation.

The main objectives of UNCAC are:

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a) to promote and strengthen, in the most effective way, measures to prevent and combat corruption;

b) to promote, facilitate and support international cooperation and technical assistance to prevent and combat corruption, including asset recovery;

c) to promote integrity, accountability and good governance with public works and state property,

- **Asset recovery**

One of the four pillars of UNCAC is asset recovery (Chapter V). Asset recovery refers to the process by which the proceeds of corruption transferred abroad are recovered and repatriated to the country from which they were taken (jurisdiction of origin) or to their rightful owners. The return of property illegally acquired and transferred to another state is one of the greatest values of the Convention, but at the same time the longest-negotiated point. A precise account of the proceeds of corruption circulating the globe is not possible, but the World Bank estimates that developing countries lose US$20-40 billion each year due to corruption (Kevin M. Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker, Melissa Panjer, 2011).

The problem with effectiveness is also highlighted by the OECD, so in the period 2010-2012, only US $1.398 billion assets were frozen and US $147.2 million were returned by OECD countries (Larissa Gray, Kjetil Hansen, Pranvera Recica-Kirkbride, Linnea Mills, 2014), which shows that are needed global efforts to improve asset recovery systems and increase cooperation and coordination between jurisdictions.

UNCAC (Article 53) provides for direct recovery of assets, whereby a foreign state is able to initiate a civil action in a foreign jurisdiction to establish title and ownership of property. It also means that courts should be able to order compensation or damages to a foreign state and recognise them as legitimate owners of property. In such a case the defrauded state, represented by counsel, will stand – like any ordinary private plaintiff would do – before the foreign jurisdiction(s) where proceeds of corruption are located and will claim their repatriation to its national treasury.

The Convention emphasizes prevention as an initial approach, by building measures to strengthen the oversight of the accounts of public officials and members

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of their families, especially in the case of large bank accounts. In addition, here is the obligation for banks to inform the competent financial institutions in case of inflow of funds from abroad in larger amounts.

The confiscation and return process includes three main stages: identifying and tracing assets; freezing and confiscating assets; and recovering and returning assets (Article 55).

In the process of identification it is necessary to make a concretization (or a connection to goods acquired through the use of an illegal assets) and to prove that exactly those assets were illegally acquired. Tracing assets means tracking the "money path", their movement through bank accounts or the purchase of movable and immovable property, which requires a good regulatory framework, quality human resources and international cooperation.

Freezing and confiscating the proceeds of corruption stops the assets from being used for further criminal activity. According to the OECD it is the permanent deprivation of assets by order of a court or other competent authority (Identification and Quantification of the Proceeds of Bribery, The World Bank, OECD, 2012). Assets can be confiscated in two ways: property-based confiscation, which requires the identification of a particular asset; or value-based, which is based on the monetary value of assets that cannot be materially recovered.

According to article 57 UNCAC, once corrupt assets have been identified and legally confiscated they must be returned to their prior legitimate owners. Namely, in case of embezzlement of public funds, the confiscated property should be returned to the requesting state, in case of proceeds of any other offense covered by the Convention, the property should be returned by providing proof of ownership or recognition of the damage caused to the requesting state.

The return of assets to the requesting state is the culmination of a process filled with mutual legal cooperation between States (Articles 46, 57 UNCAC), which establishes justice and prevents illicit enrichment.

Effective asset recovery provisions support countries' efforts to address the most damaging effects of corruption while at the same time sending a message to corrupt officials that they will have no place to hide their illegally acquired funds.

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2. MECHANISMS FOR IMPLEMENTATION – THE STOLEN ASSET RECOVERY INITIATIVE (StAR)

The Stolen Asset Recovery Initiative is a partnership between the World Bank Group and the United Nations Office on Drugs and Crime (UNODC) that supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets.

StAR provides platforms for dialogue and collaboration and also facilitates contact among different jurisdictions involved in asset recovery. Since its establishment thirteen years ago, StAR has assisted many countries in developing legal frameworks, institutional expertise, and the skills necessary to trace and return stolen assets.

The StAR Initiative was established in 2007 and is a response to the difficulties faced by states in trying to reclaim illegally acquired property in another country. StAR is an international response to the deletion of "safe havens" for hiding corrupt assets, ie, the initiative puts international cooperation at the forefront.

The StAR initiative relies on four pillars:

Creating the basics - helps countries to create a normative and institutional framework, as well as to gain practical experience.

Partnership - connects governments, regulators, financial institutions, civil society, both from developing countries and from financial centers, where illegally acquired assets are transferred.

Innovation - StAR initiative creates and shares the latest and most adequate solutions.

International standards - affect the effective application of the provisions of Chapter V (Asset recovery) of UNCAC, ie the provisions on restitution of property acquired through unlawful conduct and corruption.

19 countries received StAR assistance in 2019, and in the same time continued its engagement with global and regional multilateral organizations to foster greater international cooperation on cases, policy, and general approaches to asset recovery, and participated in a range of additional events and networks to encourage connection between practitioners—governmental and non-governmental, private and civil

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society sectors—sharing similar goals (StAR Annual Report 2019, The World Bank, UNODC).

3. OBSTACLES TO ASSET RECOVERY

Numerous analyzes show that the obstacles to the return of illegally acquired property in the requesting state are grouped into three basic groups: general, normative and operational (Kevin M. Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker, Melissa Panjer, 2011).

General obstacles to the efficient implementation of the property restitution procedure include general circumstances, ie, which have a broader impact on the implementation of overall policies.

a) Namely, the implementation of effective policies for return of assets requires "political will", ie the current holders of power in the country to have a commitment to fulfill international obligations that include the global fight against corruption, confiscation and return of illegally acquired property. This is one of the most relevant preconditions for successful and effective international cooperation in asset recovery cases. The absence of will may be in the country to which the assets were transferred, but it may also be in the country of origin (it all depends on the specific circumstances of the case). The speed with which the case is handled is an indicator of the approach to the issue. In addition, it is possible that the economic interests of the requested state will prevail over the cooperation and return of assets, especially in the case of large companies which play a significant role in the economic life of the requested state.

At the same time, the above indicates a lack of trust, as a serious obstacle to cooperation. Namely, with the signing of international acts, the states are obliged to build internal instruments and cooperation. Lack of trust prevents a quick response (often crucial to securing illegally acquired assets), has an impact on the collection and exchange of intelligence or the freezing, seizure, confiscation, and repatriation of the proceeds of corruption. Lack of trust can cause delays or even refusal to provide assistance to originating jurisdictions seeking to recover stolen assets.

The procedure of the institutions of the requested state is crucial, ie, the speed and comprehensiveness of their reaction depends on whether, and to what extent, stolen assets will be returned to the requesting state.

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Prerequisite for success in the whole process is countries to have a comprehensive asset recovery policy. Building a comprehensive asset recovery policy, both in developed and developing countries, implies applicable legislation on asset recovery, creation of strategic documents, strengthening of institutions, sufficient resources, training for practitioners, creation of specialized research units.

However, in both developed and developing countries, these policies may encounter various obstacles. Thus, in requested jurisdictions, various obstructions are possible, such as not responding to the submitted request or responding after several months thus compromising any investigative efforts to speedily track assets or completely passive attitude, giving priority to daily obligations or rejecting requests with weak arguments.

On the other hand, originating jurisdictions, often from the developing world, do not have enough sufficiently skilled practitioners with international experience and an adequate understanding of international conventions and standards to submit legally sufficient requests for mutual legal assistance. Besides that, some jurisdictions may face difficulties because investigating authorities lack independence or lack of capacity for complex investigations, resulting in incomplete requests or actions by developing countries when informed by developed countries or financial centers for suspicious capital originating in developing countries (in such cases there is a space for suspicion of political influence).

Strategic plans are especially important in the whole process, together with action plans for their implementation. Thus, the key elements on which the effect of the Strategy depends are: the publicly expressed "political will" of the highest holders of power, thematic involvement of the competent institutions according to their competencies, active involvement of civil society, creation of specialized investigative units that focus on stolen asset recovery cases, cooperation with the business sector, cooperation with other countries and international organizations, creating new tools for quick response regarding asset recovery.

b) Another general obstacle to conducting the stolen assets return procedure is the lack of resources. It is a process, namely, first it is necessary for the competent institution for investigations to have satisfactory financial resources, then to invest in quality staff - investigators (both in terms of their selection and additional training).

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Resources should be adequate for all stages of action, ie investigations, prosecution, judiciary, co-operation and co-ordination bodies. Quality human resources are a prerequisite for the realization of the complex process of returning assets that have been acquired in a criminal way.

Developed countries have the necessary financial resources and have opportunities to develop their institutions in every aspect: human potential, technical conditions, operational activities. However, they are able to provide mutual legal assistance to developing countries in strengthening their capacity, so that they can help developing countries mitigate their resource problems, thus achieving the required level of return on stolen assets.

Every country, developed or developing, should have an appropriate number of properly trained financial investigators, prosecutors, and judges to address asset recovery cases involving both domestic laws and international conventions and standards.

c) International legal assistance for the return of stolen assets requires prompt action. Channels for transmission of mutual legal assistance requests and follow-up communication are crucial factors in the timeliness of processing requests. The rapid transmission of requests and direct communication with competent officials to provide clarification are highly recommended in an effective mutual legal assistance process, especially for high-priority cases.

If more entities - institutions are involved in the process of submitting the request, then the whole procedure will be slower, and thus the chances of its success will be lower, both due to the passage of time and due to the possibility of "leaking" the information to the persons under investigation.

The speed with which the procedure for repatriation of stolen assets is carried out is especially critical in cases where politicians (former or current) are involved. In such cases, it is advisable to minimize the number of institutions in the procedure when implementing mutual legal assistance.

The dilemma arises as to whether direct communication in high-profile cases (involving politicians or assets of immense value) should be approached, avoiding the usual steps of mutual legal assistance, thus increasing the chances of success of the claim procedure, or necessarily take all steps of mutual legal assistance, although it

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would mean a longer procedure with all the risks it carries with it. This dilemma is somehow overcome by UNCAC, article 48 states in case of necessity to create and use channels of direct communication in order to achieve the goal of seizing the property gained from crime. Besides that, EU permits direct transmission for a wide range of informal assistance matters, including investigative actions and freezing and confiscation orders. It also permits direct contact between practitioners dealing with informal assistance requests (Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence, Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders).

Normative obstacles are a result of differences in legislation, then the dominance of the national norm over the international, as well as the existence of legal gaps. They are an obstacle to mutual legal assistance and the return of stolen assets.

a) Differences in legal traditions between jurisdictions introduce challenges throughout the asset recovery process. Differences can be a common reason many requests to be sent back for more information.

There are more differences between civil law and common law jurisdictions that may introduce barriers to the asset recovery process, they can refer to: Tools available for restraint or confiscation, Evidentiary requirements, Procedures to obtain assistance, including Terminology.

These are differences that can significantly affect not only the speed of the procedure for return of stolen assets, but whether such a procedure will occur at all. To overcome such differences between jurisdictions with different legal traditions, jurisdictions should provide easy access to information about asset recovery within their legal system, including relevant statutory provisions and information about proof requirements, capacities, types of investigative techniques.

b) There are several legal bases for providing mutual legal assistance in criminal and asset recovery cases, as follows: a) international conventions containing provisions on mutual legal assistance in criminal matters, such as UNCAC, b) domestic legislation allowing for international cooperation in criminal cases, c) bilateral mutual legal assistance agreements.

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The point is that the legal form of mutual legal assistance should be functional, but it is advisable to ratify the most important international acts, such as the UNCAC, regardless of the legal solutions in the domestic legislation or the existence of bilateral agreements. Because in this way the unification of the procedure is achieved (although in the international act only the general guidelines are given). Whether or not a country ratifies the UNCAC, for effective mutual legal assistance, it is very important that domestic law prescribes the crimes contained in the UNCAC.

Modern technology allows stolen assets to be transferred from one location to another at the push of a button. Therefore, the question arises, at what moment to start mutual legal assistance, to wait for the official request for finding and confiscation of assets from the requesting state or to do it earlier - by receiving a notification that in the investigation phase serious information has been received indicating stolen assets. The answer to this question are the provisions of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (2001, Article 1) and the European Union Convention on Mutual Assistance in Criminal Matters (2000, Article 3), which allow certain administrative procedures to be undertaken before the court is involved in criminal proceedings.

Freezing of property is an action of the requested state in accordance with the provisions on mutual legal assistance, but the requesting state must within a reasonable period (eg. 30 days) submit the necessary documentation to prove that it is an illegally acquired asset that should be return to the requesting state - the victim. The whole procedure should pay attention to human rights, especially the right to property, situations of unjustified restriction of the guaranteed right should not occur. This is one of the legal risks in the whole procedure.

c) Another obstacle to an effective procedure for returning stolen assets may be banking secrecy. Banks and other financial institutions in most jurisdictions are prohibited from divulging personal and account information about their customers except in certain situations mandated by law or regulation. Some jurisdictions deal with banking secrecy by giving prosecutors the ability to obtain information about the existence of an account but requiring that the prosecutor seek a judicial order to obtain additional information about the contents and transactions of the account. In some jurisdictions, a bank can not divulge any information to a prosecutor about a bank

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account without judicial approval (Kevin M. Stephenson, Larissa Gray, Ric Power, Jean-Pierre Brun, Gabriele Dunker, Melissa Panjer, 2011).

To overcome this obstacle, the solution should be sought in the national legislation by creating provisions that will impose an obligation on financial institutions to report to the supervisory bodies transactions above a certain amount, which opens a legal opportunity to check the movement of money (if there are suspicions of the crime of "money laundering"), while through mutual legal assistance space is created for quick reaction and freezing of assets, of course, upon a request submitted by the requesting state. In addition, a good solution is a legal obligation for public officials to give up banking secrecy upon taking office.

d) If there are major legal differences between the countries regarding the necessary evidence that the requesting state should submit to the requested state then there will be difficulties in obtaining mutual legal assistance for freezing and confiscation of the requested stolen assets. The creation of similar legal criteria on this topic, based on the provisions of UNCAC and similar international instruments, is a prerequisite for effective mutual legal assistance.

Besides that, requests for assistance containing incomplete information, but a clear nexus between the offender and the assets, should be accepted if the requested state appears likely to be able to locate assets based upon the submitted information.

e) Plea agreements are a useful tool for completing proceedings quickly. Part of that cooperation generally includes the defendant’s willingness to disclose where and how illicit assets are concealed, thus eliminating the need for complex and lengthy investigations, resulting in a more effective and swift asset recovery and conserving valuable resources of law enforcement and the judicial system.

The final decision regarding the plea agreement is made by the court. The court reviews the draft agreement and decides whether to accept it or not. If he accepts it, he makes a verdict to convict the defendant, but if he does not accept it, then the case is returned to the public prosecutor.

There are differences between the legislations that have introduced the plea agreement as an instrument for the efficient completion of proceedings. Thus, in some, an integral part of the agreement is the issue of confiscation of illegally acquired assets, while in others it is not an integral part, for example in Macedonian legislation the

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measure of confiscation of assets obtained through crime can not be subject to agreement (Law for Criminal Procedure, article 484, Official Gazette of the Republic of Macedonia No. 150/2010).

This situation requires additional efforts to unify national legislation on the content of the plea agreement (in countries that accept it as a legal instrument). More broadly, at the international level it is necessary to create strong bridges for cooperation, in this issue, with the states that do not have a plea agreement in the national legislation.

f) International immunities are often an obstacle to mutual legal assistance in corruption cases or to the prosecution of foreign officials holding assets in financial centers. While the intention of immunity provisions is to enable a foreign official to act freely, such laws also have had the effect of shielding officials suspected of corruption from criminal prosecution.

In order to remove this obstacle, it is necessary to distinguish between crimes committed in connection with the official activity and acts that have a private character, the immunity should not apply for the second.

The space for mutual legal assistance will be open if the immunity of the current / former public servant is revoked by the requesting state. In that way, there will be no obstacle for the requested state to take actions for freezing and confiscation of stolen assets.

If the immunity is applied or not waived, the public prosecutor should file charges against other persons or entities involved in the case.

g) According to article 57 of UNCAC, States parties should have in place such legislative and other measures as may be necessary to enable its competent authorities to return all confiscated property (minus expenses incurred) to the jurisdiction from which it was stolen.

On the other hand, Article 14 (3) (b) of the UNTOC leaves space for jurisdictions to consider entering into an agreement to share recovered assets with originating jurisdictions, if they do not have provisions in domestic law.

Essentially, for all offenses covered by UNCAC the return of stolen assets to the requesting State should be complete, while for other offenses the return of stolen assets should be based on an agreement between the two jurisdictions.

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Operational obstacles have a procedural character, affect the speed of the procedure. Overcoming them requires a network for coordination at the international level, as well as building close procedural policies and solutions.

a) In the realization of mutual legal assistance in the return of stolen assets, acquired by committing a crime, the speed of action is especially important. Therefore, states are required to designate focal points for the first contact, so that the whole procedure can begin.

The determination of focal points can be formal or informal. Formal determination of institutions is recommended (usually the Ministry of Justice) with data on the specific person or persons, published on the website of the institution or in regional - global databases. Jurisdictions should identify a primary and secondary focal point within their central authority, as initial contact point for inquiries on making requests for assistance.

Sometimes, in order to achieve the goal of mutual legal assistance, individual contact can be crucial, so that the informal focal point will be essential in the procedure.

Contact details should be accurate and regularly updated, ie., not to happen if the person changes his / her job and thus loses contact between institutions.

b) Regarding the above, state authorities should make available mutual legal assistance laws, regulations and tools, along with explanatory guidelines and sample requests for assistance.

In addition, the competent institutions designated as focal points for mutual legal assistance requests should, in partnership with relevant domestic agencies, to provide ready access to laws and regulations on mutual legal assistance on the Internet (for example, in the Republic of North Macedonia the focal point is the Sector for International Legal Cooperation, within the Ministry of Justice (https://www.pravda.gov.mk/sektor/3), while the legal basis is the Law on International Cooperation in Criminal matter ("Official Gazette of the Republic of Macedonia", No. 124 from 20.09.2010). Besides that, should issue and regularly update guidelines for foreign jurisdictions on requirements for making mutual legal assistance or other requests, including a template for a request and sample requests, and update them regularly. Also, the central authorities designated as focal points should issue written policies and procedures on mutual legal assistance to assist

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relevant staff to initiate and transmit requests and to facilitate the timely processing of requests from foreign jurisdictions, as well as, to provide relevant staff with formal and on-the-job training on mutual legal assistance laws, regulations, and policies and on procedures for making mutual legal assistance requests.

c) Another obstacle to obtaining mutual legal assistance may be the structure of requests, ie, inappropriate requests, requests with irrelevant information, vague requests, unfocused requests and poor translation.

When faced with a poorly drafted request, requested jurisdictions should communicate the deficiencies to the originating jurisdiction, a process that should improve the quality of future requests and ensure that the request will be executed as desired. Originating jurisdictions should try to ensure that their requests are clear and focused and do not use legal terms without explanation.

Mentoring of asset recovery specialists is another effective way to assist originating jurisdictions. This approach provides the opportunity for knowledge and skill transfers over an extended period of time. Developed countries can integrate assistance with mentoring and capacity-building programs in direct cooperation with the originating jurisdictions or as part of their assistance packages through multilateral organizations.

In order to overcome this obstacle, requested jurisdictions should, under agreement, provide assistance and training through the placement of liaison magistrates, prosecutors or legal mentors in originating jurisdictions, particularly those with a significant number of requests or high-value matters. In addition, originating jurisdictions should increase the quality of translation by using professional translation services.

In the field of mutual legal assistance, Switzerland should be mentioned as a good practice, namely, Switzerland has established a Web site for mutual legal assistance requests (https://www.bj.admin.ch/bj/en/home/sicherheit/rechtshilfe/strafsachen.html), which enables the authorized persons, on a daily basis, to be informed and up to date with the status of the submitted request.

d) In order for the mutual legal assistance procedure to be effective, it is necessary to achieve a balance between two goals, respect for human rights and

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freedoms, on the one hand, and confiscation and return of stolen assets, on the other hand.

Reality shows that when a case is opened against a person for confiscation of stolen assets, he will try to use the short period of time, which is not legally covered by a ban, to hide the requested property or to transfer it to a close persons, in order to avoid justice and retention of stolen assets. This is where international cooperation is needed, in order to fill legal gaps. This requires prompt action (taking into account the right to appeal, and other remedies available to the suspect).

Due to the above, requested jurisdictions should prioritize requests when informed of the urgency and create special procedures to expedite requests where originating jurisdictions advise that assistance is urgently required.

In order to use resources efficiently, originating jurisdictions should establish a reasonable monetary value threshold for assets below which they will not seek assistance unless there is high public interest in the recovery of assets.

e) In line with the above, sometimes the requested jurisdiction may request detailed information on assets, which the requesting jurisdiction may not have.

To overcome such an obstacle, states should develop and maintain publicly available registries, such as company registries, land registries, and registries of nonprofit organizations. Such registries should be centralized and maintained in electronic and real-time format, so that they are searchable and updated at all times.

f) When we talk about stolen assets from one country and transferred to another country, we primarily mean about bank accounts. In addition, bank accounts can be placed in the name of another person, which further complicates the procedure. To overcome this obstacle, states need to establish a national bank registry to retain account identification information, including beneficial owners and powers of attorney.

International cooperation requires states to provide information from such registries to foreign jurisdictions conducting investigations without requiring a formal mutual legal assistance request. This minimizes delay without alerting the asset holder to the investigation, thereby avoiding the risk that the assets will be moved or dissipated before the investigation is complete.

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4. SECOND ROUND OF UNCAC EVALUATION, WITH A SPECIAL FOCUS ON ASSET RECOVERY

The effective implementation of UNCAC is assessed through the Implementation Review Mechanism (IRM). The Mechanism promotes the purposes of the Convention, provides the Conference of the States Parties with information on measures taken by States parties in implementing the Convention and the difficulties encountered by them in doing so, and helps States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of such assistance. In addition, the Mechanism promotes and facilitates international cooperation, provides the Conference with information on successes, good practices and challenges of States parties in implementing and using the Convention, and promotes and facilitates the exchange of information, practices and experiences gained in the implementation of the Convention (https://www.unodc.org/unodc/en/corruption/implementation-review-mechanism.html).

The first cycle of the Review Mechanism started in 2010 and covers the chapters of the Convention on Criminalization and Law Enforcement and International cooperation. The second cycle, which was launched in November 2015, covers the chapters on Preventive measures and Asset recovery.

The second round of evaluation identified the problems faced by countries in implementing the provisions of the Convention, especially in the area of asset recovery. However, the problems in developing and developed countries are not the same.

Thus, it is noticed in North Macedonia that there is no national institution specialized in the tracing, securing and confiscation of assets (the same remark for Slovenia (Executive summary - Slovenia, Implementation Review Group 2020). On the other hand, the competencies and cooperation of the state institutions that have authorizations in the field of asset recovery are not clear (Executive summary - North Macedonia, Implementation Review Group 2020). It is noticed in Bosnia and Herzegovina that the asset recovery regime is in the early stages of development, and that there is no coordination between the institutions of the constituent units, ie. the establishment of domestic inter-agency coordination mechanisms is needed (Review Report of Bosnia and Herzegovina, UNODC, 2020). That the activities in Bosnia and

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Herzegovina are at an early stage is shown by the following recommendations: to adopt the necessary measures to allow confiscation for all offenses under the Convention, and to take measures to allow direct enforcement of foreign judgments and orders for confiscation or the recommendation to continue efforts to put in place a mechanism for the transfer of confiscated assets to requesting countries. In addition, it is recommended to the above countries taking measures to allow for the sharing of asset declarations with competent authorities in other jurisdictions and provisions on the reporting of accounts held in foreign jurisdictions.

Developed countries, on the other hand, face other challenges in implementing UNCAC, especially in the area of asset recovery. For example, the United Kingdom has a comprehensive legal and regulatory framework for asset recovery and has demonstrated effective inter-agency coordination leading to international cooperation on asset recovery. To facilitate successful asset recovery, the United Kingdom places specialist advisers, some as liaison magistrates and prosecutors, in priority countries to assist with mutual legal assistance, extradition and European arrest warrants, or as criminal justice or asset recovery advisers (Executive summary – United Kingdom of Great Britain and Northern Ireland, Implementation Review Group 2020). The evaluation for the UK recommends continuing with positive practices and experiences, in particular continuing efforts to improve the effectiveness of the suspicious activity reporting process; then increase financial transparency by publishing data on foreign accounts, as well as monitor the operation of the asset recovery mechanisms to ensure that they are applied to the fullest extent possible for seizures, confiscations and return procedures coming into the UK.

Liechtenstein, one of the countries with the highest GDP per capita, has a well-established legal regime for asset recovery. The mutual legal assistance framework of Liechtenstein allows for spontaneous transmission of information such as suspicious transactions or unusual payments by legal entities. Liechtenstein has been actively participating in the Lausanne process to develop guidelines for the efficient recovery of stolen assets and identify good practices and concrete steps in international cooperation to ensure effective procedures for freezing and returning stolen assets. Liechtenstein's good practice is considered to be the issuance of domestic freezing orders without a warrant from a foreign court, based on a request for mutual

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legal assistance or media reports. Despite the strong role of return on stolen assets, Liechtenstein is still advised to finalize the transposition of the fourth EU anti-money laundering directive (2015/849) to address the existing gaps in its anti-money laundering / counter-terrorist financing legislation on domestic politically exposed persons and beneficial ownership registers (Executive summary – Liechtenstein, Implementation Review Group 2020).

Despite the good legislative and institutional framework for asset recovery, Germany still has recommendations for improvement, such as: to continue efforts towards improving the data collection system concerning mutual legal assistance requests by exploring ways to compile relevant information and statistics; or to continue with steps to capacitate the newly established Financial Intelligence Unit, including through the provision of necessary resources and satisfaction of increased staff requirements to effectively carry out its mandate (Executive summary – Germany, Implementation Review Group 2020).

France has established the Agency for the Management and Recovery of Seized and Confiscated Assets as a public administrative body under the joint supervision of the Ministry of Justice and the Ministry of the Budget. Regarding asset recovery, France emphasizes cooperation and speed of information transfer. This is being done through various secure channels, such as the Egmont Group Secure Web and INTERPOL I-24/7 systems.

Similar to the UK, France designates liaison magistrates in several countries to facilitate the processing of mutual legal assistance requests, including for asset recovery. Then, the establishment of a dedicated platform for the identification of criminal assets.

The evaluation provides several recommendations for France: including the assets of spouses and minor children among the assets subject to declaration requirements; to take the necessary measures to ensure that confiscated property is returned, in accordance with UNCAC, even in the absence of an agreement with the requesting state (Executive summary – France, Implementation Review Group 2020).

As a separate category to be mentioned are the countries known as "tax havens" or Offshore destinations.

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Offshore - can be defined as business opportunities offered by countries abroad, which usually cannot be used in the home country. This term refers to business activities through the use of banks, transactions or companies abroad. The registration of a company in offshore financial centers and consequently, the opening of accounts in offshore financial centers is not always done in order to commit abuses but is also done due to lower costs for running the business.

Offshore companies around the world offer a range of benefits for companies, and to start this type of company does not require much capital (for example, to start a company in Anguilla, Belize, Panama, St Vincent requires from 850-1000 euros, https : //www.sfm.com/company-registration-cost), the company operates without accounting obligations and submits annual reports to local authorities. No tax is paid on profits, nor is there a need for a local director.

In offshore financial centers, in addition to offering lower operating costs to companies, maximum privacy is provided because the names of owners and directors do not always have to be publicly recorded in trade registers.

Right here, in the possibility of hiding the real owner of the company creates the danger of money laundering or the removal of stolen assets from the country. Therefore, during the evaluation of the implementation of UNCAC (in the area of asset recovery) some of the mentioned countries were given several recommendations (eg, Panama, https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ ImplementationReviewGroup / ExecutiveSummaries2 / V1908012e.pdf).

5. CASES FROM PRACTICE

According to data from the StAR Initiative, from January 2021 (https://star.worldbank.org/corruption-cases/assetrecovery/?term=), they have 246 stolen asset cases in their database.

According to them, the most common jurisdictions in which the asset is transferred are: USA (68), Switzerland (36), United Kingdom (26), France (7). While, as jurisdictions of origin most often appear: Nigeria (28), Ukraine (14), Libya, Philippines (13), Mexico (9).

It is noteworthy that there is no case for the Balkan countries, especially for the countries that emerged with the break-up of the former Yugoslavia. In the early 90's,

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the process of privatization of state capital took place in the mentioned countries. Thus, in Macedonia (today North Macedonia) the privatization process created social problems because more than 200,000 people lost their jobs. This process has had an impact on further developments, such as the growth of organized crime, corruption, and generally major problems with the rule of law. Meanwhile, the social image in the country is crystallizing, so those who managed to become owners of state-owned companies today have a strong influence in the overall political-economic and social life, while having a huge capital in the country and abroad (especially in developed countries and financial centers).

Case 1 - Libya

If we take as a case study the cases in which Libya appears as a country of origin, we will notice that all the cases refer to the former ruler Muammar el-Qaddafi (and related entities and individuals). These asset recovery cases began in 2011, and the requested jurisdictions are the United States, the United Kingdom, Australia, the Netherlands, Austria, Switzerland, Sweden, Canada, Germany, and South Africa. From mentioned 13 cases, only four have been completed, one case is partially completed, while the rest are ongoing.

One completed case is ID: ARW-139 (https://star.worldbank.org/corruption-cases/assetrecovery/?f%5B0%5D=sm_field_arw_jurisdiction_origin%3ALibya), in which the Netherlands returns US $ 2 billion in previously frozen money to the Libyan National Transitional Council. A similar case is with ID: ARW -130, in which US $ 1.2 billion in Libyan assets had been located and frozen in Austrian financial institutions (https://star.worldbank.org/corruption-cases/node/18428).

Starting from the fact that most cases for Libya are still ongoing (almost a decade), ie, stolen asset has not been returned to the country of origin, shows how complex and slow is the whole procedure for returning stolen asset, although we have public declarative statements especially from the requested jurisdictions (where the stolen asset is located). This negatively affects the country of origin because the material goods needed for its development cannot be obtained.

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Case 2 – Ukraine

Out of a total of 14 cases for Ukraine, eight concern Pavel Lazarenko. He is a former Ukrainian politician and former Prime Minister who in August 2006 was convicted and sentenced to 97 months in prison in the United States for money laundering, wire fraud and extortion. According to United Nations (Kravets, David, 2006), approximately US $ 200 million was embezzled by Lazarenko during 1996–97 from the government of Ukraine.

According to the Swiss Ministry of Foreign Affairs, US $ 5.4 million remain frozen (Stolen Asset Recovery Initiative - Corruption Cases - Pavel Lazarenko (Switzerland) - 2017-07-20-1.pdf (Case ID: ARW-154)).

It should be noted that out of the eight cases for Lazarenko, only one case has been completed, the rest are ongoing.

When talking about Ukraine it is necessary to mention the case of former President Viktor Yanukovych. It is a seized asset in Switzerland, worth US $ 175 million (https://star.worldbank.org/corruption-cases/node/20328 (Case ID ARW-228)). It is specific to the case that the funds went through accounts in numerous jurisdictions, including Cyprus, British Virgin Islands, Austria, Liechtenstein, Great Britain, the Netherlands and Switzerland. The procedure in this case is still ongoing, ie. the asset is still being treated as frozen.

Case 3 – Nigeria

Jurisdiction of origin with the largest number of cases in the StAR Initiative database is Nigeria. The cases mainly concern three people: Diepreye Alamieyeseigha (Nigerian politician who was Governor of Bayelsa State in Nigeria from May 1999 to December 2005), James Ibori (Nigerian politician who was Governor of Delta State in Nigeria from May 1999 to May 2007) and Sani Abacha (He was a Nigerian military general who served as the military head of state of Nigeria from 1993 until his death in 1998).

Five cases have been opened against Diepreye Alamieyeseigha, four of which have been completed and one is ongoing. The completed cases include the jurisdictions of Cyprus, Denmark, South Africa and the UK (https://star.worldbank.org/corruption-cases/assetrecovery?f%5B0%5D=sm_field_arw_jurisdiction_origin%3ANigeria (Case

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ID ARW-50 51, ARW-52, ARW-54)), and about US $ 18 million was returned to Nigeria, funds that through several companies Alamieyeseigha took out in the mentioned countries, some of them invested in real estate, while some were in bank accounts.

In the fifth case for Alamieyeseigha the requested jurisdiction is US. These are two real estates in Maryland and Massachusetts worth about US $ 1.1 million, and there are suspicions of money laundering (Case ID ARW-55). The procedure in this case is still ongoing.

Six cases have been opened against James Ibori and all are ongoing. The requested jurisdictions are the US, UK, Hong Kong and India. Proceeds from corruption worth about US $ 35 million (real estate and bank accounts) are frozen (https://star.worldbank.org/corruption-cases/node/19585).

14 cases have been opened against Sani Abacha, most of which are ongoing and several have been completed. Case ID: ARW-211 is one of the completed and with it Liechtenstein returned about US $ 224 million to Nigeria, funds that were found to be corrupt from the Nigerian national budget.

In another completed case (ID: ARW-250), Switzerland returned US $ 321 million to Nigeria in 2017 (https://star.worldbank.org/corruption-cases/node/20494). An additional US $ 160 million was returned to Nigeria from Jersey in 2003, ie funds that were corruptly removed from Nigeria by Sani Abacha and his associates (Case ID: ARW-165).

In 2007, US $ 723 million was returned to Nigeria from Switzerland (Case ID: ARW-167).

Data on completed cases, as well as ongoing ones, show that huge sums, expressed in billions of US dollars, were corruptly stolen from Nigeria during the rule of Sani Abacha.

6. STEPS FOR BETTER RESULTS

Success in stolen asset recovery requires coordinated action by all stakeholders in both requested and requesting jurisdictions, including those responsible for setting policies, law enforcement and justice officials, banks, private companies and their intermediaries (e.g., lawyers), development cooperation actors, civil society, and the media.

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A high-level commitment to asset recovery is especially important, namely, both developed and developing countries need to adopt and implement comprehensive strategic policies to combat corruption and recover assets.

Adequate funding is needed to support asset recovery, including funding for investigations, prosecutions, international cooperation, training of domestic and foreign practitioners, policy development work, and institutions.

Both developed and developing countries need to ensure that they have a broad range of mechanisms in place, such as the abilities to rapidly freeze assets, to confiscate in the absence of a conviction, to return assets as part of a settlement agreement, and to reverse or shift the burden of proof.

It is especially recommended developed countries to be proactive, to ensure that they are able to proactively identify and freeze the assets of allegedly corrupt officials and establish incentives for domestic practitioners to initiate cases. Such domestic actions should be followed by international cooperation with the relevant foreign jurisdiction, including spontaneous disclosures and actions to build capacity and trust.

Build capacity in developing countries is a necessary condition for better results in return of the stolen assets. Asset recovery requires effective investigations in both, the requested and requesting countries, and many developing countries may need technical assistance to take such action. Development agencies can support the training and mentoring of developing country practitioners.

The transparency of the achieved results is especially important, as a roadmap for the next steps. Thus, statistics on law enforcement activities are essential for showing that countries are fulfilling their high-level commitments; they also help to guide domestic policy development, resource allocation, and strategic planning.

Regarding the above, we should mention the extremely important Proposal for a Multilateral Agreement on Asset Recovery prepared by Transparency International and UNCAC Coalition (https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/TI_UNCAC_Po_Coalition_Coalition_ .12.6.2020.pdf) and submitted to UNGASS against Corruption 2021. It is a Proposal based on several international legal acts,

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including the Lima and Oslo Statements on Corruption Involving Vast Quantities of Assets.

Of note is the fact that after a decade of lobbying, on 01.01.2021 the US Congress passed the Corporate Transparency Act (https://thesentry.org/2021/01/01/5106/us-passes-corporate-transparency-act-expert-commentary-available/), which bans anonymous shell companies in the country. This decision is in line with global efforts for ownership transparency, anti-money laundering and stolen asset detection.

CONCLUSION

Justice requires the return of property to the state from which it was criminally seized. Usually the victims of the stolen asset are the countries in transition, ie the developing countries. These are countries that have weak institutions, low level of professionalism, political influence, and as a result are not able to prevent the illegal transfer of stolen assets from the country of origin.

Such property also threatens the functioning of the legal system of developed countries or financial centers, in which the stolen asset is usually transferred. Money laundering is a danger to their institutional system.

Due to the above, intensified international cooperation is needed in the field of detection of stolen asset and its return to the country of origin.

Asset recovery is one of the pillars of UNCAC that requires more energy and commitment to achieve the goals of the Convention.

Obstacles to effective detection, freezing, confiscation and return of stolen assets are of different nature, but all obstacles can be overcome if there is effective cooperation between countries at bilateral and multilateral level.

Supports for stolen asset handover initiatives, such as the StAR initiative, need to be supported. The paper presents several cases on which the StAR initiative works, but the problem with detecting a stolen asset is very large, ie the dark number is huge.

It is necessary to multiply the efforts of countries in the field of asset recovery, because injustice can not be the basis of law.

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