GOVERNMENT AS A VICTIM IN TRANSNATIONAL CORRUPTION CASES: EXPERIENCE OF KAZAKHSTAN

Open-ended Intergovernmental Working Group on Asset Recovery
13th intersessional meeting (Vienna, 29-30 May 2019)
10 BILLION $ = 10 YEARS

1/6 OF THE NATIONAL FUND OF KAZAKHSTAN
SEARCH FOR CRIMINALS AND STOLEN ASSETS

1,500 THOUSAND ARE ESCAPING FROM JUSTICE ABROAD

IN MORE THAN 200 COUNTRIES

IN SWITZERLAND – FORMER MAYOR OF ALMATY KHRAPUNOV
SOLD GOVERNMENTAL LANDS AND TRANSFERRED THE STOLEN MONEY - ABROAD

IN GREAT BRITAIN – FORMER MAYOR OF ATYRAU REGION RYSKALIEV
EMBEZZLED OVER 500 MILLION USD OF PUBLIC FUNDS

IN AUSTRIA – HEAD OF CONSTRUCTION COMPANY TAIZHANOV
DECIEVED OVER 2 THOUSAND CITIZENS, WHO ENTRUSTED HIM 100 MILLION EURO FOR HOUSES CONSTRUCTION
CASE STUDY: KHRAPUNOV

Mr. Viktor Khrapunov is an ex-mayor of Almaty.

Almaty is the biggest city in Kazakhstan with the population of 1,8 million people.

Investigation revealed that Mr. Khrapunov routinely abused his position at the office by providing illegal benefits to his associates.

The crime proceeds were laundered and transferred out of Kazakhstan by Mr. Khrapunov and his lieutenants.
In 2003 land plots of ‘Shadid’ in Almaty were illegally seized on the instruction of Khrapunov allegedly for state needs.

In 2003, the decision was made to sell a land plot in Almaty.

Khrapunov V.V.

In 2003, the decision was made to sell a land plot in Almaty purchased land plots for 100,000 USD.

Khrapunova L.K.

In 2003 sale of 100% interest for 13 million of USD

Building Service Company LLP (controlled by Khrapunova L.K.)

Land registration

13 million of USD are transferred to the personal account of L. Khrapunova in JSC "eurasian bank"
CASE STUDY: KHRAPUNOVS

» The city of Almaty hired a Swiss law firm.

» The lawyers on behalf of Almaty filed an application to become a party (as a victim) to the Swiss criminal investigation on money laundering against Khrapunovs.
CASE STUDY: KHRAPUNOVCS

» The application was upheld and the city of Almaty became a party to the proceedings.

» In 2017 Khrapunovs were charged by the Swiss prosecuting authorities on several counts of money laundering.
The city of Almaty together with BTA Bank filed a civil complaint in the London and New York courts against Khrapunovs. This litigation concerns a conspiracy by which associates of Khrapunov and Ablyazov expropriated funds belonging to the City of Almaty, Kazakhstan ("Almaty") and BTA Bank JSC, a banking institution based in Kazakhstan, and laundered the stolen funds into New York City real estate investments.

In 2018 the U.K. High Court found that Ilyas Khrapunov in conspiracy with Mukhtar Ablyazov, a former chairman of the board of directors of BTA Bank, embezzled more than 500 million of USD stolen from Kazakhstan.
CHALLENGES

- In most of the cases you need to hire a law firm to represent your interests.

- The search of a law firm is often internet based and is not reliable. Being a victim is expensive.

- It takes a lot of time and resources to identify which law firms are appropriate.
Developed:

- **Clear and short guidelines** for the investigators and prosecutors;
- **Unified MLA, FIU requests templates**;

The guidelines and the templates are:

- a) based on the **best international experience** (*UNODC, the StAR initiative, PC-OC of the Council of Europe, UK, Australia, Singapore and other recommendations and databases).*
- b) **locally adapted** to be easily applied by any investigators in Kazakhstan
200 investigators and 10 national trainers were trained with the support of the UNODC and StAR Initiative.
UNODC and StAR initiative support

- Facilitated our contacts with different jurisdictions involved in asset recovery.
- Helped us to join asset recovery interagency networks: CARIN, ARIN AP;
- Provides assistance in further development of our guidelines and templates.
Prosecutor General’s Office of the Republic of Kazakhstan

SEARCH AND SEIZURE OF THE CRIME PROCEEDS ABROAD

Baurzhan Kurmanov, Unit Head on protection of state interests abroad
Issatai Zhahanger, Prosecutor of Department of the PGO
4 TOOLS

- Egmont
- Interagancy Networks
- Open Sources
- MLA requests
TOOL NO 1
REQUESTS VIA EGMONT

EGMONT GROUP: - exchange of information by financial intelligence units of more than 150 countries

Requests are submitted electronically. Speed of execution is sometimes very high – 1-20 days

WHAT CAN BE REQUESTED?
A) Freeze or suspend alleged crime proceeds transactions
B) Obtain information on transfers of alleged crime proceeds
C) Suspicious transactions reports on persons under investigation

How to make: get an approval from the Prosecutor General’s Office and apply to the Committee on Financial Monitoring

Use request form in the CFM (Annex No 1)
Tool No. 2
Interagency Networks

1. «CARIN» (EUROPE) и ARIN-AP (ASIA)
2. INTERPOL: The Global Focal Point Network on Asset Recovery

It is possible to submit preliminary unofficial request, and:

1) Receive certain information;
a) Eg. Information about shareholders and directors of a company
   b) Voluntary witness statements

2) Establish direct contacts with foreign colleagues
Recommendation No 1

**USE TOOLS No 3 (Open Sources), No 1 (EGMONT) and No 2 (EXCHANGE NETWORKS) TO SUPPLEMENT MLA REQUESTS (No4)**

Why:

**a)** MLA requests must contain specific information about the subject of the request (numbers of bank accounts, location of assets);

**b)** In most cases, requests "to seize any bank accounts of a suspect" will not be enforced in EU, US, Canada and other countries.

**EXAMPLE of an unsuccessful request:** "Mr. X is suspected of taking bribes. Please provide a complete list of accounts that he has in your country, and immediately arrest them."

**The real answer from Switzerland:**
"We ask you to provide us correct information about bank accounts and real estate. Information can be provided only if you give either the name of the depositor and the bank or the account number and the bank. Otherwise, we cannot process your request."

**IT IS IMPORTANT TO UNDERSTAND THAT THE INFORMATION RECEIVED WITHIN TOOLS No. 1, 2, 3 IS INTELLIGENCE. IT CANNOT BE USED IN A COURT**
RECOMMENDATION No 2

USE SIMPLE SENTENCES IN YOUR REQUESTS

WHY:
Complex sentences are difficult to translate. As a result, foreign colleagues may not understand them.

THE WAY YOU SHOULD NOT DO:
Having left the borders of our state, V.I. Nikolayev and other individuals formed an organized criminal group from among the citizens of the Republic of Kazakhstan and other countries whose activities are aimed at the committing illegal acts on the legalization of money and assets obtained through criminal means in the neighboring countries and beyond.

THE WAY YOU SHOULD DO:
V.I. Nikolaev fled the Republic of Kazakhstan. Then V.I. Nikolayev established an organized criminal group. The criminal group was created to legalize (launder) funds and assets obtained by criminal means. Illegal money and assets were legalized (laundered) in the neighboring countries and beyond. The criminal group included citizens of the Republic of Kazakhstan and other countries.
One jurisdiction froze bank accounts of a person wanted by Kazakhstan on a grand corruption case. This info was spontaneously disclosed to us.

Unfortunately, we were not able to establish a link between the crime and the frozen money.

It is because the stolen public funds were cashed out and in the course of investigation we were not able to identify how the stolen money were transferred abroad.

We understand that until we find this link there is no prospect of stolen funds return to Kazakhstan on the basis of MLA.
However, if we are provided the information on how the money entered this jurisdiction we potentially would be able to find this link.

Our MLA requests to obtain bank statements were refused because we were not able to show the link between the crime and the assets.

We respect the right to confidentiality. However we believe that this refusal is not in accordance with the spirit of the UNCAC.
It is definitely not a fishing expedition. We know the banks. The person is wanted for a grand corruption case.

We possess overwhelming evidence that this person stole hundreds of million of USD from the state budget of Kazakhstan.

This person’s salary and the assets he possessed before becoming a public official were a drop comparing to the size of the frozen money.

We strongly believe that frozen funds are the money stolen from the people of Kazakhstan.
We think it is a vicious circle. In order for us to provide the evidence that these money are crime proceeds we need to understand how they entered that jurisdiction. However, we can not do this because we are not provided bank account statements.

We strongly believe that crime does not pay.

We suggest that we are not the only country which faced this conundrum.

Therefore, we ask the UNODC secretariat to look at this problem closely and advise us and other UNCAC state parties what can be done on such type of cases.
THANK YOU FOR THE ATTENTION

Do not hesitate to contact me should you have any questions:
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