



## ASSET RECOVERY POLICIES IN POST-REVOLUTION ARMENIA

### Introduction

After proclaiming independence in 1991, Armenia saw controversial political, economic, and social processes, widespread corruption, state capture by a group of individuals, social injustice, impunity, and inability to change the power because of constantly-rigged elections. The buildup of resentment in society, after manifesting itself through public outcry on a few occasions, finally peaked in 2018 in the form of a nationwide revolution.

The public demands of restoring justice and making democracy irreversible in Armenia require the implementation of appropriate policies, as well as legal and institutional mechanisms and tools to entrench the constitutional vision of constructing a social and democratic state based on the rule of law.

The rules and morals of kleptocracy prevailed and were widespread in the Republic of Armenia for years. To meet the public expectations, the post-revolutionary leadership should decide whether it prefers to consign to oblivion what happened and to move on, or to revise and evaluate the past in order to insure the state utmost against future mistakes and potential regress. The public, having witnessed various manifestations of state capture and injustice, is certainly concerned about how the revolutionary leadership will assess the misuse of public resources and the enrichment of a group through such misuse, or how the revolutionary leadership will treat officials that engaged in such conduct and their related parties, and what must be done to prevent such practices from reoccurring.

In this context, it is necessary to determine swiftly how and by what mechanisms to recover and return the property/assets stolen from the state and society. As a matter of priority, it is necessary to clarify the legal mechanisms available under Armenia's existing legislation and what needs to be done to fill the gaps.

This brief presents the concept of "asset recovery," the international experience of asset recovery, the legal regulations that currently exist in the Republic of Armenia, the main problems, and some recommendations on the most effective avenues of returning the illegally-acquired assets both in the international context and in Armenia's territory.

This brief was developed on the basis of legal, as well as political and economic considerations related to asset recovery. Hence, it reflects an attempt to meet the public's expectations as to the expediency, feasibility, effectiveness, and transparency of this measure. The recommendations made are aimed at erasing and overcoming the divide between different parts of society, achieving tolerance, and at the same time precluding any corruption in the process.

## Asset Recovery: the International Experience

### Asset Recovery Avenues

Asset recovery is the process of tracing, freezing, and returning illegally acquired assets to the jurisdiction of origin.<sup>1</sup> Under the international experience, asset recovery can be pursued through the following four avenues:<sup>2</sup>

1. Conviction-based asset recovery: this is considered the most common form of asset recovery, when a person's assets are recovered at the same time as the person is convicted for corruption. Different countries employ different methods of asset confiscation, such as confiscation only of assets acquired through the crime or confiscation of income derived from the assets and their exploitation.
2. Non-conviction-based asset recovery: in some countries, this is also referred to as "civil forfeiture." This avenue is different from criminal proceedings and requires only proving that the property is the proceeds or an instrumentality of crime.<sup>3</sup> It requires employing the "balance of probabilities" approach, under which it is necessary to present evidence for more than 50 percent of the facts: hence, the standard of proof here is not as high as in criminal cases. The claim is brought against the property, not against the person, and the property owner is a third party who has the right to protect his ownership. Such practice can be found in Ireland, Israel, Slovenia, Switzerland, as well as the USA and the United Kingdom.<sup>4</sup>
3. Administrative confiscation: the state freezes assets without applying to court—based on an act adopted by the executive or the parliament—or starts administrative proceedings in court, which leads to the confiscation of property. This avenue is often used for undisputed property subject to confiscation. This experience can be found in Germany and Tunisia.<sup>5</sup>
4. Asset recovery through civil justice: the state itself acts as a claimant in the territory of another state against a natural person or legal entity or property under the possibilities availed by such country's legislation. Similar to the first method, this method is available in all countries.

Recently, parallel to conviction-based asset recovery, there is a growing use of the other avenues. Studies have shown that more assets were recovered without conviction than through criminal prosecution/conviction.<sup>6</sup> Non-conviction-based asset recovery can work effectively in all procedural processes through settlement agreements and compensation of losses by the court.

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<sup>1</sup> OECD/IBRD WB. *Tracking Anti-Corruption and Asset Recovery Commitments: A Progress Report and Recommendations for Action*. 2011, p. 23.

<sup>2</sup> IBRD/the World Bank, *Public Wrongs, Private Actions: Civil Lawsuits to Recover Stolen Assets*. 2015, pp. 3-4.

<sup>3</sup> *Ibid*, p. 14.

<sup>4</sup> The opposite of the "balance of probabilities" approach is the "beyond reasonable doubt" principle whereby the state carries the burden of proof and must show in a compelling manner that its allegation is true.

<sup>5</sup> After the Ben Ali regime fell, the Government of Tunisia managed through this tool to confiscate property reaching hundreds of millions of US dollars.

<sup>6</sup> IBRD/The World Bank. *Public Wrongs, Private Actions: Civil Lawsuits to Recover Stolen Assets*. 2015, p. 3.

Of the aforementioned avenues, non-conviction-based asset recovery can at present be more effective in Armenia due to the following reasons:<sup>7</sup>

- Unlike the other avenues, bringing a claim against the property will preclude the political prosecution of individuals, because the goal is to collect the illegally-acquired property, rather than to imprison the person. It will enable the person to avoid criminal prosecution, conviction, and a personal criminal record of conviction.
- Asset recovery without a convicting judgment ensures a faster process, because the state's efforts concentrate on tracing the property, rather than collecting evidence for prosecuting the individual. The evidence is essentially provided by the person by means of filing a declaration.

Although "asset recovery" in the international context mostly implies the return of assets from abroad to the jurisdiction of origin, it can in principle and in substance happen also within the same country.

### *Asset Recovery: Stages*

Asset recovery is commonly considered to have 5+1 stages.<sup>8</sup>

#### *Stage 1. Collection of Intelligence and Evidence and Tracing Assets*

This stage can begin with the preparation for initiation of a criminal case or with the initiation itself or, depending on the country's legislation, simply by the relevant state body instituting a civil or administrative claim. The international asset recovery experience shows that the common mistake is often the failure in the very beginning to pay sufficient attention to the asset tracing stage. Although the property tracing is a time-consuming and costly process, it is important to start with this stage before developing a legal strategy for recovering the assets found, because the traced assets may be within the tracing country—making it unnecessary to seek the assistance of other jurisdictions.

#### *Stage 2. Securing the Assets from Movement or Destruction*

This process implies the use of tools prescribed by the legislation in order to prevent the movement or destruction of the assets. It can be done by ordering the restraint or seizure of the assets if the assets are, for example, precious stones, and decision has been taken in favor of criminal prosecution. If decision has been taken in favor of civil proceedings, it can be done by filing motion to order restraint of the assets. The importance of this stage, including its speediness, cannot be underestimated in order not to allow movement of the assets and to prevent its subsequent dissipation or legalization.

#### *Stage 3. Court Proceedings*

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<sup>7</sup> This avenue can be used in Armenia regardless of the fact that it is mostly used in common-law countries, because the common-law and civil-law distinction has become less relevant in the context of ongoing integration processes.

<sup>8</sup> *Recovery Handbook. A Guide for Practitioners*. 2011, p. 6, and Tetiana Shevchuk, Daria Kaleniuk. *Recovery of Proceeds of Corruption in Ukraine: What is Lacking? Analytical Brief*. 2015, p. 6.

Depending on which of the asset recovery avenues has been chosen (criminal, civil, or administrative), court proceedings are the decisive stage in which the ownership of the property is determined.

#### *Stage 4. Enforcement of Orders*

This is the stage in which court orders are enforced. If the assets are located inside the country, the court order is delivered to the relevant authority for enforcement. If the assets are located in a foreign jurisdiction, the competent authority must submit a mutual legal assistance request to its relevant authority, citing the relevant bilateral or multilateral treaties or, in case of their absence, simply request mutual assistance through the diplomatic pipelines.

#### *Stage 5. Asset Return*

This stage is the final return of the assets to the jurisdiction of origin and/or fixing them in the foreign jurisdiction as ownership of the jurisdiction of origin. Compared to domestic processes of asset recovery and return, asset return from other countries is more time-consuming and costly.

#### *Stage 6. Management of Returned or Restrained/Seized Assets*

This stage is essentially related to Stages 2 and 5 above. The international experience has shown that the economic use of restrained or seized assets requires mechanisms that will allow making a profit. In practice, when courts have decided to return the property to its original owner, the person is not entitled to claim loss of profits, and when the claim is resolved in favor of the state, the state receives the assets in the form of proceeds. This practice was introduced recently in Ukraine. For this purpose, it is necessary to designate clearly the agency that will manage the restrained/seized and/or returned assets.

As was mentioned above, asset recovery is internationally a rather lengthy and complicated process; hence, there have not been many cases. Nevertheless, there have been success stories over the years. Member countries of the Organization for Economic Co-operation and Development (OECD)<sup>9</sup> have returned US \$142.7 million worth of assets to jurisdictions of origin during 2010 to June 2012,<sup>10</sup> whilst a total of US \$1,398 billion of assets were frozen.<sup>11</sup> In 2017, Nigeria managed to return US \$321 million,<sup>12</sup> and the Philippines managed in the last 21 years to return from Switzerland around US \$1 billion of what had been acquired illegally by Ferdinand Marcos.

## **Asset Recovery Legislation in the Republic of Armenia**

### *The Constitution of the Republic of Armenia*

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<sup>9</sup> Assets have been returned by the following OECD member countries: Belgium, Canada, Luxembourg, the Netherlands, Portugal, Switzerland, the United Kingdom, and the USA.

<sup>10</sup> IBRD/the World Bank. *Public Wrongs, Private Actions: Civil Lawsuits to Recover Stolen Assets*. 2015, p. 27.

<sup>11</sup> Ibid, p. 1. More up-to-date data is globally not available.

<sup>12</sup> <https://star.worldbank.org/sites/star/files/star-annual-08.pdf>

The following provisions of the Constitution are of essential relevance to asset recovery in the Republic of Armenia:

1. No one may be deprived of ownership except through judicial procedure, in the cases prescribed by law.<sup>13</sup>
2. No one shall be sentenced for an action or inaction not deemed to be a crime at the time of committal. A punishment more severe than that applicable at the time of committing the criminal offence may not be imposed. A law decriminalizing an act or mitigating the punishment therefor shall have retroactive effect.<sup>14</sup>
3. Laws and other legal acts deteriorating the legal condition of a person shall not have retroactive effect.<sup>15</sup>

### *International Treaties Ratified by the Republic of Armenia*

The Republic of Armenia has ratified a number of international and regional conventions that contain provisions related to asset recovery, namely:

1. United Nations Convention against Corruption;<sup>16</sup>
2. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances;<sup>17</sup>
3. United Nations Convention against Transnational Organized Crime;<sup>18</sup>
4. European Convention on Mutual Assistance in Criminal Matters;<sup>19</sup>
5. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;<sup>20</sup>
6. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism;<sup>21</sup>
7. CIS Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Cases.<sup>22</sup>

### *Domestic Legislation*

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<sup>13</sup> Constitution of the Republic of Armenia, Article 60, part 4.

<sup>14</sup> Ibid, Article 72.

<sup>15</sup> Ibid, Article 73, part 1.

<sup>16</sup> The Republic of Armenia signed on 19 May 2005, and it entered into effect for the Republic of Armenia on 8 March 2007: <https://www.unodc.org/unodc/en/corruption/ratification-status.html>

<sup>17</sup> The Republic of Armenia joined on 13 September 1993, and it entered into effect for the Republic of Armenia on 12 December 1993:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=VI-19&chapter=6&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=VI-19&chapter=6&clang=en)

<sup>18</sup> The Republic of Armenia signed on 15 November 2001, and it entered into effect for the Republic of Armenia on 1 July 2003:

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&clang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en)

<sup>19</sup> The Republic of Armenia signed on 11 May 2001, and it entered into effect for the Republic of Armenia on 25 April 2002:

[https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/030/signatures?p\\_auth=XjCJsLJY](https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/030/signatures?p_auth=XjCJsLJY)

<sup>20</sup> The Republic of Armenia signed on 11 May 2001, and it entered into effect for the Republic of Armenia on 1 March 2004:

[https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/141/signatures?p\\_auth=XjCJsLJY](https://www.coe.int/en/web/conventions/search-on-treaties/-/conventions/treaty/141/signatures?p_auth=XjCJsLJY)

<sup>21</sup> The Republic of Armenia signed on 17 November 2005, and it entered into effect for the Republic of Armenia on 1 October 2008:

<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/198/signatures>

<sup>22</sup> The Republic of Armenia signed on 7 October 2002, and it entered into effect for the Republic of Armenia on 19 February 2005.

In the Republic of Armenia, the traditional avenue for asset recovery is forfeiture and confiscation of assets as a result of the person’s criminal conviction.<sup>23</sup> Thus, assets can be recovered if a person involved in corruption has been prosecuted and convicted through legal proceedings, by means of asset forfeiture and confiscation, which are done through inquest, pre-trial investigation, and court trial stages, as well as compulsory enforcement of the judicial act in case of failure to comply with it.

The criminal proceedings of Armenia substantively cover all the 5+1 stages of asset recovery—from asset tracing to asset management.

However, it should be noted that the current legislation of Armenia contains a number of rules that do not contribute to the effective organization of the asset recovery process: for example, asset tracing may be performed by any law-enforcement body, which is rather ineffective in terms of coordination. Seized assets may be taken and held by several agencies, without taking into consideration the economic efficiency of the assets and without generating any profit.

### *Criminal Law Provisions*

The domestic legislation of the Republic of Armenia offers two legal regimes for asset recovery—criminal and civil, which provide the minimum tools for asset tracing and return. They are mostly covered in two legal acts—the Republic of Armenia Criminal Code and the Republic of Armenia Criminal Procedure Code.

In the asset recovery process, the legislation of the Republic of Armenia prescribes legal categories such as “seizure of property,”<sup>24</sup> “arresting property,”<sup>25</sup> “property confiscation,” and “property forfeiture.” The first two (“seizure of property” and “arresting property”) are temporary measures for stopping the movement of property that potentially has criminal origin. Property confiscation is a court-ordered additional sentence type (applied to the property of a convicted person), while property forfeiture is an additional measure of procedural coercion (applied to the property and other values acquired as a result of committing a crime). In legal terms, property forfeiture, truly, requires a judicial act.

In the Criminal Code of the Republic of Armenia, “property” is defined rather extensively. It includes “material goods of any kind, moveable or immovable objects of civil rights, including financial (monetary) means, securities and property rights, documents or other instruments evidencing title to or interest in property, any interest, dividends, or other income generated by or accruing from such property, as well as neighboring and patent rights.”<sup>26</sup>

- “Seizure of property” is an investigative action performed when it is of relevance to an initiated criminal case. The seizure of a document or another object shall be performed not for the purpose of ensuring the forfeiture of property, but rather due to the fact that they may have evidentiary value for the effective investigation of the case. The

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<sup>23</sup> The Republic of Armenia Code of Administrative Offences, too, prescribes the concept of confiscation, but it is not a type of punishment.

<sup>24</sup> The Republic of Armenia Criminal Procedure Code, Article 226.

<sup>25</sup> Ibid, Article 232.

<sup>26</sup> The Republic of Armenia Criminal Code, Article 103.1, part 4.

investigative action of seizure shall be performed by an investigator when he clearly knows exactly with whom and where such property is.”<sup>27</sup>

- “Arresting property” differs from “seizure of property” by the purpose of the action. It is aimed at securing the potential forfeiture and confiscation of the property, the court expenses, and the civil claim. Bodies conducting the criminal proceedings may arrest property only when the evidence collected in the case provides a sufficient basis for assuming that the suspect, the accused, or the person holding the property may conceal, destroy, or consume the property subject to forfeiture.<sup>28</sup> A decision to arrest property shall be enforced on the basis of a decision of the inquest body, investigator, or prosecutor.<sup>29</sup> After the preliminary investigation of the criminal case is finished, court-ordered arrest of property shall be enforced by the agency responsible for compulsory enforcement of judicial acts.<sup>30</sup> Except for real estate and large objects, other arrest property shall, as a rule, be taken.<sup>31</sup>

If the arrested property comprises precious metals and stones, diamonds, foreign currency, checks, securities, and lottery tickets, they shall be delivered to the Treasury of the Republic of Armenia for safekeeping.<sup>32</sup> If the arrested property comprises cash, it shall be paid to a deposit account of the court that has jurisdiction over the case in question.<sup>33</sup> Other objects that constitute property shall be sealed and held in the body that took the decision to arrest the property, or delivered for safekeeping to a representative of the local government or an entity responsible for managing the housing stock. Property not taken, which has been arrested, shall be sealed and left for safekeeping with the property’s owner or possessor or adult members of such person’s family.<sup>34</sup>

- Under the Criminal Procedure Code of the Republic of Armenia, property confiscation is an additional sentence type, which involves the compulsory and free-of-charge taking of property that is owned by a convict or of a part thereof, as ownership of the state. The amount of property confiscation shall be determined by the court in view of the amount of property damage inflicted by the crime and the amount of property acquired criminally. The amount of property confiscation may not exceed the amount of damage inflicted by the crime or the amount of benefit acquired criminally.<sup>35</sup>
- Under Article 103.1 of the same Code, forfeiture is the compulsory taking of any property derived from or obtained, directly or indirectly, through the commission of crime, or of the income or other types of benefits gained through the use of such property, or of the instrumentalities and means used in or intended for use in the commission of crimes, or of property used in the financing of terrorism, or of the income or other types of benefits gained through the use of such property, or of the objects of smuggling that have been smuggled across the border of the Republic of Armenia, which is performed for the benefit of the state, except for the property of *bona fide* third parties and the property necessary

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<sup>27</sup> The Republic of Armenia Criminal Procedure Code, Article 226, part 1.

<sup>28</sup> The Republic of Armenia Criminal Procedure Code, Article 233, part 1.

<sup>29</sup> *Ibid*, part 3.

<sup>30</sup> *Ibid*, Article 235, part 2.

<sup>31</sup> *Ibid*, Article 236, part 1.

<sup>32</sup> *Ibid*, part 2.

<sup>33</sup> *Ibid*.

<sup>34</sup> *Ibid*, Article 236, part 3.

<sup>35</sup> The Republic of Armenia Criminal Procedure Code, Article 49.

for compensating damage inflicted by the crime upon an aggrieved party or upon a civil claimant.

In other words, forfeiture applies to property that is owned by the convicted person, while confiscation applies to property and other values received as a result of the crime.<sup>36</sup> Importantly, other countries do not differentiate between forfeiture and confiscation.

From this perspective of asset recovery, it is important to organize cooperation for the return of assets from other countries, which is done through mutual legal assistance agreements. Articles 54 and 54<sup>1</sup> to 54<sup>3</sup> of the Criminal Procedure Code of the Republic of Armenia are dedicated to mutual legal assistance. They provide that, if there is a bilateral or multilateral international treaty, mutual legal assistance shall be provided under such treaty, otherwise—diplomatic and other formal channels shall be used for mutual legal assistance. The Office of the Prosecutor General of Armenia has jurisdiction over procedural actions performed in cases pending in the pre-trial stage. The Ministry of Justice of Armenia has jurisdiction to perform procedural actions in cases pending in the trial stage, including the execution of judgments.<sup>37</sup>

### *Civil Law Provisions*

Under the Constitution of the Republic of Armenia, “the Prosecution Office shall, in exclusive cases and under the procedure prescribed by law, bring an action to court with regard to protection of state interests.”<sup>38</sup> Under the Republic of Armenia Law on the Prosecution Office, a prosecutor may bring a claim for the protection of the state’s property and non-property interests in civil, administrative, and criminal proceedings.<sup>39</sup> A prosecutor may initiate a claim in the following two cases only:<sup>40</sup>

- When the prosecutor discovers, while exercising his powers, that a state government or local self-government body vested with the power to bring a claim in matters concerning the protection of state interests, knowing about a fact of breaching state interests, has failed to bring a claim within a reasonable period of receiving the prosecutor’s proposal to bring a claim; or
- State interests have been breached in matters in which no state government or local self-government body is vested by law with the power to bring a claim.

If the prosecutor finds that sufficient grounds exist for bringing a claim for the protection of state interests, the prosecutor shall have the right, prior to bringing such claim, to warn the person who inflicted damage upon state interests, about the possibility of compensating such damage voluntarily.<sup>41</sup>

Under the civil-law provisions, persons that are victims of corruption offences may bring a civil claim as part of the criminal proceedings. Under Armenia’s current legal framework, it is

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<sup>36</sup> The Republic of Armenia Criminal Procedure Code, Article 103.1.

<sup>37</sup> Ibid, Articles 475 and 482.

<sup>38</sup> The Republic of Armenia Constitution, Article 176, part 3.

<sup>39</sup> The Republic of Armenia Law on the Prosecution Office, Article 29, part 1.

<sup>40</sup> Ibid, Article 29, part 2.

<sup>41</sup> The Republic of Armenia Law on the Prosecution Office, Article 29, part 3.

impossible to bring a civil claim against a specific person for damage compensation unless criminal prosecution of such person has been initiated.

### *The Competent Authorities*

In the Republic of Armenia, the following are the competent authorities with respect to asset recovery:

- All law-enforcement bodies and courts (power to initiate criminal prosecution, to arrest, confiscate, forfeit property, to initiate a civil claim, and to render a judgment);
- Agency responsible for the compulsory enforcement of judicial acts (power to enforce judicial acts rendered by court, which have become final);
- The Treasury of the Republic of Armenia, local self-government bodies, and entity responsible for managing the housing stock (power to arrest property); and
- The Ministry of Justice of the Republic of Armenia (mutual legal assistance).

### **Problems Faced in Armenia with Respect to Asset Recovery**

For years, the Republic of Armenia has not had any policy with respect to asset recovery, because the agenda of the corrupt leadership did not focus on illegal acquisition or the return of assets.

There are no studies carried out by local organizations that would indicate the approximate amount of assets taken out of Armenia. There is no list of public officials that own property abroad. The names of public officials that own property and have money abroad typically emerge when there is an information leakage scandal. For instance, the so-called “Panama Papers” exposed the name of Mihran Poghosyan, former head of the agency responsible for compulsory enforcement of judicial acts: a criminal case initiated against him was subsequently dropped, and he became a member of the National Assembly of the Republic of Armenia through the party list of the then ruling Republican Party of Armenia.

The changed political situation in the country and the genuine aspiration of the new leadership to root out corruption have necessitated the adoption of a clear state policy on the recovery of assets acquired illegally in the country. “Asset recovery” should include not only the return of property that is abroad, but also the return to their owners of assets located within the national borders of Armenia. Concurrent asset recovery efforts and proceedings conducted domestically will boost the effectiveness of the asset tracing and most probably generate additional data on the whereabouts of property, including property that is abroad. This approach will certainly save time and financial resources in the process of asset return from abroad.

There are currently a number of obstacles for the return of assets from either within the Republic of Armenia or abroad, namely:

- The constitutional ban of retroactivity of newly-adopted laws;
- The inadequate definition of the crime of illicit enrichment;
- No criminalization of the engagement of senior public officials in business activities; and
- The common practice of the property being registered in the names of the close relatives of senior public officials or in the names of other persons.

This paper provides some recommendations to help overcome the identified obstacles and to ensure proper tactics and mechanisms for the effective implementation of asset recovery in the Republic of Armenia.

## Recommendations

The recommendations presented here are based on the goal of establishing justice. It can be achieved by means of restoration—the return of illegally-acquired assets to their lawful owner (or, in the absence of such owner, to the state), as opposed to imprisoning corrupt officials and keeping them in prisons paid for by taxpayers. The proposed approach is aimed at removing from the economy the property that was illegally acquired, reducing the economic resources of the criminal groups, and to the extent possible weakening their impact on public life—thereby also minimizing risks of political prosecution. This approach would ensure speed and not preclude the possibility of initiating or having concurrent criminal proceedings.

It is recommended:

1. To develop an asset recovery policy by implementing the possibility of *in-rem* claim (a claim against the property) through civil proceedings without a conviction. This framework will be based on the principle of the balance of probabilities, whereby the party bearing the burden of proof will win in court if it proves to 51 percent that the origin of the property is lawful.

When returning assets in this way, the state should leave to the person 5 percent of the value of the discovered illegally-acquired assets.<sup>42</sup>

This asset recovery process should be fully in line with the adopted policy, which must be transparent and fully understandable and monitorable for the public.

2. This concept of asset recovery should be applied for the period following the establishment of the Third Republic of Armenia with respect to the following categories of persons:
  - a) The most senior public officials (of the executive, legislative, and judicial branches of power), senior public officials of the law-enforcement agencies, the most senior public officials of other state bodies created on the basis of law, senior public officials related directly to the state budget revenue collection and expenditures, which served in office since 1991, as well as persons that had contractual relations with the state (supplies, service delivery, and the like) and their related parties, provided their cash, assets, and property rights are valued at 50 million Armenian drams<sup>43</sup> or higher at 2012 prices;<sup>44</sup> and
  - b) Natural persons permanently residing in the Republic of Armenia in the last 10 years, whose cash, assets, and property rights are valued at 100 million Armenian drams<sup>45</sup> or higher at 2012 prices.

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<sup>42</sup> To be discussed.

<sup>43</sup> To be discussed.

<sup>44</sup> The determinant used was the beginning of the launching of asset and income declarations of senior public officials in 2012. To be discussed.

<sup>45</sup> To be discussed.

The legislation should prescribe the obligation of these groups to declare their cash, assets, and property rights, and whenever necessary, the obligation to present evidence to confirm their lawfulness. For the application of these legal rules on asset recovery, the scope of “related parties” must be defined clearly by law.

The information contained in declarations could be verified by the preventive anti-corruption authority.<sup>46</sup> Whenever a declarant is unable to substantiate the lawfulness of property, the competent authority will have the power to bring a claim and to demand forfeiture for the benefit of the state.

3. To make the declarations process effective, the Criminal Code of the Republic of Armenia should be supplemented with a new crime of “failing to lodge a declaration on specified transactions.” This step would play an important preventive role, because the criminalization of the aforementioned act (which is currently only an administrative offence) will increase the responsibility of declarants.
4. The Civil Code of the Republic of Armenia should be supplemented with a new article on “Forfeiture of Property for the Benefit of the State,” which should be allowed for cases when the person cannot prove the lawfulness of cash, property, and property rights equal to or greater than 50 or 100 million Armenian drams, respectively.

The power to bring a claim under that article could be vested with the preventive anti-corruption authority (for persons that are not public officials), the prosecution office (for law-enforcement officials), and the investigative body investigating corruption offences (for the representatives of the legislative and executive branches of power), in parallel making the necessary amendments to the relevant laws of the Republic of Armenia.<sup>47</sup>

The legislation should prescribe the obligation to present a quarterly online public consolidated report on the results of the asset recovery process.

5. The Civil Procedure Code of the Republic of Armenia should be amended to prescribe new types of “special proceedings,” such as “forfeiture of the property for the benefit of the state,” as well as to supplement the articles on “injunctive relief” so that the court is obliged, when examining a claim on “forfeiture of the property for the benefit of the state,” to examine and adjudicate upon a motion to impose injunctive relief immediately—within three hours of filing such motion.
6. The Republic of Armenia Law on the Compulsory Enforcement of Judicial Acts should be amended to provide for “special proceedings” in order to improve the effectiveness of proceedings related to “forfeiture of the property for the benefit of the state.”
7. The legislation should be amended to provide that 95 percent of the property returned as a result of court proceedings should go to the State Treasury, while the remaining 5 percent should go to the budget of the agency that conducted the proceedings. It would

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<sup>46</sup> To be discussed.

<sup>47</sup> To be discussed.

be useful to consider also the possibility of paying bonuses to the staff involved in the proceedings, for example—half of the proceeds left with the agency (to be distributed evenly between the staff) in order to motivate effective performance.<sup>48</sup>

The Government of the Republic of Armenia should set up a special-purpose budget made up of the 95 percent of the recovered assets, which should be spent for relevant purposes. The asset recovery process will thus become more visible and acceptable for the general public.

The Government of the Republic of Armenia should ensure the transparent use of the recovered assets by publishing online, with at least two updates per month, detailed information on the recovered assets and their use.

8. It is necessary to create/designate a special authority that will, pending the completion of the proceedings for “forfeiture of the property for the benefit of the state,” manage the arrested property in an economically efficient manner and in order to generate an income.
9. It is necessary to create/designate the law-enforcement authority that will trace the stolen assets within the country and abroad prior to the initiation of the relevant criminal proceedings.
10. It is necessary to make active use of tools available under the bilateral (EU, USA) and multilateral (Eurasian Economic Union and CIS) cooperation agreements that the Republic of Armenia already has, so that once a list of assets located abroad has been identified, it is possible to contact the relevant agencies with a requests to arrest the assets, and to ensure the efficient organization of the asset return activities without facing unnecessary technical difficulties.

The proposed legal framework will, over time, help to determine whether amendments should be made to the legislation on illicit enrichment and whether the engagement of a public official in business activities should be criminalized or prescribed as an offence posing lesser danger.

## **Conclusion**

To develop these asset recovery policies, consultations need to be launched with the relevant state agencies and stakeholders in order to create effective and functional systems for seamless and productive implementation of the process.

Considering that asset recovery activities were essentially never pursued by the former authorities, and there is no knowledge of the abilities and skills of Armenian state agencies to make use of the international and regional legal instruments available to the Republic of Armenia, it would be useful to seek expert assistance from the international partners and to develop the professional skills within the country.

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<sup>48</sup> To be discussed.