

Good practice for asset recovery from white collar crime

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White Collar Crime, Turkey

- 🔍 **Introduction**
- 🔍 **Facts**
- 🔍 **Allegations**
- 🔍 **Asset recovery**
- 🔍 **Comment**

Introduction

A recent corruption case involving embezzlement, forgery and bribery by the chairman of a non-profit organisation provides an example of the new asset recovery practice that the Fifth Judicial Reform Package (February 21 2014) has introduced. During the criminal investigation and proceedings, the assets generated by the suspect's crimes were confiscated successfully and in a timely manner. Further, the prosecutors attached importance to redeeming the value of the confiscated goods following their seizure.

Facts

The case concerned the Turkish Aeronautical Association – a non-profit organisation that aims to develop the Turkish aviation industry and promote military, civilian and tourist aviation. The association's chairman between 2009 and 2014 was the main suspect in the case in question.

Towards the end of his term of office, the chairman was subject to allegations of bribery, embezzlement, professional misconduct, forgery and illicit money laundering. The corruption had developed using charitable foundations, subsidiaries and other association groups by acquiring loans and incorporating front companies to hide under the corporate veil and disguise illicit funds. Funds were transferred between these front companies and associations, whose shareholding structure comprised of close friends or family members of the chairman. The front companies helped to camouflage the bribes and unlawful benefits that the suspects received.

Allegations

The courts ordered arrests, searches and the confiscation of assets. The chairman, his son and a number of association employees were arrested following statements from suspects, tape recordings and bank records that revealed the transfer of illicit funds.

The Smuggling and Financial Crimes Investigation Board's (MASAK) public prosecutor conducted the investigation and prepared its report – in line with the requirement that this be drafted by a competent authority to identify assets gained through criminal activity. The prosecutor requested that the chairman's

bank accounts be frozen and his assets – including real estate in the region of Akyurt – be confiscated. The Ankara Sixth High Criminal Court reviewed MASAK's report along with additional evidence and decided to confiscate the suspect's assets.

The allegations listed in MASAK's report included the following:

- Excluding his wages and additional payments from association duties, the chairman had received money from six different companies related to the association. The suspect had established front companies through his wife, son and a low-ranked association employee in order to launder illicit funds. He received TRY208,000 (approximately €65,000) in 2012 and TRY401,500 (approximately €125,000) in 2013 from these companies.
- The chairman had eight properties registered in his name between 2001 and 2008, but this number rose to 41 between 2009 and 2014, which coincided with his term of office as association chairman. It was alleged that this increase in assets could be explained only by unlawful means. The chairman's defence that his monthly salary was TRY50,000 (approximately €15,000) was not enough to refute these accusations.
- According to bank records, TRY985,572 (approximately €305,000) was deposited in the chairman's son's company account on four different dates. The suspect's son claimed that the money was for consultancy services that he had provided to a company, which was discovered to be a shell company incorporated and managed by one of the association's low-ranked employees, who was also a friend of the suspect's son. The consultancy agreement was considered to be a fake transaction to disguise the illicit transfer of funds.
- The chairman's executive assistant, who was hired in 2010 on a salary of TRY4,000 (approximately €1,500), was also accused of acquiring TRY504,000 (approximately €155,000) between 2011 and 2014 through 201 different transactions.

Asset recovery

One of the most notable details that the investigation uncovered was a bribe that the suspects had received during a tender for the acquisition of helicopters from a French company, which amounted to TRY2,739,091 (approximately €900,000). It is alleged that the chairman received bribes from the French company, which had been acquired by a well-known French aeronautical company. In return for the lease of 17 helicopters, money was transferred to a front company, which in turn provided consultancy services to the French company. The second step in laundering the illicit funds involved their transfer to the suspect's son's company.

In order to launder money and disguise the bribe received, the suspects purchased industrial mineral oil. Following the High Criminal Court's order, the prosecution office confiscated mineral oils worth TRY1,442,665 (approximately €500,000), which were regarded as "assets acquired by criminal actions".

How the prosecutor managed the confiscated mineral oils illustrates the importance placed on the frozen assets. The prosecutor carefully evaluated the expiry dates of the goods and acted promptly to sell them in order to recover the bribe money. However, it was impossible to sell the goods, as there were no potential buyers. Further, it appears from the report on the sale of assets that it was impossible to offload the mineral oils via auction or negotiations. Instead, it was determined that the best way to redeem the value of the confiscated goods was to gradually sell them to retail customers and deposit the funds received.

In June 2015 indictments were prepared regarding 41 suspects based on the facts listed above. The Ankara 12th High Criminal Court accepted the indictments on July 2015 and a suit was filed against the suspects, including the chairman, his son and two French citizens.

Comment

It is encouraging that the prosecution office and MASAK acted timely and effectively and in cooperation with the competent authorities to ensure that assets generated by crime were recovered. Recent statistics illustrate that MASAK has been effective in satisfying the requirement to produce a report before the confiscation of assets can take place. According to MASAK's asset recovery report – based on Article 128 of the Code of Civil Procedure – it received 70 requests from different authorities for a report outlining the assets that had been acquired from the crimes under investigation in this case. MASAK satisfied 62 of these requests within the same year and 93% of them were satisfied within three months.

Although the outcome of the case is not yet clear, it illustrates that the identification, tracing, liquidation and confiscation of assets generated as a result of crime is being taken seriously and that – depending on the circumstances – the corporate veil can be pierced by the prosecutor's office.

For further information on this topic please contact Filiz Toprak, Ceren Aral or Bensu Aydın at Gün & Partners by telephone (+90 212 354 00 00) or email (filiz.toprak@gun.av.tr, ceren.aral@gun.av.tr or bensu.aydin@gun.av.tr). The Gün & Partners website can be accessed at www.gun.av.tr.

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Filiz Toprak Esin



Ceren Aral



Bensu Aydın