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Funds granted but mutual assistance suspended

The saga takes a turn

Par Maria Ludwiczak Glassey le 4 March 2026

In a ruling RR.2023.127-133 dated January 20, 2026, the Federal Criminal Court (FCC) dismissed appeals against a decision to return seized funds to Russia but suspended the case pending a favorable development in the internal situation. Ruling without costs, it referred the case back to the Federal Department of Justice and Police (FDJP) for a decision on the application of Art. 1*a* EIMP, which stipulates that cooperation must be compatible, in particular, with Swiss public policy.

The case concerns funds seized in Switzerland after several requests for assistance were received from Russia starting in 2005. With the Russian criminal proceedings having ended in a conviction in 2018, Russia requested the transfer of the funds for confiscation in 2019. Several years passed due to various exchanges between the Swiss authorities and the lawyer representing the companies concerned, linked in particular to the invasion of Ukraine, changes in the political and judicial climate in Russia, and the suspension of mutual assistance with that country.

In a decision dated July 2023, the Office of the Attorney General of Switzerland (OAG) found that the conditions for the surrender of funds for confiscation under Art. 74*a* EIMP were met : the Russian judgment concerned the confiscation of the assets in question. However, given the situation in Russia in 2023, the OAG also postponed the implementation of the transfer and, at the same time, suspended the case and maintained the seizures. The Federal Criminal Court ruled on the appeals despite the suspension of the mutual assistance proceedings on the grounds that if the decision to surrender the funds proved to be legally erroneous or incorrect and had to be overturned and mutual assistance refused, this could no longer be done at a later date. The appeal could therefore not be postponed (c. 1.7).

The appellant companies rely in particular on Article 2 of the EIMP, according to which cooperation must be refused in particular where the foreign criminal proceedings are not compatible with the requirements of the ECHR and binding on Switzerland. They refer to the situation in Russia in general and, in particular, to the shortcomings found in the proceedings themselves.

After referring to the case law defining the group of persons entitled to invoke Art. 2 EIMP, the FPC excludes the appellants, legal entities that were not involved in the Russian criminal proceedings (c. 7.4-7.5). Furthermore, it referred to previous judgments handed down by the Federal Supreme Court (FSC), in particular ATF 150 IV 201 (see Ludwiczak Glassey,

cdbf.ch/1337), in which the High Court ruled out any automatic application of Art. 2 EIMP when the complaint arising from the violation of this provision is inadmissible, as in the present case (c. 7.4.1). The route of Art. 2 EIMP is therefore closed.

However, there is a noticeable unease, since the Federal Criminal Court nevertheless examines the situation of fundamental rights in Russia during the criminal proceedings that ended in 2018 and states that the restrictive case law mentioned above is "particularly problematic" when the automatic application of Art. 2 EIMP would serve to protect not individual rights but Switzerland's public interest in preserving "its legal order" and reputation ("*Ansehen*," c. 9.4). The FPC considers that this is a case of application of Art. 1*a* EIMP, according to which cooperation must be compatible with the sovereignty, security, public order, or other essential interests of Switzerland, and refers the case back to the FDJP for jurisdiction under Art. 17 para. 1 EIMP (c. 9.5).

The saga of Russian assets seized in Switzerland before 2022 (ATF 149 IV 144, see Ludwiczak Glassey, cdbf.ch/1270 ; ATF 150 IV 201) continues : until now, the Federal Supreme Court had overturned the Federal Criminal Court's rulings on appeal by the Federal Office of Justice (FOJ). This time, the case has been referred to the FDJP (whose potential decision may be challenged before the Federal Council, pursuant to Art. 26 EIMP). In the present case, the confiscation was ordered in Russia by a judgment of April 2018. Thus, any analysis of the situation in the requesting state will have to cover the period up to that point. Even more interesting will be the question of how our authorities will deal with confiscation decisions made after 2022, i.e., those resulting from criminal proceedings conducted during a period when fundamental guarantees cannot, in principle, be considered to have been respected in Russia.

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