

ACCOUNTING FOR ASSET RECOVERY

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Question

Do states violate international civil and political rights when they cooperate for the purpose of asset recovery?

Definition of “asset recovery”

- A two-part goal
 1. PEPs etc less able to **move** illicit wealth through the international financial system
 2. Victim states better able to **regain** assets when they are moved abroad
- A catch-all for legal processes that contribute to the second objective

European standards and cases

- *Saccoccia v. Austria*
 - Large-scale money laundering
 - US forfeiture order
 - Complied with Art. 1 ECHR-P1 and Arts. 6 and 7 ECHR
 - Not a penalty in Austria; not retrospective in the US
 - Not unfair in Austria; not (flagrantly) unfair in the US
 - Not unjustified as a violation of the right to property

Consistency in ambiguity

- The properness of confiscation
 - ▣ The concept of property
 - ▣ The nature of the proceedings
 - ▣ The fairness of presumptions
 - ▣ The role of substantive limitations
- The *effet attendu* and the extraterritorial application of the ECHR
- Conflicting norms and collective interests
- Cf. “other” regional HR jurisprudence

Summary

- No case directly on point
- But substantial related jurisprudence
- Respondent states are likely to succeed
 - ▣ They interfere with possessions
 - ▣ But they also act in the general interest
 - ▣ They may act lawfully and proportionately
- Is this sufficient governance of TCL, esp. re: accountability and effectiveness?