

Nicolau Dos Santos Neto

Case ID:

ARW-142

Jurisdiction of Origin of Public Official or Entity Allegedly Involved:

Brazil

Position of Public Official(s) (yrs in office):

Judge (inclusive 1991-1994)

Jurisdiction of Asset Recovery:

Switzerland

Jurisdiction of Asset Recovery ? Description:

Undertaking Recovery Effort, Location of Recovery Effort, Asset Location / Alleged Asset Location

Asset Recovery Start:

1999

Asset Recovery End:

Ongoing

UNCAC Offenses Implicated:

Art.15

Art.17

Art.23

Money laundering Implicated:

Yes

Legal Basis for Asset Recovery:

Criminal Confiscation; Private Civil Action

Intl.Cooperation: MLAT/Letter of Request?:

MLAT; Letter of Request

Contributing Factors in Asset Recovery:

Criminal and civil legal mechanisms employed in Switzerland and Brazil; more than a decade of international legal cooperation. (Sources: Swiss Federal Court decision 6B_688/2011 (August 21, 2012) and Swiss Federal Department of Justice and Police, "Strengthening co-operation in the fight against crime / Brazilian delegation visits Bern," Press Release October 14, 2002.)

Status of Asset Recovery :

Ongoing

Stage in Asset Recovery Chain:

Assets Returned to Victim or Requesting Jurisdiction (in part)

Assets Adjudicated, Not Yet Returned - Description:

\$2,100,000

Assets Returned (USD) - Description:

\$4,800,000

Agreement for Returned Assets:

No

Agreement for Returned Assets - Description:

N/A

Case Summary:

According to a July 9, 2013 press release by the Swiss Federal Office of Justice, "The sum of USD 4.8 million has now been transferred to the Federative Republic of Brazil. The Federal Supreme Court also ordered that Nicolau Dos Santos Neto should pay a replacement value of USD 2.1 million to Brazil." (Source: Swiss Federal Office of Justice, Press Release, "USD 4.8 m returned to Brazil", July 9, 2013.)

According to an August 2012 decision by the Swiss Federal Court, between 1991 and 1994, 18 transactions totalling \$6.8 million were transferred into accounts in the names of Mr. Neto and his spouse. The funds were proceeds of fraud and embezzlement by Mr. Neto in connection with the construction of a Regional Labour Court of Sao Paulo, Brazil. Preliminary criminal inquiry was opened in Switzerland in 1999 but the complicated nature of the case - which included the intervention of third parties, use of shell corporations and international ramifications requiring the sending of letters rogatory to Brazil - added to the length of the case. (Source: Swiss Federal Court decision 6B_688/2011 (August 21, 2012). The funds had been frozen and confiscated pursuant to a Swiss investigation launched in 1999; in 2005, following Mr. Neto's criminal conviction in Brazil, Brazil filed suit in Switzerland to recover the assets. (Source: Id. and Jamil Chade, "Suica vai devolver ao Brasil parte do dinheiro desviado por 'Lalau'," Estado.com.br, September 3, 2012, both accessed at <http://www.icc-ccs.org/home/news/90-fraudnet-and-its-members-in-the-news...>) According to a 2011 presentation on the case by Brazil's Swiss attorney Yves Klein, in 2001 Brazil was admitted to the Swiss criminal case as an injured party which provided Brazil with the "Right to consult the file, to participate in the acts of investigation, to make determinations on the cause, and to request investigative acts from the examining magistrate: ? investigate other bank accounts in Switzerland; ? question bank employees so as to assess their criminal liability." (Source: Attorney Yves Klein, "The TRT Case ? The forfeiture of the assets of Nicolau Dos Santos Neto in Switzerland," presentation at the International Fraud & Asset Recovery and Trans-Border Insolvency Cooperation conference of Escola Superior do Ministério Público de São Paulo (November-December 2011).

Disposition of Criminal Case(s):

According to the August 2012 decision by the Swiss Federal Court, Mr. Neto had been convicted in Brazil in 2005 of bribery, embezzlement, fraud and money laundering, and his conviction was upheld on appeal. (Source: Swiss Federal Court decision 6B_688/2011 (August 21, 2012)).

Jurisdiction of Origin: Investigative Agency:

Ministry of Justice; Federal Police

Jurisdiction of Origin: Prosecuting Authority/Civil Attorney(s):

Federal Prosecutor

Jurisdiction of Origin: Courts Involved:

Federal Regional Court of the 3rd Region

Jurisdiction of Asset Recovery: Investigative Agency:

Prosecutor General, Geneva canton; Swiss Federal Department of Justice and Police


Jurisdiction of Asset Recovery: Prosecuting Authority/Civil Attorney(s):




Prosecutor General - Geneva canton; Federal Republic of Brazil - Attorneys Enrico Monfrini and Yves Klein

Jurisdiction of Asset Recovery: Courts Involved:

Court of Justice, Geneva; Swiss Federal Court

Documents:

Attachment	Size
 Neto_Switzerland_Fed_Office_Justice_PR_Return_Jul_9_2013.pdf	113.04 KB

Attachment	Size
 Neto_Swiss_Ct_Decision_Aug_21_2012.pdf	132.07 KB
 Neto_Swiss_Fed_Justice_Statement_Oct_13_2002.pdf	118.12 KB
 Neto_Swiss_Klein_Presentation_Nov_Dec_2011.pdf	182.02 KB

Other Sources:

Swiss Federal Office of Justice, Press Release, "USD 4.8 m returned to Brazil", July 9, 2013, at <https://www.bj.admin.ch//content/bj/en/home/dokumentation/medieninformat...>

Swiss Federal Court decision 6B_688/2011 (August 21, 2012), accessed at http://jumpcgi.bger.ch/cgi-bin/JumpCGI?id=21.08.2012_6B_688/2011; Jamil Chade, "Suica vai devolver ao Brasil parte do dinheiro desviado por 'Lalau'," Estado.com.br, September 3, 2012, accessed via link provided at <http://www.icc-ccs.org/home/news/90-fraudnet-and-its-members-in-the-news...> Swiss Federal Department of Justice and Police, "Strengthening co-operation in the fight against crime / Brazilian delegation visits Bern," Press Release October 14, 2002, accessed at

<http://www.ejpd.admin.ch/content/ejpd/en/home/dokumentation/mi/2002/2002...> See also presentation on the case by Attorney Yves Klein (representing Brazil), at the International Fraud & Asset Recovery and Trans-Border Insolvency Cooperation conference of Escola Superior do Ministério Público de São Paulo (November-December 2011), at: http://www.icc-ccs.org/jdownloads/Publications/111201_klein_presentation...