



Responsibility For Legalization Of Income From Criminal Activities And Foreign Experience In This Field

Bozorov Makhsudali Makhmudovich

Teacher, Criminal Law Department, Specialized Branch Of Tashkent State Law University, Tashkent, Uzbekistan

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ABSTRACT

In this article analyzed the sense of international normative-legal acts which regulate income from criminal activities, having studied the legislation of foreign countries, it was proposed to apply the preferred aspects to improve national legislation. As a result of this analyze, it was suggested several suggestions and recommendation for improve of this legislation.

KEYWORDS

Criminal Incomes, Financial Operations, Financing Terrorism, Legalization, Confiscation, Predicate Offense, Criminal Income.

INTRODUCTION

Decree of the President of the Republic of Uzbekistan, PF-4947 "On the Strategy for further development of the Republic of Uzbekistan" addresses the issue of further reform of the judicial system in 2017-2021 the implementation of a number of reforms in this area through the introduction of a state

program. In 2017-2021, the implementation of a number of reforms in this area is indicated by the introduction of the state program on the issue of further reform of the judicial system. As a practical continuation of this decree, the state program received anti - corruption program for 2019-2020 by the Presidential

Decree in 27 may, 2019. Currently, this type of crime is committed mainly by officials through the legalization of money or property acquired after corruption. To date, the legalization of revenues from criminal activity requires a sharp struggle against it, reflecting the nature of international organized crime. In particular, in the Republic of Uzbekistan, a number of practical works are being carried out on the issue of combating this type of crime.

In particular, the amendments adopted on August 26, 2004 “Law on the fight against legalization of revenues from criminal activity, financing of terrorism and financing of weapons of mass destruction” were change was introduced within the framework of law №516, 2019. It was defined as one of the socio - political guarantees of strengthening the economic foundations of the state, increasing the welfare of the people. In particular, the development of the economy, which is now based on market relations and in many ways, the economic crimes that are committed, especially the legalization of criminal revenues, are hindering the achievement of expected economic results. Several sections of the current criminal law provide for state, official, and economic crimes against state and public property, the criminal nature of which is similar to the legalization of criminal proceeds. However, this is a similarity in some respects, as the crime of legalization is a relatively new crime and is determined based on an in-depth analysis of financial transactions, administrative and other actions.

Legalization is conventionally divided into two forms: simple and complex. The simple form is a stage of complex legalization in terms of structure, which includes multilateral financial transactions, commercial, financial and

banking structures, insurance companies, other organizations and institutions, commercial establishments and others. In the early stages of the transition to a market economy, the process of denationalization and privatization was not sufficiently regulated, which created certain opportunities for the illegal accumulation of capital (cash and other property) and its accumulation in the hands of individuals and legal entities. "Hidden" capital formed result of criminal activity which considered as untaxed hidden capital.

Shavkat Mirziyoyev held a video conference on July 27, 2018 on "Issues of crime prevention, increasing the responsibility of government agencies and society in this regard." In his lecture, President said that to get to the root of every crime, it is necessary to form immunity to fight crime in society. Otherwise, we will continue to worry about the consequences of the crime.

In this stage, we should give legal concept for legalization. Legalization – is the legalization of money from "hidden" capital and putting it into legal circulation, on the other words, they give the legal status of the legal property of a particular individual or legal entity. The term "money laundering", which means "legalization", refers to the criminal activities of the Chicago-based Al Capone mafia in the 1920s, which sought to give full legal status to "secret" capital obtained through crime. Given the threats to the economic and financial legal framework, it is important to prevent criminal investment from entering the economy and other government activities. Because the legalization of criminal assets undermines the economic security of the state.

The current fight against money laundering is also due to the fact that many countries, including the CIS, are experiencing similar financial and economic problems due to the transition from economic planning to market relations. In the international community, the fight against money laundering is considered as one of the most effective tools in the fight against organized crime, and the crime of money laundering is included in the category of international crimes. In the 21st century, these types of crimes have become transnational in nature, and new ways of committing them are emerging. According to Article 243 of the Criminal Code of the Republic of Uzbekistan, legalization of proceeds from crime, on the other words, if the property was found as a result of criminal activity, legalization of its origin by its transfer, conversion or exchange, as well as the transfer of such money or other property concealment or confidentiality of the original property, source, location, method of disposal, transfer, actual ownership of money or other property or to whom it belongs are consider as a crime. For these activities established criminal responsibility.

Factors such as the development of modern information and communication technologies, the development of international money transfer systems, and the emergence of virtual money have also made the crime of money laundering a topical issue internationally. This, in turn, requires the development of international cooperation in the fight against such crimes, the training of qualified specialists in the fight against these crimes, the study of foreign experience in this field. The danger of money laundering is that the perpetrator legitimizes the proceeds of crime and conceals the source of the proceeds. This, in turn,

conceals the crime committed and gives free access to criminally obtained property.

Legalization of criminal proceeds generally means concealment of the sources of such proceeds and their legal entry into economic circulation. The reason for the international attention to the crime of money laundering was primarily the ban on the use of money laundering through the proceeds of drug trafficking. It is precisely these crimes that have endangered the legitimate economy as a result of the free flow of money into the economy. Therefore, on December 20, 1988, the United Nations Convention against Illegal Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) was adopted in Vienna to combat drug and psychotropic substance trafficking. Following the adoption of this UN convention, money laundering has led to the need to criminalize international norms. In particular, the UN Convention against Transnational Organized Crime of 15 November 2000 and the Convention against Corruption of 31 October 2003 criminalize money laundering and make it a crime for member states to criminalize money laundering. Article 6 of the Convention defines understanding, purpose and intent as an element of the crime structure based on the objective fact of the case. That is, the Convention states that the intentional, deliberate commission of a crime is an element of the crime.

Thus, the purpose of the perpetrator in the crime of money laundering is to conceal the source of the proceeds by giving a legal character to the criminally obtained property or income. The basic provisions of this article are also in line with the provisions of Article 6 of the UN Convention against Transnational Organized Crime of 15 November 2000. It also

provides for liability for money laundering as a result of offenses provided for in this Convention.

It also states that, as the basic principles of domestic law allow, States Parties may impose a separate liability for money laundering that does not apply to persons who have committed a major crime (a major crime or a crime that causes income). Both of the above conventions provide for liability for money laundering as a result of certain crimes. Linking money laundering to specific crimes makes it difficult for states to form a common view on criminal liability.

Therefore, a special Convention on the Legalization, Detection and Confiscation of Proceeds from Crime was adopted by the EU Member States on November 8, 1990 in Strasbourg. Article 6 of this convention, in contrast to the above conventions, is called a crime of money laundering. The Convention provides for the legalization of proceeds from any crime. The rules of this convention were further developed by the European Convention on About money laundering, detection, confiscation, confiscation and terrorist financing which was adopted in Warsaw on 16 May 2005.

The Financial Action Task Force (FATF), established in 1989, plays an important role in ensuring cooperation between countries in combating money laundering and developing international standards.[2] While the FATF's decisions are of a recommendatory nature, their recommendations reflect an international program to combat money laundering by individuals and legal entities using the opportunities of the financial system. Implementation of the FATF recommendations

is of practical importance in the fight against money laundering schemes, money laundering from real criminal activities. The FATF's recommendations provide an opportunity to respond quickly to crimes in this area. In addition, a number of regional and inter-union agreements also set out specific commitments to combat money laundering. The following are important in criminalizing money laundering:

Signs of the subject of the crime (income or property obtained through crime);

Methods and signs of legalization;

An open or closed list of the main (predicate) crimes from which the proceeds of these crimes are earned.

The concept of illegal (criminal) income was first introduced in the framework of an international convention, Article 1 of the UN Convention on the fight against drug and psychotropic substances which adopted on December 20, 1988. [2] According to this article any property acquired or obtained directly or indirectly as a result of illegal trafficking in narcotic drugs and psychotropic substances (here property means any form of asset, tangible or intangible, movable or immovable, divisible or indivisible, means (legal documents giving the right to own or participate in such assets) is defined as illegal (criminal) income.

Thus, the Convention does not refer to criminal proceeds from any crime, but to proceeds from the illegal trafficking of narcotic drugs or psychotropic substances. The European Union's Warsaw Convention of 16 May 2005 gave a broader definition of criminal proceeds. According to him, any economic benefit obtained directly or indirectly as a result of the

commission of a crime is understood. The concept of income from criminal activity differs from the Vienna Convention on the confiscation of this criminal proceeds in the case of property or assets acquired at the expense of these proceeds. According to the convention, if the proceeds of crime are transferred to another property, the property will be confiscated, not the proceeds.

Confiscation applies only to the amount of illegal (criminal) income if the proceeds of crime are added to other lawfully obtained sources, the property is obtained by combining the lawfully obtained income and the illegally obtained income. In addition, the proceeds of crime will be confiscated. An analysis of the above international documents shows that the Vienna Convention against Transnational Organized Crime of 2000, the Convention against Transnational Organized Crime of 2000, and the Convention against Corruption of 2003 limit the scope of the main (predicate) crime in the concept of money laundering. the Strasbourg Conventions of 2005 and the Warsaw Conventions of 2005 reinforced the notion of legalization of proceeds of crime as a result of any crime.

We believe that money laundering is an attempt to deliberately legitimize an asset obtained as a result of any crime. Thus, in the context of this article, the legalization of income from criminal activity is the legalization of property found as a crime, that is, to give it a legal character, to conceal its source. The decision of the Plenum of the Supreme Court of the Republic of Uzbekistan "On some issues of judicial practice in cases of money laundering" from February 11, 2011 ye No. 1 In each case, the fact that the legalized property is the result of a crime must be established in

order to resolve the issue. This means that in order to prosecute a person under Article 243 of the Criminal Code, the first (predicate) crime must be identified. It should be noted that the crime under Article 243 of the Criminal Code is committed intentionally by a subject.[11-12] That is, when a person commits a crime, the transfer of proceeds of crime, the legalization of its origin by transferring it to property or exchange, the original nature, source, location of the proceeds of crime, disposal is carried out for the purpose of concealing or keeping secret the method of transfer, the actual ownership of money or other property or to whom it belongs. For example, a person has criminal income from drugs, bribery, human trafficking and other crimes, and in order to legitimize the origin of this income, that is, to freely dispose of these funds, he acquires high-value real estate. buys at a low price. He then sells the property for tens of times more. In practice, the property is provided free of charge or at a low price. In this case, the person officially legalizes the property at contract price. That is, it legitimizes the proceeds of crime and conceals its source. This example is an example of money laundering, and a person intentionally commits these acts in order to legalize the proceeds of crime.

It should be noted that the transfer of any criminal proceeds does not constitute money laundering. The following explanation is given in the above Plenum decision. "Courts should differentiate between money laundering and the acquisition or transfer of criminally obtained property. In particular, the acquisition or transfer of property found as a result of a crime (for example, looting of another's property) if such property is not given the appearance of legal ownership (for example, for the sale of a technical passport or

a stolen car) the power of attorney issued is forged), does not constitute a component of income legalization (Article 243 of the Criminal Code). Depending on the specific circumstances of the case (including the purpose of the transaction with the looted property), such actions may involve participation in the looting of another's property (in the form of an assistant) or the acquisition or transfer of criminally obtained property (Article 171 of the Criminal Code), and if there are grounds for it, it can also be qualified as forgery of documents. That is, in this explanation, the person does not attempt to change the source of the property in the acquisition or transfer of the criminally obtained property. Legalization through transactions refers to transactions, debts, gifts, pledges, leases, exchanges, etc., which are made in the same way as in civil law. the structure of contracts is understood. In our opinion, the perpetrator of money laundering must prove that his actions are aimed at money laundering in the course of the above operations or transactions. Failure to prove this intent will result in a person being prosecuted for a crime (predicate) that is the basis for the seizure of criminally obtained property. Foreign countries also have norms of liability for money laundering. The Criminal Code of the Russian Federation provides for two articles of liability for legalization. In particular, Article 174 of the Criminal Code of the Russian Federation is entitled "Legalization of money or other property obtained as a result of a crime committed by another person", while Article 1741 is entitled "Legalization of money or other property by a person who committed a crime". is called In other words, the Russian Criminal Code establishes a special responsibility for the

legalization of property found as a result of a crime committed by another person, as well as for the legalization of property acquired as a result of a crime committed by him.

In addition, the Criminal Code of the Russian Federation provides for differentiated liability for legalization of criminally obtained property. In particular, the commission of a large amount by Part 2, by a group of individuals with prior conspiracy or using their official position, Part 3, and by a large number or by an organized group aggravating the crime as a case, Article 1741 of the Criminal Code is the basis for prosecution under Part 4. In addition, all types of alternative penalties are identified. In conclusion, all of the above can be seen in the practical results of the development of modern technologies in the fight against money laundering and the methods used in developed countries to reduce crime.

It is also time to consider the confiscation of the subject of the crime, given that the transformation of property and other means of criminal activity will be included in the national economy. A comparative analysis of foreign legislation is important for the rapid detection of money laundering offenses and the improvement of national legislation. A study of the experience of foreign countries has led to the conclusion that some of the norms used in their legislation should be implemented in our national legislation.

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