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Cover Page Footnote

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LIABILITY FOR LEGALIZATION OF INCOMES OBTAINED FROM THE PROCEEDS OF THE OFFENCES IN INTERNATIONAL LAW ACTS AND LEGISLATION OF FOREIGN COUNTRIES

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***Annotation:** this article the author analyzes the issues of responsibility for the legalization of income derived from criminal activity in international legal acts and legislation of foreign countries.*

The legalization of proceeds derived from criminal activities is a criminal socially dangerous act representing imparting a lawful type to the origin of money or other property by transferring or exchanging it, non-disclosure or concealment of the true nature, source, location, method disposition, movement, rights with respect to money or other property or its accessories if money or other assets derived from criminal activity.

***Keywords:** criminal law, responsibility, legalization of income, international standards, crime.*

***Аннотация:** мақолада жиноий фаолиятдан олинган даромадларни легаллаштириши учун жавобгарлик ва унга оид халқаро-ҳуқуқий ҳужжатлар ҳамда хорижий мамлакатлар қонунчилиги таҳлил қилинган.*

Жиноий фаолиятдан олинган даромадларни легаллаштириши – пул маблағлари ёки бошқа мол-мулк жиноий фаолият натижасида топилган бўлса, уларни ўтказиши, мулкка айлантириши ёхуд алмаштириши йўли билан уларнинг келиб чиқишига қонуний тус беришдан, худди шунингдек бундай пул маблағларининг ёки бошқа мол-мулкнинг асл хусусиятини, манбаини, турган жойини, тасарруф этиши, кўчириши усулини, пул маблағларига ёки бошқа мол-мулкка бўлган ҳақиқий эгаллик ҳуқуқларини ёки уларнинг кимга қарашилiligини яширишдан ёхуд сир сақлашдан иборат бўлган жиноий жазоланадиган ижтимоий хавfli қилмиши.

***Калит сўзлар:** жиноят ҳуқуқи, жавобгарлик, даромадларни легаллаштириши, халқаро стандартлар, жиноят.*

***Аннотация:** в данной статье проанализированы вопросы ответственности за легализацию доходов, полученных от преступной деятельности в международно-правовых актах и законодательстве зарубежных стран.*

Легализация доходов, полученных от преступной деятельности, уголовно наказуемое общественно опасное деяние, представляющее собой придание правомерного вида происхождению денежных средств или иного имущества путем их перевода, превращения или обмена, а равно сокрытие либо утаивание подлинного характера, источника, местонахождения, способа распоряжения, перемещения, подлинных прав в отношении денежных средств или иного имущества либо его принадлежности, если денежные средства или иное имущество получены в результате преступной деятельности.

***Ключевые слова:** уголовное право, ответственность, легализация доходов, международные стандарты, преступление.*

In pursuance of the goals set and in accordance with the Decree of the President of Uzbekistan “On measures for cardinal improvement of the system of criminal and criminal procedure legislation” dated May 14, 2018 No. PP-3723, the **Concept of improvement of criminal and criminal procedure legislation of the Republic of Uzbekistan** was adopted [1].

One of the main objectives of this Concept is the inventory of criminal legislation for its unification and alignment with international best practices and foreign practices.

In accordance with the **Constitution of the Republic of Uzbekistan**, the 26th anniversary of which was widely celebrated on December 8, 2018, generally accepted principles and norms of international law and international treaties of Uzbekistan have priority action.

The preamble reads: “The people of Uzbekistan, recognizing the priority of the generally recognized norms of international law, accept, through their authorized representatives, the present Constitution of the Republic of Uzbekistan” [2].

Constitutional norms are also confirmed in Article 2 of the Law of the Republic of Uzbekistan “**On international treaties of the Republic of Uzbekistan**” [3], Article 1 of the **Criminal Code of the Republic of Uzbekistan** [4].

In this regard, the study of international standards and foreign practices is relevant both from a scientific-theoretical and from a practical point of view.

Especially important is the analysis in the framework of the study of such a current phenomenon as countering the legalization of criminal proceeds.

To this end, it is necessary to begin with, to define the legalization of criminal proceeds, according to domestic legislation.

According to **Article 243 of the Criminal Code** of the Republic of Uzbekistan, the legalization of income should be understood as giving the guilty a legitimate type of property derived from criminal activity by:

1. giving the rightful type of origin of property (cash or other property)
2. concealment or disguise of the true nature, source, location, method of disposal, relocation, genuine rights in relation to money or other property or its affiliation.

The Law of the Republic of Uzbekistan **“On the counteraction of the legalization of incomes obtained from criminal activity, the financing of terrorism and the financing of the distribution of the weapon of mass destruction”** of August 3, 2004, No. 660-II in Article 3 states that “the legalization of proceeds derived from criminal activities is a criminal socially dangerous act representing imparting a lawful type to the origin of property (money or other property) by transferring it, transforming it or exchanging it, non-disclosure or concealment of the true nature, source, location, method disposition, movement, rights with respect to money or other property or its accessories if money or other assets derived from criminal activity” [5].

The criminal legislation of the countries of the Commonwealth of Independent States has much in common due to the adoption on February 17, 1996 of the **Model Criminal Code for the CIS** states [6].

In this code, the legalization of income received illegally is enshrined in Article 258, which has the same name.

This crime belongs to the category of moderate severity. As a qualifying attribute is called the same act, committed by an organized group:

1. Concealing or distorting the illegal sources and nature of the origin, location, location, movement or actual ownership of funds or other property or rights to property that are knowingly obtained by unlawful means, as well as using such money or other property to engage in business or other economic activity is a crime moderately severe.
2. The same act committed by an organized group is a serious crime.

The criminal legislation of the CIS countries contains a rule on the legalization (laundering) of income acquired by criminal means.

So in the title of the article the term “legalization (laundering)” is used. In the Criminal Code of **Armenia** [7] (Art. 190), **Turkmenistan** [8] (Art. 242) and the **Russian Federation** [9] (Art. 174-1741), as in the domestic criminal law, only the term “legalization” is used, and in **Moldova** [10] (Art. 243) only the term “laundering”.

A distinctive feature of the Criminal Code of **Argentina** [11] is that the rules enshrining criminal responsibility for harboring crimes (art. 277) and money laundering (art. 278) are located in one chapter: “Concealment and laundering money of criminal origin”. Also, the code establishes criminal liability for money laundering committed “due to recklessness or gross negligence” (part 2 of article 278), i.e., according to the criminal law of Argentina, the legalization of criminal proceeds can be carried out either intentionally or by negligence.

In the Swiss Criminal Code [12], criminal liability for money laundering is enshrined in article 305.2, located in section 17 “Crimes and misconduct against justice”. Thus, the objects of money laundering under the Swiss criminal law are the interests of justice.

The article on money laundering under the Criminal Code of **Switzerland** also fixes the qualifying signs - the actions of a person:

- a) as a member of a criminal organization;
- b) as a member of a gang that has organized itself for the constant commission of money laundering;
- c) as a result of money laundering, she made a significant profit (part 2 of article 305.2).

In order to counteract the legalization of criminal proceeds, not only in the banking sector, but also in the entire financial sector, Switzerland adopted the Law on the Prevention of Money Laundering, Art. 9 which provides for an additional obligation of financial intermediaries, which is not stipulated in the Swiss Criminal Code, to report on any operations suspicious of involvement in money laundering [13].

In the Criminal Code of **China** [14], legalization refers to the provision of a financial settlement account; assistance in handling property in cash or in promissory notes; assistance in the transfer of funds

by transfer to the account or by using other methods of payment; assistance in the transfer of funds abroad; concealment and concealment by other means of the sources and nature of the proceeds from crime.

At the same time, the aforementioned actions will be a crime only if they know that the proceeds are derived from criminal activities related to drugs, the black market, smuggling, or activities performed to conceal criminal sources (Art. 191).

In January 2003, China adopted in 1994 the Rules of Financial Organizations for Combating Money Laundering, and the Rules for Managing Reports on Large and Doubtful Deals. The fundamental law regulating countering the legalization of criminal proceeds in China is the Law “**On Combating Money Laundering**”, which entered into force on January 1, 2007 [15].

Article 2 of the Law refers to the fight against money laundering to take measures on hindering prevent money laundering and various means of concealing, hiding sources of income and making profit related to committing crimes in the sphere of drug trafficking, crimes committed by organized crime, mafia crimes terrorism, smuggling, corruption and bribery, crimes that violate the order in the field of financial management, crimes in the field of financial fraud and others.

In the Criminal Code of **Bulgaria** [16] for the legalization (laundering) of income acquired by criminal means, the responsibility is provided for by Art. 253, located in Chapter 7, Crimes Against the Financial System.

Criminal Code of the **Czech Republic** [17] contains Art. 216 "Money laundering" in Chapter V "Crimes against property". In the disposition of the main part of the crime (part 1 of article 216), actions aimed at harboring origin, as well as significant complication or impossibility of establishing the origin of objects or assets acquired as a result of a criminal offense, are fixed as criminal.

The legal framework for countering the legalization of criminal proceeds in the **United States** [18] is a combination of regulatory legal acts, including Bank Secrecy Act-BSA (Bank Secrets Act 1970); The Money Laundering Control Act (Money Laundering Act 1986); Art. 2532 of the Crime Control Act (Anti-Crime Act 1990) and others.

In 1988, the **Money Laundering Prosecution Improvement Act**-(MLPIA Act) was passed, which extended the anti-legal legislation on the transportation, transfer and dispatch of payment documents. In accordance with this law, banks are obliged to report to law enforcement agencies about all suspicious transactions in the amount of more than 5 thousand dollars, for transactions with securities - in the amount of more than 3 thousand dollars [19].

V.N. Melnikov, A.G. Movsesian note that the flexibility of their institutional base based on the common law system [20] helped to make quick and drastic decisions on the substantial restructuring of the US legal framework in order to counteract the legalization of criminal proceeds.

The 1988 **UN Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances** of 1988 became the first universal international treaty providing for the development of cooperation in the fight against money laundering. In its norms the concept of “legalization” (“laundering”) was formulated in detail. It recommends that each party take such measures as may be necessary in order to criminalize the relevant acts [21].

In order to create a system to combat money laundering, the UN Convention provided the obligation of the member states to take measures to enable their competent authorities to identify, detect, freeze or seize assets, accounts with a view to the subsequent confiscation of proceeds from illicit trafficking in narcotic drugs and psychotropic substances.

A new contribution to countering the legalization of criminal proceeds was made by two UN Conventions: on November 15, 2000, the **UN Convention against Transnational Organized Crime** [22] was adopted, and on October 31, 2003, the UN Convention against Corruption [23].

They also described the actions forming the composition of the laundering of criminal proceeds, the criminalization of which is obligatory for all the acceding member countries.

In the opinion of **V.Zubkov, S.Osipov**, there is no summarizing document at the UN level, however, the issues of interstate cooperation in the area of combating money laundering have been fairly intensively developed with the help of an international organization specializing in the development of international standards for combating money laundering income.

It is about the **Financial Action Task Force on Money Laundering**, established in 1989. The decisions of the FATF are advisory in nature, but these recommendations constitute a real international program to combat the use of the financial system by natural and legal persons laundering criminal proceeds. They, along with measures of organizational and financial order, include provisions relating to the criminalization of the legalization of criminal proceeds [24].

To sum up, it should be said that the process of unification and harmonization with the advanced international standards of national criminal law is the most important task of improving domestic legislation, however, the following novelties are proposed:

1. Introduce an additional qualifying attribute providing for responsibility for the legalization of proceeds from crime in the sphere of illicit trafficking in narcotic drugs, psychotropic substances.

From the analysis of foreign criminal legislation, there is an obvious tendency to increase criminal responsibility and impose harsher penalties for the legalization (laundering) of income acquired as a result of drug trafficking.

For example, the Criminal Code of **France** [25] in Section IV “Drug Trafficking” in Article 222-38 provides for liability for the laundering of property or proceeds derived from offenses related to drug trafficking.

According to the disposition of this article, money laundering refers to acts aimed at facilitating a false substantiation of the origin of the property or income of the offender, or acts aimed at facilitating an investment transaction, as well as hiding or transforming the proceeds from any of the crimes related to drug trafficking.

The proposed novelty will reduce the number of crimes committed in the field of illicit trafficking in narcotic drugs, psychotropic substances, will contribute to a more effective fight against organized crime.

According to UN data, lately, transnational organized criminal groups around the world have received from one-fifth to one-third of their income from the sale of drugs [26].

Thus, drug trafficking is one of the main sources of criminal proceeds, which the world community is opposing, and strengthening of responsibility in these categories of cases is an actual direction for the development and improvement of criminal legislation.

2. Introduce a norm governing the confiscation of criminal proceeds.

According to experts, in recent years, revenues from various kinds of crimes in the field of money laundering range from 2 to 5% of the total world gross product, so from 1 to 3 trillion US dollars [27].

The absence of confiscatory measures in relation to proceeds from crime may lead to the ineffectiveness of criminal punishment.

At the same time, the confiscation of this crime is provided for in the legislation of several countries.

In particular, the Criminal Code of **Argentina** [28] (part 4 of article 278) establishes the possibility of applying confiscation measures in relation to property acquired as a result of legalization.

The Criminal Code of **Liechtenstein** [29] in § 20 states: “3. An offender whose monetary benefit was obtained during his membership in a criminal organization (§ 278a) or in a terrorist group (§ 278b) must be sentenced to pay the amount established by the court, if it is reasonable to assume that this benefit was obtained due to the wrongful acts of the criminal and her legal the origin cannot be proven. 4. A person who has received unjust enrichment at the expense of another person’s unlawful actions or receiving remuneration for such actions must be sentenced to recover an amount equal to unjust enrichment. If a legal entity received unjust enrichment, then it is sentenced to payment received.”

In addition, there is a practice of confiscation of property obtained by criminal means and at the international (regional) level, and evidence of this is the **Council of Europe Convention on Laundering, Detection, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism** (CETS N 198) (Warsaw, 16 May 2005).

Summing up this proposal, we believe that the novel will allow:

1. Strengthen the fight against dangerous forms of crime, increasingly acquiring an international character;

2. Apply the method of depriving the criminals criminal activity;

3. To prevent the possibility of committing repeated criminal acts.

3. The title and the disposition of Article 243 of the Criminal Code shall be supplemented with the words “financing of terrorism”.

The FATF study on opiate trade in Afghanistan noted that multimillion-dollar revenues of networks involved in drug trafficking are used to finance terrorist organizations. According to estimates by the **UN Monitoring Team** on the Al-Qaida and Taliban sanctions, a third of the total income of the Taliban, which amounted to \$ 400 million, came from the sale of opiates. Terrorist organizations may receive proceeds from drug trafficking by allowing or facilitating these activities in the regions in which they conduct their operations [30]. The FATF study on opiate trade in Afghanistan noted that multimillion-dollar revenues of networks involved in drug trafficking are used to finance terrorist organizations. According to estimates by the UN Monitoring Team on the Al-Qaida and Taliban sanctions, a third of the total income of the Taliban, which amounted to \$ 400 million, came from the sale of opiates. Terrorist organizations may receive

proceeds from drug trafficking by allowing or facilitating these activities in the regions in which they conduct their operations [30].

According to **FATF Recommendation 4**, “countries should take measures similar to those set out in the Vienna Convention, the Palermo Convention and the Convention on the Suppression of the Financing of Terrorism, including legislative measures that allow their competent authorities to freeze or seize and confiscate without prejudice to the rights of bona fide third parties the following : (a) laundered property; (b) income derived from money laundering or predicate offenses, or instruments used or intended to be used for laundering money or committing predicate offenses; (c) property that is income or is being used, or intended, or intended to be used to finance terrorism, terrorist acts or terrorist organizations; or (d) property of equivalent value ”[31].

Changing the name and disposition of the article will allow to unify the provisions of the Criminal Code and the Law of the Republic of Uzbekistan “**On Countering the Legalization of Incomes Received from Criminal Activities and the Financing of Terrorism**”.

In addition, the proposed addition will contribute to the further implementation of the **International Convention for the Suppression of the Financing of Terrorism** (New York, December 9, 1999), which Uzbekistan ratified by the Resolution of the Oliy Majlis of the Republic of Uzbekistan on May 12, 2001 [32].

In general, the need to change the wording of the article, due to:

1. An increase in the manifestation of acts of terrorism in all its forms throughout the world;
2. The fact that the financing of terrorism is a matter of serious concern for the international community as a whole;
3. The fact that the number and severity of acts of international terrorism depend on funding that terrorists can access.

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