



CONCEPT, LEGAL BASIS OF FINANCIAL INVESTIGATION ON THE CASES OF MONEY LAUNDERING AND STAGES OF FORMATION

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In recent years, the term "financial investigation" is frequently encountered not only in foreign, but also in the national law enforcement system.

In particular, the term "financial investigation" is widely used in the activities of the Financial Action Task Force (hereinafter referred to as FATF) and its regional groups.¹

During the evaluation processes, trainings and seminars conducted to study the compliance of the system of combating money laundering, financing of terrorism and financing of weapons of mass destruction with international standards, experts and responsible employees of national structures are gaining knowledge and skills about the concept of "financial investigation" of FATF member states.²

It should also be noted that the concept of "financial investigation" has not been fully studied in science, it has not been clearly defined, and it has not been normatively defined in legislation.

In the review of recommendations by FATF, special attention was paid to the practical components of the system for combating money laundering and terrorist financing.

Therefore, it is appropriate to consider the history of the emergence of the concept of financial investigation in conjunction with the legalization of proceeds from criminal activities.

The concept of legalization of proceeds from criminal activities appeared in the USA in the 20s of

the 20th century and is associated with the activities of the Chicago gangster Alphonse (Al) Capone.³

According to the 18th Amendment to the US Constitution in 1920, one year after the ratification of this article, the manufacture, sale and transportation of alcoholic beverages, their import and export for consumption in the territory of the United States and all territories under its jurisdiction is prohibited.⁴

The implementation of this law was negatively received by the middle class of the population, which led to the emergence of clandestine production, distribution and smuggling of alcohol. As a result, the sale of alcoholic products at high prices on the "black market" increased.

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With this illegal activity, many organizations began to cover up, profiting millions of dollars, and eventually, the crime of corruption, bribery and banditry⁵ increased to an unprecedented level.

³ Шашкова А.В. Зарождение понятия «легализация» (отмывание) доходов, полученных преступным путем. Вестник МГИМО-Университета. 2011;(3(18)):Б 272. <https://doi.org/10.24833/2071-8160-2011-3-18-272-274>

⁴ Конституция Соединенных Штатов Америки. 1787 г.

⁵ Бандитизм – жиноят ҳуқуқида бу жамоат тартиби ва жамоат хавфсизлиги асосларига тажовуз қиладиган энг хавфли жиноятлардан биридир. Корхоналар, муассасалар ва ташкилотларга бошқа шахсларга ҳужум қилиш мақсадида қуроли тўдалар ташкил этишдан иборат, ёки шахслар, шунингдек бундай гуруҳга (тўдага) раҳбарлик қилиш ёки гуруҳда ёки у томонидан содир этилган ҳужумларда иштирок этиш.

Экономика и право: словарь-справочник. — М.: Вуз и школа. Л. П. Кураков, В. Л. Кураков, А. Л. Кураков. 2004.

¹ Ўзбекистон Республикаси Президентининг 24.07.2021 йилдаги “Ўзбекистон Республикасининг жиноий фаолиятдан олинган даромадларни легаллаштиришга, терроризмни молиялаштиришга ва оммавий қирғин қуролини тарқатишни молиялаштиришга қарши курашиш миллий тизимини ривожлантириш стратегиясини тасдиқлаш тўғрисида”ги ПФ-6252-сон Фармони., [Қонунчилик маълумотлари миллий базаси, 29.06.2021 й., 06/21/6252/0617-сон.](#)

² Теплов В. Финансовое расследование, Litres., 2018., Москва., 3-6 бетлар.



On the other hand, there was a need to legalize criminal income received in organized groups, criminal associations, that is, to "cleanse" and "launder" these funds.

Criminal proceeds from the illegal sale of alcohol by the criminal organization led by Alphonse (Al) Capone were added to the cash proceeds from the system of laundry enterprises, and the illegal income began to be legalized. This is how the term "money-laundering" appeared.

Later, in 1931, in order to avoid the fate of Al Capone, Meyer Lansky made the task of law enforcement a little more difficult, that is, he bought a Swiss bank in 1934 in order to use Swiss bank secrecy laws to deliberately evade tax payments and legalize his illegal income.

After that, M. Lansky deposited the criminal income earned by organizing gambling games, drug trade, brothel, extortion and other crimes in the USA into this bank.

However, the search for these funds in the Swiss bank created a number of difficulties not only for the tax authorities, but also for M. Lansky in the use of these funds, because in order to use the funds, there was a need to first give a legal tone to their origin and then use them in the United States.

Therefore, in 1937, M. Lansky bought a franchise for several gaming tables in the casino of the Hotel Nacional in Havana. In 1930-1950, he used the corrupt regime in Cuba to form a transnational criminal organization.

In particular, illegal proceeds from criminal activities in the USA, funds previously deposited in a Swiss bank, are transferred to Havana, legalized with the help of casinos, and returned to the USA in the form of legal profits from foreign investments.

However, the term money laundering or "money laundering" was not used by M. Lansky either, this term was first used later in an article published in the British newspaper "The Guardian" under the name "Watergate Scandal".⁶

The term was coined by US President Richard Nixon's use of funds from campaign committee members to fund campaign events.

In particular, Nixon's campaign participants transferred \$200,000 to Mexico as an alleged donation, and later repatriated the funds to the United States through a Miami firm and spent them on campaign events.

These funds were used not only to finance the official activities of the campaign, but also to install audio equipment at the headquarters of the

Democratic Party in Washington and to organize the hearing of the party's campaign process.

Thus, the term money laundering was created in the 80s of the 20th century, and since then, the fight against money laundering has become one of the main directions of the activities of law enforcement agencies.

Thus, in Western countries, "**financial investigation**" teams have been established in police departments to effectively investigate money laundering crimes. The term "**financial investigation**" began to be actively used in the vocabulary of international organizations active in the fight against money laundering.⁷

In turn, as one of the tasks in this direction, FATF set recommendations (recommendations 30 and 31) on the activities of law enforcement agencies in order to expand the functions, responsibilities, powers and tools of law enforcement agencies for effective "financial investigation".

As a result, the FATF recommendations were amended to introduce the term "**financial investigation**" and define this term as the study of the financial aspects of criminal activity.⁸

It was determined that the main goal of the financial investigation is to determine and formalize the movement of money and other assets, their origin, when they were acquired and their connection with criminal activity.

Because determining the scale of criminal activity, exposing criminal connections and activities of groups, searching for confiscated criminal income, sources of terrorist financing, as well as finding other evidence proving the commission of a crime, is the basis for ensuring the effectiveness of the system.

The FATF recommendations are general guidelines for the conduct of financial investigations for various legal systems, families and law enforcement agencies.

Resolution No. 1617 (2005) adopted at the meeting of the UN Security Council on July 29, 2005 also recommended all countries to comply with FATF recommendations.⁹

⁷ Н.А. Пименов. Финансовые расследования: основные подходы. Вестник Финансовой Академии. 2003. №1 (25). – Б 29.

⁸ Рекомендации ФАТФ: Международные стандарты по противодействию отмыванию денег, финансированию терроризма и финансированию распространения оружия массового уничтожения. 2012 год февраль., МУМЦФМ., 2012., - Б 141.

⁶ Safire W. Safire's New Political Dictionary. Random House. N.Y. 1993.

⁹ БМТ Хавфсизлик Кенгашининг 29.07.2005 йилдаги 1617 (2005)-сон резолюцияси. //



As a result, financial investigation is recognized as one of the main aspects of the activities of law enforcement agencies in the updated standards of FATF today.¹⁰

If we study the stages of development of the national legislation on conducting a "financial investigation", based on the above-mentioned international norms and recommendations, first of all, the Law of the Republic of Uzbekistan dated August 26, 2004 "On combating the legalization of proceeds from criminal activities, the financing of terrorism, and the financing of the distribution of weapons of mass destruction" Law No. 660-II was adopted.

This Law regulates relations in the field of combating the legalization of proceeds from criminal activities, the financing of terrorism, and the financing of the proliferation of weapons of mass destruction.

The law defines the concepts of income from criminal activity, legalization of income from criminal activity, suspension of funds or other assets without use, suspension of operations, rules of internal control, special authorized body, its duties and powers.

In addition, in order to ensure the implementation of this Law, the rules of internal control were approved for 16 organizations and professionals that carry out transactions related to money or other property, and mechanisms were created for the implementation of basic tasks such as due verification of customers, reporting of suspicious transactions.

For example, the "Rules of Internal Control on Combating Money Laundering, Financing Terrorism, and Financing the Distribution of Weapons of Mass Destruction in Commercial Banks" organize internal control in commercial banks to combat money laundering, financing terrorism, and financing the distribution of weapons of mass destruction. and implementation determines the procedure for suspending funds or other assets without using them, allowing the use of assets suspended without using them, and restoring operations.¹¹

<https://eurasiangroup.org/ru/un-security-council-resolutions>.

¹⁰ Руководство ФАТФ по финансовым расследованиям: оперативные вопросы., Июнь 2012 г., Париж. – Б 11-14.

¹¹ Ўзбекистон Республикаси Марказий банки бошқаруви Ўзбекистон Республикаси Бош прокуратураси ҳузуридаги иқтисодий жиноятларга қарши курашиш департаментининг 17.04.2017 йилдаги «Тижорат банкларида жиноий фаолиятдан олинган даромадларни легаллаштиришга, терроризмни молиялаштиришга ва оммавий қирғин қуролини тарқатишни молиялаштиришга қарши курашиш бўйича ички назорат қоидаларини тасдиқлаш ҳақида»ги Қарори. //

The adoption of the Law of the Republic of Uzbekistan on November 13, 2011 "On Ratification of the Agreement on the Eurasian Group to Combat Money Laundering and the Financing of Terrorism (Moscow, June 16, 2011)" is of great importance in the implementation of international standards in this field into national legislation. became important.

After all, the ratification of this agreement imposed on Uzbekistan the task of fulfilling the obligations stipulated in the agreement regarding the fight against the legalization of proceeds from criminal activities.

In order to ensure the implementation of the agreement, the Law O'RQ-516 dated January 15, 2019 "On amendments and additions to certain legal documents of the Republic of Uzbekistan in connection with the improvement of the mechanisms for combating economic crimes and the financing of the proliferation of weapons of mass destruction" was adopted, and in the above-mentioned special law the concept of legalization of proceeds from criminal activities was explained in a new version and harmonized with the definition given in the JK, the scope of authority of the specially authorized state body was expanded.

In particular, to provide the specially authorized state body with control over the fulfillment by legal entities and individuals of the legal requirements to combat the legalization of proceeds from criminal activities, the financing of terrorism, and the financing of the distribution of weapons of mass destruction, in accordance with the procedure established by law, with international and regional organizations, relevant competent authorities of foreign countries. powers to conclude agreements were given.

In addition, in order to eliminate the shortcomings in the investigation and judicial practice, on February 11, 2011, the Plenum of the Supreme Court of the Republic of Uzbekistan adopted Decision No. the concept was given, the criteria for qualifying the act with Article 243 of the Criminal Code were clarified.

Later, a number of changes and additions were made to this decision of the Plenum based on the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan No. 23 dated June 10, 2021.

In particular, based on the recommendations of the FATF, the concept of basic crimes was defined and their categories were defined.

In addition, according to the 15th Recommendation of the FATF, crypto-assets (crypto-

Қонунчилик маълумотлари миллий базаси, 27.12.2021 й., 10/21/2886-8/1201-сон).



currency) were included among the proceeds of criminal activities.

It was noted that the property obtained from the legalization of income should be considered the subject of a crime, and it should be confiscated after the compensation of the material damage caused to an individual or legal entity as a result of the main crime.

Through the analysis of the current legal documents, we will dwell in more detail on the stages of development of the national legal system, to what extent it complies with international standards.

The adoption of the Law of the Republic of Uzbekistan on December 25, 2012 ORQ-344 No. "On Quick Search Activity" was considered one of the main legal documents regulating financial investigation.

Because in this law, the tasks, types, procedures of conducting investigative activities, which are one of the methods of "financial investigation" established by international standards, the scope of bodies implementing TQF, and their duties were defined.

These investigative activities are aimed at identifying, preventing, eliminating, gathering evidence of crimes that are being prepared, committed or committed, and are one of the mechanisms for conducting a full financial investigation.

It is also worth noting that TQF materials are the basis for the initiation of a criminal case, and are presented to the investigation and investigative bodies conducting the criminal case, to the prosecutor to prepare for and carry out investigative actions, as well as from these materials the Criminal Procedure Code of the Republic of Uzbekistan (hereinafter referred to as the Criminal Procedure Code of the Republic of Uzbekistan maintained) can be used in evidence in criminal cases according to the norms.

The results of the conducted search operations can be recognized as evidence after being checked and evaluated in accordance with the Code of Criminal Procedure of the Republic of Uzbekistan.

In particular, according to Article 22 of the Criminal Procedure Code (hereinafter referred to as the Criminal Procedure Code), the investigator, prosecutor, and court must determine whether a crime has occurred, who is responsible for its commission, and all related circumstances.

According to Article 87 of the Criminal Code, these functions include conducting evidence investigation and court actions - questioning, confronting, presenting the suspect, accused, defendant, witness, victim, expert for identification, checking, confiscating, searching, inspecting evidence at the scene of the incident. , expertise and inspection are carried out by appointing and other investigative actions, as well as conducting rapid search activities.

The main element of the "financial investigation" is the collection of evidence confirming the commission of a crime, and the procedural procedure for the collection and consolidation of evidence is defined in the JPK.

At the same time, one of the main steps of the financial investigation is to take measures to identify and confiscate the proceeds of crime.

In fact, according to articles 203-212 of the Criminal Code, objects, objects, funds, money, which were directly used in the commission of a crime, related to the crime, are recognized as material evidence or weapons of crime, and then money and other assets obtained by criminal means are considered property damage caused as a result of the crime according to the judgment of the court. transferred to compensation, if the person who suffered property damage is not identified, it is determined to be transferred to the benefit of the state.

According to Article 290 of the Criminal Code, the property of the suspect, accused, defendant and civil defendant, which is recognized as material evidence, can be seized.

Also, in all other cases where physical evidence is damaged or lost, their value must be collected in accordance with the provisions of civil legislation on obligations arising from damage.

According to the decision of the Plenum of the Supreme Court No. 26 of 27.12.2016 "On the judicial practice on the application of the legislation on the compensation of property damage caused as a result of crime" during this period, if there are sufficient grounds to believe that this property actually belongs to the suspect or the accused, a ban may be imposed.¹²

The procedure for confiscation, storage, sale and destruction of physical evidence, material valuables and other property based on the names of the Criminal Code "Investigation, investigation, preliminary investigation and trial before the investigation" registered by the Ministry of Justice of the Republic of Uzbekistan on December 29, 2010 with registration No. 2174 During the discussion, it is carried out based on the procedure established in the Decision on approving the instruction on the procedure for confiscating (receiving), accounting, keeping,

¹² Ўзбекистон Республикаси Олий суд Пленумининг 27.12.2016 йилдаги «Жиноят натижасида етказилган мулккий зиёни қоплашга оид қонунчиликни қўллаш бўйича суд амалиёти тўғрисида»ги 26-сон қарори. // <http://old.lex.uz/docs/3115385>.



giving, selling, returning, and destroying physical evidence, material valuables and other property.¹³

In order to improve the effectiveness of financial investigation and coordinate the activities of the competent authorities in this regard, the Decree of the General Prosecutor of the Republic of Uzbekistan dated February 22, 2016 "On effective provision of the rule of law and the protection of the rights and freedoms of the individual in the fight against crime, investigation, preliminary investigation and rapid search" It is worth noting the number order separately.

Because in this sectoral order, the mechanisms of applying the norms established by the law regarding financial investigation were clarified.

Later, in order to increase the effectiveness of the law enforcement agencies that carry out financial investigations on money laundering crimes, to form a uniform practice in this direction, on May 20, 2021, the Prosecutor General, the Minister of Internal Affairs, the Chairman of the State Security Service and the State Customs Committee issued a "Quick - Joint instruction on the procedure for studying the financial aspects of criminal activities during the implementation of search, pre-investigation, investigation and preliminary investigation activities was approved.

In the instruction, strengthening the national system for combating money laundering and financing of terrorism, money laundering, increasing the effectiveness of exposing and investigating cases related to money laundering and financing of terrorism, collection and strengthening of evidence, criminal proceeds, sources of financing and other assets. later identification and registration for confiscation was arranged.

By the decision of the Prosecutor General, the Chairman of the State Security Service, the Minister of Internal Affairs and the Chairman of the State Customs Committee dated October 29, 2021, the Regulation "On the procedure for conducting a parallel financial investigation in order to determine cases of legalization of proceeds from criminal activities and financing of terrorism" was approved.

In this Regulation, the procedure for conducting a parallel financial investigation in order to

identify cases of legalization of proceeds from criminal activities, financing of terrorism, persons related to them, and property to be confiscated during the course of rapid search, pre-investigation investigation and investigative actions was established.

In this regard, the adoption of Decree No. PF-6252 by the President of the Republic of Uzbekistan on June 28, 2021 "On approval of the strategy for the development of the national system of combating the legalization of proceeds from criminal activities, the financing of terrorism, and the financing of the proliferation of weapons of mass destruction" will further improve the national legislation, is an important step in ensuring its effectiveness.

The strategy includes reduction of risks identified at the national level in the fight against money laundering, compliance of the national system with international documents, implementation of FATF recommendations into national legal documents, early prevention of crimes, improvement of the efficiency of state bodies, strengthening of international cooperation, formation of an integrated system of information, the professional development of the employees of state bodies involved in the field was defined as the main areas.

Based on the decree, in order to ensure the implementation of the tasks defined in the strategy, the Roadmap was approved, the list of laws and regulatory documents that should be developed on the improvement of the national legal system was formed, organizational measures to ensure the efficiency of activities, improvement of personnel qualifications, execution periods and responsible executives were determined.

In order to ensure the implementation of the decree, on June 29, 2021, Resolution No. 402 of the Cabinet of Ministers of the Republic of Uzbekistan was adopted, and the Regulation on the procedure for providing information related to the fight against the legalization of proceeds from criminal activities, the financing of terrorism and the financing of the distribution of weapons of mass destruction was approved.

With this decision, implementation of international cooperation in the field of combating the legalization of proceeds from criminal activities, financing of terrorism, and financing of the distribution of weapons of mass destruction, monitoring of compliance with the above-mentioned crimes by organizations that carry out operations related to money and other property, and Regulations on the organization of control were approved.

The adoption of these Regulations is an important mechanism for increasing the effectiveness of activities in combating money laundering.

¹³ Ўзбекистон Республикаси Адлия вазирлиги томонидан 2010 йил 29 декабрда рўйхатдан 2174-сон билан рўйхатдан ўтказилган «Терговга қадар текширув, суриштирув, дастлабки тергов ва суд муҳокамаси давомида ашёвий далиллар, моддий қимматликлар ва бошқа мол-мулкни олиб қўйиш (қабул қилиш), ҳисобга олиш, сақлаш, бериш, сотиш, қайтариш, йўқ қилиб ташлаш тартиби тўғрисидаги йўриқномани тасдиқлаш ҳақида»ги Қарори. // *Қонунчилик маълумотлари миллий базаси. 21.10.2021 й., 10/21/2174-2/0988-сон).*



In this regard, international experts, in particular, the Eurasian Group for Combating Money Laundering and Terrorist Financing (EOG), the UN Office on Drugs and Crime, the Organization for Cooperation and Security in Europe, will conduct a financial investigation into the crimes of money laundering and terrorist financing. procedure, a number of seminars and trainings are being organized on the topics of establishing effective inter-agency cooperation in this regard.

The national system of combating the legalization of criminal proceeds and the financing of terrorism of the Republic of Uzbekistan was studied by the expert evaluators of the Eurasian Group on combating the legalization of criminal proceeds and the financing of terrorism from June 14 to July 2, 2021, in terms of the implementation of international standards into national legislation, the improvement of the foundations of national legislation. it was noted that effective results were achieved.

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