



CRIMINAL LIABILITY OF INDIVIDUALS FOR MONEY LAUNDERING AND TERRORIST FINANCING

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ABSTRACT

This article analyzes the issues of liability for money laundering and terrorist financing. A review of the national legislation of the Republic of Uzbekistan in the field of ML/TF is made.

In the modern world, where financial flows are becoming increasingly complex and global, issues of combating money laundering and the financing of terrorism (AML/CFT) are becoming a priority for many states, including the Republic of Uzbekistan. Effectively combating these phenomena requires not only the development of appropriate legislation, but also strict monitoring of its compliance.

To increase the effectiveness of the fight against ML and TF, systematized legislation is necessary. And in order for legal norms to work, it is necessary to establish responsibility for violating these norms. Systematized and comprehensive legislation in the field of combating money laundering (ML) and the financing of terrorism (TF) is the foundation for effectively combating these phenomena. Transparent and coherent legal frameworks provide law enforcement agencies with clear guidance and tools to identify, prevent and suppress illicit financial transactions.

Establishing accountability for violating these norms is a key element in encouraging compliance with laws and creating a disciplined environment.

Legislative liability creates a threat to those who may be inclined to commit ML and TF crimes. Potential violators may refrain from illegal actions for fear of serious legal consequences. Prosecutions create legal precedents that can serve as a basis for future cases and serve as a warning to those who may be contemplating committing similar crimes.

In addition, when citizens see authorities decisively crack down on illegal financial practices and hold violators accountable, this helps increase trust in the rule of law and government institutions.

Systematized legislation and effective accountability also promote international cooperation. Countries monitoring similar crimes can more easily cooperate and share information if they are based on similar legal frameworks.



Establishing liability allows courts to take adequate measures depending on the severity of the violations committed, which contributes to a more fair and effective suppression of crimes.

Thus, systematized legislation in the field of combating ML and TF, supported by the establishment of liability, is a key factor in the successful fight against these crimes.

Establishing liability for violation of legislation in the field of combating the legalization (laundering) of proceeds from crime and the financing of terrorism (AML/CFT) has several important goals and justifications:

1. Ensuring public safety:

Combating money laundering and the financing of terrorism is a key aspect of ensuring national and global security. These phenomena can lead to serious threats to society, including the financing of terrorist activities and organized crime.

2. Maintaining financial stability:

Anti-AML/CFT efforts are aimed at maintaining financial stability and the integration of financial systems. Laws in this area create mechanisms to prevent illegal financial transactions that could undermine economic sustainability.

3. The international cooperation:

As mentioned above, the establishment of legal responsibility in the field of combating money laundering and the financing of terrorism (AML/CFT) also plays a significant role in facilitating international cooperation. Many countries cooperate in joint efforts to combat these crimes, and the establishment of common norms and standards of accountability promotes more effective cooperation between states.

4. Creating an effective countermeasures system:

Establishing responsibility serves as an incentive to create effective anti-AML/CFT systems. When those who commit violations are held legally accountable, it encourages greater compliance with AML/CFT laws and standards.

5. Protecting trust in financial institutions:

Anti-AML/CFT is also aimed at protecting trust in financial institutions. When the public knows that authorities are taking action to prevent abuse and illegal financial transactions, it helps maintain trust in banks and financial institutions.

6. Compliance with international obligations:

Many countries are required to comply with international AML/CFT standards and regulations. Establishing accountability helps countries meet their international obligations and maintain their place in the global community.

Thus, establishing liability for violation of AML/CFT legislation plays a key role in ensuring security, stability and legality in society and the global community.

In the Republic of Uzbekistan, administrative and criminal liability are established for individuals for violating AML/CFT regulations.

In the Republic of Uzbekistan, ML is criminalized in Article 243 of the Criminal Code - "Legalization of proceeds from criminal activity." Criminal liability arises for the commission of the following actions with money or other property obtained as a result of criminal activity:

giving a legal appearance to the origin of property (money or other property) through its transfer, transformation or exchange;



concealment or concealment of the true nature, source, location, method of disposal, movement, true rights in relation to funds or other property or its belongings.

From the point of view of the theory of Criminal Law, **money laundering** should be understood as giving the perpetrators a legitimate view of the origin of property obtained as a result of criminal activity.

Transfer refers to the performance **of** any financial transactions in banks with funds received from criminal activities. According to the explanation of the Plenum of the Supreme Court, financial transactions include capital flow operations, in particular the crediting of funds to an account, dispersing them into deposits in various banks, transferring them to another currency, purchasing securities with illegally obtained money, transferring funds abroad with subsequent their return to the bank deposit, etc.¹

Transformation should be understood **as** the commission of any civil transactions with property obtained from criminal activity (conclusion of a purchase and sale agreement, loan, gift, pledge, lease, exchange, etc.) or investment of income received as a result of criminal activity, in the creation or operation of a legal business or other production structure.

Exchange means the conversion **of** funds received from criminal activities in the national currency of Uzbekistan into any foreign currency²

Under Article 243 of the Criminal Code of the Republic of Uzbekistan (CC), the subject of the crime is “money or other property.” The criminal legislation of Uzbekistan does not have a clear definition of the terms “property” and “money”. In accordance with Article 169 of the Civil Code and paragraph 3 of the resolution of the Plenum of the Supreme Court No. 1, property means movable and immovable property, including property rights, things, securities, services, results of intellectual activity, including exclusive rights to them (intellectual property), as well as virtual assets such as cryptocurrency. Consequently, the subject of the crime established in Article 243 of the Criminal Code can be money or other property, including various forms of property as defined in the Civil Code and even covering modern forms of virtual assets such as cryptocurrency.

Income received from criminal activity in accordance with Article 3 of the AML/CFT/CFT Law means profit or benefit received from the use of funds or other property obtained by criminal means (income from income); property into which funds or property obtained by criminal means have been converted or transformed (for example, the construction of real estate from building materials acquired by criminal means); property obtained by combining funds or other property acquired through criminal means with property acquired from legal sources. In such cases, the property is recognized as obtained by criminal means only to the extent that it corresponds to the amount of money involved or the value of the property involved, virtual assets (cryptocurrency). The value of the laundered property does not matter for the onset of liability under Article 243 of the Criminal Code. However, the size of legalization

¹ See : resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan “On some issues of judicial practice in cases of legalization of proceeds from crime” dated February 11 2011 r. No. 1, part 3, paragraph 3. // Official newsletter of the Supreme Court of the Republic of Uzbekistan.

² Commentary on the Criminal Code of the Republic of Uzbekistan. A special part. Second edition, revised and expanded / M. Kh. Rustambayev . -T., 2016. P.912



(significant, large or especially large of such property according to paragraph 8 of the resolution of the Plenum of the Supreme Court No. 1, affects the determination of the sentence term ³.

Article 243 of the Criminal Code provides for a penalty of imprisonment for a term of 5 to 10 years for committing a crime related to money laundering. This crime is classified as a serious crime, and no other penalties are provided.

In accordance with paragraph 8 of the resolution of the Plenum of the Supreme Court No. 1, ⁴when determining the amount of punishment, courts are required to take into account the value of the laundered property, as well as other circumstances specified in this resolution.

Also, criminal liability has been established for individuals for the illegal organization of public associations or religious organizations (Article 216 of the Criminal Code). For committing such an act, penalties are provided in the form of a fine from 50 to 100 BRV or restriction of freedom from 2 to 5 years or imprisonment for up to 5 years.

Criminal liability is also provided for inducement to participate in the activities of illegal public associations and religious organizations (Article 216-1 of the Criminal Code) and violation of the legislation on religious organizations (Article 216-2 of the Criminal Code). Criminal liability of NPOs, like other legal entities, is not provided for by law due to the fundamental principles of the legal system.

In addition, due to violation of the legislation on combating the legalization (laundering) of income, the financing of terrorism and the financing of the proliferation of weapons of mass destruction, these actions entailed causing major damage or significant harm to the rights and legally protected interests of citizens, as well as the interests of the state and society, officials of legal entities may be prosecuted under Articles 192-11 and 205 of the Criminal Code for abuse of power, under Article 206 for exceeding official powers, under Article 207 for official negligence, under Article 208 for inaction of power, and under Article 209 for official forgery.

In addition to criminal liability for ML, the Criminal Code of the Republic of Uzbekistan also provides for criminal liability for TF. In Uzbekistan, countering the financing of terrorism is a crime under the UN Convention for the Suppression of the Financing of Terrorism and is established as an independent crime in the country's Criminal Code. The corresponding article of this Criminal Code regulating this type of criminal activity is Article 155-3. According to this article, financing of terrorism is an activity aimed at ensuring the existence, functioning, financing of a terrorist organization, traveling abroad or moving through the territory of the Republic of Uzbekistan to participate in terrorist activities, preparing and committing a terrorist act, direct or indirect provision or collection of any funds, resources, other services to terrorist organizations or persons facilitating or participating in terrorist activities.

Activities aimed at ensuring the functioning and financing of terrorist activities include targeted actions such as recruiting, recruiting and selecting militants for a terrorist organization, arming them with various types of weapons, explosives, explosive devices, as well as organizing training and planning terrorist actions. This also includes the provision of housing, monetary benefits and other necessary resources.

³See Mutual Evaluation Report of the Republic of Uzbekistan. 2022 // https://eurasiangroup.org/files/uploads/files/MER_Uzbekistan_2022_rus.pdf

⁴<https://lex.uz/ru/docs/1455974>



Activities aimed at ensuring travel abroad or movement through the territory of the Republic of Uzbekistan to participate in terrorist activities on the territory of a foreign state include providing assistance, financial support, providing documents for travel, purchasing tickets and providing transportation.

The preparation and execution of terrorist acts includes the stages of planning, selecting the target of attack, distribution of responsibilities, as well as the actual commission of acts, such as explosions, arson, hostage-taking and massacres.

Providing or collecting funds, resources and other services for terrorist organizations includes any activity aimed at financing terrorist organizations, including the creation of funds, organizations and financial structures, as well as the use of industrial structures to support the activities of terrorist organizations.

The provision of funds, resources and other services can be considered as direct, when the perpetrator knows who and why he is providing these funds, and indirect, when the funds are transferred through intermediaries, such as charities.

The crime is considered completed from the moment of the beginning of activities aimed at ensuring the existence of a terrorist organization, traveling abroad to participate in terrorist activities, preparing or committing terrorist acts, providing or collecting funds and providing other services to a terrorist organization or their accomplices ⁵.

The Criminal Code provides for punishment for TF under Part 1 of Article 155-3 from 8 to 10 years of imprisonment and is classified as a serious crime. The qualified composition of Part 2 of Article 155-3 of the Criminal Code in the case of a crime being committed repeatedly, by an organized group, an official or a dangerous recidivist provides for a punishment of 10 to 15 years in prison and is classified as a particularly serious crime.

References:

1. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On some issues of judicial practice in cases of legalization of proceeds from crime" dated February 11 2011 r. No. 1, part 3, paragraph 3. // Official newsletter of the Supreme Court of the Republic of Uzbekistan;
2. Commentary on the Criminal Code of the Republic of Uzbekistan. A special part. Second edition, revised and expanded / M. Kh. Rustambaev . -T., 2016. P.912;
3. Mutual Evaluation Report of the Republic of Uzbekistan. 2022;

⁵ Commentary on the Criminal Code of the Republic of Uzbekistan. A special part. Second edition, revised and expanded / M. Kh. Rustambaev . -T., 2016.