DOI: 10.51634/2307-5201_2025_4_56
УДК 343.3/.7
МРНТИ 10.77.51

THE CRIMINAL AND LEGAL CHARACTERISTICS OF THE LEGALIZATION OF PROCEEDS FROM CRIME: PROBLEMS OF CLASSIFICATION AND HARMONIZATION OF LEGISLATION IN THE REPUBLIC OF KAZAKHSTAN WITH INTERNATIONAL STANDARDS

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The paper is conducted to study the criminal and legal instruments of combating legalization (laundering) of proceeds of crime in the Republic of Kazakhstan focusing on the analysis of compliance of the national legislation with international standards and obligations in terms of its implementation. The relevance of the study is conditioned by the low level of efficiency of application of Article 218 of the Criminal Code of the Republic of Kazakhstan, which is confirmed by statistics: 20% of acquittals (2022-2024) and the absence of cases on laundering of proceeds from drug trafficking.

The purpose of the research is to identify systemic problems of law enforcement, doctrinal controversies and development of measures to harmonize the norms with international standards of the Financial Action Task Force (hereinafter – FATF).

Methodology includes comparative legal analysis, a system interpretation of the norms of the Criminal Code of the RK, analysis of judicial practice and doctrinal positions.

The results of the research that two-object construction of the corpus delicti of the crime is based: the main object is economic relations; the supplementary object is the interests of justice. The necessity of introduction of the share approach in determining the subject of the crime is revealed, in connection with which the revision of p. 19 of the NRSC of RK No. 3 from 24.01.2020 is proposed. The contradiction between the theory of "special subject" (excluding self-launderers) and practice of application has been established, which requires criminalization of professional intermediaries through the qualifying feature. It has been indicated that the subjective side of the crime does not correspond to the FATF standards, where it is sufficient to realize the criminal origin of assets (due diligence).

The implementation of the recommendations will strengthen the protection of the interests of the economy and justice. The research is significant for law enforcement practice and reforming anti-money laundering legislation of the Republic of Kazakhstan.

Keywords: counteraction, money laundering, responsibility, FATF, analysis, legislation.

Introduction

The low level of statistical data registering cases of bringing to criminal liability under Article 218 of the Criminal Code of the Republic of Kazakhstan (hereinafter – the Criminal Code of the RK) allows to state the decrease in the effectiveness of existing criminal legal instruments. This issue becomes especially acute in the context of a dynamic increase in rates of shadow economy transactions, which actualizes the need for a critical review of the applied legal mechanisms in order to ensure their compliance with modern challenges.

Accordingly, in 2022-2023 and the first half of 2024, the courts of the republic considered 81 cases against 114 individuals under the Article 218 of the Criminal Code of the Republic of Kazakhstan.

During the analyzed periods 13 cases against 16 individuals were acquitted by the courts of the republic, as well as 3 cases against 3 individuals were terminated for lack of corpus delicti and failure to prove culpability in terms of charges under Article 218 of the Criminal Code (according to the judicial

acts that entered into legal force). This means that in every fifth case considered by the court, the presence of elements of money legalization (money laundering) in the defendant's act was not proved in court [1].

Consequently in 20% of cases the courts did not establish sufficient grounds to confirm the fact of legalization, which indicates systemic difficulties in the formation of the evidence base, possible gaps in the qualification of acts at the pre-trial stage, as well as the risks of imperfections in the norms of criminal law or their interpretation.

In addition there is no systematic judicial practice in cases of legalization of proceeds from drug trafficking, despite the recommendations of the international expert community [3]. According to the data of the authorized body, about 3 thousand criminal cases related to drug trafficking are registered annually, however in 2023 and 2024 the number of pre-trial proceedings under the Article 218 of the Criminal Code of the Republic of Kazakhstan (legalization of criminal proceeds) amounted to only 3 and 1 case, respectively [2]. Such disproportion of statistical indicators not only emphasizes the problem of failure to recover the damage caused to the economy through the laundering of criminal capital, as well as challenges the implementation of the fundamental principle of criminal law – inevitability of responsibility.

International experts emphasized in their Report [3] that such a situation requires immediate enhancement of the activities of the Ministry of Internal Affairs of the Republic of Kazakhstan in terms of countering predicate offenses that form the financial base of drug-related crime. However, the current dynamics indicates the persistence of institutional gaps, which confirms the need for normative adjustment of existing law enforcement mechanisms.

In our opinion the above-mentioned difficulties of law enforcement directly correlate with the need to accurately define the corpus delicti, which is the foundation for the correct qualification of acts.

Materials and methods of research

This research was carried out using a set of methods traditionally used in legal science, namely: general scientific, historical and legal, comparative-legal, formal-logical, system-structural methods. Along with the above methods, private methods were used, corresponding to the goals and objectives of the research topic: analysis and evaluation of normative sources, international legal acts ratified by Kazakhstan, experience of foreign countries, recommendations of international structures related to the problems under consideration.

Results and their discussion

In accordance with tradition the theory of criminal law under the object of crime means social relations protected by criminal law from criminal encroachments [4].

The work of E.M. Bimoldanov [5, P. 126] indicates that the crime under research, being referred to the section of criminal offenses in the sphere of economic activity, has as a generic object the economic interests of the state. The author treats them as a system of economic relations regulating the processes of creation, exchange, distribution and use of material goods. Thus, the object of crime in this area is these social relations that ensure the functioning of the economy.

A.A. Emtseva within the critical analysis of the problem puts forward an alternative position: "the statement that legalization of criminal proceeds is a crime in the field of economy is accepted without sufficient scientific substantiation, only by virtue of apparent obviousness" [6, P. 118].

The thesis is scientifically grounded in the position of I.A. Klepitsky, who believes that the object of legalization (laundering) of proceeds as a social and legal phenomenon is extrapolated beyond economic relations. The scientist emphasizes that the public danger of this act is determined by its ability to create systemic barriers to the identification and procedural proof of mercenary offenses, as well as for the implementation of criminal and legal responsibility of subjects of criminal activity. Having conducted a comparative legal analysis, Klepitsky I.A. establishes a correlation between the objective side of legalization and the crime concealment institute, emphasizing the similarity of their criminalistic mechanisms and orientation to the deformation of justice procedures. In this regard, Klepitsky I.A. proposed to replace this article in the chapter on crimes against justice. [7, P. 521].

Adhering to a similar position, the Belarusian researcher P.S. Pakhomchik notes that legalization is aimed at concealing the origin of property, which makes it difficult to bring the perpetrators to justice, allowing criminals to avoid punishment and creating conditions for new offenses. [8, P. 443].

Despite the controversy of the issue, the most reasonable position is that the object of the analyzed crime is economic relations. It is confirmed by the systemic interpretation of the norms of the Criminal Code of the RK, the direction of the act to destabilize the economy, as well as the need to protect legal financial mechanisms. Alternative views, although noteworthy, focus on the collateral, rather than the main consequences of the crime.

Nevertheless from our point of view it is reasonable to consider the interests of justice as an additional object of legal regulation in the context of legalization (laundering) of proceeds of crime. This thesis is justified by the fact that the functioning of the justice system is negatively affected due to difficulties in identifying the property acquired by illegal means, which can potentially act as material evidence in court proceedings, as well as due to the complexity of the procedure for its seizure in favor of the state.

Following the establishment of the object of the crime as social relations protected by criminal law, the logical sequela of the structural analysis of the corpus delicti is the study of its object – a material element that is directly affected by the offender in the process of legalization, which allows to specify the mechanism of causing harm to protected social values and differentiate this act from related corpus delicti.

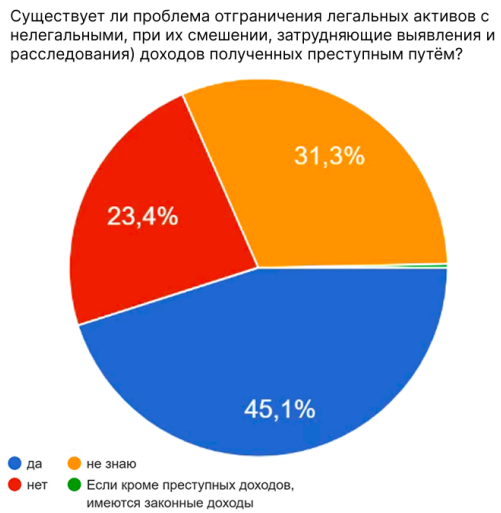
Analysis of the disposition of the Article 218 of the Criminal Code of the RK enables to conclude that the legislator defines the subject of the crime as "money and other property acquired by criminal means", where:

- money (Articles 115, 127 of the Civil Code) includes cash and non-cash funds in national (tenge) or foreign currency.

- other property includes securities, precious metals and gems, movable and immovable objects [9, P. 710], and recently – also digital assets (cryptocurrency) [10].

Objects withdrawn from civil circulation (weapons, drugs, etc.) are not the subject of the crime [11, P. 47]. At the same time, money or other property acquired illegally, for example, as a result of transactions that violate civil law relations, are not the subject of a criminal offense [12, P. 32].

In modern legal science, the problem of determining the subject of a crime in the context of legalization of proceeds of crime is relevant, aggravated by the dynamics of integration of criminal assets into legal financial flows through digital instruments [13].



Picture No.1

Modern national law enforcement practice has not developed a detailed system of differentiation of transactions in situations involving the combination or intermingling of legal and illegal tangible assets. Earlier, the above mentioned legal conflict was analyzed in scientific studies of Kazakhstani scientists, where the issues of identification and qualification of such mixed financial flows are considered [14].

The existing problem was confirmed by the results of a survey of the Agency of the Republic of Kazakhstan on Financial Monitoring (hereinafter – the Agency), conducted in 2025 (see Figure 1), 45.9% of respondents noted the presence of systemic difficulties in the process of distinguishing legitimate financial flows from illegal in their commingling within the framework of unified economic processes [15].

In the process of overcoming the above problematic issues, it is necessary to appeal to the regulatory and legal experience of the Russian Federation, which determines the necessity to conduct a systematic analysis of the current legislation with the subsequent development of differentiated qualification criteria.

Therefore, in accordance with the legal position of the Plenum of the Supreme Court of the Russian Federation of 07.07.2015 N 32, operations with commingled assets (lawful and criminal) are subject to qualification under Art. 174 or 174.1 of the Criminal Code of the Russian Federation in the proportion corresponding to the amount of illegally obtained funds. This doctrine is based on the principle of proportional responsibility, which minimizes legal risks in identifying the origin of assets and ensures proportionality of criminal and legal impact [16].

Consequently, the approach of Russia, establishing the principle of proportionate calculation of the amount of legalized funds, eliminates conflicts related to the identification of "dirty" assets in the total mass.

Thus, the implementation of the legal mechanism of differentiation of commingled assets (lawful and unlawful) will comply with the principles of international legal standards in the field of combating money laundering, in particular, the requirements set forth in the FATF Recommendations [17, P. 13].

In the modern doctrine of criminal law remains a controversial nature of interpretation of the objective features of the corpus delicti, regulated by Article 218 of the Criminal Code of the Republic of Kazakhstan.

The doctrinal position of I. Borchashvili fully correlates with the normative interpretation of the Supreme Court of the Republic of Kazakhstan, where legalization of criminal proceeds covers the involvement of property in legal turnover through transactions in the form of conversion/transfer, its possession/use, concealment of true characteristics (source, ownership, etc.). In this case, financial operations and transactions knowingly for the perpetrator cover the connection of legalized money or other property with a criminal offense, aimed at concealing the fact of criminal acquisition of property and ensuring its transparent circulation [9, 18].

It should be noted that domestic legislation does not contain a precise definition of "financial transactions". Meanwhile, the legislation regulating legal relations in the sphere of anti-money laundering and combating the financing of terrorism (hereinafter – the AML/CFT Law) also does not contain norms and provisions concerning transactions in the form of conversion. The AML/CFT Law refers to such transactions with money and (or) other property, which are expressed in the actions of individuals, legal entities and foreign structures without formation of a legal entity with money and (or) other property regardless of the form and manner of their realization, aimed at establishment, change or termination of civil rights and obligations related to them.

Remarkably, domestic civilistics [19] recognizes transactions as actions of citizens and legal entities aimed at the establishment, modification or termination of civil rights and obligations. Consequently, there are ambiguities concerning conversion transactions and/or operations performed by the subjects designated by the AML/CFT Law.

N.R. Aikumbekov believes that financial transactions can be carried out through transactions, which are actions of citizens and legal entities aimed at establishing, changing or terminating civil rights and obligations [20, P. 17].

A number of foreign scientists propose to distinguish transactions from financial transactions [21, P. 22].

In our opinion, such conflicts of normative legal acts, regulating legal relations in combating illegal money laundering, lead to the incoherence and inconsistency of the fixed legal provisions of criminal legislation and legal provisions of other branches of legislation, which requires further study, development of a systematic approach to the unification of legal norms, as well as improving the methodology of their application in order to minimize legal gaps and to ensure the consistency of criminal and civil law

The analysis of subjective signs characterizing the elements of the crime under study should begin with the consideration of the *subject of the crime*.

It is difficult to determine the general signs of the subjects of this crime, as it can be committed by any individual depending on the circumstances.

The current criminal legislation does not define the general concept of a special subject. The signs characterizing special subjects are provided in the norms of the Special Part of the Criminal Code of the RK and they are very diverse. Thus, the Criminal Code of the RK contains about 40% of compositions with a special subject, this applies to crimes in the sphere of financial and credit relations [23, P. 39].

Due to the complex process of legalization, the range of individuals interested in committing this crime is quite wide. First of all such individuals are the owners of "dirty" money, the so-called "self-launderers" [24], and people organizing the commission of this crime. [24], and individuals organizing the process of legalization, i.e., "professional launderers" [25].

A number of scientists have contradictory opinion to international experts, thus from the point of view of Professor B.V. Volzhenkin: "The subject of the crime provided by Article 174 of the Criminal Code can be called special in the sense that it can be not any individual, but only those who did not participate in the commission of the primary (initial) crime, as a result of which the property subject to legalization (laundering) was acquired" [26, P. 235-236].

A domestic scientist I. Borchashvili shares the opinion of the Russian researcher, who states that the subject of the crime in question is an individual aged 16 or older who has not participated (any type of complicity) in the commission of a criminal offense, resulting in the acquisition of money or other property. Such can be employees of credit organizations, professional participants of the capital market. [9, P. 713].

At the same time, according to the Mutual Evaluation Report of the Republic of Kazakhstan in 2023, the majority of crimes under study in the country are committed in the form of self-laundering (through the acquisition of movable and immovable property by individuals for criminally obtained funds with its fictitious registration in the ownership of third parties, involvement in the economic turnover of legal entities under the pretense of legally acquired production equipment, real estate) [27, P. 60].

Despite the position of scientists regarding a special subject of money laundering (an individual who did not participate in the primary crime), the practice of law enforcement in Kazakhstan demonstrates the prevalence of self-laundering, where the subjects are the perpetrators of the original crimes, which raises doubts about the universality of this interpretation.

B.D. Zavidov, O. B. Gusev and others assume that "the subject of the crime is all individuals involved in a financial transaction or operation with property acquired intentionally illegally: as those who directly acquired illegally this property, and then took measures to legalize it, and other individuals – citizens ..., foreigners, stateless individuals" [28, P.104].

Kazakhstani scientists, such as J. Kabdullina and B.U. Seitkhozhin, adhere to a similar opinion: "the subject of the crime provided by Article 193 of the Criminal Code can be any physical person of sound mind reached the age of sixteen. Liability is incurred by individuals having at their actual possession monetary funds or other property acquired illegally. Those who intentionally assist in legalization are accomplices or members of a criminal group. The subjects should also include those who directly use the illegally acquired property, make transactions with them, financial transactions, that is, those persons who have the money at their actual possession [29, p.7-9; 49-50].

Accepting the position of B.D. Zavidov, O.B. Gusev, Zh. Gusev, J. Kabdullina and B.U. Seitkhozhina, it should be noted that the broad interpretation of the subject of crime in the field of legalization, including both individuals who directly acquired property by criminal means, as well as accomplices, organizers of transactions and users of such property, corresponds to the modern challenges of countering economic crime. This approach is scientifically justified by the necessity to cover all links of the criminal chain (from the initial acquisition to the final integration of property into the legal turnover), which is consistent with international standards (e.g., FATF provisions) and provides systemic criminal law counteraction to complex laundering schemes, including self-laundering and professional intermediation.

Therefore, the analysis of Article 218 of the Criminal Code of the RK indicates that the current version fails to identify professional launderers (for example, financial monitoring subjects) as a separate category of subjects of legalization, despite their key role in the organization of complex schemes of professional laundering. In our opinion, it is expedient to supplement Article 218 of the Criminal Code with a special qualifying feature (e.g., "commission of a crime by a party providing professional services for the legalization of property"), which is scientifically justified by the need to take into account the organization and systematic nature of their actions, as well as international experience of criminalization of such subjects [30]. This will increase the accuracy of qualification of the act and the effectiveness of criminal and legal counteraction to the offense under study.

In the doctrine of criminal law of the Republic of Kazakhstan prevails the position, which states that the subjective side of the act provided by Article 218 of the Criminal Code of the Republic of Kazakhstan is characterized by direct intent: the perpetrator is aware of the illegal nature of assets, foresees the consequences of their legalization, desires their occurrence and purposefully commits actions on their legalization by means of conversion, transfer, concealment of the actual characteristics of the property or mediation in its turnover. An obligatory element of the subjective component is recognized ex lege purpose – to give the appearance of legality of possession/disposition of criminally acquired assets [9, P. 713].

The Normative Resolution of the Supreme Court of the Republic of Kazakhstan [18], congruent with this scientific position, concretizes the manifestation of the specified purpose through:

1) investment of criminal proceeds in highly liquid assets (real estate, art objects).

2) the use of fictional civil law contracts (donation, loan) or modeled accounting documentation to simulate the legality of the origin of funds.

Therefore, the unity of doctrinal and law enforcement approaches emphasizes the dominance of the target component ("imitation of legality") in the structure of the subjective side of the crime.

The scientific discussion reveals conceptual inconsistencies between the national doctrine and international standards in the qualification of legalization of property (Art. 218 of the Criminal Code of the RK). The position of I. Borchashvili and the Normative Resolution of the Supreme Court of the Republic of Kazakhstan, emphasizing the need for direct intent and the special purpose of "giving a legal appearance", retain compliance with the domestic and legal criminal legal paradigm, but are not fully relevant to the requirements of the UN Palermo Convention and FATF. The latter determines liability already upon awareness of the criminal origin of assets or violation of due diligence standards, minimizing the focus on the target component of the act.

As of today, in the context of the modernization of the legal system, Kazakhstan has started to gradually implement the institution of due diligence, set out in the Concept of Anti-Corruption Policy for 2022-2026 [31] and tested in tax legal relations [32]. At the same time, the current legal framework in the sphere of anti-money laundering and combating the financing of terrorism (AML/CFT) already contains the concept of "due diligence" and sets forth the established list of subjects of financial monitoring, which are obliged to carry out due diligence of clients.

In order to harmonize the national legislation with international standards of FATF and Palermo Convention, it seems expedient to consider the issue of inclusion in the subjective side of Article 218 of the Criminal Code of the RK of a negligent form of culpability (in the form of criminal negligence) arising from the violation by the subject of financial monitoring of due diligence standards in relation to the origin of assets, which will broaden the grounds of liability for money laundering without mandatory proof of intentional crime.

Conclusion

In summary the conducted research of criminal and legal mechanisms of anti-money laundering in the Republic of Kazakhstan enabled to formulate the following conclusions and recommendations:

The discussion about the object of the crime is resolved through the two-object construction of the composition: the main object is economic relations (production, distribution of benefits), the supplementary object is the interests of justice (obstruction of confiscation, concealment of evidence).

The broadening of the subject of the offense through cryptocurrencies and mixed assets requires the introduction of an equity approach to qualification.

Legislative drafting suggestions: to supplement p. 19 of the Normative Resolution of the Supreme Court of the Republic of Kazakhstan No. 3 dated 24.01.2020 with the norm on proportional liability in the legalization of commingled assets. Example of revisions: "...committing operations with commingled assets (legal and criminal) shall be subject to qualification under Art. 218 of the Criminal Code of the RK in the proportion corresponding to the volume of illegally obtained funds".

The inconsistency between the theory of "special subject" (excluding self-launderers) and the practice of self-laundering dominance requires criminalization of professional launderers. Recommendation: to introduce in Article 218 of the Criminal Code of the RK a qualifying feature – "commission of the act by a party providing professional services for legalization of property" (notaries, auditors, employees of financial institutions).

The national doctrine (direct intent + the purpose of 'imitation of legality') contradicts the provisions of the Palermo Convention and FATF, where it is sufficient to be aware of the criminal origin of assets or violation of due diligence. Suggestion: Introduction of a negligent form of culpability (criminal negligence) in case of violation of due diligence standards by financial monitoring subjects will allow to eliminate the existing legal gap related to provability of intentional nature of actions.

The implementation of these measures will enable to overcome the imbalance between theory and practice, to strengthen the protection of the interests of the economy and justice, as well as to minimize the risks of the consequences of money laundering.

Б.Д. Еркенов, Қазақстан Республикасы Ішкі істер министрлігінің М. Есболатов атындағы Алматы академиясының докторанты, ұлттық қауіпсіздік және әскери іс магистрі (Алматы қ., Қазақстан Республикасы): Қылмыстық жолмен алынған кірістерді заңдастырудың қылмыстық-құқықтық сипаттамалары: біліктілік мәселелері және Қазақстан Республикасының заңнамасын халықаралық стандарттармен үйлестіру.

Ғылыми мақала ұлттық заңнаманың халықаралық стандарттарға және оларды имплементациялау саласындағы міндеттемелерге сәйкестігін талдауға баса назар аудара отырып, Қазақстан Республикасында Қылмыстық жолмен алынған кірістерді заңдастыруға (жылыстатуға) қарсы іс-қимылдың қылмыстық-құқықтық құралдарын зерттеуге бағытталған. Зерттеудің өзектілігі ҚР ҚК 218-бабын қолданудың тиімділігінің төмен деңгейіне байланысты, бұл статистикамен расталады: ақтау үкімдерінің 20%-ы (2022-2024 жж.) және есірткі саудасынан түскен кірістерді жылыстату жөніндегі істердің болмауы.

Жұмыстың мақсаты – құқық қолданудың жүйелі проблемаларын, доктриналық қайшылықтарды анықтау және нормаларды ақшаны жылыстатуға қарсы күрестің қаржылық шараларын әзірлеу тобының (бұдан әрі-FATF) халықаралық стандарттарымен үйлестіру жөніндегі шараларды әзірлеу.

Әдістеме салыстырмалы-құқықтық талдауды, ҚР ҚК нормаларын жүйелі түсіндіруді, сот практикасы мен доктриналық ұстанымдарды талдауды қамтиды.

Зерттеу нәтижелері:

1. Қылмыс құрамының екі объектілік құрылымы негізделген: негізгі объект – экономикалық қатынастар, қосымша – сот төрелігінің мүдделері.

2. Қылмыстың мәнін анықтау кезінде үлестік тәсілді енгізу қажеттілігі анықталды, осыған байланысты ҚР Жоғарғы Сотының нормативтік қаулысы 19-тармағының 24.01.2020 ж. № 3 редакциясы ұсынылды.

3. Кәсіби делдалдарды біліктілік белгісі арқылы криминализациялауды талап ететін "арнайы субъект" теориясы (өзін-өзі жылыстатушыларды қспайтын) мен қолдану практикасы арасында қайшылық анықталды.

4. Қылмыстың субъективті жағының FATF стандарттарына сәйкес келмеуі көрсетілген, мұнда активтердің қылмыстық шығу тегі туралы хабардар болу жеткілікті (due diligence – тиісті тексеру).

Ұсынымдарды іске асыру экономика мен сот төрелігінің мүдделерін қорғауды күшейтуге мүмкіндік береді. Зерттеу құқық қолдану практикасы мен ҚР ақшаны жылыстатуға қарсы заңнамасын реформалау үшін маңызды.

Түйінді сөздер: қарсылық, кірістерді заңдастыру, жауапкершілік, FATF, талдау, заңнама.

Б.Д. Еркенов, докторант Алматинской академии Министерства внутренних дел Республики Казахстан имени М. Есбулатова, магистр национальной безопасности и военного дела (г. Алматы, Республика Казахстан): Уголовно-правовая характеристика легализации преступных доходов: проблемы квалификации и гармонизация законодательства Республики Казахстан с международными стандартами.

Научная статья направлена на исследование уголовно-правовых инструментов противодействия легализации (отмыванию) доходов, полученных преступным путем, в Республике Казахстан, с акцентом на анализ соответствия национального законодательства международным стандартам и обязательствам в области их имплементации. Актуальность исследования обусловлена низким

уровнем эффективностью применения ст. 218 УК РК, что подтверждается статистикой: 20% оправдательных приговоров (2022–2024 гг.) и отсутствием дел по отмыванию доходов от наркоторговли.

Цель работы – выявление системных проблем правоприменения, доктринальных противоречий и разработка мер по гармонизации норм с международными стандартами Группы разработки финансовых мер борьбы с отмыванием денег (далее – FATF).

Методология включает сравнительно-правовой анализ, системное толкование норм УК РК, анализ судебной практики и доктринальных позиций.

Результаты исследования:

1. Обоснована двуобъектная конструкция состава преступления: основной объект – экономические отношения, дополнительный – интересы правосудия.

2. Выявлена необходимость внедрения долевого подхода при определении предмета преступления, в связи с чем предложена редакция п. 19 НПВС РК № 3 от 24.01.2020г.

3. Установлено противоречие между теорией «специального субъекта» (исключающей самоотмывателей) и практикой применения, что требует криминализации профессиональных посредников через квалифицирующий признак.

4. Показано несоответствие субъективной стороны преступления стандартам FATF, где достаточно осознания преступного происхождения активов (due diligence – должная осмотрительность).

Реализация предложений позволит усилить защиту интересов экономики и правосудия. Исследование значимо для правоприменительной практики и реформирования антиотмывочного законодательства РК.

Ключевые слова: противодействие, легализация доходов, ответственность, FATF, анализ, законодательство.

References:

1. Analiticheskoe pis'mo Verhovnogo suda Respubliki Kazahstan v adres Agentstva Respubliki Kazahstan po finansovomu monitoringu // ish. № AFM-14-4-20/1908 ot 27.11.2024. Arhiv Agentstva. Astana, 2024. 3 s. (neopublikovannye materialy).

2. Portal organov pravovoj statistiki i special'nyh uchetov // Statisticheskie otchjoty. URL: https://qamqor.gov.kz/crimestat/statistics (25.03.2025).

3. Otchet vzaimnoj ocenki Respubliki Kazahstan 2023. Evrazijskaja gruppa po protivodejstviju legalizacii prestupnyh dohodov i finansirovaniju terrorizma. 2023. URL: https://eurasiangroup.org/files/uploads/files/ME_(2023)_1_rus_rev1_2.pdf (25.03.2025).

4. Chuchaev A.I. Ob#ekt prestuplenija. Rossijskoe ugolovnoe pravo. Obshhaja chast': uchebnik pod red. L.V. Inogamovoj-Hegaj, V.S. Komissarova, A.I. Raroga. M.: Prospekt, 2008.

5. Ugolovnoe pravo Respubliki Kazahstan. Osobennaja chast': uchebnoe posobie (praktikum). Almaty: OONIiRIR Almatinskoj akademii MVD RK im. M. Esbulatova, 2017. 327 p.

6. Emceva A.A. Obshhestvennaja opasnost' legalizacii (otmyvanija) dohodov, poluchennyh prestupnym putem, i sovershenstvovanie instituta ugolovnoj otvetstvennosti za ee sovershenie. Obshhestvo i pravo. 2009. № 3 (25). P. 116–120.

7. Klepickij I.A. Sistema hozjajstvennyh prestuplenij. M.: Statut, 2005. 568 p.

8. Pahomchik S.D. Legalizacija (otmyvanie) denezhnyh sredstv ili imushhestva, priobretennyh prestupnym putem: problemy kriminalizacii i zakonodatel'noj tehniki // 20 let SNG: materialy mezhdunarodnoj nauchno-prakticheskoj konferencii (Minsk, 28–29 sentjabrja 2011 goda). Sost. N.N. Kostjukovich. Minsk: Belorusskaja nauka, 2011. P. 441–444.

9. Kommentarij k Ugolovnomu kodeksu Respubliki Kazahstan. Osobennaja chast': v 2 t. T. 2. Almaty: Zheti zharry, 2021. 1152 p.

10. Zakon Respubliki Kazahstan ot ot 25 ijunja 2020 goda «O vnesenii izmenenij i dopolnenij v nekotorye zakonodatel'nye akty Respubliki Kazahstan po voprosam regulirovanija cifrovyh tehnologij». URL: https://online.zakon.kz/Document/?doc_id=34230083 (01.04.2025).

11. Sejthozhin B.U. Prestuplenija v sfere jekonomicheskoj dejatel'nosti: ponjatie, vidy, otvetstvennost' pod red. I.Sh. Borchashvili. Almaty: Zheti zharry, 2007. 176 p.

12. Sejlhanova S.A. Ugolovnye pravonarushenija v sfere jekonomicheskoj dejatel'nosti: uchebnoe posobie. Almaty: OONIiRIR Almatinskoj akademii MVD Respubliki Kazahstan im. M. Esbulatova, 2018. 175 p.

13. Tjunin V.I., Badzgaradze T.A. [Stat'ja] // Zhurnal pravovyh i jekonomicheskih issledovanij. 2021. № 4. P. 133–141. URL: https://giefjournal.ru/sites/default/files/019.%20V.I.%20Tyunin,%20T.A.%20Badzgaradze.pdf (05.04.2025).

14. Dosekeev O., Imanbekova M., Turlybekov K. O nekotoryh voprosah kvalifikacii ugolovnyh pravonarushenij, svjazannyh s legalizaciej (otmyvaniem) prestupnyh dohodov // Vestnik Evrazijskogo nacional'nogo universiteta imeni L.N. Gumileva. Serija: Pravo. 2024. № 2 (147). P. 26–37 (23.04.2025).

15. Rezul'taty anketirovanija sotrudnikov Agentstva RK po finansovomu monitoringu, 2025 g. Arhiv issledovanija. Astana, 2025. (neopublikovannye materialy).

16. Postanovlenie Plenuma Verhovnogo Suda RF ot 07.07.2015 № 32 (red. ot 26.02.2019). URL: https://www.consultant.ru/document/cons_doc_LAW_182365/ (02.04.2025).

17. Rekomendacii FATF: Mezhdunarodnye standarty po protivodejstviju otmyvaniju deneg, finansirovaniju terrorizma i finansirovaniju rasprostranenija oruzhija massovogo unichtozhenija / per. s angl. M.: MUMCFM, 2012. 191 p. URL: https://eurasiangroup.org/files/uploads/files/other_docs/FATF%20docs/rekomendacii-fatf-2019.pdf (02.04.2025).

18. Normativnoe postanovlenie Verhovnogo Suda Respubliki Kazahstan ot 24.01.2020 № 3. URL: https://adilet.zan.kz/rus/docs/P200000003S (05.04.2025).

19. Grazhdanskij kodeks Respubliki Kazahstan (Obshhaja chast') ot 27.12.1994 (s izm. na 01.09.2024). URL: https://online.zakon.kz/Document/?doc_id=1006061 (05.04.2025).

20. Ajkumbekov N.R. Bor'ba s otmyvaniem deneg, poluchennyh ot narkobiznesa: metodicheskie rekomendacii. Almaty: OONIiRIR Akademii MVD Respubliki Kazahstan, 2009. 50 p.

21. Ugolovnoe pravo Rossii. Osobennaja chast': uchebnik / pod red. A.I. Raroga. – M.: Jeksmo, 2008. 786 p.

22. Lopashenko N.A. Otvetstvennost' za legalizaciju prestupnyh dohodov. Zakonnost'. 2002. № 1. P. 18–21.

23. Eljubaev Zh.S. Otvetstvennost' za prestuplenija v sfere finansovo-kreditnyh otnoshenij: monografija. Almaty: [b.i.], 2009. 208 p.

24. Rukovodstvo FATF: Dannye i statistika v sfere POD/FT (oktjabr' 2015). URL: https://www.fatf-gafi.org/content/dam/fatf-gafi/translations/guidance/Guidance-on-data-and-statistics-Russian.pdf (05.04.2025).

25. FATF. Professional'noe otmyvanie deneg (2018). URL: https://www.fatf-gafi.org/publications/methodandtrends/documents/professional-money-laundering.html (05.04.2025).

26. Volzhenkin B.V. Jekonomicheskie prestuplenija. SPb.: Juridicheskij centr Press, 1998. 312 p.

27. Otchet vzaimnoj ocenki Respubliki Kazahstan 2023. URL: https://eurasiangroup.org/files/uploads/files/ME_(2023)_1_rus_rev1_2.pdf (25.03.2025).

28. Zavidov B.D., Gusev O.B., Korotkov A.P., Popov I.A., Sergeev V.I. Prestuplenija v sfere jekonomiki. Ugolovno-pravovoj analiz i kvalifikacija. M.: Jekzamen, 2001. 224 p.

29. Kabdullin Zh. Otvetstvennost' za legalizaciju denezhnyh sredstv // Predprinimatel' i pravo. 2002. № 11. P. 7–9.

30. Sejthozhin B.U. Prestuplenija v sfere jekonomicheskoj dejatel'nosti: ponjatie, vidy, otvetstvennost': monografija. Karaganda: [b.i.], 2006. 176 p.

31. Koncepcija antikorrupcionnoj politiki Respubliki Kazahstan na 2022–2026 gody. URL: https://adilet.zan.kz/rus/docs/U2200000802 (05.04.2025).

32. Pilot po dolzhnoj nalogovoj osmotritel'nosti. URL: https://mybuh.kz/news/pilot-po-dolzhnoy-nalogovoy-osmotritelnosti/ (05.04.2025).

Для цитирования и библиографии: Yerkenov B. D. The Criminal and Legal Characteristics of the Legalization of Proceeds from Crime: Problems of Classification and Harmonization of Legislation in the Republic of Kazakhstan with International Standards // Право и государство. № 4(109), 2025. – С. 56-64. DOI: 10.51634/2307-5201_2025_4_56

Материал поступил в редакцию 11.06.2025