

**Actual problems of criminal law,
criminal procedure and criminalistics**

Materials of scientific conference

Volume II

«East West» Association for Advanced Studies and Higher Education GmbH

**Vienna
2017**

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List of references:

1. B. P. Protsenko. The principles of the criminal process. Tutorial. Krasnodar, 2008. - 96 p.
2. Soviet Encyclopedic Dictionary. M. "Soviet Encyclopedia". 1982, 1072 c. Dictionary of Latin winged words. Moscow, "Russian language". 1982.- 621 c.
3. COGAM M.Ch. - Commentary to the Criminal Procedure Code of the Republic of Kazakhstan. General and Special parts. - Almaty Zheti Zhargy, 2008. - 888 p.
4. Ospanov S.D.- Criminal Procedure of the Republic of Kazakhstan (General Part). - Almaty, 2006. - 269s.
5. Ugolovno Procedure Code RK: How posobie.- Almaty: "Publisher" Norma-K ", 2015. - 368 p.

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Guidelines for Investigation criminal offenses for the legalization (laundering) money and (or) other property, obtained by criminal means in the Republic of Kazakhstan

Abstract: The article indicated technique investigation of criminal cases on legalization of money and (or) other property, proceeds of crime in the Republic of Kazakhstan.

Key words: legalization of money, laundering, «shadow» economy

The counteractions against laundering of money or other property acquired by criminal means, is one of the priority directions in the sphere of economic activity, both in our country and around the world. Countering legalization of proceeds from criminal activities deemed necessary measure to ensure the economic security of the Republic of Kazakhstan and to prevent splicing of the underworld with the legal business.

Legislative provisions aimed at countering the specified type of criminal activity at the moment, is article 218 of the Criminal Code of the Republic of Kazakhstan - Involvement in the legal turnover of money and (or) other property obtained by criminal means, through transactions in the form of conversion or transfer of property representing proceeds of criminal and (or) administrative offenses, concealment or disguise its true nature, source, location, disposition, movement, rights to property or its accessories, knowing that such property is the proceeds of criminal and (or) administrative offenses, as well as the possession and use of the property or mediation in the legalization of money and (or) other property obtained by criminal means, if these acts have been committed in significant amount. In accordance with paragraph 2 of Article 3 of the Criminal Code of considerable size in the article 218 of the Criminal Code - money and (or) other property obtained by criminal means, in

excess of two thousand monthly calculation indices (4.5 million tenge KZT, or 13 963 US dollars).

However, in accordance with the Amendments to the Law of RK as of April 8, 2016 "On amendments and additions to some legislative acts of Kazakhstan on the issues of arbitration" in Articles 3 and 218 of the Criminal Code of the Republic of Kazakhstan (red.2014g.) In terms of exclusion from dispositions threshold for criminal liability in the form of a "significant amount of damage," which is equal to the 2000 MCI. These amendments given in the action with the April 20, 2016.

In this regard, the crime with the specified date according to the article. 218 of the Criminal Code (the legalization (laundering) of money or other property obtained by criminal means) applies to any type of property, regardless of its value, which represents the proceeds of crime.

This provision is aimed primarily against income in the legal turnover of proceeds from organized crime, that is, to undermine the foundations of economic crime.

The subject of direct attacks are money or property. Under the cash meant not only money and currency, and bank and traveler's checks, money orders, investment securities, bonds, certificates, documents of title, the presentation of which is sufficient for entry into law, the contract of sale, loan, loan documents.

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The subject of direct attacks are money or property. Under the cash meant not only money and currency, and bank and traveler's checks, money orders, investment securities, bonds, certificates, documents of title, the presentation of which is sufficient for entry into law, the contract of sale, loan, loan documents.

The property - a property, as well as vehicles, jewelry, precious and rare metals. The most common subject of direct attacks are money, currency, valuables and securities. commit method. Legalization of the action for the removal of cash from illegal profits from the "shadow" economy and to give them legal status through: 1) finan-sovyh operations; 2) purchase and sale transactions, loan lending; 3) pred-prinimatelskoy activities; 4) false economic activity (opening of fictitious firms, companies).

Depending on the subject of a criminal act the list of circumstances to be established during a preliminary investigation and trial (st.113 Criminal Procedure Code) in cases of money laundering, as well as proof areas have special features. Attention should first be given to the study of the predicate offense. Given the complex nature of the objective side of money and the original focus on the distortion of information as a result of its commission (interruption due to the results of property crime, disguise the source, mixing with legitimate income, the change in volume of the estate), this problem - not a simple one.

The investigation established not only the circumstances of receipt of the proceeds of crime, but also the time of their money, as well as the size of the legitimate income received during the period. The record should reflect what kind of income was obtained as a result of crime, what part of this amount and how was laundered, place and time of the transaction (transactions), which documents and other data confirm the fact of laundering. These data should be specified by period, if the proceeds of criminal activities did not at once.

Suffice it to date and are indicative of the materials of the investigation of legalization of money and property derived from criminal activities related to the smuggling of various goods from China in Kazakhstan with the subsequent realization and money.

Evidence in criminal cases are:

1) the testimony of witnesses:

- Head of the legal entity, which reflect the functions and responsibilities helper, the actual work performed by them access to the accounting and financial records, the

distribution and the actual performance of duties by other employees aware of the action helper and other employees in relation to the smuggling of movement of goods across the border and legalization funds received from the sale, participate in the illegal activity, as well as fictitious documentation, which has been issued helper activities and businesses for the purchase and sale of goods or products;

- Other employees of legal entities (the warehouse which also receives goods) on the process of capitalization and payment of goods or services and the receipt of funds from the accounts of its implementation of the legal entity and other circumstances;

- Employees of a customs post on the procedure of customs clearance, clearance of the relevant documents, on possible causes of discrepancies presented to them for inspection of commodity-accompanying documents, etc.;

- Persons whose passports on fictitious companies were registered in the address of which is smuggled products;

- Employees of companies involved in the transport of smuggled goods; 2) seized and enclosed to the criminal case documents: customs freight commodity-accompanying documents, fake invoices from various foreign firms with the indication of false information on the number and the name of the product or products; customs declarations, invoices on receipt of the goods to the warehouses of legal entities from various fictitious companies; payment orders for the transfer of funds to these companies accounts in banking institutions; documents on financial and economic activities of legal entities and fictitious companies from tax authorities, testifying that does not reflect their real work in them; 3) response to the international investigation commission, in which data on foreign firms cooperation were reflected with a legal entity, as well as information about the number of produced supplies to firms receipt of funds to the accounts of foreign companies, the data on the real value and quantity of the goods delivered to the address firms;

4) carried out in the case of calligraphic and technical and forensic examination of documents, auditing (audit) of financial and

economic activities and accounting of different companies, as well as forensic accounting, in the conclusion of which reflects the amount of unpaid customs duties;

5) regulations governing the movement

of goods across the border and the proper execution of documents;

6) other information established during the investigation.

References

1. Criminal Code of the Republic of Kazakhstan - 2014
2. Criminal Procedure Code – 2014
3. Kulekeev Zh.A. The shadow economy in Kazakhstan // Kazakhstan's economy. — 1997. № 1.
4. Dzhekebaev W.S. Basic Principles of Criminal Law of the Republic of Kazakhstan. — Almaty: Zheti Zhargy, 2001.