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ANALYSIS OF FOREIGN EXPERIENCE IN THE IMPLEMENTATION OF INTERNATIONAL NORMS AND FATF STANDARDS

Submission Date: February 18, 2023, Accepted Date: February 23, 2023,

Published Date: February 28, 2023

Crossref doi: <https://doi.org/10.37547/ijlc/Volume03Issue02-06>

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ABSTRACT

This article is devoted to the analysis of the FATF Recommendations related to the seizure and confiscation of property obtained by criminal means, which are mandatory for implementation in national legislation. The article discusses individual FATF recommendations, their inherent features and features of foreign countries in this area.

KEYWORDS

Arrest, confiscation, FATF recommendations, implementation, money laundering, terrorist financing, laundered property, proceeds of crime.

INTRODUCTION

To date, the institutions of arrest and confiscation of property obtained by criminal means have reached a high level of development in many countries. An indicator of this fact is that the majority of countries and jurisdictions receive high marks in mutual evaluations of the national AML / CFT system conducted by the FATF and regional groups like the FATF in their regions. . In particular, countries such as

Australia, the Republic of Belarus, the United Kingdom, along with many other countries, have received a “compliance” rating under Recommendation 4, which is specifically designed to regulate Confiscation issues. These countries have achieved high results in the implementation of the above analyzed international norms and have achieved the creation of an effective

system for the arrest and confiscation of criminal assets.

An analysis of the legislation of the Republic of Uzbekistan based on the FATF Standards, international conventions and other international acts showed that, along with many positive aspects of the AML / CFT system in the field of arrest and confiscation, there are also some shortcomings both in the system and in the legal regulation of these institutions of law in general.

The presence of identified shortcomings in the system of arrest and confiscation in Uzbekistan creates the need for a comprehensive study of these problems and find suitable solutions to eliminate these problems. In this regard, in order to find an optimal solution to the problem, one should study the experience of countries that have already established their own system of arrest and confiscation and have fully implemented the international FATF standards. In this regard, we can say that, in our opinion, the study of experience in order to solve the problems identified is the most appropriate and expedient way at the moment.

If we talk about shortcomings in the field of arrest and confiscation of criminal property in Uzbekistan, then it should be noted that the country's legislation does not comply with the FATF Standards, which were demonstrated above. In particular, shortcomings exist in the implementation of the norms of Recommendations 4, 38, 30, which have already been noted above in the analysis of the legislation of Uzbekistan.

It should be noted that these shortcomings in the legislation of Uzbekistan may adversely affect the image of Uzbekistan in international rankings and cause serious criticism from international experts..

More specifically, there are a number of disadvantages that have been analyzed above. (1) One of them, as mentioned above, is the insufficient regulation of the institution of confiscation. Although the issues of confiscation in the legislation of the country are regulated by criminal procedural laws, there are no substantive norms regulating this issue in the country. This state of affairs can lead to ineffective implementation of the rules on confiscation, as well as the weakening of this institution in terms of legal validity in practice. In addition, this circumstance also applies to the issue of confiscation of the equivalent value of property obtained by criminal means.

It can be said that in recent years many countries have already solved problems of this kind in their legislations and successfully implemented international standards in this area. And this, in turn, was positively reflected in the results of the mutual evaluation.

One of such countries in our region is the Republic of Belarus. This country was rated "Compliance" in mutual evaluation held in 2019. This assessment allows us to say that this country has eliminated all the shortcomings and its standards are fully consistent with international standards.

If you pay attention, the Republic of Belarus, like many other countries, settled the issue of confiscation by criminal and criminal procedure legislation..

So Article 46-1 of The Criminal Code of the Republic of Belarus regulates the issue of confiscation. This article provides for a special confiscation, which means the forced gratuitous seizure of property acquired by criminal means, as well as material evidence and objects of crime, property acquired with funds obtained by criminal means, into the ownership of the state.

Also, this rule regulates the requirement to confiscate the equivalent value of the property subject to confiscation. According to the second part of the article, if it is impossible to confiscate property obtained by criminal means, income from such property at the time of the decision to confiscate due to the loss of such property, spending, or other reasons, an amount equal to the amount of lost property subject to circulation to the state revenue.

In this regard, the Russian Federation, which also scored well in the Mutual Evaluation on recommendation, with a “significantly compliant” (SC) rating, has a separate provision in the Criminal Code dedicated to confiscation. Article 104-1 of the Criminal Code of the Russian Federation directly provides for the issues of confiscation, according to which confiscation of property is understood as a forced gratuitous seizure and conversion into state property on the basis of a guilty verdict for the crimes established in this article

As for the confiscation of the equivalent value of property subject to collection in state revenue, this issue is separately regulated by Article 104-2. According to this article, if the confiscation of property subject to conversion into state revenue, at the time the court decides on confiscation due to its use, sale or for any other reason, the court makes a decision on the confiscation of a sum of money that corresponds to the value of this item. And in case of insufficient funds, the court may confiscate other property equal in price to the property subject to confiscation.

(2) The next problematic point of the legislation of the Republic of Uzbekistan is in the implementation of the norms of Recommendation 4 in terms of identifying and tracking criminal property.

In this regard, the Russian Federation has good experience in regulation, where the issues of identifying and tracking property subject to confiscation are well established. This issue in Russia is for the most part regulated by the legislation on operational-search activity. According to Article 2 of the Federal Law of the Russian Federation “On operational-search activity”, the main tasks of operational-search activity, in addition to detecting, preventing, suppressing and solving crimes, obtaining information about crimes, and searching for criminals, is to identify property subject to confiscation. Also, by this law, the bodies that carry out operational-search activities are given broad powers to carry out the above tasks, including the identification and tracking of property subject to conversion into state revenue.

In addition, Article 73 of the Criminal Procedure Code of the Russian Federation provides for circumstances that must be proven without fail in the course of the investigation of a criminal case. Among other circumstances, paragraph 8 of the first part of this article states that it is also mandatory to prove the fact that the property is the result of a criminal act or is income from property obtained by criminal means, or was intended to be used as an instrument of crime or other means to commit a crime or to finance terrorism. A similar rule, similar to Article 73 of the Code of Criminal Procedure of the Russian Federation, exists in Article 89 of the Code of Criminal Procedure of the Republic of Belarus.

Australia is also a country that has received a 'compliance' rating under Recommendation 4. This country, like the Russian Federation and the Republic of Belarus, empowers its competent authorities to search, detect and trace property obtained by criminal means for the purpose of subsequent confiscation. In particular, under the Australian Proceeds of Crime Act,

which provides for rules that allow institutions, including financial institutions, to be required to provide information regarding assets, accounts and transactions that question the legal origin of these assets, or are considered as evidence in a criminal case.

(3) In this regard, it would be appropriate to dwell on Recommendation 30, which regulates the issues of the powers of law enforcement and investigative agencies, as well as the conduct of parallel financial investigations. According to this recommendation, it is mandatory for countries to authorize and oblige their investigative and law enforcement agencies to conduct parallel financial investigations. Such a rule allows countries to effectively identify and track property and assets subject to confiscation for state revenue.

In this regard, as mentioned above, in our opinion, there are certain gaps in the legislation in the Republic of Uzbekistan. Although, in general, the country's legislation does not contain provisions that prevent parallel financial investigations, both simultaneously with the investigation of predicate offenses and ML, and separately from them. However, the procedure for conducting parallel financial investigations is not fixed at the legislative level. Also, the investigators of the investigating authorities are not empowered to conduct parallel financial investigations.

Parallel financial investigations are already a developed activity. Different countries regulate this activity in different ways. For example, in the Republic of Belarus, the legal basis for conducting parallel financial investigations is the Joint Decree of the law enforcement agencies of the Republic of Belarus of the General Prosecutor's Office of the Republic of Belarus, the State Committee for Forensic Examinations of the Republic of Belarus, the Investigative Committee of

the Republic of Belarus, the State Security Committee of the Republic of Belarus, the Ministry of Internal Affairs of the Republic of Belarus, the Ministry of emergency situations of the Republic of Belarus, the Ministry of Defense of the Republic of Belarus, the State Control Committee of the Republic of Belarus, the State Border Committee of the Republic of Belarus, the State Customs Committee of the Republic of Belarus, dated December 26, 2016 No. 36/278/338/77/42/7/32/17 /28/24 "On approval of the Instruction on the procedure for interaction between the prosecutor's office, preliminary investigation, inquiry and the State Forensic Examination Committee of the Republic of Belarus in the course of pre-trial proceedings ».

A similar rule is also reflected in legislative acts - US codes. Under these laws, the US law enforcement agencies responsible for investigating ML/TF and predicate offenses are the Department of Justice, the Department of Homeland Security, the Department of the Treasury and the US Postal Service, which are given the authority to introduce parallel financial investigations.

In China, law enforcement agencies authorized to investigate predicate offenses also have the right to conduct parallel financial investigations.

Another important issue in the AML/CFT system is the issue of mutual legal assistance, which is governed by Recommendation 38, which requires countries to grant powers of prompt action to country requests to identify, freeze, seize and confiscate criminal assets. And also have effective mechanisms for the management of seized and confiscated property, tools or property of an appropriate value, as well as agreements on the coordination of procedures for the seizure and confiscation of proceeds, which should

include the division of confiscated assets. In this regard, there are gaps in the legislation on the regulation of these norms. This is manifested in the fact that Uzbekistan does not regulate the issues of confiscation of property without a court verdict for the implementation of a foreign request. Management of seized and confiscated property at the request of a foreign state, as well as issues of disposal (transfer) of confiscated property are also a problematic issue in the country.

This issue is well regulated in Australia. Under the Australian Mutual Assistance in Criminal Matters Act 1987 (MACMA), Australia may detect, freeze, seize or confiscate the proceeds or funds used in the commission of foreign felonies at the request of another country if the sanction for such offense exceeds 12 months in prison or a fine of over A\$51,000. Apart from this section 34(2) MACMA, confiscation without judgment is possible. And also according to this law, it is possible to dispose of confiscated property by confiscating it to the budget of Australia, or, on the basis of an agreement with the country that sent the request, to transfer the confiscated asset, or part of it.

In the Russian Federation, this issue is regulated by the basic law of the Russian Federation on AML / CFT, criminal procedure and operational-search legislation. Russia can enforce the decisions and sentences of foreign courts in accordance with article 11 of the basic AML / CFT law». At the same time, the final decision is made by Russian courts, that is, those issued by foreign courts in relation to persons with proceeds of crime must first be recognized by Russian courts. (Code of Criminal Procedure of the Russian Federation, art. 473.1, 473.6 (3)). The only exception to forfeiture without conviction is forfeiture in the event of the death of the offender.

As for the transfer of confiscated property, in accordance with Article 11 of the Federal Law No. 115, Russia can fully or partially transfer property to a foreign state, in particular when it recognizes and executes a foreign court decision on confiscation.

As we can see, the result of the analysis of countries shows that these countries have established a good system of seizure and confiscation with legislation that is fully consistent with international norms and the FATF Standards.

After analyzing the leading countries in the field of confiscation, taking into account the identified shortcomings in the legislation of the Republic of Uzbekistan, certain conclusions can be drawn to solve these problems based on the experience of the countries analyzed.

Thus, based on the analysis of countries, in order to resolve the issue related to the problem of insufficient regulation of the institution of confiscation, and confiscation of the equivalent value of property subject to conversion into state revenue, some changes and additions to some legislative acts of the Republic of Uzbekistan can be proposed.

(1), Firstly, the experience of countries such as the Republic of Belarus and the Russian Federation and others shows that the issue of regulating the institution of confiscation is resolved by criminal law, in the form of a separate rule requiring the confiscation of property obtained by criminal means, as well as the equivalent value of such assets. Based on this, in our opinion, it would be advisable to introduce the relevant norms into the general part of the Criminal Code of the Republic of Uzbekistan, providing for separate norms on the confiscation of property obtained by criminal

means, as well as the equivalent value of such property. (see Appendix No. 1);

(2) Secondly, in order to solve problems with the identification and tracing of property subject to confiscation, the competent authorities should be authorized to carry out certain operational-search activities to identify and trace such property. The experience of the countries analyzed above indicates the need for authorization of bodies at the level of law. In particular, it is necessary to supplement the list of tasks of operational-search activities provided for in the Law of the Republic of Uzbekistan on operational-search activities, the task of identifying and tracking property obtained by criminal means, thereby giving authority to employees of bodies entitled to conduct operational-search activities. It should be noted that such experience has been implemented in the laws of the Russian Federation, in the Law on ORD of the Russian Federation, as well as in the laws of Australia.

In addition, in order to give greater legal validity and legitimacy to the arrest and confiscation of criminal assets, it is necessary to supplement Article 82 of the Code of Criminal Procedure of the Republic of Uzbekistan, which provides for the circumstances to be proved, also with the circumstance that the property is the result of a crime or income from property obtained from a crime, as indicated in the Code of Criminal Procedure of the Republic of Belarus (see Appendix No. 1). This addition to Article 82 of the Code of Criminal Procedure of the Republic of Uzbekistan. will ensure the legitimacy of confiscation as a legitimate tool for depriving criminals of their financial basis.

(3) Thirdly, the experience of advanced countries such as China and the United States, as well as the experience of the Republic of Belarus, shows that in

order to solve problems with the implementation of the norms of Recommendation 30 on conducting parallel financial investigations, it is necessary to empower the investigating authorities with the authority to conduct financial investigations by amending Article 36 (Powers of the investigator) and Article 38-1 (Powers of the interrogating officer) of the Code of Criminal Procedure of the Republic of Uzbekistan. That is, in this case, it is necessary to supplement the list of powers of the investigator and the interrogating officer with the power to conduct parallel financial investigations.

(4) Fourthly, issues related to the confiscation of property at the request of another country, as well as the management of confiscated property at the request of another country and the issue of disposing of such property (the issue of transfer upon request) are problematic in the legislation of Uzbekistan at the moment. This issue is handled differently in different countries. In Australia, separate laws, in the RF CPC and the basic law. In this case, based on the analysis of foreign countries, it can be proposed that this issue be settled by the Criminal Procedure Law. Namely, it is necessary to make additions to the Code of Criminal Procedure in the form of a new article providing for the rules on the recognition and enforcement of a sentence, decisions of a court of a foreign state regarding the confiscation of proceeds from crime located on the territory of the Republic of Uzbekistan (See Appendix No. 1).

In our opinion, the above proposals are necessary for the introduction into the legislation of the Republic of Uzbekistan in order to bring the legislation in the field of arrest, confiscation and related regulations for these institutions into compliance.

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