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International Experience of Criminal Law Countering the Legalisation (Laundering) of Property Obtained by Criminal Means: Retrospective and Current Trends

Ilona V. Zhuk^{1*}, Agnieszka Kaliz²

¹National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine

²University of Gdańsk
80-309, 8 Jan Bazhinsky Str., Gdańsk, Republic of Poland

■ **Abstract.** The problem of countering the money laundering has always been in the centre of attention of law enforcement, financial authorities, and international organisations. It has become particularly relevant in the context of the COVID-19 pandemic, which has reoriented financial activities to the use of new modern technologies, changed economic processes, opening up new ways to obtain criminal proceeds. The purpose of the study is to investigate the current state of international regulation in the field of criminal law counteraction to the legalisation (laundering) of property obtained by criminal means. Methodological tools include the dialectical method of scientific cognition, formal and legal, system and structural, and comparative and legal methods. The implementation of a systematic analysis of international legislation in the field of countering money laundering provided the following conclusions: 1) the conceptual basis for effective counteraction to the laundering of “dirty” property is international cooperation, within which the establishment of a national system of legal norms took place; 2) international anti-money laundering legislation is sufficiently unified, the provisions of legal acts are mutually agreed and do not contain fundamental contradictions, in particular, regarding the description of objective and subjective signs of legalisation; 3) international standards are mainly advisory in nature, but countries adhere to the requirements for their implementation; 4) among the measures to prevent legalisation, the following are of the greatest interest: creation of a register of beneficial owners; development of standards designed to ensure integrity in the work of public and private organisations; introduction of a mechanism for monitoring the use of virtual currencies, etc. The results and suggestions presented in the study can be used in the further development of criminal law mechanisms to counteract the legalisation (laundering) of property obtained by criminal means

■ **Keywords:** international standards; anti-laundering legislation; criminal proceeds; terrorist financing; implementation

■ Introduction

The problem of countering the legalisation (laundering) of property obtained by criminal means continues to attract extraordinary attention of the entire international community, especially in the context of the COVID-19 pandemic, which has created new challenges for Ukrainian and foreign law enforcement

agencies in the field of combating economic crime, primarily transnational. As noted by the State Financial Monitoring Service of Ukraine, the COVID-19 pandemic has caused changes in socio-economic processes, primarily of a technological nature, which has opened up new ways for criminals to obtain “dirty” income in financial activities [1]. Changes in financial behaviour, including an increase in the volume of remote transactions, have limited the ability of financial institutions to detect anomalies. Analysis by Financial Action Task Force (FATF)¹ also indicates

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■ *Corresponding author

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¹The anti-money laundering Financial Action Task Force is an intergovernmental body whose goal is to develop and implement internationally measures and standards to combat money laundering, financing of terrorism, and financing of proliferation of weapons of mass destruction.

that criminals continue to take advantage of the opportunities created by the pandemic around the world, associated with an increase in cases of counterfeit medical goods, investment fraud, cybercrime fraud, and exploitation of economic stimulus measures introduced by national governments [2]. The problem of money laundering, which now poses a threat to both national and international economic security, has become even more acute in the context of the COVID-19 pandemic. Moreover, the armed aggression of the Russian Federation against Ukraine has become a challenge to ensuring the stability of the financial system, and has created new risks in the field of financial control and monitoring.

According to statistics of the Prosecutor General's Office of Ukraine, the number of registered facts of legitimisation of criminal proceeds in Ukraine, responsibility for which is provided for in Article 209 of the Criminal Code of Ukraine [3], has increased in recent years: so, in 2018, 242 facts of legalisation of property obtained by criminal means were registered, of which 64 proceedings were sent to court with an indictment; in 2019 – 283 (88); in 2020 – 348 (93); in 2021 – 395 facts legalisation of property (103 proceedings were sent to the court with an indictment) [4]. At the same time, crimes of this type are characterised by a fairly high level of latency, and therefore, there is reason to believe that the real number of facts of money laundering is much higher.

FATF President M. Player said in his speech that “ensuring the protection of citizens from harm caused by criminal activities, including money laundering and terrorist financing, should remain a priority for all governments around the world” [5]. Consequently, countering the laundering of “dirty” property requires mutually agreed actions of law enforcement and financial authorities at all levels, and first of all, compliance with the standards of legal response set out in international acts. According to international experts, even the best Ukrainian laws against legalisation cannot be effective enough without international cooperation, since criminals are very rarely limited to the territory of one state, which causes jurisdictional and organisational problems. Therefore, the national legislation of states should meet the needs of international cooperation, that is, have common features [6, p. 31]. Consequently, it is extremely important to take steps to adapt the national anti-money laundering legislation to international legal standards, especially in the light of the intensification of the European integration processes, in particular, the signing by President Zelensky on 28 February 2022 of Ukraine's application for membership in the European Union, which may become a prerequisite for Ukraine to become an EU candidate in the near future.

Moreover, the study of these issues is of increased relevance in the light of the amendments

made to Article 209 of the Criminal Code [3] on the basis of the Law of Ukraine “On Preventing and Countering the Legalisation (Laundering) of Proceeds from Crime, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction” of December 6, 2019 No. 361 [7].

The purpose of the study is to comprehensively investigate international standards of criminal law on combating money laundering, considering modern challenges and threats in the field of financial control and monitoring.

■ Materials and Methods

Methodological tools are selected in accordance with the goal set, the specifics of the object and subject of research. In particular, the dialectical method was applied, which provided an interdisciplinary complex character and an in-depth scientific analysis of the provisions on criminal legal counteraction to money laundering, in their unity and interrelation, contributed to the formulation of conclusions and proposals on the topic under study. The comparative legal method was used in the analysis of national and international statutory regulations and other documents, allowed identifying identical and different, general and special, positive and negative in the problems of criminal law counteraction to money laundering, which outlined ways of potential borrowing useful experience. The system and structural method was used to investigate and identify the structural components of the theoretical concept of international criminal law counteraction to the legalisation of “dirty” property. The formal legal method was used in the study of legal provisions, legal terms, and wording, in particular, definitions of legalisation and related acts, predicate crimes, etc.

The theoretical basis consists of the studies by Ukrainian and foreign researchers (V.S. Beznogiyh [8], K.V. Bysaga [9], I.I. Bilous [10], O.O. Dudorov & T.M. Tertychenko [11], N.M. Nanyun & A. Nasiri [12], W.R. Schroeder [13] and other scholars [14; 15]), the provisions of international laws and regulations, in particular:

- conventions (United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances of March 16, 1989 [16], Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of November 8, 1990 [17], UN Convention Against Transnational Organised Crime of November 15, 2000 [18] and others [19; 20]);

- declarations (UN Declaration on Crime and Public Safety of 12 December 1996 [21], Vienna Declaration on Crime and Justice of 17 April 2000 [22], Bangkok Declaration “Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice” of 25 April 2005 [23]);

- other laws and regulations [24-26].

The paper also provides statistical data of the Prosecutor General's Office of Ukraine on the number of registered facts of money laundering in Ukraine [4].

■ Results and Discussion

In accordance with the provisions of the association agreement between Ukraine and the European Union, Ukraine has committed itself to implementing international legal standards for regulation and monitoring in the field of financial services. Article 20 of the Agreement [25] defined the principles of countering money laundering and terrorist financing, in particular, the need for international cooperation is emphasised, ensuring the implementation by the parties of relevant international standards, primarily the FATF and other EU standards equivalent to them. According to Article 127 of the Agreement [25], such international standards include: "Basic principles of effective banking supervision" of the Basel Committee [26], "Forty recommendations" and "Nine special recommendations for combating terrorist financing" of the FATF [27], etc.

Ukraine's cooperation on countering money laundering and terrorist financing is carried out within the framework of cooperation with such international organisations as the FATF (primarily the International Cooperation Review Group (ICRG) and the Policy Development Group (PDG), the International Monetary Fund (IMF), the Egmont Group of Financial Intelligence Units, the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval), the World Bank, the Organisation for Security and Co-operation in Europe (OSCE). In general, in the structure of international intergovernmental organisations that form the institutional basis of the global international system for combating money laundering, the following can be distinguished:

- organisations of general competence (the United Nations (UN), the World Bank, the Basel Committee on Banking Supervision (BCBS), IMF, etc.);
- law enforcement-type organisations (International Criminal Police Organisation (Interpol), etc.);
- international organisations of narrow specialisation [9, p. 46].

This category includes the already mentioned FATF, Moneyval, Egmont Group of Financial Intelligence Units, Asia-Pacific Anti-Money Laundering Group (APG), East and South Africa Anti-Money Laundering Group (ESAAMLG), Middle East and North Africa Financial Action Development Group (MENAFATF), Eurasian group on combating money laundering and financing of terrorism (EAG), etc.

These international organisations and regional groups are entrusted with the functions of ensuring the process of implementation in the national legislation of the participating countries of international

norms in the field of countering the legalisation (laundering) of property obtained by criminal means, and their practical implementation. The Financial Action Against Money Laundering (FATF) group, established in 1989, will now play a leading role in this process. In 1990, the FATF issued "Forty recommendations" [28], which were designed to provide the action plan necessary to combat money laundering, which were subsequently supplemented by nine more special recommendations for combating the financing of terrorism. In 2012, the FATF completed a thorough review of its standards and published revised recommendations [12]. These recommendations reinforced the need for countries to define the list and characteristics of operations related to the legalisation of criminal proceeds, introduce rules for identifying customers and monitoring information, create authorised bodies in countries responsible for combating money laundering, etc. Thus, according to Recommendation No. 3 on the crime of "Money laundering" [27], the obligation of countries to criminalise money laundering is established on the basis of the UN Convention for the Suppression of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances of 1989 (Vienna Convention) [16] and the UN Convention for the Suppression of Transnational Organised Crime of 2000 (Palermo Convention) [18]. This recommendation defined approaches to describing predicate criminal offences, in particular: a) by referring to all offences; b) by setting a certain threshold, linking to the category of "serious crimes"; or c) with reference to such a type of punishment as imprisonment. The subject of a crime is proposed to recognise any type of property, regardless of its value, that was directly or indirectly obtained by criminal means. It is emphasised that "intent and awareness" as subjective signs of the composition of a crime should be established according to objective factual circumstances. An interesting position is that it is necessary to extend criminal liability measures to legal entities (if this practice complies with the principles of national legislation). Recommendation No. 4 "Confiscation and temporary measures" [27] pointed out the need for countries to take measures to grant the competent authorities of these countries the authority to freeze or seize and confiscate legalised property, income, tools of crime used in money laundering or predicate crimes, etc. These international FATF standards are advisory in nature, but countries voluntarily adhere to the discipline of multilateral monitoring and mutual control, since failure to comply can lead to significant financial complications. At the same time, UN Security Council Resolution No. 1617 of July 29, 2005 obliged all UN member states to comply with the FATF recommendations when conducting financial monitoring (paragraph 7) [24]. Based on the results of inspections, the FATF publishes lists of "non-cooperative" countries in

its annual reports that do not adhere to the targeted measures provided for in the recommendations [14, p. 13]. Thus, for example, on April 21, 2022, a regular meeting of Ministers of the FATF member countries was held, which, among other things, considered the issue of including the Russian Federation in the FATF blacklist and excluding it from the FATF for gross violation of international standards [29].

The Basel Committee on Banking Supervision (BCBS) is the main body that sets global standards in the field of banking regulation and supervision. The committee issues directives and recommendations, including on regulating the issue of combating money laundering, "which are not binding, however, in most cases are reflected in the national legislation of the member states" [15, p. 38]. Such documents include, for example, the basic principles of effective surveillance of 1997, "Basel I" of 1988 (these standards, by the way, were implemented by more than 120 countries around the world [30]), "Basel II" of 2004, "Basel III" of 2011 and "Basel IV" (its main provisions should come into force in 2022), proper risk management related to money laundering and terrorist financing of 2020, etc. [26]. Separately, it is worth highlighting the Wolfsberg Group, an association of international banks whose goal is to develop the basics and recommendations for managing the risks of financial crimes [31]. The general directives on countering money laundering in the private banking sector (Wolfsberg principles) developed by this group in 2000, which defined the requirements for identifying customers, including beneficial owners, the algorithm of actions when detecting suspicious circumstances, etc., were implemented in the legislation of many countries [32].

Among researchers (for example, in the studies by I.I. Belous [10, p. 84] & W.R. Schroeder [13, p. 4]), it is widely suggested that in international practice for the first time the concept of money laundering was formulated in the UN Vienna Convention "On Combating Illicit Trafficking in Narcotic Drugs and Psychotropic Substances" of 1989 [16], which became the basis for the creation and further development of international legislation on combating money laundering. Thus, Article 3 of the Convention [16] called on the parties to recognise as criminal offences the following intentional actions: "conversion" or "transfer of property", if such property is obtained as a result of committing a criminal offence, in order to conceal the illegal source of its origin, location, or method of disposal, and movement, concealment of true rights in relation to such property or its acquisition, possession, or use. Notably, the Convention [16] focuses on the need to establish subjective signs of *corpus delicti* ("awareness, intention or purpose"). The same provision is found in the FATF recommendations outlined above, in a virtually identical design. As a punishment,

the Convention [16] proposes to apply "imprisonment or other types of custody, penalties, and confiscation".

The next international document in the field of countering legalisation, which developed and supplemented the provisions of the Vienna Convention of 1989 [16], was the Council of Europe Convention "On Laundering, Search, Seizure and Confiscation of Proceeds From Crime" of 1990 (Strasbourg Convention) [17]. According to Article 1, "income" was defined as "any economic benefit acquired by criminal means"; the concept of "property" included "property of any kind, tangible property, or property expressed in rights, movable or immovable property, and legal documents or documents confirming the right to such property or a share in it"; and the "predicate crime" included all criminal offences that resulted in the specified criminal income. In the literature, there is a position that the Strasbourg Convention [17] for the first time established a penalty for laundering proceeds obtained and accumulated in the course of committing any crime, regardless of whether it is related to drug trafficking, that is, expanded the content of the predicate crime [8, p. 45]. However, the UN Vienna Convention [16] did not narrow the concept of a predicate act exclusively to those related to the sale of narcotic drugs, and recognised all types of crimes as predicates. The Strasbourg Convention (Article 6) [17] did not introduce a new meaning to the definition of "crimes related to money laundering". At the same time, provisions have been developed regarding the subjective characteristics of the *corpus delicti*: "each party may take such measures as it considers necessary to qualify all or some of these actions as criminal by its internal law, in any case where the offender: (a) had to assume that property was income; (b) acted for the purpose of making a profit; (c) acted with the aim of facilitating the continuation of criminal activity" [17]. In general, the Strasbourg Convention [17] can be considered the first international legal document aimed directly at countering the laundering of "dirty" income. Significant is the fact that it obliged the state party to criminalise the legalisation of income received from most criminal offences, and also regulated the confiscation of such criminal income [11, p. 115].

The Council of Europe in 1995, to facilitate the implementation of anti-laundering legislation in national legal systems, developed a Model Law on drug money laundering [33], which contained recommendations for the creation of legal regulation mechanisms. For example, Article 20 of Section III "Sanctions" contained the following version of the construction of a legal norm on establishing responsibility for the legalisation of criminal proceeds: "are punishable by imprisonment from ... to ... and a fine in the amount of from ... to ... or any one of these measures of punishment of persons who (option; intentionally)

convert or transfer funds or property obtained, directly or indirectly, from illicit trafficking in narcotic drugs, psychotropic substances or precursors, for the purpose of concealing the illegal source of this property or means, or providing assistance to any person involved in the commission of one of the offences, so that he can evade legal responsibility for such actions" [33]. In addition, the Model Law [33] regulated the issue of liability for attempted crime and complicity in a crime.

The UN Declaration on Crime and Public Safety, adopted by General Assembly resolution 51/60 of December 12, 1996 [21], emphasised the need to strengthen the fight against transnational flows of proceeds from criminal activities, with the concealment of the true origin of such proceeds, and the deliberate conversion or transfer of such proceeds for this purpose. It is significant that the Declaration [21] emphasised the obligation to keep proper records by financial and related institutions of member states and, where appropriate, to provide information about suspicious transactions, to ensure the adoption of effective laws and procedures allowing the seizure and confiscation of proceeds from dangerous transnational criminal activities, and also recognised the need to limit the application of laws concerning bank secrecy in relation to criminal transactions (Article 8). These provisions were developed in the UN Convention Against Transnational Organised Crime, adopted by General Assembly resolution 55/25 of November 15, 2000 [18]. According to Article 6 "Criminalisation of laundering of proceeds of crime" [18], each state party takes measures to declare criminal the following intentional acts: "conversion or transfer of property, if it is known that such property is the proceeds of crime, in order to conceal the criminal source of this property; concealment of the true nature, location, method of disposal, movement of such property; acquisition, possession or use of such property; participation, involvement or collusion to commit any of the crimes recognised as such under this article, attempt to commit it, and assistance, inciting, or advising in its commission". At the same time, Article 11 [18] establishes the principle that the definition of crimes falls under the national legislation of each state party, that is, the provisions of the convention [18] set only the minimum standards that states must adhere to in the interests of consistency. States parties may exceed these standards, since each state reserves the right not to be limited by them [34, p. 399]. As for predicate crimes, the Convention [18] called on states to assign a wide range of major offences to them. As an anti-money-laundering measure, it is proposed to establish "a comprehensive internal regulatory and supervisory regime for banks, non-bank financial institutions, and other vulnerable bodies, based on requirements for customer identification, reporting,

and providing information on suspicious transactions". Article 12 [18] regulated the use of confiscation and seizure: "a) proceeds from crimes defined by the convention, or property whose value is equivalent to the value of such proceeds; b) property, equipment or other means used or intended for use in the commission of these crimes". The Convention [18] focused on the close relationship between the activities of organised criminal groups and the laundering of "dirty" proceeds. As preventive measures, states are invited to contribute to the development of standards designed to ensure "good faith" in the work of public and private organisations, in particular, codes of conduct; the creation of the possibility of depriving, by a court decision or other appropriate means, for a reasonable period of time, persons convicted of crimes defined by the Convention [18] of the right to hold positions of heads of legal entities; the creation of a national register of persons deprived of the right to hold positions of heads of legal entities, etc.

Further aggravation of the problem of countering transnational organised crime led to the intensification of efforts of the international community to combat the legalisation of criminal proceeds as its "satellite". Thus, the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century, adopted on April 17, 2000, at the 10th UN Congress on Crime Prevention and Treatment of Offenders [22], declared that "the fight against money laundering and economic crime is an essential element of strategies to combat organised crime". It was also noted that "the key to the success of this fight is to coordinate appropriate mechanisms to combat money laundering, including supporting initiatives aimed at states and territories offering offshore financial services that allow money laundering" [22]. A similar position of the UN is reflected in the Bangkok Declaration "Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice" [23], adopted at the 11th UN Congress on April 25, 2005, which expressed and consolidated "deep concern" about the spread and scale of transnational organised crime, including money laundering, sharp growth, expansion of geography and the consequences of new economic and financial crimes that have become a dangerous threat to the national economy and the international financial system.

The adoption of the UN Convention Against Corruption on October 31, 2003 [19], which is considered the first comprehensive and systematic multilateral international legal document aimed at combating corruption [35, p. 410], was an equally important step in countering money laundering, primarily from the standpoint of preventing these crimes. Thus, the Convention [19] consolidated key preventive measures (Article 14), in particular: the regime of regulation and monitoring in relation to banks and non-bank financial institutions, first of

all, the identification of the client and beneficial owner, reporting and providing reports of suspicious transactions; the establishment of a financial operational information unit concerning potential cases of money laundering; cooperation of bodies in the field of countering money laundering and the exchange of information at the international and national levels; requirements for individuals and legal entities to report cross-border transfers of significant amounts of cash, etc. Separately, the Convention [19] defined a set of measures to prevent transfers of proceeds from crime and detect them (Article 52), and measures for the direct return of property (Article 53). Article 23 "Laundering of proceeds of crime" formulated a definition of laundering that is generally similar in content to the concept of this crime, which was given in the UN Convention Against Transnational Organised Crime of 2000 [18]. The definition of laundering consolidated by the Council of Europe Convention on Laundering, Detection, Seizure, and Confiscation of Proceeds from Criminal Activity and Financing of Terrorism of May 16, 2005 (Warsaw Convention) has not changed much [20]. According to Article 9, "crimes related to laundering" [20] include: conversion or transfer of "dirty" property; concealment of such property or concealment of the actual nature, origin, location, placement, movement of property or rights to it; acquisition, possession, or use of property; participation, complicity or conspiracy in the commission or attempt to commit and assist, incite, or advise in the commission of any of the crimes established under this article. At the same time, according to the provisions of the Convention [20], a criminal who "suspected that the property was profit, or should have assumed that the property was profit, should be liable". Article 13 [20] established a requirement for the parties to take legislative and other necessary measures to create a comprehensive national monitoring regime to prevent money laundering, considering existing international standards, including, in particular, FATF recommendations.

In the future, the provisions of international law on countering money laundering were developed in the EU framework decisions (for example, Framework Decision 2005/212/SVS on the confiscation of proceeds from crime, dated 24 February 2005 [36]) and directives on preventing the use of the financial system for the purpose of money laundering and terrorist financing, in particular, Directive 2005/60/EC of 26 October 2005 [37], Directive (EU) 2015/849 of 20 May 2015 [38] and Directive (EU) 2018/843 of 30 May 2018 [39], each of which supplemented and improved the previous one. In the latest directive, the European Parliament and the Council stressed the need to further strengthen the transparency of the EU's economic and financial environment, and the need to ensure the implementation of rules on

countering money laundering and terrorist financing by obligated entities. Attention was focused on the problem of anonymity of virtual currencies – now a significant part of this environment remains anonymous – which opens up the possibility of their illegal use for criminal purposes. It is determined that in order to counteract the risks associated with anonymity, national financial intelligence agencies should be able to obtain information that would allow linking the addresses of virtual currencies with the identity of their owner. In general, the Directive [39] recommends the implementation of the following measures to counter money laundering and terrorist financing: monitoring the use of virtual currencies by the competent authorities and ensuring the effective implementation of financial investigations in this area; ensuring the "widest range of international cooperation" of financial intelligence agencies regarding money laundering and related predicate crimes, considering the recommendations of the FATF and the principles of the Egmont Group; carrying out secure remote or electronic identification of individuals and legal entities; ensuring greater transparency of financial transactions of legal entities, primarily trusts; creating registers with information about beneficial owners, etc.

Summing up, it can be stated that the analysed international documents became the basis for creating a system of anti-laundering legislation and a guide for its further development. The United Nations Office on Drugs and Crime (UNODC), defining the strategy for 2021-2025 [40], noted the need to develop national systems of legislation and criminal justice to combat money laundering. Improving the effectiveness of criminal justice in this area should take place through the following measures: strengthening the capacity to conduct financial investigations to identify the proceeds of criminal activity; coordinating state programme initiatives to combat illegal financial flows; providing support to member states in tracking, arrest, freezing, confiscation, and recovery of assets, etc. Special attention is paid to the need to promote innovative methods of international cooperation, primarily with international and regional financial institutions in the field of countering money laundering and asset recovery. Close collaboration should improve collective understanding of illegal financial flows and lay a solid foundation for combating them.

■ Conclusions

The systematic study of international legislation in the field of combating money laundering provided the following conclusions and generalisations:

1. International cooperation, within the framework of which the Ukrainian legislative basis was created, plays a key role in countering the legalisation (laundering) of property and the financing of terrorism. Ukraine's cooperation on these issues

is carried out within the framework of cooperation with such international organisations as the FATF, the Basel Committee on Banking Supervision, the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the Egmont Group of Financial Intelligence Units (EGFIU), etc. These organisations are responsible for developing anti-laundering measures (standards) and ensuring the process of their implementation in national legal systems. At the same time, Ukraine is not a member of most of these organisations.

2. International anti-laundering legislation is characterised by uniformity, which confirms the fact of well-established interstate cooperation in countering money laundering. The provisions of international regulations are consistent with each other and, despite certain differences, do not contain fundamental contradictions.

3. These standards are mostly advisory in nature, but countries adhere to the discipline of multilateral monitoring and mutual control, since their failure to comply may result in financial complications.

4. When describing the objective and subjective signs of laundering as a criminal act, the analysed legal acts use a standardised approach, and in general, it is reduced to the following: a) the subject of a crime is proposed to recognise any type of property, regardless

of its value, which is directly or indirectly obtained by criminal means; b) predicate crimes are called to include the widest range of main offences; c) the objective side of legalisation covers the conversion or transfer, concealment of property or the actual nature, origin, location, placement, movement of property or rights to it, and acquisition, possession; d) emphasises the need to establish subjective signs of the *corpus delicti* (“awareness, intention or purpose”) through objective circumstances. It is proposed to use imprisonment or other types of custody, penalties, and confiscation as punishment. At the same time, it is necessary to extend liability measures to legal entities (if such practices comply with the principles of national legislation).

5. Regarding measures to prevent the legalisation of criminal proceeds, the most interesting and promising from the standpoint of their potential borrowing are issued as follows: development of standards designed to ensure good faith in the work of public and private organisations, in particular, codes of conduct; creation of appropriate national registers, first of all, a register of persons deprived of the right to hold positions of heads of legal entities in connection with their conviction for laundering, and a register with information about beneficial owners; introduction of a mechanism for monitoring the use of virtual currencies by competent authorities, etc.

■ References

- [1] Order of the State Financial Monitoring Service of Ukraine No. 146 “Typological Research Actual Methods, Ways, Tools for Legalization (Laundering) of Criminal Proceeds and Financing of Terrorism (Separatism)”. (2021, December). Retrieved from <http://document.vobu.ua/wp-content/uploads/2022/01/nakaz146-2021d-1.pdf>.
- [2] Update: Money laundering and terrorist financing related to COVID-19 – Risks and related policies. (2020). Retrieved from <https://www.fatf-gafi.org/media/fatf/documents/Update-COVID-19-Related-Money-Laundering-and-Terrorist-Financing-Risks.pdf>.
- [3] Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.
- [4] Report on registered criminal offenses and the results of their pre-trial investigation. (2022). Retrieved from <https://gp.gov.ua/ua/posts/statistika>.
- [5] FATF. (2021). *Annual report 2020-2021*. Retrieved from <https://www.fatf-gafi.org/media/fatf/documents/brochuresannualreports/Annual-Report-2020-2021.pdf>.
- [6] Golovkin, B., & Marysyuk, K. (2019). Foreign experience in combating (preventing) organized crime in the financial system: Special law enforcement agencies and strategic priorities. *Baltic Journal of Economic Research*, 5(3), 25-36. doi: 10.30525/2256-0742/2019-5-3-25-36.
- [7] Law of Ukraine No. 361 “On Prevention and Counteraction to Money Laundering, Terrorism and Financial Proliferation of Weapons of Mass Destruction”. (2019, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/361-20#n880>.
- [8] Beznohykh, V.S. (2018). *Criminal liability for the use of funds obtained from drug trafficking: A comparative legal study* (PhD. thesis, National Academy of Internal Affairs, Kyiv, Ukraine).
- [9] Bysagha, K.V. (2021). International system for combating money laundering and terrorist financing: Institutional aspect. *Eastern European Scientific Journal*, 2(66), 43-56. doi: 10.31618/eco.2713-0355.
- [10] Bilous, I.I. (2019). The essential characteristics of the legalization of proceeds from crime. *Economy and State*, 5, 82-88. doi: 10.32702/2306-6806.2019.5.82.
- [11] Dudorov, O.O., & Tertychenko, T.M. (2015). *Counteracting the laundering of “dirty” property: European standards and the Criminal Code of Ukraine*. Kyiv: Vaite.

- [12] Nanyun, N.M., & Nasiri, A. (2021). The role of the FATF in the financial systems of countries: Successes and challenges. *ournal of Money Laundering Control*, 24(2), 234-245. doi: 10.1108/JMLC-06-2020-0070.
- [13] Schroeder, W.R. (2001). Money laundering: The global threat and the response of the international community. *FBI Law Enforcement Bulletin*, 7(5), 1-9.
- [14] Chohan, U.W. (2019). FATF in the global financial architecture: Problems and consequences. *CASS Working Papers on Economics and National Affairs*, 3, article number EC001UC. doi: 10.2139/ssrn.3362167.
- [15] Penicas, H. (2015). History of banking regulation, developed by the Basel Committee on Banking Supervision 1974-2014. *Estabilidad Financiera*, 28, 9-47.
- [16] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. (1989, March). Retrieved from https://zakon.rada.gov.ua/laws/show/995_096#Text.
- [17] Convention "On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime". (1990, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_029#Text.
- [18] UN Convention against Transnational Organized Crime, adopted by General Assembly Resolution 55/25. (2000, November). Retrieved from https://www.un.org/ru/documents/decl_conv/conventions/orgcrime.shtml.
- [19] UN Convention against Corruption. (2003, October). Retrieved from https://www.un.org/ru/documents/decl_conv/conventions/corruption.shtml.
- [20] Council of Europe Convention "On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism". Retrieved from <https://www.coe.int/ru/web/conventions/full-list?module=treaty-detail&treatynum=198>.
- [21] UN Declaration adopted by General Assembly "On Crime and Public Safety". Retrieved from https://www.un.org/ru/documents/decl_conv/declarations/crime.shtml.
- [22] Vienna Declaration adopted by the 10th UN Congress on Crime Prevention and Treatment "On Crime and Justice: Responding to the Challenges of the 21st Century". (2000, April). Retrieved from https://www.un.org/ru/documents/decl_conv/declarations/vendec.shtml
- [23] The Bangkok Declaration adopted by the 11th UN Congress "On Interaction and Response: Strategic Unions in Crime Prevention and Criminal Justice". (2005, April). Retrieved from https://www.un.org/ru/documents/decl_conv/declarations/bangkok_declaration.shtml.
- [24] Resolution 1617, Approved by the Security Council at its 5244th meeting. (2005, July). Retrieved from https://zakon.rada.gov.ua/laws/show/995_d53#Text.
- [25] Association Agreement between Ukraine and the European Union, the European Atomic Energy Community and Their Member States. (2014, June). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011#Text.
- [26] Publications of the Basel Committee on Banking Supervision. (2022). Retrieved from <https://www.bis.org/bcbs/publications.htm?m=2566>.
- [27] International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (2012–2022). Paris : FATF. (2022). Retrieved from www.fatf-gafi.org/recommendations.html.
- [28] The forty recommendations of the financial action task force on money laundering. (1990). Retrieved from <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%201990.pdf>
- [29] FATF confirmed gross violations of international standards of the Russian Federation. (2022). Retrieved from <https://fiu.gov.ua/pages/dijalnist/funkcional/news/FATF-pidtvrdzheno-grube-porushennya-rf-mizhnarodnix-standartiv.html>.
- [30] Jones, E., & Zeitz, A.O. (2017). The limits of globalization Basel banking standards. *Journal of Financial Regulation*, 3, 89-124. doi: 10.1093/jfr/fjx001.
- [31] Global banks: Global standards. (2018). *The Wolfsberg Group*. Retrieved from <https://www.wolfsberg-principles.com>.
- [32] General Directives on Combating the Abolition of Income in the Private Banking Sector (Wolfsberg Principles). (2000, October). Retrieved from https://zakon.rada.gov.ua/laws/show/995_688#Text.
- [33] Model Law of the Council of Europe "On the Withdrawal of Mmoney from Drugs". (1995, January). Retrieved from https://zakon.rada.gov.ua/laws/show/994_141#Text.
- [34] Romashkin, S., Shulzhenko, N., & Liubov, K. (2020). The mechanism of international cooperation in accordance with the UN Convention against Transnational Organized Crime. *Journal of the University of Zulia*, 11(31), 389-402. doi: 10.46925/rdluz.31.24.
- [35] Bondarenko, O., Reznik, O., Yevgen, G., Andriichenko, N., & Stohova, O. (2020). Participation of Ukraine in International Cooperation against Corruption. *Amazonia Investiga*, 9(29), 407-416. doi: 10.34069/AI/2020.29.05.45

- [36] Framework Decision No. 2005/212/JHA “On the Confiscation of Proceeds of Crime”. (2005, February). Retrieved from https://zakon.rada.gov.ua/laws/show/984_005-05#Text.
- [37] Directive of the European Parliament and of the Council No. 2005/60/EU “On the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing”. (2005, October). Retrieved from https://zakon.rada.gov.ua/laws/show/994_774#Text.
- [38] Directive of the European Parliament and of the Council No. (EU) 2015/849 “On the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing”. (2015, May). Retrieved from <https://www.kmu.gov.ua/storage/app/sites/1/55-GOEI/es-2015849.pdf>.
- [39] Directive of the European Parliament and of the Council No. 2018/843/EU “On the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing”. (2018, May). Retrieved from https://zakon.rada.gov.ua/laws/show/984_010-18#Text.
- [40] Strategy of the United Nations Office “On drugs and crime (UNODC) for 2021-2025”. (2021). Retrieved from https://www.unodc.org/res/strategy/full-strategy_html/full-strategy_RU.pdf.

■ Список використаних джерел

- [1] Типологічне дослідження «Актуальні методи, способи, інструменти легалізації (відмивання) злочинних доходів та фінансування тероризму (сепаратизму)»: наказ Державної служби фінансового моніторингу України від 20 груд. 2021 р. № 146. URL: <http://document.vobu.ua/wp-content/uploads/2022/01/nakaz146-2021d-1.pdf>.
- [2] Update: COVID-19-related money laundering and terrorist financing – risks and policy responses. Paris : FATF, 2020. URL: <https://www.fatf-gafi.org/media/fatf/documents/Update-COVID-19-Related-Money-Laundering-and-Terrorist-Financing-Risks.pdf>.
- [3] Кримінальний кодекс України : Закон України від 5 квіт. 2001 р. № 2341-III. URL: <https://zakon.rada.gov.ua/laws/show/2341-14/print>.
- [4] Звіт про зареєстровані кримінальні правопорушення та результати їх досудового розслідування. Генеральна прокуратура України. URL: <https://gp.gov.ua/ua/posts/statistika>.
- [5] FATF. Annual report 2020–2021. URL: <https://www.fatf-gafi.org/media/fatf/documents/brochuresannualreports/Annual-Report-2020-2021.pdf>.
- [6] Golovkin B., Marysyuk K. Foreign experience in countering (preventing) organized crime in the financial system: Special law enforcement bodies and strategic priorities. *Baltic Journal of Economic Studies*. 2019. Vol. 5. No. 3. P. 25–36. doi: 10.30525/2256-0742/2019-5-3-25-36.
- [7] Про запобігання та протидію легалізації (відмиванню) доходів, одержаних злочинним шляхом, фінансуванню тероризму та фінансуванню розповсюдження зброї масового знищення : Закон України від 6 груд. 2019 р. № 361. URL: <https://zakon.rada.gov.ua/laws/show/361-20#n880>.
- [8] Безногих В. С. Кримінальна відповідальність за використання коштів, здобутих від незаконного обігу наркотиків: порівняльно-правове дослідження : дис. ... канд. юрид. наук : 12.00.08 / Національна академія внутрішніх справ. Київ, 2018. 274 с.
- [9] Бисага К. В. Міжнародна система протидії легалізації злочинних доходів і фінансуванню тероризму: інституційний аспект. *East European Scientific Journal*. 2021. № 2 (66). С. 43–56. doi: 10.31618/eco.2713-0355.
- [10] Білоус І. І. Сутнісна характеристика легалізації доходів, отриманих злочинним шляхом. *Економіка та держава*. 2019. № 5. С. 82–88. doi: 10.32702/2306-6806.2019.5.82.
- [11] Дудоров О. О., Тертиченко Т. М. Протидія відмиванню «брудного» майна: європейські стандарти та Кримінальний кодекс України : монографія. Київ : Baire, 2015. 392 с.
- [12] Nanyun N. M., Nasiri A. Role of FATF on financial systems of countries: successes and challenges. *Journal of Money Laundering Control*. 2021. Vol. 24. No. 2. P. 234–245. doi: 10.1108/JMLC-06-2020-0070.
- [13] Schroeder W. R. Money laundering: A global threat and the international community's response. *FBI Law Enforcement Bulletin*. 2001. P. 1–7.
- [14] Chohan U. W. The FATF in the Global Financial Architecture: Challenges and Implications. *CASS Working Papers on Economics & National Affairs*. 2019. Article number EC001UC. doi: 10.2139/ssrn.3362167.
- [15] Penikas H. History of banking regulation as developed by the Basel Committee on Banking Supervision 1974–2014. *Estabilidad Financiera*. 2015. No. 28. P. 9–47.
- [16] Конвенція Організації Об'єднаних Націй про боротьбу проти незаконного обігу наркотичних засобів і психотропних речовин : міжнар. док. від 16 берез. 1989 р. URL: https://zakon.rada.gov.ua/laws/show/995_096#Text.
- [17] Конвенція про відмивання, пошук, арешт та конфіскацію доходів, одержаних злочинним шляхом : міжнар. док. від 8 листоп. 1990 р. URL: https://zakon.rada.gov.ua/laws/show/995_029#Text.
- [18] Конвенція ООН проти транснаціональної організованої злочинності, прийнята резолюцією 55/25 Генеральної Асамблеї від 15 листоп. 2000 р. URL: https://www.un.org/ru/documents/decl_conv/conventions/orgcrime.shtml.

- [19] Конвенція ООН проти корупції : міжнар. док. від 31 жовт. 2003 р. URL: https://www.un.org/ru/documents/decl_conv/conventions/corruption.shtml.
- [20] Конвенція Ради Європи про відмивання, виявлення, вилучення та конфіскацію доходів від злочинної діяльності та про фінансування тероризму : міжнар. док. від 16 трав. 2005 р. URL: <https://www.coe.int/ru/web/conventions/full-list?module=treaty-detail&treatynum=198>.
- [21] Декларація ООН про злочинність та громадську безпеку, прийнята резолюцією 51/60 Генеральної Асамблеї від 12 груд. 1996 р. URL: https://www.un.org/ru/documents/decl_conv/declarations/crime.shtml.
- [22] Віденська декларація про злочинність та правосуддя: відповіді на виклики XXI століття, прийнята на 10-му Конгресі ООН щодо попередження злочинності та поводження з правопорушниками від 17 квіт. 2000 р. URL: https://www.un.org/ru/documents/decl_conv/declarations/venec.shtml.
- [23] Бангкокська декларація «Взаємодія та заходи у відповідь: стратегічні спілки в галузі попередження злочинності та кримінального правосуддя», прийнята на 11-му Конгресі ООН від 25 квіт. 2005 р. URL: https://www.un.org/ru/documents/decl_conv/declarations/bangkok_declaration.shtml.
- [24] Резолюція 1617 (2005), ухвалена Радою Безпеки на 5244-му засіданні : міжнар. док. від 29 лип. 2005 р. URL: https://zakon.rada.gov.ua/laws/show/995_53#Text.
- [25] Угода про асоціацію між Україною та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами : міжнар. док. від 27 черв. 2014 р. URL: https://zakon.rada.gov.ua/laws/show/984_011#Text.
- [26] Basel Committee on Banking Supervision Publications. URL: <https://www.bis.org/bcbs/publications.htm?m=2566>.
- [27] International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation (2012–2022). Paris : FATF. URL: <https://www.fatf-gafi.org/recommendations.html>.
- [28] The forty recommendations of the financial action task force on money laundering. URL: <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%201990.pdf>.
- [29] FATF підтверджено грубе порушення РФ міжнародних стандартів. Державна служба фінансового моніторингу України. URL: <https://fiu.gov.ua/pages/dijalnist/funkcional/news/FATF-pidtvrdzheno-grube-porushennya-rf-mizhnarodnix-standartiv.html>.
- [30] Jones E., Zeitz A. O. The limits of globalizing Basel banking standards. *Journal of Financial Regulation*. 2017. No. 3. P. 89–124. doi: 10.1093/jfr/fjx001.
- [31] Global banks: Global standards. *The Wolfsberg Group*. URL: <https://www.wolfsberg-principles.com>.
- [32] Загальні директиви з протидії відмиванню доходів в приватному банківському секторі (Вольфсбергські принципи) : міжнар. док. від 30 жовт. 2000 р. URL: https://zakon.rada.gov.ua/laws/show/995_688#Text.
- [33] Типовий закон Ради Європи про відмивання грошей, отриманих від наркотиків : міжнар. док. від 1 січ. 1995 р. URL: https://zakon.rada.gov.ua/laws/show/994_141#Text.
- [34] Romashkin S., Shulzhenko N., Liubov K. The mechanism of international cooperation accordingly to UN Convention against Transnational Organized Crime. *Journal of the University of Zulia*. 2020. Vol. 11. No. 31. P. 389–402. doi: 10.46925/rdluz.31.24.
- [35] Bondarenko O., Reznik O., Garmash Ye., Andriichenko N., Stohova O. Participation of Ukraine in International Cooperation against Corruption. *Amazonia Investiga*. 2020. Vol. 9. No. 29. P. 407–416. doi: 10.34069/AI/2020.29.05.45.
- [36] Про конфіскацію доходів, засобів і власності, одержаних злочинним шляхом : рамкове рішення 2005/212/ЮВС від 24 лют. 2005 р. URL: https://zakon.rada.gov.ua/laws/show/984_005-05#Text.
- [37] Про запобігання використанню фінансової системи з метою відмивання коштів та фінансування тероризму : директива 2005/60/ЄС Європейського Парламенту та Ради від 26 жовт. 2005 р. URL: https://zakon.rada.gov.ua/laws/show/994_774#Text.
- [38] Про запобігання використанню фінансової системи з метою відмивання коштів та фінансування тероризму : директива (ЄС) 2015/849 Європейського Парламенту та Ради від 20 трав. 2015 р. URL: <https://www.kmu.gov.ua/storage/app/sites/1/55-GOEEI/es-2015849.pdf>.
- [39] Про запобігання використанню фінансової системи з метою відмивання коштів та фінансування тероризму : директива (ЄС) 2018/843 Європейського Парламенту та Ради від 30 трав. 2018 р. URL: https://zakon.rada.gov.ua/laws/show/984_010-18#Text.
- [40] Стратегія Управління ООН з наркотиків та злочинності (УНЗ ООН) на 2021–2025 роки. URL: https://www.unodc.org/res/strategy/full-strategy_html/full-strategy_RU.pdf.

Міжнародний досвід кримінально-правової протидії легалізації (відмиванню) майна, одержаного злочинним шляхом: ретроспектива та сучасні тенденції

Ілона Василівна Жук¹, Агнешка Каліж²

¹Національна академія внутрішніх справ
03035, пл. Солом'янська, 1, м. Київ, Україна

²Гданський університет
80-309, вул. Яна Бажинського, 8, м. Гданськ, Республіка Польща

■ **Анотація.** Проблема протидії легалізації (відмиванню) майна, одержаного злочинним шляхом, завжди перебувала в центрі уваги правоохоронних, фінансових органів і міжнародних організацій. Особливої актуальності вона набула в умовах пандемії COVID-19, яка переорієнтувала фінансову діяльність на застосування нових сучасних технологій, змінила економічні процеси, відкривши нові шляхи отримання злочинних доходів. Метою статті є дослідження сучасного стану міжнародного регулювання у сфері кримінально-правової протидії легалізації (відмиванню) майна, одержаного злочинним шляхом. Методологічний інструментарій становлять діалектичний метод наукового пізнання, формально-юридичний, системно-структурний та порівняльно-правовий методи. Здійснення системного аналізу міжнародного законодавства у сфері протидії легалізації злочинних доходів дало змогу дійти таких висновків: 1) концептуальним базисом ефективної протидії відмиванню “брудного” майна є міжнародне співробітництво, у межах якого відбувалося становлення національної системи правових норм; 2) міжнародне антилегалізаційне законодавство є достатньо уніфікованим, положення правових актів взаємно узгоджені й не містять принципових суперечностей, зокрема, щодо опису об’єктивних та суб’єктивних ознак легалізації; 3) міжнародні стандарти мають переважно рекомендаційний характер, однак країни дотримуються приписів щодо їх імплементації та подальшого виконання; 4) серед заходів запобігання легалізації найбільший інтерес становлять такі: створення реєстру бенефіціарних власників; розробка стандартів, призначених для забезпечення сумлінності в роботі публічних та приватних організацій; запровадження механізму моніторингу використання віртуальних валют тощо. Наведені в роботі результати і пропозиції можуть бути використані під час подальшого розроблення кримінально-правових механізмів протидії легалізації (відмиванню) майна, одержаного злочинним шляхом

■ **Ключові слова:** міжнародні стандарти; антилегалізаційне законодавство; злочинні доходи; фінансування тероризму; імплементація