

Distinctive Features of Initial Procedural Actions Upon Detection of the Crime of Laundering Proceeds from Criminal Activity

Kudratillaev Khazratoli Zokirjon ugli

Lecturer at the Department of Criminal procedure law, Tashkent State University of Law

qudratillayev.xazratoli@gmail.com

Abstract: This article analyzes the procedural actions undertaken during the initial stage of investigating the legalization of criminally obtained income. Furthermore, the author examines all the investigator's actions at this stage, the circumstances that must be determined, and the tasks involved in both the pre-investigation verification and preliminary investigation phases.

Key words: Money laundering of criminal proceeds, preliminary investigation, investigator, investigative action, interrogation, accused, witness, search, seizure, inspection.

The legalization of criminal proceeds is, by its nature, an act that does not cause visible harm. As a result, the degree of concealment for this type of crime is extremely high. Therefore, timely and comprehensive identification of information about the crime is one of the main tasks in combating the legalization of criminal proceeds, which, in our opinion, should be addressed at the initial stage of the investigation.

The study of investigative practice shows that the majority of economic crimes are related to the legalization of money or other property obtained through criminal means in one way or another. Investigators, for a number of subjective and objective reasons, are refusing to initiate relevant criminal cases and take them into their proceedings.

In the author's opinion, this situation indicates that investigative bodies are reluctant to initiate criminal proceedings due to the lengthy nature of such investigations, their complexity, strong resistance to the investigation, and, unfortunately, the investigators' lack of practical knowledge not only in complex disciplines such as accounting and financial analysis but also in civil law.

One of the main features of the initial stage of investigating the legalization of criminal proceeds is the importance of effectively utilizing operational-search information. Furthermore, in our opinion, effectively combating the legalization of criminal proceeds requires not only a deep understanding of a wide range of special laws and subordinate regulatory documents but also a thorough knowledge of banking, non-bank finance, accounting, and other economic activities related to the legalization process.

According to N.I. Gazetdinov, at the stage of initiating a criminal case, in order to make a lawful and well-founded decision, the investigator must resolve the following issues: whether the information on money laundering can serve as a basis for initiating a criminal case; whether the information contains indications of a crime; whether there are any circumstances that preclude proceeding with the case; what measures should be taken to preserve and secure evidence of the crime; whether there is a need for additional verification of the information and what actions should be taken in this regard.¹

The collaborative activity of investigators and operational officers begins before the initiation of a criminal case and continues until the case is sent to court. At the stage of initiating a criminal case, the

¹ Газетдинов Н.И. О законодательной регламентации поводов и оснований для возбуждения уголовного дела // Российский следователь. 2007. № 20.

investigator's involvement in this process includes: familiarizing themselves with the results of operational-search activities, determining the methods and deadlines for implementing available information, as well as identifying the possibility of apprehending individuals involved in the legalization of criminal proceeds. The actions of investigators and operational officers to identify signs of money laundering, identify persons involved in the crime, and search for criminal proceeds should constitute a unified and intensive process of cooperation from start to finish. This approach has long been considered the most effective and has been regarded as an axiom in criminology and the closely related theory of operational-investigative activity for many decades².

As a result of the investigator's cooperation with the operational unit, a well-founded decision on initiating a criminal case must be made. Subsequently, the investigator, as an independent procedural entity, should determine the directions of the search, gather evidence of guilt of persons laundering money based on regular monitoring of incoming information, process the available materials within the framework of the criminal case, and apprehend suspects with items of criminal origin (monetary funds).

However, in practice, this is not always the case. It becomes challenging for the investigator to make a hasty decision to initiate a criminal case without having sufficient information about the instances of money laundering and the persons involved. This is because evidence, which is already difficult for the investigator to find, can be quickly destroyed, the criminal conspiracy system may be revised, counterintelligence activities within the criminal organization may be intensified, and intelligence work among law enforcement agencies through corrupt individuals may be escalated. This complicates the verification of information through investigation. If the preliminary information is not confirmed during the investigation, it leads to a prolongation of the investigative process, and in most cases, to the termination of criminal cases related to the investigation of money laundering³.

It should be noted that the typical investigative situation arising at the initial stage of investigating the legalization of criminal proceeds is usually characterized by the following features:

1. There is substantiated information about the "laundering" of criminal proceeds;
2. The persons who committed this crime have been identified;
3. The location of funds (or other property) is known (or unknown).

The investigator's main task during the investigation process is to develop recommendations for operational officers in each specific case. This is done to determine the procedural acceptability and necessary volume of evidence for deciding whether to initiate a criminal case, or to establish the impossibility of timely achieving the goal of operational-search measures (identifying reliable and sufficient information to initiate a criminal case) before the case is formally opened. The clarity and specificity of the issues raised depend precisely on the investigator, which necessitates the effectiveness of these measures, an accurate legal assessment of the events, and a higher quality investigation of the criminal case.

An important issue arising in the process of initiating a criminal case regarding legalization facts is the admissibility of evidence. The most common objection to using the results of operational-search activities as evidence is that the relevant evidence, obtained in violation of the Criminal Procedure Code of the Republic of Uzbekistan, lacks legal force and cannot be used as the basis for accusation or in issuing a verdict.

² Жубрин Р.В. Повышение эффективности уголовно-правовых средств борьбы с легализацией преступных доходов в России // Закон. 2011. № 9. С. 80-85.

³ Гасников К.Д. Применение законодательства о противодействии легализации доходов, полученных преступным путем // Журнал российского права. 2007. № 10. С. 51-61.

However, evidence obtained through operational-search measures is considered admissible if it complies with the requirements of the Criminal Procedure Code of the Republic of Uzbekistan. For instance, before initiating a criminal case, the investigator has the right to issue instructions for conducting operational-search measures to collect evidence that meets the Criminal Procedure Code requirements and can serve as a basis for accusation. In particular, A.A. Krayushkin believes that the process of consolidating information obtained from operational-search activities can be conditionally divided into the following stages:

1. Direct consolidation of information obtained through operational means (carried out before transferring materials to the investigator).
2. Inclusion of the obtained materials in criminal proceedings (attaching them to case materials).
3. Verification of information involved in the criminal case using criminal procedure methods, giving them a criminal procedural form.

If there is sufficient information indicating signs of legalization, the investigator issues a decision to initiate criminal proceedings in accordance with Article 322 of the Criminal Procedure Code of the Republic of Uzbekistan. It should also be noted that after initiating a criminal case, the preliminary investigation stage continues with the formulation of investigative versions. Versions should be compiled based on the circumstances arising during the investigation, by comparing initial data with the forensic description of criminal proceeds legalization.

When formulating versions in the process of investigating criminal cases related to money laundering, the investigator must address the following tasks: identifying and extracting information about "laundering" from material, documentary, and personal sources - information carriers; systematizing previously obtained preliminary data, identifying new possible direct or indirect sources; comparing existing information on a specific money laundering event with the data from the criminalistic description of criminal proceeds "laundering" - compiling possible versions; drawing conclusions from possible versions.

If the investigator applies a scientific approach to organizing the investigation in general and formulating investigative versions in particular, difficulties at the initial stage of the investigation can be easily overcome. Only after compiling, analyzing, developing, and excluding versions can the investigator determine the model of legalization (method of implementation) and the current stage of the legalization process. The availability of substantial evidence and the possibility of reinforcement stem from this approach⁴.

In our opinion, the most effective and useful hypotheses in the process of investigating money laundering are those that predict both the near and distant future, as they contribute to a more efficient collection of evidence. The investigation plan should provide for the investigator's simultaneous actions regarding unverified hypotheses and the examination of other possible hypotheses put forward to replace rejected ones. This primarily involves hypotheses about whether the investigated money laundering incident is limited to the facts on which the criminal case was initiated, or if it is only a part of a larger series of criminal episodes.

In legal literature, experts emphasize that the legalization of criminal proceeds is an active process, in which completely unexpected variants of criminal actions cannot be ruled out. Not every investigator can complete such an investigation; therefore, the investigation of money laundering should be entrusted to investigators who can put themselves in the shoes of certain individuals and mentally simulate (or anticipate) promising steps to conceal traces and "cleanse" illegal profits. Furthermore, as

⁴ Халиков А.Н. Взаимосвязь следственных ситуаций, версий и планирования при расследовании преступлений // Следователь. 2009. № 9.

previously noted, the investigator must have a thorough understanding of the financial and economic activities of commercial organizations and banks. In some cases, it is advisable to involve individuals knowledgeable in financial and other non-legal matters in the investigation⁵.

At the initial stage of investigating the legalization of criminal proceeds, the investigator should focus on verifying the reliability of factual data that served as the basis for initiating a criminal case, collecting new evidence, and preventing possible attempts by interested parties to conceal traces of the crime. In general, the factors determining the success of the investigation in establishing instances of legalization are irrefutable evidence confirming actions taken by individuals to demonstrate the legal origin of large amounts of criminal proceeds, as well as facts showing the use of this property in entrepreneurial or other economic activities.

It is evident that utilizing the element of surprise is justified and effective for the successful continuation of the investigation at its initial stage. It is advisable to conduct urgent investigative and operational-search measures aimed at detaining suspicious persons, collecting preliminary evidence, and seizing criminally acquired funds (or other property).

A detailed study of the problems encountered during the initial stage of investigating the legalization of criminal proceeds leads to the conclusion that the following preliminary investigative actions are characteristic:

- 1) interrogation of suspects and accused persons;
- 2) identification and interrogation of witnesses;
- 3) search for funds and other property acquired through criminal means;
- 4) conducting searches;
- 5) seizure and examination of financial and economic documents;
- 6) inspection of premises, items, and documents;
- 7) appointment and conduct of expert examinations⁶.

From the author's perspective, the investigator should not prioritize certain investigative actions over others or predetermine the procedural weight of specific evidence. In other words, the investigator must conduct an impartial investigation of the case, basing their actions on the genuine necessity of carrying out investigative measures to resolve investigative tasks.

In the initial stage of investigating the legalization (laundering) of criminal proceeds, investigative actions are conducted in accordance with general procedural norms and forensic tactical recommendations. However, certain investigative and other actions have their own distinctive features, which include searches and seizures, inspections of premises, objects, and documents, as well as interrogations of witnesses, suspects, and accused individuals.

BIBLIOGRAPHY:

1. Васильев А.А. Легализация добытых преступным путем доходов как вид прикосновенности к преступлению // Российский юридический журнал. Екатеринбург: Изд-во УрГЮА. 2008. № 5. С.139-143.;

⁵ Курбатов А. Противодействие легализации преступных доходов: будет ли создан эффективный правовой механизм? // Хозяйство и право. 2009. № 8. С. 72-78.

⁶ Соловьев А.В. Особенности первоначального этапа расследования легализации доходов, приобретенных преступным путем // "Черные дыры" в Российском Законодательстве. Юридический журнал. 2002. № 4. С. 142-157.

2. Газетдинов Н.И. О законодательной регламентации поводов и оснований для возбуждения уголовного дела // Российский следователь. 2007. № 20. ;
3. Жубрин Р.В. Повышение эффективности уголовно-правовых средств борьбы с легализацией преступных доходов в России // Закон. 2011. № 9. С. 80-85. ;
4. Гасников К.Д. Применение законодательства о противодействии легализации доходов, полученных преступным путем // Журнал российского права. 2007. № 10. С. 51-61. ;
5. Краюшкин А.А. О развитии отечественного уголовного законодательства, направленного на борьбу с легализацией (отмыванием) преступных доходов // Закон и право. 2009. № 11. С. 63-64.;
6. Халиков А.Н. Взаимосвязь следственных ситуаций, версий и планирования при расследовании преступлений // Следователь. 2009. № 9. ;
7. Курбатов А. Противодействие легализации преступных доходов: будет ли создан эффективный правовой механизм? // Хозяйство и право. 2009. № 8. С. 72-78. ;
8. Соловьев А.В. Особенности первоначального этапа расследования легализации доходов, приобретенных преступным путем // "Черные дыры" в Российском Законодательстве. Юридический журнал. 2002. № 4. С. 142-157.