


**QUESTION 1.**

*Has your country signed and ratified the Convention and Palermo protocols?*

Ukraine has signed the Convention of the Council of Europe on countering the human trafficking as of 5/16/2005. The convention is ratified by the Law No. 2530-VI of 9/21/2010.

**QUESTION 2.**

*Does your Country have a special legislation for*  
2.1. identifications  
2.2. despoilment (freezing)  
2.3. confiscations,  
*of the property of criminal organizations? If so, to what extent?*

According to the Article 41 (6) of the Constitution of Ukraine, the confiscation may be conducted exclusively through a court proceeding. Special laws are Criminal Code of Ukraine, the Code of criminal procedure of Ukraine, and international contracts which are ratified by Ukraine.

According to the Articles 111, 184 of the Code of criminal procedure of Ukraine and in case of presence of enough evidences proving that a person or a premise may contain a number of objects or articles of value received in a criminal way, a search may be authorized by the court with the seizure of objects or articles of value. The seizure may be also provided upon the resolution of the criminal investigator (Article 178 of the Code of criminal procedure of Ukraine). In this case, the seizure of the articles of value, objects, and documents is possible under the Article 184 of the Code of criminal procedure of Ukraine.

The detention of correspondence and removal of information from the communication channels us regulated by the Article 187 of the Code of criminal procedure of Ukraine. They may be used to initiate criminal proceedings.

The legislation of Ukraine provides for timely seizure of the articles of value and property of criminal organizations for the confiscation. Everything depends on the efficiency and awareness of the law enforcement bodies.

**QUESTION 3.**

*Has your country established 1 or more departments to identify and seize the income of the organized crime?*

According to the Law about the ratification and under the Article 33 (2) of the Convention, the central bodies of Ukraine, which received the authority under Article 33 (1) of the Convention, are the Ministry of Justice of Ukraine (satisfying judgments) and the General Prosecutor’s Office of Ukraine (legal proceedings during investigation of criminal cases).
According the Law about the ratification and under the Article 46 (13) of the Convention, the Ukraine has declared that the central enforcement authority with the special status for financial the monitoring of Ukraine under the Article 46 of the Convention shall fulfill the functions of the department for financial monitoring.

The department for financial monitoring in Ukraine is the State committee for financial monitoring of Ukraine (Decree of the President of Ukraine No. 1527/2004 of 24.12.2004) “About regulations on the State committee for financial monitoring of Ukraine”. The state committee for financial monitoring of Ukraine is the central enforcement authority with the special status and activity that is coordinated by the Cabinet of Ministers of Ukraine. The state committee for financial monitoring is a special representative enforcement authority in the sphere of financial monitoring.

The State Taxation Service, together with all of the subjects of the national system in the sphere of money-laundering, has established a Uniform state information system in the sphere of prevention and counteraction to the legalization (money-laundering) of incomes and financial support to the terrorism.

For this time, the State Taxation Service is providing the information to the State committee for financial monitoring on the basis of agreement on cooperation. The information is provided upon inquiries and urgently.

QUESTION 4.

4.1. What assets may be subject to despoilment?
- “Incomes” means any economic gain, received or acquired, directly or indirectly, as a result of criminal activity. It may be represented by any type of property;
- “Property” includes any type of property, material or expressed in the form of rights, movable or real estate, legal papers or documents which confirm the right to such property or any part of it;
- “Instruments and means of crime” means any property which is used or can be used in any way, in full or in part, for the realization of criminal activity;

4.2. Which assets are subject to confiscation?
- All listed in the point 4.1.

4.3. Do you need to seize the property to confiscate it?
- It is not necessary to seize the property to have it confiscated.

4.4. What is the despoilment process?
- Despoilment (freezing, arrest, and seizure) is a temporary prohibition of transfer, destruction, transformation, alienation or movement of property or temporary protection or control over the property through a court proceeding or by the decision of the other competent authority.

4.5. What is the confiscation process?
- “Confiscation” is a punishment or a measure defined by the court upon the legal investigation of a crime or crimes which result is final deprivation of property.

4.6. Does the judge participate in the processes defined in the points 4.4 and 4.5?
Seizure of property, search of premises and persons, disclosure of bank secrecy and arrest of bank accounts may be provided only by the decision of the court.
Confiscation may be provided only by the decision of the court.

QUESTION 5.

5.1. Does your country have any current legislation which allows to confiscate the incomes received as a result of criminal activity after the end of criminal procedure?
Special confiscation in Ukraine is a type of procedural decision with regards to the subjects, considered as physical evidences (Article 78 of the Code of criminal procedure of Ukraine) which is applied on the basis of Article 81 of the Code of criminal procedure of Ukraine in relation to the
instruments of crime; money and another articles of value acquired in a criminal way; money and another articles of value considered as objects (subjects) of criminal activity. The abovementioned property is seized from the guilty and may be confiscated in favor of the state, destroyed or returned to its original owners.

**QUESTION 6. Does your country have a special legislation related to electronic transfers?**

According to the Articles 7, 40, 56, and 67 of the Law of Ukraine “About the National bank of Ukraine”, Articles 9, 10, and 12 of the Law of Ukraine “About the payment systems and transfer of money in Ukraine”, for the further regulation improvement of activity related to the creation and turnover of ekash in Ukraine, and for the realisation of monitoring over such activity, the Board of the National bank of Ukraine has approved a new edition of Regulation on the ekash in Ukraine (registered in the Ministry of Justice of Ukraine No. 1336/18631 of 12/24/201) under the resolution No. 481 of 11/4/2010.

The Ukrainian government has adopted the following regulatory legal acts in order to develop a system against money laundering or financial support to the terrorism, and for the establishment of a strategic areas of its activity:

Points 1 and 2 of the law of Ukraine No. 249 of 28.11.02 “About counteraction to legalization (washing up) of the incomes received by a criminal way” provide the definition to the term

“Legalisation (washing up) of incomes” are the actions directed on the concealment and deception of the money and other property of a criminal origin or its ownership, the right to such money or property, sources of origin, location, transfer and acquisition, ownership or use of money or other property, under condition of comprehension by the person that they were the incomes used to legalize the ownership or the use of the other incomes.

- Decision of the Cabinet of ministers of Ukraine No. 315-p of 8/3/2005 “About approval of the concept on counteraction to legalisation (washing up) of the incomes received by a criminal way, and terrorism financing for 2005-2011”
- Decision of the Cabinet of ministers of Ukraine and National Bank of Ukraine No. 736 of 10.08.2005 “About the approval of the list of activities on counteraction to legalisation (washing up) of the incomes received by a criminal way, and terrorism financing for 2005”.

The main task for the introduction of criminal responsibility over the legalisation of incomes of a criminal origin is to prevent the legal (official) economy from receiving shadow capitals of illegal activity as such financial flow may destabilize the national economy, increase the inflationary processes, and misbalance the budget that will worsen the social and economic situation and may even lead to social and economic crisis in the country.

According to the law of Ukraine No. 2341-ІП of 05.04.01 the new Criminal code of Ukraine was introduced from 01.09.01, providing criminal responsibility for the legalization of criminal incomes (Article 209 – For the legalization (washing up) of money and other property of criminal origin). According to the law of Ukraine No. 430-ІУ of 6.01.03 “About the amendments to the Criminal code and Code of criminal procedure of Ukraine” a new edition of the Article 209 of the Criminal code of Ukraine was introduced.

Article 209 is the “Legalization (washing up) of the incomes of criminal origin” provides responsibility for:

Any financial operation or agreement based on the money or other property, received as a result of socially dangerous and illegal activity which preceded the legalization (washing up) of income, as well as taking any other actions directed on the concealment and deception of money and other property of criminal origin or its ownership, sources of its origin, location, and transfer, as well as acquisition, ownership or use of money or other property received as a result of socially dangerous and illegal activity which preceded the legalization (washing up) of income – are punished by imprisonment for the term of three to six years with the deprivation of right to occupy certain posts or undertake certain activity for the term of two years with the confiscation of money
or other property of a criminal origin and property confiscation.

**QUESTION 7.**

7.1. **Is it necessary to have an international authority to regulate the organized crime? Except for Interpol, Eurojust, and Fronteks?**

In my opinion it is necessary to cooperate more actively within the framework of the existing organisations without establishing any new.

7.2. **Could your country be more active in this sphere?**

Ukraine is working actively in this area.

7.3. **Could you as a judge to be more active in this sphere? Do you have enough means of qualification to consider the cases related to the organised crime in the court?**

I, as the judge, have sufficient qualification in this sphere and Ukraine provides for sufficient means to consider the cases related to the organised crime in the court.

I am, just as any other judges of Ukraine, called to fulfil the requirements of laws related to the struggle against the organised crime. However it should be mentioned that the law prohibits the judges to show this or that activity.

**Trustee of the Association of Judges of Ukraine**

**Appellate judge of Zaporozhye region**

Grygoriy Aleinikov