

# BEST PRACTICES OF HANDLING AML/CFT CASES IN COURTS

## Training course for Azerbaijani judges OSCE Office in Baku

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# 1. Introduction

- ▶ LAW IN BOOKS: What is money laundering and financing of terrorism?
  - ▶ UN Conventions
    - ▶ Vienna Convention 1988 (drug trafficking)
    - ▶ Palermo Convention 2001 (organized crime, money laundering and corruption)
    - ▶ Terrorist Financing Convention 1999
  - ▶ Council of Europe Conventions
    - ▶ Warsaw Convention 2005 (Money Laundering and Financing of Terrorism)
    - ▶ Strasbourg Convention 1990 (Money Laundering)

# 1. Introduction

- ▶ LAW IN BOOKS: What is money laundering and financing of terrorism?
  - ▶ Law of the Republic of Azerbaijan
    - ▶ Criminal Code, amended 21 March 2010
    - ▶ AML/CFT Law, amended 5 March 2010
    - ▶ Law on Combating Terrorism, amended 21 March 2010

# 1. Introduction

- ▶ LAW IN ACTION: How does the law work in practice?
  - ▶ The FATF Recommendations 2012
  - ▶ MONEYVAL Progress Report on Azerbaijan 2011
  - ▶ Case Studies from Germany
  - ▶ Concluding remarks of problems solved and remaining

## 2. Vienna Convention 1988

- ▶ Drug trafficking
- ▶ Wide obligation to enact offences and sanctions
- ▶ Both for drug trafficking and for money laundering connected to it
- ▶ Inference and evidence of the mental element
- ▶ Wide definition of confiscation

# 3. Palermo Convention 2001

- ▶ Participation in an organized criminal group
- ▶ Money laundering
- ▶ Corruption
- ▶ Corporate criminal liability

# 4. Terrorist Financing Convention 1999

- ▶ Preparation to a terrorist crime
- ▶ Corporate criminal liability

# 5. Warsaw Convention 2005

- ▶ Money laundering
- ▶ Mandatory confiscation in several cases
- ▶ Prosecution of predicate offence not necessary
- ▶ Jurisdiction to predicate offence not necessary
- ▶ Corporate criminal liability



# 6. Criminal Code of AZ

- ▶ Temporal application to temporary targeted financial sanctions (Art. 10)
- ▶ Territoriality principle (Art. 11)
- ▶ Personality principle (Art. 12)
  - ▶ Money laundering when the predicate crime abroad by a foreign citizen?
- ▶ Extradite or convict (Art. 13)
- ▶ Intentionality (Art. 25)
  - ▶ Concept and type of evidence (Code of Criminal Procedure Art. 124.1.2)
- ▶ Negligence (Art. 26)

# 6. Criminal Code of AZ

- ▶ Preparation for a crime (Art. 27–28)
- ▶ Attempt to a crime (Art. 29)
- ▶ Kinds of accomplice and complicity (Art. 31–33)
- ▶ Criminal organization and conspiracy? (Art. 34)
  - ▶ Agreement to commit basic money laundering by others not involved in criminal organization?

# 7. Money laundering (Art. 193–1)

- ▶ Money and other illicit property
- ▶ “All crimes” approach
- ▶ “Property” and other definitions
  - ▶ AML/CFT Law (Art. 1.0)
  - ▶ Law on Combating Terrorism (Art. 1)
- ▶ “Possession” etc. of “large” amounts (Art. 194)?
- ▶ Two investigations simultaneously, both predicate offence and ML?
- ▶ Absence of conviction of predicate offence no obstacle to ML conviction

# 8. Terrorist financing (Art. 214-1)

- ▶ Individuals and organizations
- ▶ The funds do not actually have to be used to carry out a terrorist act
- ▶ Corporate criminal liability

# 9. FATF Recommendations 2012

- ▶ AML/CFT policies and coordination
- ▶ Money laundering and confiscation
- ▶ Terrorist financing and financing of proliferation
- ▶ Preventive measures
- ▶ Transparency and beneficial ownership of legal persons and arrangements
- ▶ Powers and responsibilities of competent authorities and other institutional measures
- ▶ International cooperation

# 9. FATF Recommendations 2012

- ▶ Rec. 3: Countries should
  - ▶ Criminalize money laundering on the basis of the Vienna Convention and the Palermo Convention
  - ▶ Apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences
  - ▶ Derive intentionality from factual circumstances
  - ▶ Apply corporate criminal liability

# 9. FATF Recommendations 2012

- ▶ Rec. 4: Countries should
  - ▶ Confiscate on the basis of the Vienna Convention, the Palermo Convention and the Terrorist Financing Convention
  - ▶ Property laundered
  - ▶ Proceeds from laundering
  - ▶ All kinds of financing of terrorism
  - ▶ If missing, property of corresponding value
  - ▶ Non-conviction based confiscation
  - ▶ Burden of proof to the offender?

# 9. FATF Recommendations 2012

- ▶ Rec. 5: Countries should
  - ▶ Criminalize terrorism financing on the basis of the Terrorist Financing Convention
  - ▶ Acts, organizations and individuals
  - ▶ Even without a link to a specific terrorist act



# 10. MONEYVAL Progress Report 2012

- ▶ The predicative offences of money laundering
- ▶ Complicity and conspiracy to money laundering
- ▶ Predicate offence abroad
- ▶ Absence of a conviction in the predicate offence
- ▶ Coverage of terrorism financing
- ▶ The need to create jurisprudence

# 11. GERMAN AML/CFT CASES

- ▶ 2 StR 225/05: Money laundering of ransom money
  - ▶ Accomplice and complicity
  - ▶ Criminal organization and conspiracy
  - ▶ Transactions as separate acts or as a combination of activity?
  - ▶ The responsibility of the Court to clarify the case
  - ▶ Laundering one's own illicit funds

# 11. GERMAN AML/CFT CASES

- ▶ 2 StR 146/03: Heroin trafficking and money laundering Turkey – The Netherlands – Germany
  - ▶ Accomplice and complicity
  - ▶ Criminal organization and conspiracy
  - ▶ Objective evidence of the mental element
  - ▶ Confiscation to legal persons abroad
  - ▶ Burden of proof of confiscation
  - ▶ Proving property is the proceeds of a crime
  - ▶ Conviction on predicate crime
  - ▶ Extraterritorially committed predicate offences

# 11. GERMAN AML/CFT CASES

- ▶ 2 StR 513/03: Advocate laundering money in his lawyer's remuneration
  - ▶ Interpretation of Criminal Code definitions in conjunction with the Conventions behind them
  - ▶ Teleological interpretation
  - ▶ Relationship with ECHR Art. 6
  - ▶ Freedom of practice of profession
  - ▶ The right to defense counsel
  - ▶ Trust relationship between the client and the defense

# 11. GERMAN AML/CFT CASES

- ▶ 3 StR 552/08: Insurance frauds to finance Al Qaeda
  - ▶ Surveillance methods of the suspects
  - ▶ Nullum crimen sine lege and the determination of terrorist organizations
  - ▶ Member, supporter or financier
  - ▶ Attempted fraud or completed fraud
  - ▶ Uncompleted and not even started terrorist offences

# 12. CONCLUDING REMARKS: AML

- ▶ Proving property is the proceeds of crime
- ▶ The scope of predicate offences
- ▶ Extraterritorially committed predicate offences
- ▶ Laundering one's own illicit funds
- ▶ Ancillary offences
- ▶ Exceptions to the principle of double criminality
- ▶ Liability of natural persons and corporate criminal liability
- ▶ Inference and evidence of the mental element

# 13. CONCLUDING REMARKS: CFT

- ▶ Criminalization
  - ▶ Significant values only?
  - ▶ Uncompleted or not even started terrorist offences
  - ▶ “Terrorist organization”
  - ▶ “Support”
- ▶ Jurisdiction for terrorist financing offence
- ▶ The mental element
- ▶ Corporate criminal liability



**Təşəkkür edirik!**  
**Thank you!**