

## INFORMATION of the

### General Prosecutor's Office on the negative impact of the non-repatriation of funds of illicit origin on the enjoyment of human rights

**Question 1.** In the process of non-return of unlawfully obtained funds to the countries of origin, several problems are observed at various stages. For instance, during the initial stages of preliminary investigation, individuals accused of committing crimes (such as corruption, narcotics, human trafficking, etc.) or their family members and relatives are found to have substantial amounts of money in bank accounts in foreign countries' territories or significant assets acquired in their names. Challenges arise in the execution of international mandates related to freezing or seizing substantial amounts of money and assets on the pretext of these individuals committing crimes.

To place a lien or freeze state property, money, or assets allegedly obtained through criminal activities, numerous pieces of evidence are required, proving that the accused acquired the property into their unlawfully obtained funds account. Alternatively, excuses related to distant relationships are used to refrain from imposing a lien or freezing assets and money. It should be noted that the information requested during the initial stages of the investigation is preliminary and, in some cases, may not provide sufficient or complete evidence of the property being acquired through criminal means into the account of unlawfully obtained funds. Establishing all aspects of the predicate crime or determining all crimes committed by the accused individual may not be possible.

Failure to place a lien or freeze assets and money within a short period can lead to the self-alienation or destruction of these assets and properties. In some cases, additional documents related to the criminal acquisition of funds are required even if there is a ruling on the return of the requested property or money to the country of origin. Delays occur intentionally regarding the return of these funds and assets to the country of origin, after confiscating them, by requiring additional documentation proving that the funds were obtained through criminal means and by confiscating the assets and money.

**Question 2.** The Republic of Azerbaijan's Financial Monitoring Service collaborates with mutual efforts to determine and track illegally obtained funds and investigate suspicious transactions conducted during all transfers. Cooperation is carried out within the framework of mutual collaboration with law enforcement agencies during operations, enabling the identification of such funds. Subsequently, compliance with the legal requirements of both local and foreign states is ensured by placing liens or freezing assets and funds for the purpose of preventing their disposal or destruction during the investigative period.

In some cases, significant challenges arise in the execution of international mandates related to freezing substantial amounts of money and assets in bank accounts in foreign countries' territories, allegedly owned by individuals accused of committing crimes (such as corruption, narcotics, human trafficking, etc.) or their family members and relatives. Numerous pieces of evidence are required to prove that the accused obtained the property into their unlawfully obtained funds account or, alternatively, excuses related to distant relationships are used to refrain from imposing a lien or freezing assets and funds.

It is believed that, within the framework of international legal norms, it is essential to ensure the timely imposition of liens or freezing of assets and funds that are subject to investigation, even for a short period, during investigations related to criminal activities. Furthermore, in certain cases, additional documents related to the criminal acquisition of funds are required, even if there is a ruling on the return of the requested property or money to the country of origin. Delays occur intentionally regarding the return of these funds and assets to the country of origin, after confiscating them, by requiring additional documentation proving that the funds were obtained through criminal means.

It is noteworthy that, to address the issues arising from the relevance of this matter, the Special Seizure Management Department of the Prosecutor General's Office has been established with the aim of resolving problems and facilitating cooperation. The department has implemented the "Twinning" project in collaboration with the Special Investigation Service of the Republic of Lithuania, a selected partner institution, to study advanced international practices in the field of property recovery and management. Currently, the execution of this project continues successfully in line with the objectives of the National Action Plan.

**Question 3.** The non-return of funds to the countries of origin, as well as the mandatory transfer of funds to the account of the appointed bank of the Republic of Azerbaijan in accordance with national legislation, failure to transfer funds for the designated purpose, non-payment of specified bank interests, and the non-payment of legally stipulated taxes hamper transparency in the respective field, impede the improvement of people's living standards, hinder the provision of social welfare, prevent the optimal fulfillment of people's social demands by the state, and disrupt the proper allocation of funds designated for these purposes. These actions cast a shadow on the activities of the relevant authorities operating in the respective field, as well as harm the legally protected interests of citizens.

**Question 4.** In the legal practice, one of the main problems faced by the countries conducting inquiries and the countries being inquired is the failure to provide timely and appropriate responses to international mandates. Additionally, international inquiries sent to some countries are often inadequately addressed or left unanswered altogether. Moreover, instances are frequently encountered where baseless refusals (without comprehensive explanations) to execute inquiries sent to certain countries occur.

Furthermore, in practice, discrepancies arise in determining the non-receipt of foreign currency funds to be returned for consignments exported via customs declaration in the export customs procedure by "A" companies. These discrepancies pertain to the identification of whether the contracted foreign companies received the funds, the manner in which funds were disbursed (with no transactions found in the client bank accounts), and the formalities of registered companies and officials in the inquired countries (with challenges arising in obtaining actual officials and bank information).

**Question 5.** The control over the movement of funds within the territory of the Republic of Azerbaijan is regulated by the "Law on Currency Regulation" of the Republic of Azerbaijan. The institution responsible for implementing the legal powers in preventing the legalization of funds obtained through criminal activities, including terrorism financing, and confiscating assets acquired through criminal means, is the Financial Monitoring Service of the Republic of Azerbaijan (FMS). The FMS operates as an independent structural unit alongside the Central Bank of Azerbaijan, established by the Presidential Decree No. 66 dated February 23, 2009. On February 3, 2016, a new entity, the Chamber of Supervision

of Financial Markets, was created, and the Financial Monitoring Service was incorporated into it, functioning as the financial monitoring body. In accordance with the Presidential Decree No. 95 dated May 25, 2018, the creation of a coordination mechanism to enhance the potential of state institutions in combating the legalization of funds obtained through criminal activities and terrorism financing, ensuring effective coordination among them, improving the efficiency of collaboration and information exchange systems, and expanding international cooperation led to the establishment of the Financial Monitoring Service as a public legal entity.

It is essential to note that the Financial Monitoring Service is tasked not only with monitoring funds obtained through corruption but also with tracking funds acquired through other criminal activities such as narcotics, human trafficking, and other offenses. When necessary, the Service can issue orders to halt transfer operations for up to 72 hours and provide relevant information to the respective law enforcement agencies.

**Question 6.** In the territory of the Republic of Azerbaijan, mechanisms for the utilization of properties seized or unclaimed, as regulated by several legislative acts, have been established. Examples include the Cabinet of Ministers of the Republic of Azerbaijan's Decision dated April 18, 2022, on "Approval of the Charter on the Inventory, Valuation, Storage, Use, and Sale of Seized, Unclaimed, and Inherited Properties Transferred to State Ownership Based on Inheritance Rights," and the Rules on "Special Seized Properties Transferred to State Ownership," approved by the Decision of the same institution dated December 30, 2020.

These documents outline the rules for transferring special seized properties to state ownership, detailing the relevant stages of the existing procedure, tasks to be carried out by respective state authorities in this field (such as the Prosecutor General's Office, Ministry of Internal Affairs, State Security Service, Ministry of Finance, State Committee for Work with Religious Organizations, State Service for Property Issues under the Ministry of Economy, courts, etc.), and other necessary mechanisms, reflecting the applicable standards and procedures.