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THE OBJECT OF THE CRIME OF FAILURE TO REPATRIATE FOREIGN CURRENCY FUNDS IN THE REPUBLIC OF AZERBAIJAN

Açar sözlər: *valyuta tənzimi, cinayətin obyekti, xarici valyuta vəsaitləri, repatriasiya, iqtisadi fəaliyyət, müvəkkil bank.*

Ключевые слова: *валютное регулирование, объект преступления, иностранные валютные средства, репатриация, экономическая деятельность, уполномоченный банк.*

Keywords: *currency regulation, object of the crime, foreign currency funds, repatriation, economic activity, authorized bank.*

According to the theory of criminal law, for an act to be recognized as a crime, in addition to possessing social danger, unlawfulness, guilt, and punishability, all elements of the corpus delicti – namely the object, the objective aspect, the subject, and the subjective aspect – must be fully present in that act.

The object of a crime makes it possible to distinguish crimes from other unlawful acts that do not have a criminal-law nature [9]. As a fundamental element of the corpus delicti, it refers to the socially significant values, interests, and assets protected by criminal law that the crime is directed against and to which harm is caused, or in respect of which a real threat of such harm is created [1, p.22]. F. Samandarov notes that the object of a crime is the social relations protected by the norms of criminal law against criminal encroachments [5, p.135].

As social relations evolve, the scope of values, interests, and benefits protected by criminal law norms also changes. Therefore, with changes in the economic, socio-political, and socio-cultural environment, their list and content likewise undergo transformation [1, p.34].

It should also be noted that in criminal law the concepts of the object and the subject matter (object of material encroachment) of a crime sometimes cause confusion. However, these concepts should not be equated with one another. Thus, the object (from the Latin objectum) is understood as “that which is set before or directed toward. The subject matter of the crime (from the Latin praedicamentum), by contrast, means “that which is defined or distinguished” and constitutes a more precise and concretized part within the object. In other words, the object is general, while the subject represents a specific aspect within that object.

At the same time, the object may be explained as the sphere toward which an activity, cognition, or relationship is directed. According to a group of scholars, the object is the phenomenon, item, or relationship toward which a person’s or subject's attention is directed. From a legal perspective, while the subject matter of a crime (object of material encroachment) expresses the material or non-material (intangible) values directly targeted by the criminal act (for example, money, property, documents, etc.), the object of a crime is considered to be the social relations affected by the criminal act.

Pursuant to Article 208 of the Criminal Code of the Republic of Azerbaijan, criminal liability is provided for the act of failing to repatriate, from abroad, a significant amount of foreign currency funds obtained as a result of foreign economic activity that, in accordance with the legislation of the Republic of Azerbaijan, must be mandatorily transferred to the account of an authorized bank of the Republic of Azerbaijan [2]. In the Commentary on the Criminal Code of the Republic of Azerbaijan, the object of this crime is identified as "social relations arising in connection with the state's activities in the field of currency regulation and currency control", while the subject of the crime is specified as "foreign currency" [3, p.147-148].

"Foreign currency refers to monetary instruments in the form of banknotes, treasury notes, and coins that are in circulation and recognized as legal tender within the territory of the relevant foreign state or group of states, as well as those withdrawn or being withdrawn from circulation but exchangeable within that territory for monetary instruments in circulation, and funds held in accounts denominated in the monetary units of foreign states or in international monetary or settlement units" [4]. Foreign currency also performs the function of a universal measure of value that facilitates trade, financial, and investment operations among participants in global economic relations.

Currency regulation is a system of state supervision and management over currency circulation, currency transactions, the foreign exchange market, and currency relations related to foreign economic activity. In other words, it represents a complex of legal, administrative, and economic measures implemented by the state to protect its economic sovereignty, regulate foreign exchange reserves, and ensure economic stability. One of the authoritative experts in this field, I. V. Khamenyushko, has explained currency regulation in both a broad and a narrow sense. In the broad sense, currency regulation constitutes currency policy related to the implementation of the state's economic and legal measures through certain mechanisms; in the narrow sense, currency regulation is a system of currency restrictions and a special legal regime for control [8].

The main objectives of currency regulation are to preserve the stability of the national currency, ensure the effective management of the state's foreign exchange reserves, exercise control over foreign trade and investment flows, reduce risks in the foreign exchange market, ensure the transparency of financial flows, and combat the shadow economy and money laundering. From this perspective, the object of the crime of failing to repatriate foreign currency funds from abroad, as provided for in Article 208 of the Criminal Code, is considered to be the social relations that are harmed as a result of the violation of this regulatory system.

The multi-level classification of the objects of crime – namely, the distinction between the general, generic, specific, and direct objects – is of significant importance for determining the legal nature of a specific corpus delicti and the degree of its social danger. This approach makes it possible to accurately identify which system of social relations is harmed by each type of crime.

In this context, the hierarchy of objects of the crime of failing to repatriate foreign currency funds from abroad (Article 208 of the Criminal Code of the Republic of Azerbaijan) may be analyzed as follows.

The general object of a crime consists of specific social relations protected by criminal law. The general object of a crime forms a comprehensive understanding of socially significant values, interests, and benefits that modern society and the state consider important, damage to which, or the possibility of such damage, gives rise to criminal liability [1, p.53-54]. Article 2 of the Criminal Code of the Republic of Azerbaijan generally defines the general objects of crimes. These objects include the peace and security of humanity, the rights and freedoms of individuals and citizens, property, relations in the field of economic activity, public order and public safety, the environment, as well as the constitutional system of the Republic of Azerbaijan [2]. In the context of the general objects specified in Article 2 of the Criminal Code of the Republic of Azerbaijan, the crime of "failure to repatriate foreign currency funds from abroad," as provided for in Article 208, also falls within the category of crimes directed at social relations in the field of the state's economic activity. This crime harms both the stability of the state's currency regulation and control system and the protection of economic security and financial discipline, thereby violating economic activity and the related social relations, which constitute one of the general objects listed in Article 2 of the Criminal Code of the Republic of Azerbaijan [2].

The generic object of a crime encompasses socially significant values, interests, and benefits that are of the same socio-political or economic nature and, for this reason, are interconnected and must be protected as a unified complex by the norms of criminal law [1, p. 54]. From this perspective, the crime of failing to repatriate foreign currency funds from abroad, as provided for in Article 208 of the Criminal Code of the Republic of Azerbaijan, belongs to the generic object that protects social relations in the field of economic activity. This crime is part of a series of legal violations directed at economic stability, currency regulation, and the financial interests of the state. Thus, this type of crime targets the system of values protected by criminal law norms that ensure the protection of economic security and financial discipline.

The specific object of a crime represents the totality of social relations within the generic object, with the interests and benefits of the participants in these relations being safeguarded [5, p.143]. Thus, the crimes stipulated in a particular section of the Criminal Code of the Republic of Azerbaijan encompass acts targeting objects of the same nature, that is, generic objects. When the crime is committed, the specific object is the social relations related to the state's economic activity, financial stability, currency control mechanisms, and the regulation of the foreign trade regime. These relations constitute essential mechanisms for ensuring the state's economic security, financial stability, and currency regulation policy. For this reason, the crime of failing to repatriate foreign currency funds from abroad functions as a socially dangerous act directed against the normal operation of these mechanisms and carries the risk of violating financial discipline within the system of the state's economic interests.

The direct (immediate) object of a crime is the specific socially significant value, interest, or asset that suffers harm as a result of the commission of the crime or faces the real threat of harm [1, p.60]. From this perspective, in the crime of failing to repatriate foreign currency funds from abroad, as provided for in Article 208 of the Criminal Code of the Republic of Azerbaijan, the direct object consists of the social relations in the field of the state's currency regulation and currency control. These relations hold strategic importance for maintaining the country's financial stability, economic security, and balance in the foreign exchange market. This crime directly undermines the state's currency circulation and the management of financial resources by failing to return foreign-earned currency funds to the country.

According to O. Kubantseva, the direct object of the crime is the regulated relations established for the fulfillment of the obligation of residents to repatriate funds obtained from foreign trade activities [7, p.84]. Examining Kubantseva's position, it becomes clear that she considers the direct object of the crime in the context of economic relations, more specifically, as the normatively regulated relations concerning the fulfillment of the obligation to repatriate funds obtained through foreign trade activities. According to the author, this approach is aimed at protecting the integrity of the state's currency control system and ensuring financial security.

The analysis of this approach shows that the author's position reflects a synthesis of normative-legal and economic-functional perspectives. The violation of the repatriation obligation affects not only individual entrepreneurial interests but also the financial stability of the state. In this sense, Kubantseva links the legal nature of the object to the character of the damage arising in social relations, highlighting the socio-economic aspect of the corpus delicti. Consequently, this position can be regarded as a scientific approach that justifies the criminal-legal significance of protecting the legal regime of foreign currency operations. Thus, in the crime of failing to repatriate foreign currency funds from abroad, the direct object can be considered the economic interests of the state within the framework of its currency control regime.

According to Article 13 of the Law "On Currency Regulation," the Central Bank of the Republic of Azerbaijan is established as the main body responsible for implementing currency regulation in the Republic of Azerbaijan [6]. Thus, the Central Bank is the primary institutional body responsible for implementing currency policy, exercising currency control, and maintaining the stability of the country's foreign exchange balance. For this reason, the failure to repatriate foreign currency funds to the country in accordance with the law hinders the execution of the Central Bank's functions in currency regulation, disrupts the state's currency control mechanism, and, consequently, harms social relations aimed at ensuring economic security. In other words, the act provided for in Article 208 of the Criminal Code constitutes an unlawful behavior directed against the effectiveness of the currency management system established by the Law "On Currency Regulation" and the implementation of the Central Bank's powers as defined by law.

In practice, in some cases, the crime of failing to repatriate foreign currency funds from abroad is not limited to the main corpus delicti; other illegal actions may also occur. Such cases are usually accompanied by the use of forged documents, corruption, abuse of official powers, and similar acts during the commission of the crime. In these situations, additional or secondary objects of the crime emerge. These additional objects may include social relations that ensure the normal functioning of the state's tax system, public administration, financial oversight, and other economic regulatory institutions. These relations play a crucial functional role in safeguarding the state's financial discipline, budgetary policy, and overall economic stability.

Conclusion

The analysis shows that the crime of failing to repatriate foreign currency funds from abroad (Article 208 of the Criminal Code of the Republic of Azerbaijan) carries a multi-component social danger from legal, economic, and institutional perspectives. According to the theory of criminal law, one of the key elements defining the essence of any crime is its object, and the proper determination of this object is a fundamental condition for both legal qualification and the scientific explanation of the corpus delicti. The object of the mentioned crime has a multi-level structure, and each level of this structure - the general, generic, specific, and direct object - is aimed at protecting a particular system of social relations.

Moreover, the legal assessment of the problem of failing to repatriate foreign currency funds is not limited to national criminal law; it is also relevant in the context of international economic law and financial security. In this regard, the study demonstrates that the analysis of the object of the crime should take into account the state's economic sovereignty and its capacity to participate in international currency relations. Such an approach broadens the scope of the criminal-legal protection and allows for a more comprehensive assessment of the social danger of the crime.

The main point that defines the scientific novelty of this research is that the analysis of the object of this crime is carried out not only from the material aspect (the illegal movement of foreign currency funds) but also in terms of institutional and systemic relations. In other words, the corpus delicti here is not limited to harm to economic values but also carries the risk of damage directed at the state's economic management mechanisms, the effectiveness of currency policy, and the regulatory functions of the Central Bank.

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Qüdrətli Günay Əlibaba qızı,
Milli Aviasiya Akademiyasının "Cinayət hüququ və kriminologiya;
cəza-icra hüququ" ixtisası üzrə doktorantı

AZƏRBAYCAN RESPUBLİKASINDA XARİCİ VALYUTA VƏSAİTLƏRİNİ XARİCDƏN QAYTARMAMA CİNAYƏTİNİN OBYEKTİ

XÜLASƏ

Qloballaşan iqtisadi münasibətlər şəraitində xarici valyuta vəsaitlərinin dövriyyəsi və onların ölkəyə qaytarılması dövlətin maliyyə təhlükəsizliyinin mühüm təminat vasitələrindən biridir. Ölkəyə qaytarılmayan xarici valyuta vəsaitləri dövlətin iqtisadi maraqlarına zidd olduğu və maliyyə sisteminə qarşı təhlükə törətdiyi üçün iqtisadi sabitliyin pozulmasına səbəb olmaqla cinayət hüququ mövqeyindən ictimai təhlükəli əməl kimi qiymətləndirilir. Bu baxımdan onun obyektinin düzgün müəyyənləşdirilməsi hüquqi nəzəriyyə və məhkəmə təcrübəsi prizmasında mühüm əhəmiyyət kəsb edir.

Tədqiqatda alimlərin cinayətin obyektinə dair müxtəlif yanaşmaları və mövcud konsepsiyalar təhlil edilərək bu istiqamətdə mövcud nəzəri baxışların ümumiləşdirilməsi və cinayət hüququnda qeyd edilən cinayətin obyekti kateqoriyasının mahiyyətinin düzgün müəyyənləşdirilməsinə xidmət edən nəticələr əldə edilmişdir. Eyni zamanda obyekt həm iqtisadi, həm də hüquqi aspektdə qiymətləndirilmiş, cinayətin ictimai təhlükəliliyi iqtisadi sabitlik, valyuta tənzimi, valyuta nəzarəti sahəsində fəaliyyət kimi müxtəlif prizmalardan təhlil olunmuşdur.

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ОБЪЕКТ ПРЕСТУПЛЕНИЯ НЕВОЗВРАТА ИНОСТРАННЫХ ВАЛЮТНЫХ СРЕДСТВ ИЗ-ЗА РУБЕЖА В АЗЕРБАЙДЖАНСКОЙ РЕСПУБЛИКЕ

РЕЗЮМЕ

В условиях глобализации экономических отношений оборот иностранных валютных средств и их возврат в страну являются одним из важных средств обеспечения финансовой безопасности государства. Иностранные валютные средства, не возвращённые в страну, противоречат экономическим интересам государства и создают угрозу финансовой системе, в связи с чем с точки зрения уголовного права рассматриваются как общественно опасное деяние, способное привести к нарушению экономической стабильности. В этом контексте правильное определение объекта данного преступления имеет важное значение как в правовой теории, так и в судебной практике.

В исследовании проанализированы различные подходы учёных и существующие концепции относительно объекта преступления, обобщены имеющиеся теоретические взгляды и получены выводы, направленные на корректное определение сущности категории объекта данного преступления в уголовном праве. Одновременно объект оценён как в экономическом, так и в правовом аспекте, а общественная опасность преступления проанализирована с различных позиций, таких как экономическая стабильность, валютное регулирование и деятельность в сфере валютного контроля.

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