

# Features of implementation of international norms on financing of terrorism in Azerbaijan

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## **Abstract**

*The contribution is devoted to the description of features of national implementation of treaty obligations of Azerbaijan according to the UN Convention for the Suppression of the Financing Terrorism. The basis of research is presented by the Law of the Republic of Azerbaijan "On the Prevention of the Legalization of Criminally Obtained Funds or Other Property and the Financing of Terrorism". The author pays attention to the next aspects: 1) differences between approaches of national legislation and treaty obligations; 2) modern challenges that might have impact on the efficiency of implementation of international norms on suppression of the financing of terrorism.*

**Keywords:** Azerbaijan, implementation, treaty obligations, counteraction to criminality, financing of terrorism.

**JEL Classification:** K14, K33

## **1. Introduction**

Important stage in the development of the domestic mechanism to combat the financing of terrorism was the adoption of the Law of the Republic of Azerbaijan No. 767-IIIQ of 10.02.2009 on countering the legalization of money or other property obtained through criminal means and the financing of terrorism (hereinafter - the Law of Azerbaijan on financing of terrorism)<sup>2</sup>. Its provisions helped improve the legal, institutional and organizational framework for countering money laundering and financing of terrorism. In this context, it is advisable to characterize its provisions in the context of compliance at the domestic level with the requirements of Azerbaijan's obligations under the UN Convention against the Financing of Terrorism of 09.12.1999<sup>3</sup>.

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<sup>2</sup> О противодействии легализации денежных средств или другого имущества, полученного преступным путём, и финансированию терроризма: Закон Азербайджанской Республики № 767-IIIQ от 10.02.2009 г (On Counteracting the Legalization of Monetary Funds or Other Illegally Grown Property and the Financing of Terrorism: Law of the Republic of Azerbaijan No. 767-IIIQ of February 10, 2009). The document is available online at: [http://base.spinform.ru/show\\_doc.fwx?rgn=24\\_582](http://base.spinform.ru/show_doc.fwx?rgn=24_582), consulted on 1.09.2018.

<sup>3</sup> Международная конвенция о борьбе с финансированием терроризма: Рез. 54/109 ГА ООН от 09.12.1999 г (International Convention for the Suppression of the Financing of Terrorism: Res. 54/109 UN GA dated 09.12.1999). The document is available online at: [http://www.un.org/ru/documents/decl\\_conv/conventions/terfin.shtml](http://www.un.org/ru/documents/decl_conv/conventions/terfin.shtml), consulted on 1.09.2018.

Analysis of existing works indicates that at the present stage there is a lack of relevant scientific developments devoted to the peculiarities of Azerbaijan's implementation of international legal norms on combating the financing of terrorism in the context of the dynamics of regulatory development at the national legal level and the improvement of international legal cooperation in the proper sphere. In various aspects, the corresponding problems were reflected in the works of A.N. Abbasbeyli, N.O. Aliev, A.D. Guliyev, R.M. Sevdimaliev, but the results of their research require actualization taking into account the modern evolution of the international legal mechanism for countering the financing of terrorism and the changing nature of the challenges facing the world community.

The purpose of the study is to characterize the specific features of Azerbaijan's implementation of the obligations stipulated by the UN Convention on Combating the Financing of Terrorism of 09.12.1999.

## 2. Statement of the main material

Taking into account the key importance of the Law of Azerbaijan on the financing of terrorism in ensuring the effectiveness of the domestic mechanism to combat crime in the financial sphere and the proper implementation of treaty obligations under the UN Convention on the Suppression of the Financing of Terrorism, one can't help paying attention to certain features in the approach of the legislator of Azerbaijan when formulating appropriate legislative provisions:

**The content of the concept of "*financing of terrorism*".** According to the paragraph 1.0.4 of paragraph 1.0 of Article 1 of the Law of Azerbaijan, on the Financing of Terrorism it means "deliberate collection or transfer, directly or indirectly, of all or part of money or other property, regardless of the source of its receipt, knowing that they will be used to finance the preparation, organization or commission of a person or group (gang, organization) of the acts provided for in articles 102, 214, 214-2, 214-3, 215, 219, 219-1, 226, 227, 277, 278, 279, 280, 282 and 283-1 of the Criminal Code of the Republic of Azerbaijan, or to provide the person with the aim of committing the said press upleny or created for this purpose groups (gangs, organizations)".

In comparison with the approach of the developers of the United Nations Convention on the Suppression of the Financing of Terrorism with regard to the content of the term "financing of terrorism", it is possible to single out such peculiarities of the approach of the legislator of Azerbaijan:

a) The developers of the relevant UN Convention have clearly indicated that the deliberate provision of funds or their provision, with the intention or awareness of the unlawful purposes for which they are used, should be punishable only when such actions are carried out unlawfully (paragraph 1 page 2). At the same time, there is no such indication in the Law of Azerbaijan on the Financing of Terrorism, which gives grounds for assuming a broader scope of paragraph 1.0.4, p.e 1.0, Article 1, since in the absence of an appropriate indication it is implied that the financing of terrorism can be carried out both illegally and lawfully.

Such an expansion of the scope of the concept of "financing of terrorism" can be seen as a reflection of current trends in the practice of financing terrorism. For example, in paragraph 22 of UNSCR 2199 (2015), UN member states are called upon to "take immediate steps to fulfill ... the obligation" to prevent and suppress the support of IGIL, FAN and a number of other terrorist organizations "by increasing vigilance in the context of the functioning of the international financial system and on the basis of work with their non-profit and charitable organizations";

b) The approach of the legislator of Azerbaijan when formulating the definition of "financing of terrorism" involves the use of the concept of "money or other property", through which the provision of terrorist activities is carried out. By this concept, according to paragraph 1.0.1 paragraph 1.0 Article 1 means "money, movable or immovable, tangible or intangible property, legal documents that confirm ownership rights."

First of all, it is necessary to point out that in paragraphs 1.0.1 paragraph 1.0 Article 1 of the Law of Azerbaijan on the Financing of Terrorism deals with money or other property obtained by criminal means. At the same time, the notion of "financing of terrorism", as outlined in paragraph 1.0.4 paragraph 1.0 Article 1, indicates the punish ability of the relevant operations when conducting them not only with money and other property obtained by criminal means, but also with the same resources, but obtained in a lawful way. This is confirmed by the use of the phrase "irrespective of the source ... of the receipt." At the same time, in the Law of Azerbaijan on the Financing of Terrorism, the corresponding feature has not been reflected, since only the notion of "money or other property obtained by criminal means" is disclosed;

c) in Section 1, Article 1 of the UN Convention on the Suppression of the Financing of Terrorism, the content of the notion of "means" is disclosed, which is used in the context of the definition of the concept of "financing of terrorism", as well as measures to counteract the corresponding negative phenomenon (for example, Article 8, paragraph 1). It should be noted the unity of the terminology used. At the same time, the Azerbaijani legislator in this case refers to the use of terms that are close in content, but not completely identical. For example, in paragraphs 1.0.4 paragraph 1 of the Law of Azerbaijan on the financing of terrorism uses the concept of "cash or other property," in paragraphs 1.0.15 paragraph 1 - "assets", and the legislator has fixed a separate interpretation for each of them.

**The content of the term "beneficiary".** Article 9 of the Law of Azerbaijan on the Financing of Terrorism imposes on the financial institutions and a number of other persons the obligation to identify their clients and beneficiaries. Under the beneficiary according to paragraph 1.0.12 paragraph 1 means "a natural or legal person acquiring economic or any other benefit in the final result of transactions with cash or other property, as well as the real owner of the legal entity in whose favor the transactions are being carried out, or an individual exercising control over the client."

This approach is significantly different from the approach of the developers of the UN Convention on Combating the Financing of Terrorism and the Forty Recommendations of the FATF. So, in the first case in paragraphs "B" of item 1 of Article 18 of the relevant Convention, States Parties undertake, firstly, to adopt rules prohibiting "the opening of accounts whose owners or beneficiaries are not identified or can't be identified and measures to ensure that such institutions verify the identity of the present participants in such operations" and, secondly, impose on financial institutions the requirement to take, if necessary, "measures to verify the legal status and structure of the client by obtaining - from the state registration authority, the client or from both - proof of the client's registration as a legal entity, including data on the name of the client, its legal form, address, leaders and regulations governing the authority to assume obligations on behalf of this legal entity. "As we see, in this case, two key concepts are used: the "beneficiary" and the "leaders" of the client. However, the content of these concepts is not disclosed in the above-mentioned UN Convention. At the same time, it is obvious that, within the meaning of the treaty provisions, the beneficiaries are those who are the beneficiaries of certain accounts. In this context, the question arises as to how justified is the inclusion in the concept of "beneficiary" under paragraph 1.0.12 paragraph 1 of the Law of Azerbaijan on the Financing of Terrorism, not only beneficiaries, but also owners of the legal entity in whose favor transactions are carried out, or individuals exercising control over the client.

Considerable assistance in this context can be provided by the provisions of the Forty Recommendations of the FATF, whose provisions are also aimed at combating the financing of terrorism. In particular, they suggest the need to distinguish between the terms "beneficiary" and "beneficial owner"<sup>4</sup>. As we see, the combination in the single concept of "beneficiary" of different interpretations within the framework of national legislation can hardly be justified sufficiently, proceeding from the provisions of international standards for combating the financing of terrorism. For this reason, it would be advisable, within the framework of the Law of Azerbaijan on the Financing of Terrorism, to fix not only the notion of "beneficiary", but also the concept of "beneficial owner".

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The wording of the concept of "financing of terrorism", cited in paragraphs 1.0.4 paragraph 1 of the Law of Azerbaijan on the Financing of Terrorism, differs

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<sup>4</sup> FATF (2012), International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, updated October 2016, FATF, Paris, France, [www.fatf-gafi.org/recommendations.html](http://www.fatf-gafi.org/recommendations.html), consulted on 1.09.2018.

somewhat in the context of the form of guilt from contractual interpretation. Thus, a criminal can't simply be aware of the possibility of using collected or transferred funds to support terrorists, but should know that they will be used to finance the preparation, organization or commission of terrorist acts. This approach of the national legislator, in our opinion, is somewhat narrower than that proposed by the developers of the UN Convention on Combating the Financing of Terrorism, since it does not presume, on the basis of literal interpretation, an imprudent form of guilt in the case of financing terrorism.

Despite Azerbaijan's considerable efforts to create the proper regulatory framework for combating the financing of terrorism, according to A.D. Guliyev, "there has not yet been an effective policy to protect the individual, society and the state from acts of terrorism." The researcher is convinced that "the main efforts of lawmakers should be aimed at developing legal mechanisms for the elimination of financial sources of terrorism"<sup>5</sup>. One can't disagree with the author in assessing the key role of financing in the conduct of terrorist activities, but without understanding what prevents effective fight against the financing of terrorism, further progress in this sphere is hardly possible.

At the present stage of the development of the mechanism for combating the financing of terrorism in Azerbaijan, the following challenges can be singled out:

*1. The changing nature of the main sources of financing of terrorism and their constant development.* Terrorists, in response to the decline in the role of some sources of terrorist financing due to the appropriate efforts of the member states of the international community, are constantly looking for opportunities to use new sources or to strengthen sources of money that are so insignificant: "... the international community should remain vigilant in attempts to increase the diversification of its channels receive income or expand relatively small channels. For example, IGIL can apply for external donations (which have so far provided a relatively small share of the financing of this terrorist group) or to intensify their efforts to seize foreign hostages in order to obtain ransom"<sup>6</sup>. At the same time, such efforts of the states are always catching up in essence with regard to the practice of terrorist organizations, which negatively affects the effectiveness of the fight against terrorists.

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<sup>5</sup> Гулиев А. Д. Институт президентства в противодействии международному терроризму: сравнительно-правовой анализ законодательств Украины и Азербайджанской Республики: монография / К.: НАУ, 2012. 440 с (A. Guliyev. The Presidential Institute in Countering International Terrorism: A Comparative Legal Analysis of the Legislations of Ukraine and the Azerbaijan Republic: Monograph / К.: NAU, 2012. p. 440)

<sup>6</sup> Доклад Генерального Секретаря ООН об угрозе для международного мира и безопасности, которую создаёт ИГИЛ (ДАИШ) и о масштабах усилий ООН по оказанию поддержки государствам-членам в борьбе с этой угрозой, S/2016/501, 31.05.2016. 28 с. [The report of the UN Secretary-General on the threat to international peace and security that ISIL creates (Daesh) and the scale of the UN efforts to support Member States in combating this threat, S / 2016/501, May 31, 2016, p. 28]. The document is available online at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/150/28/PDF/N1615028.pdf?OpenElement>, consulted on 1.09.2018.

In this context, Azerbaijan seeks to improve the effectiveness of the fight against the financing of terrorism, given the changing nature of the financing of terrorism, but the corresponding efforts are unlikely to completely eliminate the financing of terrorism, which sometimes creates the ground for unjustified accusations<sup>7</sup>. As the chairman of the State Committee for Work with Religious Organizations, M. Gurbanli, states, "to prevent a tendency towards radical extremism, it is necessary to crush their economic base. We will not allow anyone in Azerbaijan to raise funds and send them to some groups for terrorist purposes. If someone collects funds for sending our youth to Syria, to the ranks of the IGIL, etc., this will be stopped, and the source of these funds will be immediately destroyed"<sup>8</sup>.

2. *Emergence of new sources of financing of terrorism.* FATF experts note the risk of spreading new sources of financing terrorism, which requires an adequate response from the international community. In particular, among these new sources, which are becoming more widespread, the collection of funds through social networks should be attributed recently: "The widespread availability and anonymity of the Internet and the rapid spread of social networks are used by terrorist groups to raise money from sympathizers in all world, representing a weak spot in the financing of terrorism. Terrorist organizations widely use social networks to conduct terrorism propaganda and establish contacts with sympathizing people"<sup>9</sup>. Thus, a relatively recently emerging terrorist financing channel has become crowd founding, which is "a special type of financing through the collection of funds for the implementation of a project using the Internet"<sup>10</sup>. As FATF experts note, "crowd-hosting sites on the Internet make it easy to open pages for collecting money and receive donations. However, crowdfunding can also be used for illegal purposes, including by hiding the true purpose of the fundraising campaign".

3. *The use by terrorists of existing gaps in the mechanism of international legal and domestic regulation of the counteraction to the financing of terrorism.*

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<sup>7</sup> Кашеварова А., Казаков И. Росфинмониторинг: 3,5 тысяч россиян направляли деньги террористам // Известия. – 20 ноября 2015 г. (Kashevarova A., Kazakov I. Rosfinmonitoring: 3.5 thousand Russians sent money to terrorists // Izvestia. - November 20, 2015). The document is available online at: <http://izvestia.ru/news/596157>, consulted on 1.09.2018.

<sup>8</sup> Кто отправлял деньги ИГИЛ из Азербайджана? // Musavat. – 21 ноября 2015 г. (Who sent money to ISIS from Azerbaijan? // Musavat. - November 21, 2015). The document is available online at: [http://musavat.com/ru/news/kto-otpravlyal-dengi-igil-iz-azerbajdzhana\\_306669.html](http://musavat.com/ru/news/kto-otpravlyal-dengi-igil-iz-azerbajdzhana_306669.html), consulted on 1.09.2018.

<sup>9</sup> Новые риски финансирования терроризма: Отчёт ФАТФ. /Евразийская группа по противодействию легализации преступных доходов и финансированию терроризма. – Октябрь 2015 г. – 76 с. (New terrorist financing risks: FATF report. / Eurasian Group on Combating Money Laundering and Financing of Terrorism. - October 2015, p. 76). The document is available online at: [http://www.eurasiangroup.org/files/FATF\\_docs/Novye\\_riski\\_finansirovaniya\\_terrorizma.pdf](http://www.eurasiangroup.org/files/FATF_docs/Novye_riski_finansirovaniya_terrorizma.pdf), consulted on 1.09.2018.

<sup>10</sup> Аккерман К. Краудфандинг як фінансовий інструмент/Україна фінансова. (K. Ackerman, Crowdfunding as a financial instrument / Financial Ukraine). The document is available online at: [http://www.ufin.com.ua/analit\\_mat/sdu/139.htm](http://www.ufin.com.ua/analit_mat/sdu/139.htm), consulted on 1.09.2018.

One of the most complex and evolving problems of the international community, despite the fact that it can't be called a new one, remains the opposition to the use of foreign militants by terrorist organizations. According to UN Security Council Resolution 2178 (2014) of 09.24.2014, the "foreign fighters, terrorists make conflicts more intense, persistent, and intractable, and can also pose a serious threat to their States of origin, countries through which they are in transit, and States in which they follow, as well as states neighboring the areas of armed conflict in which foreign terrorist militants are active and which bear a significant security burden"<sup>11</sup>.

The urgency of this problem for Azerbaijan is due to the fact that, according to official statistics, 248 Azerbaijani citizens took part in extremist activities in Afghanistan and Pakistan, and 271 in Syria and Iraq. Of these, 78 were killed in one region and 97 in another. Thirty people were brought to justice on their return home and 33 people were put on international wanted lists<sup>12</sup>.

Despite the fact that in 2014 Azerbaijan toughened the criminal punishment for terrorism and crimes related to mercenary activities (participation in combat operations as a mercenary, as well as recruitment and material support of mercenaries), according to UN experts, the measures mentioned did not affect the proper as far as the visits of foreign terrorist militants in the sense in which they are understood in UN Security Council Resolution 2178 (2014) of 24.09.2014. No recommended measures were taken to prevent and suppress the provision of financial support for foreigner terrorist fighters. According to paragraph 6 of the resolution, they include the establishment of certain types of acts as criminal offenses, for example, deliberately providing or collecting funds, by any means, directly or indirectly, by their own citizens or in their territories with the intention that such funds be used - or with the realization that they will be used to finance travel of persons traveling to a state that is not their state of residence or citizenship for the purposes of committing, planning, preparing or participation in the commission of terrorist acts or terrorist training or passing a preparation.

### 3. Conclusions

Azerbaijan consistently and unswervingly follows the course it has chosen to improve the effectiveness of the mechanism for combating the financing of terrorism both at the domestic and international legal levels. At the same time, the complexity, variability and flexibility of the relevant mechanisms for the implementation of criminal activity presuppose the need to continue to improve the

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<sup>11</sup> Resolution of United Nations Security Council 2178(2014) of 24.09.2014. The document is available online at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/548/01/PDF/N1454801.pdf?OpenElement>, consulted on 1.09.2018.

<sup>12</sup> Resolution of United Nations Security Council 2178(2014), S/2015/975, 29 December 2015. The document is available online at: <http://docplayer.ru/27811402-S-2015-975-sovet-bezopasnosti-organizaciya-obedinennyh-naciy.html>, consulted on 1.09.2018.

state policy on a permanent basis in order to provide timely response to emerging challenges.

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