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## KAZAKHSTAN'S BILATERAL COOPERATION WITH FOREIGN COUNTRIES ON COLLECTING EVIDENCE AND RETURNING ILLEGALLY WITHDRAWN ASSETS AS A TARGET FACTOR IN COMBATING CORRUPTION

**Abstract.** The article discusses modern international mechanisms for the return of stolen assets, obtained through corruption, as well as Kazakhstan's participation in this process. The article analyzes bilateral agreements on mutual legal assistance in criminal matters, including measures such as collection of evidence, identification of criminal proceeds, their arrest and subsequent confiscation. A comparative analysis of Kazakhstan's treaties with the United States, Great Britain, South Korea and India has been carried out, and differences in the scope of legal assistance, the procedure for confiscation and protection of the rights of third parties have been identified. The article highlights the practice of successful asset recovery, including through cooperation with international organizations and the use of unofficial communication channels. It is concluded that interaction with foreign law enforcement agencies through unofficial channels (such as CARIN, Egmont, ARIN-AP, etc.) increases the responsiveness to asset recovery. The importance of improving national legislation and international cooperation to increase the effectiveness of combating corruption and financial crimes was noted.

**Keywords:** asset recovery; laundering; crime; corruption; cooperation; interaction; contract; legal assistance; criminal case; evidence; confiscation; information exchange.

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## СЫБАЙЛАС ЖЕМҚОРЛЫҚҚА ҚАРСЫ ІС-ҚИМЫЛДЫҢ НЫСАНАЛЫ ФАКТОРЫ РЕТІНДЕ ДӘЛЕЛДЕМЕЛЕР ЖИНАУ ЖӘНЕ ЗАҢСЫЗ ШЫҒАРЫЛҒАН АКТИВТЕРДІ ҚАЙТАРУ ЖӨНІНДЕГІ ҚАЗАҚСТАННЫҢ ШЕТ ЕЛДЕРМЕН ЕКІЖАҚТЫ ЫНТЫМАҚТАСТЫҒЫ

**Аннотация.** Мақалада сыбайлас жемқорлық арқылы алынған, ұрланған активтерді қайтарудың қазіргі заманғы халықаралық тетіктері, сондай-ақ Қазақстанның осы процеске қатысуы қарастырылады. Қылмыстық істер бойынша өзара құқықтық көмек туралы екіжақты шарттар талданады, олар дәлелдемелер жинау, қылмыстық кірістерді анықтау, оларды қамауға алу және кейіннен тәркілеу сияқты шараларды қамтиды. Қазақстанның АҚШ, Ұлыбритания, Оңтүстік Корея және Үндістанмен жасалған шарттарына салыстырмалы талдау жүргізілді, құқықтық көмек көлемінде, тәркілеу тәртібінде және үшінші тұлғалардың құқықтарын қорғауда айырмашылықтар анықталды. Активтерді табысты қайтару тәжірибесі, оның ішінде халықаралық ұйымдармен ынтымақтастық және бейресми байланыс арналарын пайдалану арқылы қамтылған. Шетелдік құқық қорғау органдарымен бейресми арналар арқылы өзара іс-қимыл (CARIN, Egmont, ARIN-AP және т.б. сияқты) активтерді қайтару бойынша әрекет етудің жеделдігін арттырады деген қорытынды жасалады. Сыбайлас жемқорлық және қаржылық қылмыстарға қарсы іс-қимылдың тиімділігін арттыру үшін ұлттық заңнаманы және халықаралық өзара іс-қимылды жетілдірудің маңыздылығы атап өтілді.

**Түйінді сөздер:** активтерді қайтару; жылыстату; қылмыс; сыбайлас жемқорлық; ынтымақтастық; өзара әрекеттесу; келісім-шарт; құқықтық көмек; қылмыстық іс; дәлелдеу; тәркілеу; ақпарат алмасу.



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## ДВУХСТОРОННЕЕ СОТРУДНИЧЕСТВО КАЗАХСТАНА С ЗАРУБЕЖНЫМИ СТРАНАМИ ПО СБОРУ ДОКАЗАТЕЛЬСТВ И ВОЗВРАТА НЕЗАКОННО ВЫВЕДЕННЫХ АКТИВОВ КАК ЦЕЛЕВОЙ ФАКТОР ПРОТИВОДЕЙСТВИЯ КОРРУПЦИИ

**Аннотация.** В статье рассматриваются современные международные механизмы возврата похищенных активов, полученных коррупционным путем, а также участие Казахстана в данном процессе. Анализируются двусторонние договоры о взаимной правовой помощи по уголовным делам, включающие такие меры, как сбор доказательств, идентификация преступных доходов, их арест и последующая конфискация. Проведен сравнительный анализ договоров Казахстана с США, Великобританией, Южной Кореей и Индией, выявлены различия в объемах правовой помощи, порядке конфискации и защите прав третьих лиц. Освещена практика успешного возврата активов, в т.ч. через сотрудничество с международными организациями и использование неофициальных каналов связи. Делается вывод о том, что взаимодействия с зарубежными правоохранительными органами через неофициальные каналы (как CARIN, Egmont, ARIN-AP и др.) повышает оперативность реагирования по возврату активов. Отмечена важность совершенствования национального законодательства и международного взаимодействия для повышения эффективности противодействия с коррупционными и финансовыми преступлениями.

**Ключевые слова:** возврат активов; отмывание; преступление; коррупция; сотрудничество; взаимодействие; договор; правовая помощь; уголовное дело; доказательство; конфискация; обмен информации.

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*Introduction.* The recovery of stolen assets is one of the priorities of modern States, especially in the context of the globalization of financial flows and the growth of transnational crime.

Illegal capital withdrawal, corruption, money laundering and other financial crimes cause significant damage to the national economy, undermine confidence in State institutions and hinder sustainable development.

Stolen assets transferred abroad deprive the state of significant financial resources that could be used for socio-economic development.

According to B.L. Sergio “the main goal of the initiative is to encourage and facilitate more systematic and timely return of assets stolen by politically exposed persons through acts of corruption” [1, 28 p.].

According to estimates by global financial experts, developing countries annually lose about 30 billion United States (US) dollars due

to bribes and misappropriation of funds<sup>1</sup>. For Kazakhstan, as for many other countries, the return of assets stolen through corrupt schemes and shadow financial transactions is a key element of ensuring economic stability.

As noted in the Concept of the Anti-Corruption Policy of the Republic of Kazakhstan for 2022-2026, the next step will be the implementation of the fundamental principle of the UN Convention against Corruption – ensuring the search and return of criminal assets in the investigation of criminal offenses, especially those associated with the risks of obtaining criminal income and its legalization.

To this end, according to the “follow the money” principle, it is necessary to provide for a mandatory financial investigation, ensuring the appropriate specialization of law enforcement officers and their active cooperation with authorized government agencies and

<sup>1</sup> 30 млрд долларов ежегодно теряют развивающиеся страны из-за коррупции – депутат [Electronic resource] – Access mode: [https://www.inform.kz/ru/30-mrd-dollarov-ezhegodno-teryayut-razvivayuschiesya-strany-iz-za-korruptcii-deputat\\_a4076109](https://www.inform.kz/ru/30-mrd-dollarov-ezhegodno-teryayut-razvivayuschiesya-strany-iz-za-korruptcii-deputat_a4076109) (Access date: 20.03.2025).



organizations<sup>2</sup>.

The scientists note that “knowledge of the actions for the return of stolen assets will require not only a study of the process of their withdrawal from the country in order to prevent and suppress it, but also the development of an algorithm for working with foreign countries and international organizations. But it will also make it possible in the future to increase the effectiveness of the fight carried out by state bodies against the facts of obtaining (acquiring) criminal proceeds and their legalization” [2, 6 p.].

In the context of globalization, issues of international cooperation in the field of criminal prosecution, collection of evidence and return of illegally exported assets are becoming increasingly relevant.

As noted by E.A. Omarov “one of the most common forms of international crime control is the cooperation of law enforcement agencies of foreign countries, which includes the implementation of procedural actions in criminal cases” [3, 77 p.].

According to R. Arifin “international collaboration has two different sorts of legal frameworks: treaty-based and non-treaty-based” [4, 335 p.].

In addition, as noted by K.Z. Tokubaev “a special place among the normative legal acts that guide law enforcement agencies in combating crime is occupied by bilateral agreements on mutual legal assistance in criminal matters concluded by the Republic of Kazakhstan with other States” [5, 116 p.].

The relevance of the topic is due to the globalization of financial flows, the growth of

transnational crime and the increase in cases of illegal capital withdrawal. For Kazakhstan, effective international cooperation, unification of legal mechanisms and improvement of bilateral agreements are of key importance in the fight against financial and corruption crimes.

*Materials and methods.* The research materials include bilateral legislative acts on legal assistance in criminal matters, scientific papers by legal scholars dealing with issues of bilateral assistance in asset recovery cases, statistical data on sent assignments, as well as materials from online resources.

In addition, the article consists a comparative legal analysis of bilateral agreements on legal assistance in criminal matters, the work of legal scholars in the form of articles and publications. Various methods of research and knowledge of legal relations in the field of international cooperation were used.

In particular, system-logical, dialectical, problem-search, comparative-legal, statistical methods.

*Results, discussion.* Kazakhstan, actively participating in international initiatives, concludes bilateral agreements with foreign countries, including between the law enforcement agencies of these countries. They contribute to improving the effectiveness of the pre-trial investigation of corrupt financial crimes and the prosecution of persons who evade responsibility.

For example, Kazakhstan has concluded more than 30 agreements on legal assistance in criminal matters with foreign countries<sup>3</sup> (See Table 1.).

LIST OF COUNTRIES				
Bulgaria	Brazil	Great Britain	Hungary	Vietnam
Georgia	India	Jordan	Spain	Italy
Qatar	Cyprus	Korea	North Korea	China
Kyrgyzstan	Lithuania	Monaco	Mongolia	UAE
Pakistan	Romania	Serbia	North Macedonia	USA
Türkiye	Uzbekistan	Ukraine	Czech	France

Table 1. The current list of foreign countries that Kazakhstan has concluded an agreement on legal assistance in criminal matters

<sup>2</sup> Об утверждении Концепции антикоррупционной политики Республики Казахстан на 2022-2026 годы и внесении изменений в некоторые указы Президента Республики Казахстан: указ Президента Республики Казахстан от 2 февр. 2022 г. № 802 [Electronic resource] – Access mode: <https://adilet.zan.kz/rus/docs/U2200000802#z17> (Access date: 10.06.2025).

<sup>3</sup> Карта договоров на сайте Генеральной прокуратуры Республики Казахстан [Electronic resource] – Access mode: <https://www.gov.kz/memleket/entities/prokuroor/documents/details/471614?lang=ru> (Access date: 18.01.2025).



Thus, paragraph 3 of Article 1 of the Treaty between the Republic of Kazakhstan and the US sets out the limits of legal assistance between the two states. The help includes the following:

- obtaining testimony or statements from individuals;
- provision and attestation of authenticity of documents, materials and physical evidence;
- establishing the location or identification of persons and objects;
- delivery of documents;
- transfer of persons in custody for testimony or other assistance in accordance with the Agreement;
- conducting searches and seizures;
- identification, tracing, freezing, seizure and confiscation of assets and assistance in related proceedings;
- any other type of assistance that is not prohibited by the legislation of the Requested State<sup>4</sup>.

Article 16 of the Treaty between the Republic of Kazakhstan and the Republic of Korea (South Korea) regulates the provision of assistance in confiscation procedures.

It should be noted that the provisions of this article actually define the list of information that must be provided in order for one of the parties to provide legal assistance in asset confiscation.

Paragraph 1 of this article states that the requested Party, upon request, will seek to determine, in accordance with its jurisdiction, whether there are any proceeds of crime and will notify the Requesting Party of the results of such an investigation.

In case of detection of proceeds of criminal activity, the Requested Party shall take measures, in accordance with its legislation, to seize or confiscate such proceeds.

At the same time, the rights of bona fide third parties must be respected in accordance with the legislation of the Requested Party.

The requested Party must retain any proceeds of criminal activity that have been confiscated,

unless otherwise agreed in individual cases<sup>5</sup>.

This paragraph also contains the following clause: “detention, imposition of a fine and confiscation of proceeds and funds from criminal activities and other assistance related to the purpose of the Contract, which does not contradict the legislation of the Requested Party”.

In other words, when sending an international request to each other, the law enforcement agencies of Kazakhstan and the US, South Korea must provide sufficient evidence that confirms the connection with the crime, are the instrument of the crime, or the equivalent value of the criminal proceeds.

Thus, based on the meaning of this agreement, it can be assumed that it allows for the confiscation of property that is the same in value as criminal income and, as expected, it may not be directly criminal income.

Each bilateral agreement has its own terms and conditions, depending on the wishes of the parties to the agreements.

In the contract with the United Kingdom (UK), the Requesting Party must provide the following information:

- detailed information about the property in respect of which cooperation is requested;
- information about the location of the property and its relation to the subject of the request;
- a connection, if any, between property and crimes;
- information about any interests of third parties in this property;
- if available, a certified copy of the decision on restriction or confiscation issued by the court, and a statement indicating the grounds on the basis of which the court decision was made, if they are not specified in the decision itself<sup>6</sup>.

Other bilateral agreements also provide for the confiscation of proceeds from criminal activity.

For example, paragraph 2 of article 1 of

<sup>4</sup> О ратификации Договора между Республикой Казахстан и Соединенными Штатами Америки о взаимной правовой помощи по уголовным делам: закон Республики Казахстан от 16 июля 2015 г. № 331-V ЗПК [Electronic resource] – Access mode: <https://adilet.zan.kz/rus/docs/Z1500000331> (Access date: 20.06.2024).

<sup>5</sup> О ратификации Договора между Республикой Казахстан и Республикой Корея о взаимной правовой помощи по уголовным делам: закон Республики Казахстан от 8 июля 2011 г. № 453-IV ЗПК [Electronic resource] – Access mode: <https://adilet.zan.kz/rus/docs/Z1100000453> (Access date: 20.03.2025).

<sup>6</sup> О ратификации Договора между Республикой Казахстан и Соединенным Королевством Великобритании и Северной Ирландии о взаимной правовой помощи по уголовным делам: закон Республики Казахстан от 24 февр. 2016 г. № 460-V ЗПК [Electronic resource] – Access mode: <https://adilet.zan.kz/rus/docs/Z1100000460> (Access date: 20.06.2024).



the Treaty between Kazakhstan and India “On Mutual Legal Assistance in Criminal Matters” states that mutual legal assistance includes:

- 1) measures for the detection, arrest and confiscation of criminally acquired valuables, as well as instruments of crime;
- 2) collecting evidence and accepting statements from individuals;
- 3) provision of information and documents, including protocols of investigative and judicial actions;
- 4) detection of persons and objects, including their identification;
- 5) discovery and seizure of materials and items related to the case;
- 6) transfer of property, including temporary provision of physical evidence;
- 7) ensuring the temporary transfer of persons in custody and the appearance of other persons to testify or assist in the investigation;
- 8) delivery of documents, including subpoenas;
- 9) other legal assistance consistent with the objectives of this Agreement, not contrary to the legislation of the requested Party<sup>7</sup>.

A comparative analysis has shown that all the reviewed bilateral treaties between Kazakhstan and the US, South Korea, UK and India provide for mechanisms for mutual legal assistance in criminal matters, including evidence collection and asset recovery. However, there are differences in the scope of legal assistance, the request procedure, and the conditions of confiscation.

In the US and South Korea, treaties provide for the possibility of asset confiscation if there is evidence of their criminal origin. The South Korean treaty specifically emphasizes that confiscated assets are retained by the requested party, unless otherwise agreed.

In the UK, the approach is more formalized, i.e. a court decision on confiscation is required, as well as providing evidence linking property to a crime and possible rights of third parties.

And in India, a comprehensive approach is being applied, which includes the identification

and seizure of property, as well as its subsequent confiscation in compliance with national legislation.

Only the treaty with South Korea explicitly mentions the need to protect the rights of bona fide third parties during confiscation. In agreements with the US, UK and India, this aspect is not highlighted, which may create legal risks in the recovery of property if claims from third parties appear in the future.

Thus, Kazakhstan's bilateral treaties demonstrate a high level of international law enforcement cooperation, but require further improvement in terms of protecting the rights of third parties and unifying confiscation procedures.

According to statistics, Kazakhstan has sent requests for mutual legal assistance in the following categories of crimes<sup>8</sup> (See fig.1.).

Among the countries to which requests were sent most often, there are: Russia – 961, Uzbekistan – 156, Turkey – 135, China – 99, UAE – 97, Germany – 77, Ukraine – 74, UK – 65, US – 57 (See fig.2.).

In addition, it should be noted that Kazakhstan has sent several successful requests to Switzerland, Belarus and Latvia regarding the confiscation of large amounts related to money laundering, legalization and theft of assets.

For example, during the investigation conducted in Kazakhstan, it was established that in the period 2007-2009, K. and others created a criminal community with the aim of illegally transporting goods across the customs border of Kazakhstan from China. The criminal proceeds were transferred to citizen A. for laundering and transferring assets abroad, namely Switzerland, by concluding imaginary contracts. Having established the location of the assets, the Prosecutor General's Office sent a request to Switzerland to seize the accounts and return the funds to Kazakhstan. As a result of close cooperation in the period 2017-2020. Swiss federal authorities have returned \$1.3 million worth of criminal assets to Kazakhstan. By the verdict of the Almaty court, members

<sup>7</sup> О ратификации Договора между Республикой Казахстан и Республикой Индия о взаимной правовой помощи по уголовным делам: закон Республики Казахстан от 17 мая 2000 г. № 49 [Electronic resource] – Access mode: <https://adilet.zan.kz/rus/docs/Z1100000453> [https://adilet.zan.kz/rus/docs/Z000000049\\_](https://adilet.zan.kz/rus/docs/Z000000049_) (Access date: 24.06.2024).

<sup>8</sup> Отчет взаимной оценки Республики Казахстан ЕАГ, 2023 г. – 423 с. [Electronic resource] – Access mode: [https://eurasiangroup.org/files/uploads/files/ME\\_\(2023\)\\_1\\_rus\\_rev1\\_2.pdf](https://eurasiangroup.org/files/uploads/files/ME_(2023)_1_rus_rev1_2.pdf) (Access date: 18.01.2025).

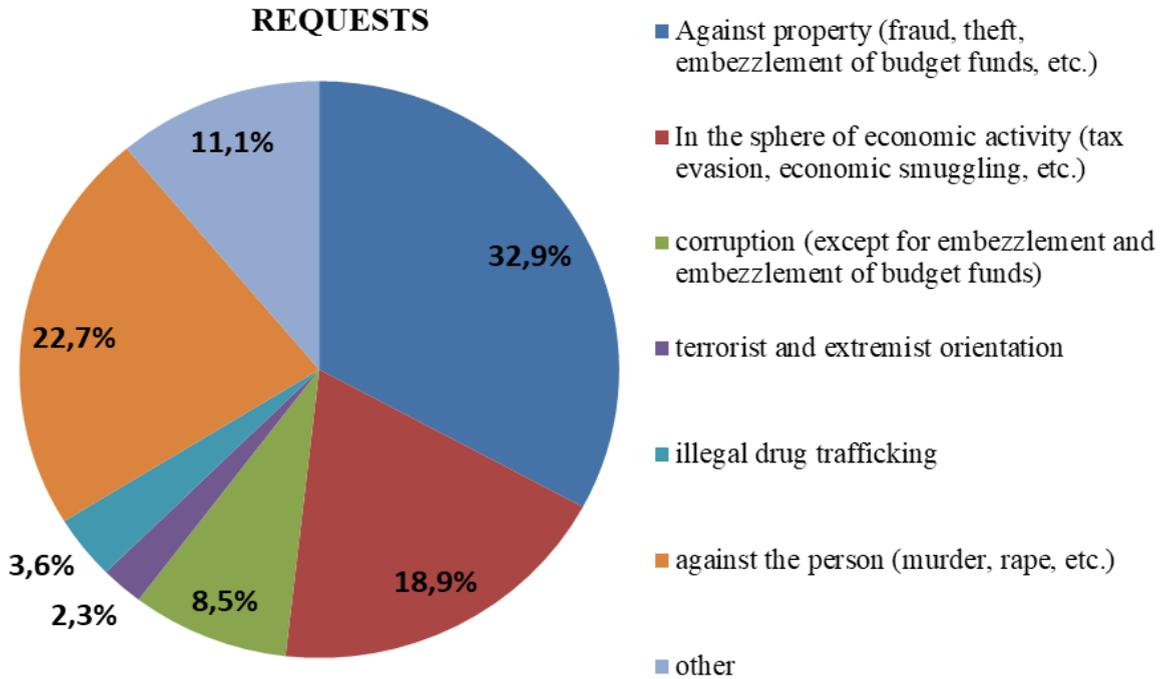


Figure 1. The proportion of the category of crimes for which Kazakhstan has sent requests for mutual legal assistance

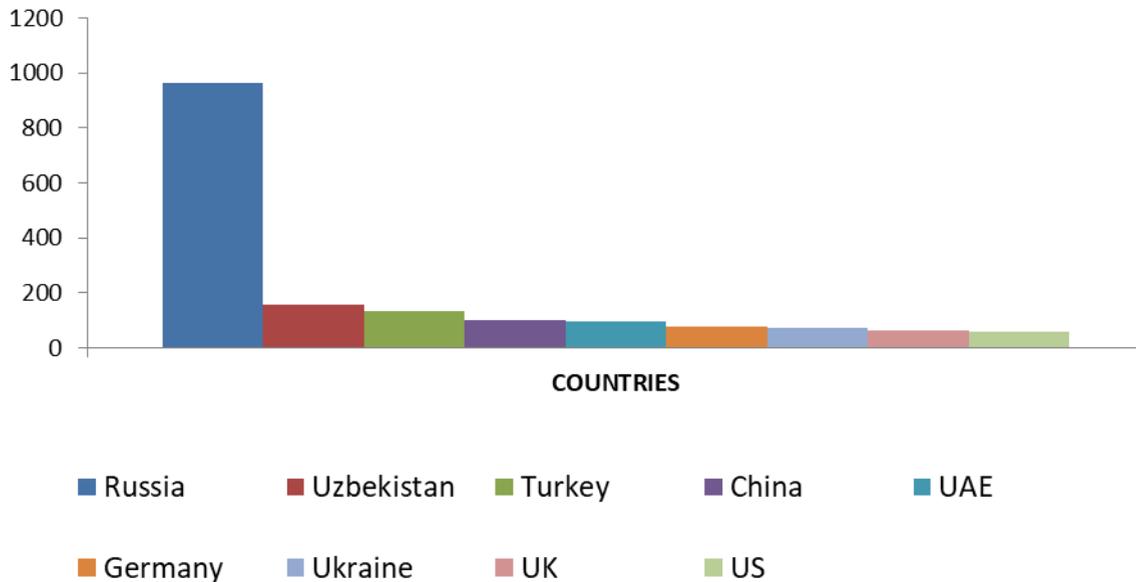


Figure 2. The list of countries to which Kazakhstan most often sent requests for mutual legal assistance

of the criminal community K. and others were sentenced to various types of punishment with confiscation of property<sup>9</sup>.

As R. Balashov noted, “along with official

international legal cooperation, law enforcement agencies can use unofficial communication channels, for example, CARIN, ARIN-AP, ARIN-WCA, EGMONT, I-SECOM, SIENNA” [6, 97 p.].

<sup>9</sup> Отчет взаимной оценки Республики Казахстан ЕАГ, 2023 г. – 423 с. [Electronic resource] – Access mode: <https://eurasiangroup.org/ru/mutual-evaluation-reports> (Access date: 18.01.2025).



As E.K. Mynzhanov noted, “the most widespread communication channel is CARIN, established in 2004 as an informal interdepartmental regional network for cooperation in the field of tracking and confiscation of criminal assets. It allows investigators from different countries to effectively combat this type of crime” [7, 5 p.].

Such informal channels enable law enforcement agencies of countries to promptly exchange information and, if necessary, consult in order to properly process international requests in accordance with their legislation, which law enforcement agencies should take into account in their work.

For example, the Financial Monitoring Agency of the Republic of Kazakhstan has signed 41 cooperation agreements with the competent authorities of foreign countries.

In particular, with the Financial Intelligence Units of Moldova, the United Arab Emirates, the Russian Federation, the Republic of Belarus, the Kyrgyz Republic, the Republic of Tajikistan, the People's Republic of China, the Republic of Cyprus, Macedonia, Montenegro, the Turkish Republic, Romania, Lithuania, Japan, Croatia, Armenia, Poland, Panama, Bangladesh, Georgia, Mongolia, South Korea, Israel, UK, Serbia, Canada, the Republic of Latvia, Hungary, the Republic of Uzbekistan, Ukraine, Turkmenistan, Afghanistan, India, Albania, Pakistan, Macau, the Republic of Togo, Sint Maarten, as well as with the Committee of the Astana International Financial Center for Financial Services Regulation and BN KZ Technologies Limited<sup>10</sup>.

In addition, a Memorandum of Partnership and Cooperation was signed between the Asset Recovery Committee of the Prosecutor General's Office and the Commission for the Seizure of Illegally Obtained Property of the Republic of Bulgaria. The purpose of the Memorandum is to define partnership mechanisms and forms of cooperation for effective search, detection, identification, and confiscation of illegal assets<sup>11</sup>.

P. Sproat believes that “criminalization not only allows national authorities to detect, prosecute

and deter offences but also provides the legal basis for international cooperation among LEAs and judicial and administrative authorities” [8].

According to B. Sagimbekov, the return of stolen assets from foreign jurisdictions should be one of the priorities of the criminal process [9, 93 p.].

According to Georgios Pavlidis “international cooperation is necessary to promote the harmonization of rules, avoid legal fragmentation and ensure that the new technologies for AML/CFT remain aligned with global sectoral standards” [10, 162 p.].

G. Huang believes that “without the coordination and cooperation between assets-inflow countries the existing current Chinese cross-border recovery system can not work successfully and smoothly” [11, 93 p.].

Through this interaction, law enforcement agencies can find out about the legal requirements of other countries for providing evidence in order to confiscate assets and return them later.

It should be noted that the scientific novelty of this study lies in an integrated approach to the study of mechanisms for the return of stolen assets as one of the targeted anti-corruption factors. For the first time, the paper provides a systematic analysis of international and bilateral legal instruments applicable in the Republic of Kazakhstan, with an emphasis on their practical effectiveness in the process of returning illegally exported assets. The study suggests new approaches to the unification of legal mechanisms and the development of an algorithm for interaction with foreign jurisdictions and international organizations.

In addition, special attention is paid to preventive measures, including the improvement of legislation, the introduction of standards of financial transparency and integrity in public service. Thus, the study contributes to the development of scientific and practical understanding of the problems of asset recovery and improving the effectiveness of anti-corruption policy.

**Conclusion.** Based on the conducted

<sup>10</sup> Отчет взаимной оценки Республики Казахстан ЕАГ, 2023 г. – 423 с. [Electronic resource] – Access mode: <https://eurasiangroup.org/ru/mutual-evaluation-reports> (Access date: 18.01.2025).

<sup>11</sup> Казахстан и Болгария укрепляют сотрудничество в сфере возврата незаконно приобретенных активов [Electronic resource] – Access mode: <https://www.gov.kz/memleket/entities/mfa-sofia/press/news/details/931905?lang=ru> (Access date: 15.03.2025).



research, it should be concluded that the return of stolen assets is a complex and multi-stage process that requires an integrated approach and active international cooperation.

An analysis of Kazakhstan's bilateral agreements with various States shows that there are significant differences in the mechanisms for mutual legal assistance, the confiscation procedure and the protection of the rights of third parties. However, all agreements are aimed at achieving a single goal – the identification, seizure and subsequent confiscation of criminally acquired assets.

Comparative legal analysis has shown that a feature of Kazakhstan's treaties with the US and South Korea is the possibility of asset confiscation if there is sufficient evidence of their criminal origin. Moreover, the South Korean agreement separately provides for the preservation of confiscated funds by the requested party, unless otherwise agreed separately. The British treaty requires a formalized approach, including the mandatory availability of a court decision, a detailed justification for the connection of property with criminal activity, and consideration of the interests of third parties. The agreement with India applies a broad, integrated approach that covers all stages of the process, from the identification of assets to their subsequent confiscation.

In addition, special attention in the process

of international cooperation is paid to the tools of law enforcement practice. As the analysis of Kazakhstan's international requests shows, the most frequent destinations for cooperation are the CIS countries, China, Turkey, the United Arab Emirates, Germany, the US and the UK. An important factor in the success of such requests is not only the legal validity, but also the existence of bilateral agreements that comply with international standards.

Moreover, the practice of interacting with foreign law enforcement agencies and financial intelligence agencies demonstrates the effectiveness of both official channels (for example, international treaties) and unofficial ones (such as CARIN, EGMONT, ARIN-AP, etc.), which increases the responsiveness to criminal financial schemes.

Thus, the improvement of international cooperation mechanisms, as well as the unification of asset confiscation and recovery procedures, taking into account the protection of the rights of bona fide third parties, are key areas for the further development of Kazakhstan's law enforcement practice. Strengthening legal instruments, expanding contractual obligations and the active use of international legal assistance networks will significantly increase the effectiveness of countering crimes related to money laundering and illegal asset withdrawal.

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