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The subject of money laundering as a starting point for an effective investigation

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■ **Abstract.** The relevance of the subject is the necessity to correctly identify the subject of money laundering during the investigation, in the context of the current version of the Criminal Code of Ukraine. The purpose of the research is to define modern approaches to determining the subject of property laundering. The research methodology includes general scientific methods, in particular, analysis, synthesis and generalisation, to determine the characteristics of the subject of the crime; special research methods, namely, formal-logical and comparative-legal – to determine the specifics of the subject of the crime at the current stage of development of legal science and the regulatory framework. The result of the research is a generalisation of positions on the location of the crime object among the elements of forensic characterisation and the importance of its clarification. The author describes legislative innovations and their impact on the identification of the subject of a criminal offence. The types of property that can be subject to legalisation are defined. The research describes the problems faced by investigators in the course of investigating property laundering related to an atypical object of crime – a “virtual asset”. The author outlines approaches to establishing the subject of a criminal offence in modern realities, the possibility of its transformation and further clarification, and the involvement of persons with specialised knowledge. The connection between the person of the offender and the object of the crime is described. The author considers the possibilities of using international cooperation to clarify the subject of property legalisation and its identification

■ **Keywords:** object of the crime; legalisation; illegal benefit; virtual asset; cash, international cooperation, property rights

■ Introduction

Nowadays, there is a rapid growth of innovative technologies that affect both everyday life and other areas, including the economy. One of the most dangerous threats to the proper functioning of the state is money laundering. In particular, it is reflected in the national policy of Ukraine, in particular, in the statement on the importance of combating money laundering and the adoption of appropriate strategies that should be consistent with the current Criminal Procedure Code of Ukraine [1]. The issue of developing modern mechanisms in the system of combating (laundering) the proceeds of crime and developing an action plan in this area remains relevant since the current strategy [2] is designed for the period up to 2023. Using innovative technologies by criminals in

this area is occurring faster than inventing effective methods to counteract them, detect crimes they have committed and successfully investigate them. Changes in Ukrainian legislation contribute to the successful fight against money laundering, but they only declare specific provisions and do not provide tools for investigators. In addition, regulations in this area are often inconsistent with each other, in particular, using outdated terminology, which causes misunderstandings in the activities of investigators, which should be regulated precisely and unambiguously. A successful pre-trial investigation begins with the investigator's awareness of the nature of the unlawful actions and the ways and means to document them. The investigation process, in any case, must comply with the requirements of the applicable criminal and criminal procedure laws. Generally, investigators are engaged in the investigation of several different criminal offences that may have various objects and subjects and are not narrowly specialised in the investigation of a particular crime. Thus, the key to an effective start of an investigation is to identify the elements

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of the forensic characterisation of the crime that is being investigated. The starting point for this is to identify the object of the crime. Currently, the issue of identifying the subject of property laundering is almost unexplored. On the one hand, it is explained by the fact that scientists include this issue in studies that cover a wider range of elements of forensic characterisation. On the other hand, the signs of the subject of property laundering have changed since 2019 and have not yet become a common subject of scientific discussion. In such circumstances, it is justified to use the practical recommendations of international experts in the field of combating money laundering, considering the provisions of the current regulations of Ukraine. A good example of such recommendations is the Manual on the detection, investigation and prosecution of money laundering, edited by Council of Europe experts Ian Richardson and Ignacio de Lucas Martin [3]. The relevance of this subject can hardly be overestimated, in particular, due to the amendments to the Criminal Code of Ukraine [4] that were made in 2019, which replaced the definition of “money laundering” with “property laundering”, which explicitly affects the definition of the object of the crime, and the above-mentioned development of technology, which has established a completely new type of property – “virtual asset”. Thus, it is important for investigators conducting pre-trial investigations of money laundering to have a correct understanding of the features of the object of this crime, and the current possibilities for its clarification. It is virtually impossible today to conduct an effective investigation of money laundering without involving specialists in the field of information technology, virtual assets, etc., and without using the possibilities of international cooperation. The above indicates the necessity to identify modern, innovative approaches to determining the subject of property laundering (legalisation), considering the current version of regulatory documents and the state of development of information technology both in Ukraine and worldwide.

The fact that the object is one of the key elements of the forensic characterisation of crimes is noted in their scientific works by A.A. Bessonov [5], N.M. Negrych [6] etc. The object of the crime induces a person to commit criminal acts and motivates them to commit them; it influences the choice of the method of committing the crime, the environment, place and time of its commission. In addition, as noted by N.M. Negrych [6], the object is connected by a double relationship with the offender and the characteristics of their personality.

In their research on the general understanding of the concept of the object of the crime, A.A. Muzyka & E.V. Lashchuk [7] refer to it as an optional feature of a criminal offence and note that the object of the

crime is defined as the material value in respect of which a crime is committed.

The scientific originality of the research is conditioned upon the identification of relevant tools and methods for determining the object of property laundering. There is a necessity to use qualitatively new approaches to pre-trial investigation. It is essential to use information technology and international cooperation in planning tactical tasks and ways to solve them. Currently, the correct identification of the object of property laundering is the key to a successful investigation. The object of this crime includes currency values, virtual assets, other property, and property rights and obligations. To identify them, it is necessary to involve specialists and use the possibilities of international cooperation

The issue of the object of property laundering has been understudied, and therefore the purpose of the research is to summarise the approaches to the general definition of the object of crime and to develop a modern understanding of the object of a particular type of criminal offence, considering its regulatory definition, and to identify its characteristic features and the tools and methods for its practical clarification by investigative officers.

■ Materials and Methods

At this stage of the development of Ukrainian society, the legal framework and information technology, not enough attention has been paid to the issue of determining the object of the crime. Determining the object of a crime is of great practical significance in the work of investigators. To conduct a professional and exhaustive investigation of a crime, it is necessary to have a sufficient theoretical base of knowledge about the relevant element of forensic characteristics for its correct determination in each case, which makes the study of this issue relevant nowadays.

The object of the crime is explored in the research in stages. First of all, the author analyses the understanding of the concept of the object of crime and its characteristics. The author analyses the available scientific materials and positions on understanding the characteristics of the object of crime and their features. Further, the author establishes the connection between the scientific approach to understanding this element of forensic characterisation and the current regulatory framework and identifies its specific types. The author distinguishes between the classical approach to determining the object of a crime and its most common types. In addition, attention is devoted to new types of items that can be used by criminals nowadays. Finally, the author identifies the impact of information technology development on clarifying the object of a crime and clarifies the possible practical use of this knowledge in the activities of an investigator.

The study used the current regulatory framework of Ukraine, in particular the Criminal Code of Ukraine (CC of Ukraine) [4], the Criminal Procedure Code of Ukraine (CPC of Ukraine) [1], the Civil Code of Ukraine (CC of Ukraine) [8], the National Accounting Regulation (Standard) 1 “General Requirements for Financial Reporting” approved by the Order of the Ministry of Finance of Ukraine No. 73 dated 02/07/2013 [9], the Law of Ukraine “On Currency and Currency Values” [10], the Law of Ukraine “On Prevention of Corruption” [11], which allowed identifying and generalising the vision of the “legislator” on the definition of the object of the crime and served as a foundation for the theoretical substantiation of its mandatory features; materials of the case law of the High Specialised Court of Ukraine for Civil and Criminal Cases on the consideration of a court case under Part. 1 of Art. 209 of the CC of Ukraine [12], which demonstrates practical experience in establishing the subject of property laundering; analytical materials of the Academy of Financial Monitoring [13], which allowed comparing scientific achievements with the practice of its use by the authorities directly involved in combating money laundering (legalisation) of the proceeds of crime. In addition, the author analysed the scientific works of A.A. Muzyka & E.V. Lashchuk [7], and A.A. Besonov [5], which explore the general concept of the object of crime; N.M. Negrych [6], V.G. Lyseitseva [14], where the object is described as an element of the forensic characterisation of a particular type of crime.

In addition, to provide an opportunity to apply theoretical approaches to understanding the subject of money laundering in the practical activities of investigators, the research used the practical guide by Ian Richardson and Ignacio de Lucas Martin [3], which summarises the European experience in combating money laundering.

The research methodology includes general scientific and special methods. In particular, the author used analysis, synthesis and generalisation, which allowed identifying the characteristics of the object of the crime and different approaches to its understanding and highlighting the features common to the object of property laundering committed in different ways, and the relationship of these features to the wording used in the current regulatory framework. In addition, the analysis identified some specific features of the object of money laundering, which allow for determining its particular type. By generalising, the author identified the optimal most general definition of the object of money laundering. Using special research methods, in particular, formal-logical and comparative-legal methods, allowed identifying the features of the object of crime at the current stage of development of legal science and regulatory framework, identifying the shortcomings and ambiguities in the wording of dispositions of regulations relating

to the object of property laundering, and allowed establishing the importance of theoretical research for using the results obtained in the practical activities of investigators.

■ Results and Discussion

However, considering this position, it should be concluded that the object of the crime is in any case defined as a material benefit for the offender, which they use to satisfy their needs, and therefore always has a specific monetary value. As a rule, considering the banking system and currency policies of developed countries, this monetary expression is always traceable. However, the process of this tracking depends on the investigator's understanding of the mechanisms and capabilities of these systems and the theoretical training of the investigating body's employees.

Thus, the object of the crime significantly affects other elements of forensic characterisation and determines the methodology of investigation of a particular crime.

The classification of the object as an optional characteristic has a more criminal law colouration, as it is based solely on the current provisions of criminal law. The tasks of criminalistics are quite different in terms of methods of investigating a specific type of crime, in particular, money laundering. For an investigator, establishing and clarifying the object of a crime is one of the primary tasks that subsequently determines the area of investigation, the tactics of particular investigative actions, and the choice of subjects to be involved in the investigation to establish complete and objective data on the criminal offence.

However, along with scientific definitions, first of all, to clarify the object of the crime under investigation, and thereby further determine the methodology of its investigation, one should refer to the regulatory statement of the disposition of a particular article.

Thus, Article 209 of the CC of Ukraine [4] states that legalisation (laundering) of the proceeds of crime is the acquisition, possession, use, and disposal of property in respect of which the actual circumstances indicate that it was obtained by criminal activity, including the execution of a financial transaction, a transaction with such property, or movement, changing the form (transformation) of such property, or performing actions designed to conceal or disguise the origin or ownership of such property, the right to such property, its source, or location, if these actions are committed by a person who knew or should have known that such property was obtained directly or indirectly, completely or partially, by criminal activity.

This version of the article has been in force since 12/06/2019, and has changed compared to the previous version, including the definition of the object of this crime.

According to the wording of Art. 209 of the CC of Ukraine [4], which was in force until 12/06/2019, the legalisation (laundering) of proceeds of crime is the performance of a financial transaction or transaction with funds or other property obtained as a result of a socially dangerous illegal act that preceded the legalisation (laundering) of proceeds, and the performance of actions designed to conceal or disguise the illegal origin of such funds or other property or possession thereof, rights to such funds or property, sources of their origin, location, movement, change of their form (transformation), and the acquisition, possession or use of funds or other property obtained as a result of a socially dangerous illegal act that preceded the legalisation (laundering) of proceeds.

The wording of the articles is intentionally quoted verbatim, as their wording is the base and support for further theoretical discussions and scientific substantiation of the possibility of identifying a specific type of property as the subject of money laundering. In addition, it is the base for the investigation of a crime by employees of practical investigative units since, in their activities, they primarily use the wording of the elements of a criminal offence available in the disposition of specific articles of the CC of Ukraine [4].

Notably, the new version of the article refers to the object of the crime by a different term, namely, replacing “income” with “property”. Such changes are advisable since analysing the definition of property provided in the Civil Code of Ukraine [5], the author concludes that it is broader and includes the concept of income. The introduced changes are of great significance for the methodology of investigating this type of crime, as they affect the identification of criminally significant features and the search for links between the elements of its forensic characteristics and serve to develop and test investigative versions. It further affects the optimisation of the crime detection and investigation process.

Thus, based on the content of Art. 209 of the CC of Ukraine [4], the object of this crime is a property in respect of which the actual circumstances indicate that it was obtained by criminal activity.

Notably, one of the main features of property being the object of a crime was its actual origin from another crime. Currently, such a feature has disappeared, and it is not necessary to find a person guilty of a so-called “predicate” crime, it is sufficient to have “actual circumstances” that indicate that it was obtained by criminal activity.

These changes in the understanding of the subject of money laundering are extremely progressive for Ukraine, but it will take time to implement them in practical law enforcement. Even though there are still disputes about the presumption of innocence in money laundering cases, the author of the research believes that the current version of the Criminal Code

of Ukraine [4] is a step towards the European model of combating money laundering, and the issue of the necessity to establish the so-called “predicate” is a relic of the old legal system.

Considering this wording of the provision of the CC of Ukraine [4], it is necessary to elaborate on the definition of “actual circumstances”, since they are a mandatory component of the object of the crime and this component affects the investigation of money laundering since without its establishment, the corpus delicti of the criminal offence will be absent. Thus, at the initial stage of the investigation, the investigator must have some information that contains circumstances that indicate that the property that is the object of the crime was obtained by criminal activity. In the future, in addition, the investigator is obliged to establish a sufficient scope of such factual circumstances.

Regulatory documents do not define the concept of factual circumstances, however, the Academic Dictionary of the Ukrainian Language [15] defines the word “factual” as “true”, “real”, and “corresponding to facts, reality”. A “circumstance” is a phenomenon, event, or fact that is related to something, accompanies something, or affects something.

Notably, the CPC of Ukraine [1] uses such wording as factual data, i.e., valid, true information about the quality of a circumstance.

Thus, factual circumstances can be established by obtaining factual data, i.e. evidence.

Thus, the new version of Art. 209 of the CC of Ukraine [4] did not deprive the investigator of the necessity to collect evidence of the illegal acquisition of property that was subsequently legalised but only changed the necessity to achieve the sufficiency of such evidence for sentencing.

At its core, the task of the CC of Ukraine [4] is to ensure the protection of legal relations regulated by other branches of law. The relations between people regarding property – property relations – are regulated by the Civil Code of Ukraine [8], and it is to this regulation that the term “property” should be referred.

Considering that the term “property” is defined by the Civil Code of Ukraine [8], the conclusion is that as an object of a criminal offence, it should be understood in the civil law sense, considering some nuances.

Civil law [4] defines property as a special object as a thing, a set of things, and property rights and obligations. Things are defined as various objects of the material world that satisfy people's demands and for which civil rights and obligations can arise.

Thus, the subject of legalisation (laundering) of property obtained by an official in the form of an illegal benefit is of particular importance, as it depends both on the wording of Article 209 of the CC of Ukraine [4] and on the very concept of an illegal benefit.

According to the Law of Ukraine “On Prevention of Corruption” [16], the following can be considered

illegal benefits: money, other property, advantages, privileges, services, intangible assets, and any other benefits of an intangible or non-monetary nature.

Thus, when determining the object of property legalisation, the definition of property provided in the Civil Code of Ukraine [8] should be considered and combined with the definition of illegal benefit. Considering this, the object of legalisation, in this case, can be money or other property, and property rights and obligations.

Notably, this crime does not include advantages, benefits, services, intangible assets, or any other benefits of an intangible or non-monetary nature, as they are not included in the concept of property and can only be the object of a criminal offence of obtaining an illegal benefit.

In addition, the analysis of Art. 209 of the CC of Ukraine [4], conducted by the Academy of Financial Monitoring [10], correctly states that the object of this crime cannot be things withdrawn from free circulation, in particular weapons and ammunition, explosives and radioactive substances, narcotic, psychotropic and potent or poisonous substances. If such things are used as the object of a criminal offence, they cannot be the objects of money laundering, as they are the objects of other crimes.

According to the National Accounting Regulation (Standard) 1 “General Requirements for Financial Reporting” approved by the Order of the Ministry of Finance of Ukraine No. 73 dated 02/07/2013 [9], cash (money) means cash, funds on bank accounts and demand deposits. An analysis of Article 192 of the Civil Code of Ukraine [8] allows understanding that money (funds) includes the monetary unit of Ukraine, the hryvnia, and foreign currency.

Thus, if it is established that the object of a particular crime, namely a particular fact of property legalisation, is money laundering, the construction of witness versions and their verification will be connected with their characteristics, which will affect the typical traces of the crime that will be associated with money (withdrawals from a bank account by a particular person, transfer of non-cash funds from one person to another, provision of financial assistance, etc.)

In her scientific works, V.G. Lyseytseva [14] notes that the main purpose of the legalisation of criminal proceeds is to convert cash into non-cash form, providing it with the appearance of being obtained from legitimate sources. Thus, it identifies cash as the predominant object of property laundering. However, considering the development of the latest methods of investigating this type of crime, which encourages criminals to invent new ways to conceal the crime, and technological progress, the laundering of property other than cash is becoming more widespread.

While the term “cash” does not raise any problems with its understanding, the concepts of other

property, and property rights and obligations, deserve more detailed attention.

Civil law defines property as objects of the material world, as it may seem at first glance, and such concepts as currency values and virtual assets, which are now deeply involved in all spheres of people's lives and are of particular importance, including for the detection of property legalisation and the choice of tactics for its investigation.

Thus, according to Article 1 of the Law of Ukraine “On Currency and Currency Values” [10], currency values are the national currency (hryvnia), foreign currency and precious metals.

Notably, the currency is understood in the form of banknotes or funds in bank accounts, and as electronic money denominated in hryvnia or any other foreign currency.

Particular attention should be paid to the concept of “virtual asset”, which is provided in the Law of Ukraine “On Prevention and Counteraction to Legalisation (Laundering) of Proceeds of Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction” [16], namely, clause 13, part 1, article 1 of the Law states that a virtual asset is a digital expression of the value that can be traded in a digital format or transferred and can be used for payment or investment purposes.

Therewith, Article 46 of the Law of Ukraine “On Prevention of Corruption” [11] requires persons submitting declarations to the National Agency for the Prevention of Corruption to indicate crypto assets, in other words, a virtual asset. Thus, a virtual asset has already been recognised by law as a type of property, and therefore it may be the object of a crime under Article 209 of the CC of Ukraine [4].

The significance of understanding the properties of cryptocurrencies as a criminal object and their use is confirmed at the global level, in particular, this issue was one of the main ones discussed at the meeting of the G20 leaders in Osaka in 2019.

Thus, technological progress, in particular, the removal of the possibility of obtaining illegal benefits from purely material things, establishes new challenges for law enforcement and other agencies and institutions that are called upon to combat the legalisation of illegally obtained property. These challenges are related to the necessity of using specialised knowledge in the field of information technology and engaging relevant specialists to effectively detect and investigate this type of crime.

In addition, it should be noted that using electronic funds, virtual assets, or crypto assets as a subject of property legalisation blurs the boundaries for criminals and results in the fact that separate traces of a crime that are subject to detection can be under the jurisdiction of different countries. This circumstance requires the investigator to have a thorough

understanding of the characteristics of such an object of the crime, the possibility of its transformation and ways to withdraw it outside the country, and, thus, develop a line of investigation that will include the involvement of foreign law enforcement agencies.

The issue of using virtual assets as a subject of property laundering and their tracking is quite relevant in Ukraine, and therefore the main areas of development of the system for preventing and counteracting the legalisation (laundering) of proceeds of crime, terrorist financing and financing the proliferation of weapons of mass destruction in Ukraine for the period up to 2023 and the action plan for their implementation, approved by the Order of the Cabinet of Ministers of Ukraine No. 435-p of 05/12/2021 [2], it is noted that new challenges in the field of combating the legalisation of criminal proceeds are, in particular, used by criminals of the latest information technologies, and virtual assets that contribute to the anonymity of their activities. Thus, the lack of legal regulation of the virtual assets sector is considered to be one of the main factors contributing to money laundering, and the legal regulation of the virtual assets sector is defined as one of the main areas of national policy in this area.

Notably, according to the online publication *CryptoMisto* [17], Ukraine is among the top 3 countries in terms of cryptocurrency adoption.

Property rights and obligations deserve special attention in determining the object of legalisation of property obtained by criminal activity, considering that they are not objects of the material world in themselves, which causes some difficulties in their identification, and, thus, in establishing the possibilities of their legalisation. In this case, each fact of legalisation should be approached separately and the question of whether it occurred at all, or whether there was no attempt to legalise it, and such rights or obligations remained in the original state in which they were acquired, should be explored.

N.E. Blazhivska [18] concludes that the concept of "property" is not limited to the right of ownership of material objects but can be expressed in the form of the right to a thing and the binding right of claim, which may arise from contractual and non-contractual obligations.

Considering this, the author believes that the right to property or property obligations related to it can be the object of illegal benefit, and, subsequently, legalisation, if a person receives, for example, the right to claim a debt or the right to obtain ownership of the real estate in the future as an illegal benefit. Thus, the way to legalise it is to register the ownership of the apartment or to recover money from the debtor.

Such a characterisation of the object of the crime requires establishing the method of committing the crime and a connection with the person of the offender.

In addition, note that to correctly identify signs of money laundering, it is necessary to bear in mind that a person receives criminal income from property that they did not previously own. Therefore, the funds or property of individuals and legal entities that were received by a person on the legitimate ground, but which they illegally withheld, concealed, or failed to transfer to the state in the presence of an obligation to do it, cannot be the object of an offence [19].

Thus, for example, the Ruling of the High Specialised Court of Ukraine for Civil and Criminal Cases of 07/14/2011 [12], following a cassation appeal by the prosecutor, reversed the verdict of the Uzhhorod District Court of the Zakarpattia region of 08/04/2008 and the Court of Appeal of the Zakarpattia region of 03/29/2011 against R. in part of the conviction under part 1 of Article 209 of the CC of Ukraine [4], and the proceedings in this part were closed based on paragraph 2 of Article 6 of the CPC of Ukraine [1] for lack of *corpus delicti*.

The ground for this decision was the official origin of the funds incriminated as the object of legalisation (obtaining a loan from a bank), which were later used by the convict to purchase a car.

■ Conclusions

Thus, to determine the object of property laundering, it is not enough to refer solely to the disposition of the said article, which significantly narrows the possibility of its correct determination in the course of the investigation of a criminal offence. In each case, it is necessary to consider technological progress and its impact on changes in legislation, including criminal, civil, anti-corruption and anti-money laundering legislation. Important measures during the investigation to clarify the object are the involvement of information technology specialists and using the possibility of international cooperation.

In addition, in the current realities, efficiency in the activities of investigators is of particular importance due to the limitless options for transforming the object of property legalisation. Currently, cash or other property can be transformed into virtual assets within a very limited period, which in turn can be instantly moved to other countries, with virtually no control by government authorities.

Thus, the most appropriate and complete definition of the object of the crime is currency values, including cash, virtual assets, other property, and property rights and obligations.

Thus, the establishment of the specific features of the object of legalisation of the property obtained by criminal activity and its characteristics is a determining factor for the effective detection and further investigation of the crime, which affects the establishment of the method of legalisation, the circumstances of the crime, their connection with the person of the

offender and is a determining factor for organising and planning the investigation of this crime, and the establishment of national policy for the next period should include specific measures to counteract the legalisation of virtual assets that can be obtained in

the form of an illegal benefit. Such measures should be comprehensive and combine the activities of various authorised state bodies to achieve specific results exclusively in the legal field and include practical aspects of clarifying the object of property laundering.

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Предмет відмивання майна як передумова здійснення ефективного розслідування

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■ **Анотація.** Актуальність теми полягає в необхідності правильного з'ясування предмета відмивання майна під час розслідування в умовах дії актуальної редакції Кримінального кодексу України. Метою статті є визначення сучасних підходів до з'ясування предмета відмивання майна. Методологія дослідження містить загальнонаукові методи, зокрема аналіз, синтез та узагальнення – для з'ясування характеристики предмета злочину; спеціальні методи дослідження, а саме формально-логічний і порівняльно-правовий – для з'ясування особливостей предмета злочину на сучасному етапі розвитку правової науки та нормативної бази. Результатом дослідження є узагальнення позицій щодо місця предмета злочину серед елементів криміналістичної характеристики та важливості його з'ясування. Описано новели законодавства та їхній вплив на з'ясування предмета злочину. Визначено види майна, які можуть бути предметом легалізації. Описано проблематику, з якою стикаються слідчі під час розслідування відмивання майна, яке пов'язане з нетиповим предметом злочину – «віртуальним активом». Окреслено підходи до встановлення предмета злочину в сучасних реаліях, можливості його трансформації та подальшого з'ясування, а також залучення осіб зі спеціальними знаннями. Описано зв'язок особи злочинця з предметом злочину. Розглянуто можливості використання міжнародного співробітництва для з'ясування предмета легалізації майна та його ідентифікації

■ **Ключові слова:** предмет злочину; легалізація; неправомірна вигода; віртуальний актив; готівка; міжнародне співробітництво; майнові права