

Responsibility for legalization (laundering) of proceeds from crime in international statutory instruments and legislation of the Russian Federation

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Abstract. Legalization (laundering) of proceeds from crime is an offence of international nature. In view of globalization of the world economic processes, penetration of criminal money into the legal economy of one state adversely affects the financial stability of all countries, which requires them to collaborate in combating this type of criminal activities. This article deals with the regulation of responsibility for laundering proceeds from crime on the international level and on the level of criminal legislation of Russia, including the influence of international statutory instruments on the domestic legislation of the Russian Federation.

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Introduction

According to UN expert reports, the annual turnover of the organized crime is equal to approximately 500 billion US Dollars, half of which is the money gained from illegal drug trafficking. These amounts are laundered by criminal economic structures every year. In 1992, the Economic and Social Council of the UN decided to establish the UN Commission on Crime Prevention and Criminal Justice. At the first meeting, the Commission determined three main activities concerning crime prevention, the first one of which is the domestic and transnational crime, organized crime, economic crime (including legalization of proceeds from crime), and the role of the criminal law in the environment protection [1]. According to International Monetary Fund, the total amount of laundered money in the world reaches 2-5% of the world gross domestic product [2]. The most complete picture of the proceeds of the organized crime in the world is provided by the report of the United Nations Office on Drugs and Crime, which is named "Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes" published in the end of 2011 [3]. In 2009, the total turnover of all types of the organized crime in the world was almost equal to US\$2.1 trillion according to this report, which is equal to 3.6% of the world GDP.

Non-application by a state of legal measures on combating legalization of illicitly gained proceeds contributes to criminalization of economic ties. The countries, which have great experience in struggling organized crime, first of all "find and cut-off the

money of criminal organizations, which are the basis of its activity and are laundered and used for reproduction of the criminal business" [4]. Therefore, prevention of a criminal organization from using the proceeds gained in such a way is one of the methods of prevention and suppression of acquisitive offences, destruction of the financial base of organized crime as well as a contribution to the economic recovery. Experts say, "In Russia, there are about 40 thousand various firms controlled by criminal groups and taking part in legalization (laundering) of money gained illegally. The main directions of export are offshore areas, first of all, Cyprus, where about 12 billion US Dollars are laundered every year. Also, shell companies are actively used in Switzerland, Austria, Liechtenstein, and Persian Gulf countries" [5].

Body of the work

The first international document stating the concept of "laundering of proceeds from crime" was the UN Convention "Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances" [6]. The Convention went into effect for the USSR on April 17, 1991. According to Article 3 of the Convention, each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally: the conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph a) of this paragraph (subparagraph a) includes, for example, production, manufacture, preparation, distribution, sale of any narcotic drug or

any psychotropic substance). Thus, the said Convention admitted laundering of proceeds from the drug trafficking as an offence. However, not only proceeds from illicit drug trafficking but also proceeds from any other illegal activity were laundered. The Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime dated November 8, 1990 No.141 admitted actions associated with laundering of proceeds from various criminal activities as crime. The parties of the Convention undertook to qualify laundering of proceeds from criminal activity as crime; seize the instruments and proceeds from criminal activity (or property, the value of which is equal to these proceeds). The Convention went into effect for the Russian Federation on December 1, 2001.

During the same period (the late 1980s), in order to develop collective measures on struggling laundering of proceeds from crime, the Financial Action Task Force group (FATF) was established. The Russian Federation was admitted a member of FATF in June 2003. In February 1990, FATF developed 40 Recommendations on struggling money laundering. According to Recommendation "B", the countries were to treat money laundering as crime based on the Venice Convention and the Palermo Convention. The countries were to apply the "money laundering crime" term to all serious offences in order to cover the widest possible range of predicate offences.

The 1996 Criminal Code of the Russian Federation for the first time included Article 174 – legalization (laundering) of money or other property acquired illicitly. But the problem of regulation of this type of crimes remained not solved completely. On August 7, 2001, the Federal Law "On introducing Amendments and Supplements into Statutory Acts of the Russian Federation in view of Adoption of the Federal Law "On Combating Legalization (Laundering) of Proceeds from Crime and Financing Terrorism" [8] was adopted, according to which new Article 174¹ (legalization (laundering) of money or other property acquired by a person as a result of commitment of an offence by himself) was added to the Criminal Code of the Russian Federation and the content of Article 174 (legalization (laundering) of money or other property acquired by other persons as a result of an offence) was amended. Later on, multiple amendments were made in Articles 174 and 174¹ of the Criminal Code of the Russian Federation. The regulations have been most recently edited in view of adoption of the Federal Law dated June 28, 2013 No.134-FZ "On Introducing Amendments in the Statutory Acts of the Russian Federation in Part of Combating Illicit Financial Transactions" [9].

Articles 174 and 174¹ target at protecting the purity and stability of our financial system with the finite purpose of encouraging the national economy development. The Directive of the Council of Europe dated June 10, 1991 "On Prevention of Use of the Financial System with the Purposes of Money Laundering" evidences that financial systems needed appropriate legal protection [10].

Both articles called money and other property acquired by crime as the target of crime. The Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime dated November 8, 1990 determined the term "property" as property of any kind, tangible and intangible, movable and immovable, as well as legal acts or documents entitling to own of such property or to benefit from it. The UN Convention against Transnational Organized Crime provides similar definition [11].

The texts of the Federal Law "On Combating Legalization (Laundering) of Proceeds from Crime and Financing Terrorism" and Articles 174 and 174¹ of the 2011 Edition of the Criminal Code of the Russian Federation emphasized that the target of legalization did not include funds acquired as a result of commitment of such crimes as non-return of foreign currency from abroad, evasion of taxes and custom duties, non-fulfillment of obligations of a tax withholding agent, concealment of monetary resources or assets of an organization or an individual entrepreneur, at the expense of which taxes and(or) fees were to be collected (Articles 193, 194, 198, 199, 199¹, 199² of the Criminal Code of the Russian Federation). N.G. Ivanov noticed that "the specificity of the listed offences, commitment of which does not incur any income, resides in the fact that an individual benefits from criminal operations but not gives what must be given to the government, i.e. part of his income received in the result of legitimate transactions" [12]. Other scientists also support this view [13, 14]. As for the criminal legislation of other countries, for example, the Penal Code of Poland, on the contrary, lists the types of crimes, which result in proceeds from crime subject for legalization [15]. However, some authors doubt that and believe that proceeds from any crime can be legalized [16, 17]. International legal standards do not stipulate exceptions from the so-called predicate offences, proceeds from which are the subject of such offences. Particularly, Article 1 of the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime No.141 reads: a "predicate offence" means any criminal offence, as a result of which proceeds were generated that may become the subject of an offence. The Federal Law dated June 28, 2013 No. 134-FZ

brought the criminal legislation of Russia in line with the international standards.

Offences stipulated in Articles 174 and 174¹ of the Criminal Code of the Russian Federation must be different from each other only by the subject of the crime. According to Article 174 of the Criminal Code of the Russian Federation, that person is to be arraigned on a criminal charge who legalizes (launders) property, which he has not acquired by crime, i.e. commits only the legalization of the property without committing the predicate (primary) offence. And the person who first acquires the property by crime and then legalizes (launders) it must be arraigned on a criminal charge under the Article 174¹ of the Criminal Code of the Russian Federation. I.e. in the second case, the same person commits two offences (the criminal law treats this situation as multiple crime): the predicate one, in the result of which the proceeds from crime are gained, and the laundering of these proceeds. As both cases address legalization (laundering) of proceeds from crime, the actus reus of the offences stipulated by Articles 174 and 174¹ of the Criminal Code of the Russian Federation must be the same to our opinion. This problem was partially solved in 2010 by adoption of the Federal Law dated April 7, 2010 No. 60-FZ "On Amendment of Certain Legislative acts of the Russian Federation". The action in the form of utilization of monetary funds or other property obtained by crime with business or other economic purposes was removed from the actus reus of the offences stipulated by Article 174 of the Criminal Code of the Russian Federation.

There were multiple contradictory arguments in legal publications about the possibility to arraign on a criminal charge for legalization if an offence, in the result of which a person obtained property (a predicate offence), has not been qualified separately. Clause 21 of the Decree of the Plenum of the Supreme Court of the Russian Federation "On the Court Practice Regarding Cases of Illicit Entrepreneurship and Legalization (Laundering) of Monetary Funds or Other Property Acquired by Crime" [18] did not make this issue clear by pointing out that, at sentencing according to Article 174 or Article 174¹ of the Criminal Code of the Russian Federation, the court is to establish the fact that the person obtained monetary funds or other property, which he knew to have been obtained by crime or as a result of commitment of an offence. P.S. Yani noticed: "The plenum in the mentioned clause requires that in the a legalization case sentence the court must conclude on the criminal nature of the legalized property acquisition and avoid any reference to the sentence for the predicate offence, which sentence can even not be made at all" [19].

The Deputy Chairman of the Supreme Court of the Russian Federation V.P. Perin also substantiated an opposite conclusion when interpreting the same decree [20]. Taking into account that B.P. Perin is a representative of the judicial system, we can conclude that the legal practice will keep to the path of the necessity of a sentence for a predicate offence in order to arraign on a criminal charge for legalization.

Until recently (June 2013), the following issue has remained unsolved: If a person receives the property by his own crime and then legalizes it (Article 174¹ of the Criminal Code of the Russian Federation), the criminal responsibility will take place only if the act of crime was on a large scale (six million rubles). And if the person just legalizes the property obtained by crime (Article 174 of the Criminal Code of the Russian Federation), the criminal responsibility is not associated with the large scale. In this case, it is sufficient to legalize the property equal to any amount in order for the responsibility to occur. This is not in line with the principle of justice, which has many times been mentioned by scientists [21, 22]. We raised the question what amount of money or property needed to be legalized in order for the criminal responsibility to occur according to Article 174 of the Criminal Code of the Russian Federation: 100 rubles, 1,000 rubles, or more. Part 2 of Article 14 of the Criminal Code of the Russian Federation reads that an act is not treated as an offence if it is not socially dangerous due to its insignificance though it contains attributes of an offence as stated by the Criminal Code of the Russian Federation. We find it reasonable to arraign on a criminal charge for legalization (laundering) of monetary funds or other property acquired by other persons by crime, which legalization committed in the amount exceeding 1,000 rubles. In case of commitment of these acts to the amount less than 1,000 rubles, there should be administrative responsibility in compliance with Article 15.27 of the Administrative Offence Code of the Russian Federation – non-abidance by the requirements of the legislation concerning the legalization (laundering) of proceeds, which have been acquired by crime, and the financing terrorism [23].

Lawmakers solved this issue by synchronizing the criminal responsibility for commitment of offences described in Articles 174 and 174¹ of the Criminal Code of the Russian Federation. The Federal Law dated June 28, 2013, No.134-FZ stated that commitment of a criminal act on a large scale became the qualifying attribute of the said offences (Part 2 of Articles 174 and 174¹ of the Criminal Code of the Russian Federation).

Conclusion

It is to be noted that improvement of the criminal law in part of responsibility for legalization (laundering) of money or other property acquired by crime has not been finished. The judicial and investigational practice will reveal certain problem of law-enforcement, which will require their legislative solution both on the international and domestic level.

Summary

1. Legalization (laundering) of proceeds from crime is treated as one of the main activities of the organized crime. Organized crime in this sphere endangers security of the financial system of any state.

2. The concept of laundering proceeds from crime is included in the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the Convention of the Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the UN Convention against Transnational Organized Crime, and the Recommendations of FATF concerning the struggle against money laundering.

3. The criminal law of Russia stipulates responsibility for legalization (laundering) of money or other property acquired by a person by his crime (Article 174¹ of the Criminal Code of the Russian Federation) and for legalization (laundering) of money or other property acquired by other persons by crime (Article 174 of the Criminal Code of the Russian Federation). The criminal law of Russia does not contradict international legal acts against laundering of proceeds from crime.

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