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SUBJECTIVE SIGNS OF LEGALIZATION OF REVENUE RECEIVED FROM CRIMINAL ACTIVITIES

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Abstract. The article analyzes the general concept of money laundering. All over the world, the international community, including the United Nations, recognizes the legalization of proceeds from crime as one of the most widespread and dangerous transnational crimes. The growing danger of the legalization of criminal proceeds in the modern world is of concern to the vast majority of countries in the world community. According to experts, "in recent years, the proceeds from various kinds of crimes in the field of money laundering have been from 2 to 5% of the total world gross product, that is, from 1 to 3 trillion US dollars". With the globalization of the world financial system, the question arises of the need to coordinate the efforts of states to combat money laundering at the international level. In the world, special importance is attached to the fight against crime, the imposition of sentences by the courts for crimes committed in accordance with the principle of justice, and the liberalization of criminal legislation. Thus, special attention is paid to conducting research in the field of determining responsibility for the legalization of proceeds from crime and preventing the causes and conditions that contribute to its occurrence, the correct qualification of this crime, and strengthening the implementation of international standards in this area in national legislation.

Keywords: crime, criminal liability, proceeds of crime, money laundering, legalization, punishment

JINOIY FAOLIYATDAN OLINGAN DAROMADLARNI LEGALLASHTIRISHNING SUBYEKTIV BELGILARI

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Annotatsiya. Maqolada jinoiy faoliyatdan olingan daromadlarni legallashtirishning umumiy tushunchasi tahlil qilingan. Dunyoda xalqaro hamjamiyat, shu jumladan, Birlashgan Millatlar Tashkiloti tomonidan jinoiy daromadlarni legallashtirish eng keng tarqalgan va xavfli transmilliy jinoyatlardan biridir deb topilgan. Zamonaviy dunyoda jinoiy yo'l bilan topilgan daromadlarni legallashtirishda ortib borayotgan jamoat xavfi dunyo hamjamiyatini tashvishga solmoqda. Mutaxassislarning fikriga ko'ra, "so'nggi yillarda jinoiy daromadlarni legallashtirish bilan bog'liq turli xil jinoyatlardan keladigan daromadlar global yalpi mahsulotning 2–5 foizi, ya'ni 1–3 trillion AQSh dollarini tashkil etadi". Jahon moliyaviy tizimining globallashuvi sharoitida pullarni legallashtirishga qarshi kurashishdagi davlatlar sa'y-harakatlarini xalqaro miqyosda muvofiqlashtirish zarurati tug'iladi. Jahonda jinoyatchilikka

qarshi kurash, sudlar tomonidan sodir etilgan jinoyatlar uchun odillik prinsipiga asosan jazo tayinlash, jinoyat qonunchiligini liberallashtirishga alohida ahamiyat berilmoqda, jumladan, jinoiy faoliyatdan olingan daromadlarni legallashtirish uchun javobgarlikni belgilash hamda unga imkon bergan sabab va sharoitlarning oldini olish, ushbu jinoyatni to'g'ri kvalifikatsiya qilish hamda uni sodir etganlik uchun javobgarlikni takomillashtirish, bu boradagi xalqaro standartlarning milliy qonunchilikka implementatsiyasini kuchaytirish sohasida tadqiqotlar o'tkazishga alohida ahamiyat berilmoqda.

Kalit so'zlar: jinoyat, jinoiy javobgarlik, jinoiy daromadlar, pul yuvish, legallashtirish, jazo.

СУБЪЕКТИВНЫЕ ПРИЗНАКИ ЛЕГАЛИЗАЦИИ ДОХОДОВ, ПОЛУЧЕННЫХ ОТ ПРЕСТУПНОЙ ДЕЯТЕЛЬНОСТИ

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Аннотация. В статье анализируется общее понятие отмыывания денег. Во всем мире международным сообществом, в том числе Организацией Объединенных Наций легализация доходов, полученных от преступной деятельности, признается одним из самых распространенных и опасных транснациональных преступлений. Нарастающая в современном мире общественная опасность легализации преступных доходов вызывает озабоченность подавляющего большинства стран мирового сообщества. По оценкам экспертов, в последние годы доходы от различного рода преступлений в сфере отмыывания денег составляют от 2 до 5 % всего мирового валового продукта, то есть от 1 до 3 трлн долларов США. По мере глобализации мировой финансовой системы встает вопрос о необходимости координации усилий государств по противодействию отмыыванию преступных доходов на международном уровне. В мире особое значение придается борьбе с преступностью, назначению судами наказаний за совершенные преступления согласно принципу справедливости, либерализации уголовного законодательства. Так, особое внимание уделяется проведению исследований в сфере определения ответственности за легализацию доходов, полученных от преступной деятельности, и предупреждению причин и условий, способствующих ее возникновению, правильной квалификации данного преступления, усилению имплементации в национальное законодательство международных стандартов в этой области.

Ключевые слова: преступление, уголовная ответственность, преступные доходы, отмыывание денег, легализация, наказание

Introduction

In the domestic science of criminal law, the subject of a crime is a naturally sane person who has committed a crime and has reached the age established by criminal law. The absence of at least one of these elements (signs) means the absence of the subject of the crime and, accordingly, the absence of the crime itself [1].

According to V. G. Pavlov, the subject of a crime is a legal concept and determines

the legal characteristics of the person who committed the crime; it is limited only by the signs (individual, age, sanity) that are necessary for the onset of criminal liability concerning the person who committed a socially dangerous act, which constitute only a small part of the signs of the person who committed the crime [2, p. 270].

In the theory of criminal law, the subjects of crime are traditionally classified into the following types.

General subject - having all the characteristics specified in Article 17 of the Criminal Code of the Republic of Uzbekistan.

A special subject of a crime is a person who, along with the general characteristics of the subject (reaching the age of criminal responsibility and sanity) also meets additional special features specified in the disposition of the articles of the Special Part of the Criminal Code, which are subject to a mandatory establishment when qualifying and limiting the circle of persons who may be liable under this article. A special subject must be defined by criminal law [3, p. 104].

There is an opinion of several local scientists, such as R. Kabulov, A. A. Otajonov, and I.A. Sattiev, that if a common subject participates in crime along with a special subject, then the special subject will be the performer, and the general one will be the organizer, instigator or accomplice based on the acts [4, p. 87].

Analyzing the studied corpus delicti – the legalization of revenue received from criminal activities, it can be concluded that the Criminal Code of the Republic of Uzbekistan does not specify a special subject, and this in turn suggests that the subject of legalization of revenue received from criminal activities can be sane individuals who have reached the age of 16.

In domestic science, there are no controversial discussions regarding the definition of general and generic objects of the corpus delicti provided in the Article 243 of the Criminal Code of the Republic of Uzbekistan.

It can be seen that the number of facts of crimes committed and the data on the share of legalization (laundering) changed abruptly throughout the study period, but there is a clear tendency to reduce the number of crimes in recent years by more than 2 times.

Uzbekistan has a high share of the shadow economy: when estimating the share of the

shadow economy at 50%, GDP loss amounts up to 16-17 billion US dollars.

Materials and methods

General scientific methods such as historical, comparative legal, and logical (analysis and synthesis) methods were used in the framework of the article.

Research results

Studying the legislation of foreign countries, one can see that this crime possesses different approaches to the object.

Thus, in the Criminal Code of Kazakhstan [5], criminal liability for money laundering is enshrined in Article 218, which contains both a general and a special subject. Special subjects here are, for instance, persons who have committed this crime using their official position, officials, and persons holding a responsible public position.

A special subject is also singled out separately in the Criminal Code of the Russian Federation [6] in the dispositions of Articles 174 and 174.1, persons who have committed a crime using their official position are indicated.

In the CIS countries, the Republic of Moldova has an interesting example of a special subject.

The Article 243 of the Criminal Code [7] of this country provides criminal liability for money laundering for legal entities, and as a punishment, provides large fines, and deprivation of the right to engage in certain activities or liquidation of this legal entity.

In the Criminal Code of the Netherlands [8], Article 51 is devoted to this issue, stating criminal acts committed by both individuals and legal entities.

Currently, more than 70 countries provide criminal liability for legal entities [9, p. 9].

Considering the fact that such theorists of criminal law as A.B. Naumov and A.V. Brilliantov believe that public relations that regulate the established procedure for carrying out an entrepreneurial activity or other economic activity [10]

are considered under the direct object of legalization, this judgment gives us the right to draw conclusions about the possibility of recognizing such participants in entrepreneurial activity as subjects of crime.

Let's analyze the subjective side of crime.

M.Kh. Rustambayev points out that this is the mental attitude of the perpetrator to the socially dangerous act committed by him, regarded as a crime by the criminal law, characterized by guilt, motive, purpose and emotions. generally speaking, I agree with M. Usmonaliev [11], R. Kabulov, A.A. Otajonov [12], and B.J. Matmuratov [13, p. 3].

The subjective side of the crime is an internal (relative to the objective side) characteristic of the crime. In the scientific literature, the subjective side is defined as the internal, mental attitude of a person to a socially dangerous act committed by him [14, p. 15].

The subjective side of the crime is formed prior to the commission of the crime in the form of motives and goals and then accompanies it until the criminal result occurs, representing a kind of self-control over the actions performed [16, p. 227].

According to a majority of researchers, the subjective side of the crime includes a set of mental processes that determine and justify the illegal act committed by the perpetrator. In science, it is generally accepted that any mental process can be described by considering the three aspects that form it: cognitive, volitional and emotional [15, p. 45].

In fact, the authors clearly define the form of guilt as direct intent in all the comments to the relevant norms of the Criminal Code.

At present, the question of the subjective side of the crime prescribed in Article 243 of the Criminal Code of the Republic of Uzbekistan does not seem to be completely clear to us. The disposition of the Article does not contain an indication of the purpose of performing the actions provided in it,

despite the fact that the corresponding term legalization is used in its name. A person who is aware that he is making a financial transaction or other transaction cannot but wish to make this transaction (operation) of a legitimate nature. Criminal acts are committed on the intent of the person. That is, in our opinion, the direct intent of the occurrence of criminal consequences of legalization, (namely, giving the received income the appearance of legal origin) should be covered by the intent of the subjects of the crime.

Based on this, it is necessary to consider the possibility of committing a crime with indirect intent under the Article 243 of the Criminal Code of the Republic of Uzbekistan.

The nature of the crime in the form of legalization of revenue received from criminal activities is associated with financial and economic values, and in this case, the mercenary component is obvious, but the legislator does not accentuate this, unlike the elements of crimes related to the theft of other people's property. In this regard, it is necessary to clarify the concept of the motive of the crime in general and in the commission of the crime under consideration in particular.

P.S. Dagel and D.P. Kotov define the motive of a crime as "a conscious and evaluated motivation generated by the system of needs, which is the ideal basis and justification for a socially dangerous act". A.I. Rarog defines the motive of a crime as internal motives caused by certain needs and interests, which cause a person to resolve to commit a crime and which guide him when committing it [17].

As it is obvious from the disposition, there is no indication of proof of knowledge, when this term is present to describe the forms of legalization of criminal revenue by some CIS countries (Russia, Armenia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan). It seems that this is due to the fact that in the

design of legal norms establishing liability for the laundering of criminal proceeds, some regulatory legal acts adopted by the Inter-Parliamentary Assembly of the CIS member states could be taken into account.

For example, Article 15 (legalization of revenue received from criminal activity) of The Recommendation Legislative Act “On Combating Organized Crime”, adopted by the resolution of the Inter-Parliamentary Assembly of the CIS Member States on November 2, 1996, formulated the concept of legalization. It is understood as the concealment or non-disclosure of illegal sources and the nature of the origin, location, placement, movement or actual ownership of funds or other property or rights to property knowingly obtained by criminal means. This term is used in paragraph 2 of Article 2 of the Model Law “On Countering the Legalization (“Laundering”) of Illegally Obtained Revenue”, which defines the characteristics of income obtained knowingly illegally [18].

In particular, in the Criminal Code of the Republic of Belarus [19], this term is used in Article 235 (legalization (“laundering») material values obtained by criminal means): “The commission of financial transactions with funds obtained knowingly by criminal means, in order to give a lawful form to the possession, use and (or) disposal of these funds for the purpose of concealing or distorting the origin, location, placement, movement or actual ownership of these funds.”

It is important to note that a number of international documents mention the signs of the subjective side of money laundering.

For example, in accordance with the provision of paragraph 2 of Article 5.2.1 (Criminal Offence of Money Laundering) of The Model Legislation on Money Laundering and the Financing of Terrorism, prepared by the United Nations Office on Drugs and Crime in conjunction with the International

Monetary Fund (2003) [20], states that “the conclusion of knowledge, wish or intent as a necessary element of an offence can be inferred from objective factual circumstances”.

Article 6, paragraph 2 (Criminalization of Laundering of revenue received from criminal activities) of the United Nations Convention against Transnational Organized Crime (2000) [21] states that “awareness, intent or purpose as elements of the offence referred in paragraph 1 of this article may be established from the objective factual circumstances of the case”.

The actions listed in the Article 243 of the Criminal Code relate to the formal elements of the crime, the form of intent is direct.

In domestic criminal legislation, there is no special indication of the motive and purpose of the crime. The purpose of money laundering is specified in the Criminal Codes of Armenia, the Republic of Belarus, Moldova, and Azerbaijan [22, pp. 463–492].

Conclusions

The state policy in the field of combating money laundering is based on the international legal obligations of the Republic of Uzbekistan and the interest of protecting the normal functioning of the national economic system. International legal standards for combating money laundering indicate typical approaches to solve the issue, taking into account both the general laws of countering this phenomenon, the characteristics of each state and the need of ensuring protection from crimes of a transnational nature. Following international standards, the state, however, cannot fail to take into account the specifics of their implementation, on the basis of the national legal system and specific socio-economic conditions. All of these aspects determine the direction of solving a complex issue, finding a balance between compliance with international standards and considering national interests.

Studies of the theory, legislative and law enforcement practice allow us to conclude that, despite the high degree of public danger of money laundering, the practice of applying Article 243 of the Criminal Code of the Republic of Uzbekistan still does not meet the real scale of this crime.

To this end, the article substantiates the need to analyze the theory and practice of foreign countries in bringing legal entities to justice for laundering the revenue received from criminal activities; based on the analysis of legal literature, it is determined that the simultaneous use of the terms “laundering” and “legalization” of criminal revenue in the title of the article is possible.

The study confirms the need to develop comprehensive measures to counteract the legalization of income received from criminal activities by adopting annual programs for interdepartmental coordination of measures to counteract the legalization of revenue received from criminal activities.

The author proposes to continue a periodical summary of the judicial practice considering the cases of money laundering,

as well as on the basis of the materials obtained to conduct analytical work on effective prevention and control of this delinquency. In addition, it is proposed to organize the publication of collections of depersonalized cases on the investigation of crimes in this area, thereby opening access to legal and financial information.

The Law of the Republic of Uzbekistan 660-II “On countering the legalization of revenue received from criminal activities, the financing of terrorism and the financing of the proliferation of weapons of mass destruction” of 26.08.2004 shall be further improved, taking into account the requirements of international law, in particular, the Recommendations of the Financial Action Task Force on Money Laundering (FATF). For instance, it should include issues related to virtual assets, financial investigations, and others.

Taking into account all of the above, it can be concluded that the issues of countering the legalization of revenue received from criminal activities are so large-scale that they require further research within the framework of other research works.

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