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12.00.03 – FUQAROLIK HUQUQI. TADBIRKORLIK HUQUQI. OILA HUQUQI. XALQARO XUSUSIY HUQUQ

12.00.04 – FUQAROLIK PROTSESSUAL HUQUQI. XO'JALIK PROTSESSUAL HUQUQI. HAKAMLIK JARAYONI VA MEDIATSIYA

12.00.08 – JINOYAT HUQUQI, HUQUQBUZARLIKLARNING OLDINI OLISH. KRIMINOLOGIYA. JINOYAT-IJROIYA HUQUQI

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THE GENESIS OF MONEY LAUNDERING

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Abstract. *This article analyzes the general concept of legalization of incomes received from criminal activities. The author drew attention to the fact that the legalization of income derived from criminal activity represents a serious threat to national interests since it is a necessary condition for the creation and functioning of organized crime in various spheres of social life. Legalization of revenue received from criminal activities is a criminal and socially dangerous act constituting transfer, conversion, or exchange of property, which has been obtained as a result of criminal activities, as well as non-disclosure or concealment of original nature, source, location, way of disposal, movement, genuine rights concerning the property or ownership thereof in the instance if such property has been obtained as a result of criminal activities.*

Keywords: *criminal law, responsibility, legalization of income, crime, financing of terrorism.*

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Аннотация. *В данной статье проанализировано общее понятие легализации доходов, полученных от преступной деятельности. Автор обратил внимание на то, что легализация доходов, полученных от преступной деятельности, представляет собой серьезную угрозу национальным интересам, поскольку является необходимым условием порождения и функционирования организованной преступности в различных сферах жизни общества. Легализация доходов, полученных от преступной деятельности, – уголовно наказуемое общественно опасное деяние, представляющее собой придание правомерного вида происхождению денежных средств или иного имущества путем их перевода, превращения или обмена, а равно сокрытие либо утаивание подлинного характера, источника, местонахождения, способа распоряжения, перемещения, подлинных прав в отношении денежных средств или иного имущества либо его принадлежности, если денежные средства или иное имущество получены в результате преступной деятельности.*

Ключевые слова: *уголовное право, ответственность, легализация доходов, преступление, финансирование терроризма.*

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Аннотация. *Мақолада жиноий фаолиятдан олинган даромадларни легаллаштиришнинг умумий тушунчаси таҳлил қилинган. Муаллиф эътибори жиноий фаолиятдан олинган даромадларни легаллаштириш жамият ҳаётининг турли соҳаларида уюшган жиноятчилик юзага келиши ва фаолият кўрсатиши учун зарур шарт-шароит яратиши туфайли миллий хавфсизликка жиддий таҳдид солиш мумкинлигига қаратилган. Жиноий фаолиятдан олинган даромадларни легаллаштириш – пул маблағлари ёки бошқа мол-мулк жиноий фаолият натижасида топилган бўлса, уларни ўтказиш, мулкка айлантириш ёхуд алмаштириш йўли билан уларнинг келиб чиқишига қонуний тус беришдан, худди шунингдек, бундай пул маблағлари ёки бошқа мол-мулкнинг асл хусусияти, манбаи, турган жойи, тасарруф этиш, кўчириш усули, пул маблағлари ёки бошқа мол-мулкка бўлган ҳақиқий эгалик ҳуқуқлари ёки уларнинг кимга қарашлилигини яшириш ёхуд сир сақлашдан иборат бўлган, жиноий жазоланадиган ижтимоий хавфли қилмиш.*

Калит сўзлар: *жиноят ҳуқуқи, жавобгарлик, даромадларни легаллаштириш, жиноят, терроризмни молиялаштириш.*

Introduction

To date, the legalization of revenue received from criminal activities is considered an international crime [1, p. 52].

The legalization of criminal revenue is a complex systemic phenomenon that must be countered with an adequate state strategy. The concept of improving the criminal and criminal procedure legislation of the Republic of Uzbekistan of May 14, 2018, set exactly this task to the state institu tions.

Following the document, it is necessary to conduct an inventory of criminal legislation for its unification and bringing it into alignment with advanced international standards and foreign practices, including transnational crimes, to which the legalization of criminal revenue belongs.

Since the adoption of the Law of the Republic of Uzbekistan “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” dated August 26, 2004, a state system for countering the legalization of criminal revenue has been systematically created in the country, which is aimed to meet modern international standards.

The law defines this crime as followings: “legalization of revenue received from criminal activity is a criminally punishable, socially dangerous act, that is a transfer, conversion, or exchange of property, which has been obtained as a result of criminal activities, as well as nondisclosure or concealment of original nature, source, location, way of disposal, movement, genuine rights in relation to the property or ownership thereof in the instance if such property has been obtained as a result of criminal activities”.

Under the Article 243 of the Criminal Code of the Republic of Uzbekistan, legalization of revenue received from criminal activities is a transfer, conversion, or exchange of property, which has been obtained as a result of criminal activities, as well as nondisclosure or concealment of original nature, source, location, way of disposal, movement, genuine

rights concerning the property or ownership thereof in the instance if such property has been obtained as a result of criminal activities.

The resolution of Plenum of the Supreme Court "On some issues of judicial practice in cases of legalization of revenue received from criminal activities" of 11 February 2011, states that under the term of legalization of criminal revenue, a guilt of giving a legitimate view to the origin of the property obtained through criminal activities should be understood. In this instance, any property provided for the Article 169 of the Civil Code may be considered as an object of ownership.

As a rule, giving a legal appearance to the origin of such property is committed during the financial transactions and other transactions with money or other property [2, p. 30].

Materials and Method

In the course of the study, methods such as historical, systemic-structural, comparative-legal, logical, specifically sociological, complex research of scientific sources, induction and deduction, analysis of statistical data were applied.

Results

The concept of "legalization" is defined by studying the method of committing an act and its purpose.

In the legal science, there are ideas that the "laundering" of revenue is inherent in an integral feature – the goal is to create the appearance of legality of obviously criminal income [3, p. 100]. We fully support this judgement.

In the modern history, the term of "money laundering" was first used in the late twentieth century in the United States of America with the proceeds of drug trafficking [4, p. 6].

In the international law, the definition of legalization (laundering) of the revenue from criminal activities was given in the Article 3 of the UN Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of December 19, 1988.

The Vienna Convention of the United Nations of 1988 recognized the "laundering" of money obtained from drug trafficking as a crime.

Thus, the revenue received from criminal activities can be used for the following purposes:

1) covering current expenses of criminals;
2) accumulation;
3) development of criminal activity;
4) investment in the legal economy.

Taking into account these facts, all this leads to the transformation of legalization into a highly profitable and effective criminal production [5, p. 19].

In criminal-legal doctrine, there are the basic signs of money laundering, as the commission of a predicate, giving legitimation and concealment of traces of criminal nature of income, creating the illusion of legitimacy of income and investment in legitimate business [6, p. 8-9].

N.A. Bashyan singles out organized legalization of revenue from fraud as a type of criminal deception in the economic sphere, including an integral set of crimes committed as part of an organized group, including a criminal community (criminal organization), financial transactions, and other transactions with money, other property, and rights to it, knowingly acquired by the criminal person or other persons through the commission of fraud, in order to give a legitimate form of possession, use and disposal of the corresponding money, other property, and rights to it, as well as people who committed such crimes [7, p. 10].

M.Kh. Rustambayev points out that the subject of legalization is the property obtained as a result of committing crimes, such as theft, smuggling, extortion, illegal trafficking of narcotic drugs and psychotropic substances, weapons, organization, and maintenance of brothels of debauchery, production, or distribution of pornographic objects and a number of others [8, p. 6].

V.V. Lavrov considers this crime in a narrow sense. He sees legalization only as

"a special form of involvement in a crime, expressed in the commission of financial transactions or other transactions with money or other property acquired in a criminal-illegal way, as well as in the use of this revenue in the implementation of entrepreneurial or other economic activities" [9, p. 15].

V.B. Bukarev argues that the term "laundering", used in international legal acts refering to this crime, is more accurate. The use of the term "legalization" with criminal proceeds is a terminological error that needs to be corrected by law, "laundering" should be accepted as the most accurate, logical and widely used term in international legal science and practice [10, p. 154].

The opposite position is taken by A.S. Boskholov, who believes that the term "laundering" should be excluded from the law, as an unnecessary and disorienting practice [11, p. 38].

German scientist H.H. Kerner defines money laundering as "operations" carried out to conceal or conceal the presence, origin or intended purpose of material values arising from a crime in the first stage, in order to start extracting regular income from them in the second stage" [12, p. 6].

Scholar M.E. Bear defines money laundering as "the transfer of illegally obtained cash to another asset, the concealment of the true source or property from which the money is illegally obtained, and the creation of the character of legality for the source and property" [13, p. 11].

For example, here are some statements of German experts who consider the problems of countering the legalization of the "laundering" of revenue, it is difficult to disagree with his views. Thus, K. Kottke gave the definition of "dirty" money through the main spheres of their acquisition: general criminal and taxation, believing that the methods of laundering, given their differences, constitute some complete or integral processes [14, p. 14].

The legalization of criminal revenue is also mixed with the continuation of criminal activity in the scientific literature.

In particular, V.M. Aliyev notes that 1/3 of the criminal proceeds are invested in the development of illegal business, 1/5 part is spent on the acquisition of property.

The authors of the electronic textbook "Shadow Economy and Economic Delinquency" A.K. Bekryashev, I.P. Belozerov note that one of the stages of the criminal economic cycle is the legalization of criminal funds which includes financial transactions aimed at giving criminally obtained funds as the appearance of legally obtained funds. After the legalization of criminal revenue, according to the authors, the stage of criminal investment follows the use of legalized criminally obtained funds for the resumption and expansion of a criminal enterprise [15].

V.I. Tretyakov notes that corruption and legalization often mutually cooperate [16, p. 15].

Study of the model of money laundering adopted by the FATF (Financial Action Task Force on Money Laundering): Phase 1 – the introduction of "dirty money" into legal circulation; phase 2 –the dissolution of illegal funds in the legal flow; phase 3 – investment in legitimate business [17, p. 6].

In the literature, money laundering is also described as the "dark side of globalization" or the "illegal side of the global economy [18, p. 6]; money laundering is usually perceived as a transnational, high-tech crime.

In our opinion, a broader interpretation of legalization is assumed to be more correct, as it is presented in the studies of domestic scientists.

Turning to the historical analysis of legalization, it should be noted that attempts to disguise the criminal origin of revenue have been made since ancient times, when criminals caught in the possession or use of stolen goods, referred to the legality of its acquisition. Therefore, the laws of the Babylonian king Hammurabi (1792-1750

BC) already provided with the procedure for establishing the legality of the origin of a thing with the verification of the owner's testimony about its acquisition in good faith. Similar norms were contained in the laws of Ancient India (Arthashastra of Kautili – 321-297 BC) and Ancient Greece (Laws of Solon – 594-593 BC).

However, until the 20th century, the legalization of criminal revenue was not mentioned in the legislation, which indicates that this socially dangerous act, associated with the skillful disguise of the criminal origin of property or money, was not formed in its final form. This is due to the underdevelopment of economic relations, the prevalence of simple forms of market relations, and the low degree of profitability of crime. The presence of large sums of money of unknown origin quickly captured the attention of the state authorities and became the basis for an investigation.

Thus, Article XLIII "sufficient suspicion of theft" of the Criminal code, the Carolina (1532) provides with the verification of the legality of the origin of the property with the burden of proof on the suspect: "If the stolen property is found or discovered on a suspect and if one possessed it in whole or in part, sold, changed, or gave it away, then this serves as a sufficient evidence of a crime against him if he does not want to indicate from whom he bought or acquired this property, and if he does not prove that he acquired it not in a criminal and not punishable manner, but in good faith" [19, p. 720].

If we conduct a retrospective analysis of the criminal legislation on countering the legalization of the revenue received from criminal activities, we can conclude that in the period before the independence of the Republic of Uzbekistan, there was no such offense in the Criminal Codes of the Uzbek SSR.

This is primarily due to the fact that in the international legal arena, the concept of legalization of the revenue from criminal activities appeared for the first time in the UN Convention "On Combating the Illicit Transport of Drugs and Psychotropic Substances" only in 1988.

The Soviet government, as we know, abolished private property. However, in the Criminal Code of the UzSSR of 1926, there was a rule, to some extent, similar to the laundering of illegally obtained income.

The next Criminal Code of 1959 contained a more general rule: it established penalties for the acquisition or sale of property knowingly obtained as a result of the commission of a crime. As a rule, the subject of this crime were things related to socialist property, often obtained in the commission of theft, as well as in the commission of other criminal encroachments, for example, illegal logging or smuggling. When establishing the signs of the composition of the crime in question, it was necessary to establish the composition of the original crime, in the commission of which the object was obtained which significantly complicated the application of the norm [20, p. 386].

Thus, in the Criminal Code of the UzSSR of 1926 in Chapter I on "State crimes", there were norms similar to the analyzed composition of the crime in the articles 81, 82, 83, namely:

1. Concealment of inherited property or property transferred under the acts of donation, in whole or in part, as well as an artificial reduction of the value of the property in order to circumvent the laws on inheritance and donation, as well as the law on the tax on the inheritances and property transferred under the acts of donation…

2. Concealing or misrepresenting the quantities of items or products subject to taxation or accounting, organized by mutual agreement…

3. The concealment or incorrect indication of the size of the land area and the number of lives and meter-long agricultural equipment were accounted for the land reform for a confiscation or a forced redemption, as well as an embezzlement or a theft of the property already registered by local land commissions.

In the Criminal Code of 1959, similar articles are reflected in the chapters III-IV

on "The crimes against socialist property" and "Crimes against personal property of citizens":

Article 121 "An acquisition or sale of property knowingly obtained by criminal means – if the property is state or public";

Article 132 "An acquisition or sale of property knowingly obtained by criminal means – if the property has personal property rights".

Examining the norm of the two Criminal codes, one can conclude that if the edition of the Criminal code from 1926, crimes similar to money laundering were classified as crimes against a management order, while in a later edition of 1959, emphasis was placed on the property and the economic nature of the crime. A similar approach to this category of crimes is reflected in the later editions of Criminal Codes.

In the USSR, where the market economy was reduced to a minimum, the legalization of the criminal revenue was almost impossible which significantly hindered the growth of economic crimes [21, p. 162].

In the Criminal Code of 1994, the legalization of the revenue from criminal activities as a crime is reflected in the Article 243. Initially, the provisions of this article reads legalization of revenue received from criminal activities, that is transfer, transformation, or exchange of property, obtained through criminal activities or the concealment or disguise of the true nature, source, location, disposition, movement, genuine rights in respect of the property or its facilities, if such property obtained through criminal activities.

Article 243, as amended by Law of the Republic of Uzbekistan No. 223 of September 22, 2009, changed the disposition: "legalization of revenue received from criminal activities is a transfer, conversion, or exchange of property, which has been obtained as a result of criminal activities, as well as nondisclosure or concealment of original nature, source, location, way of disposal, movement, genuine rights concerning the property or ownership thereof in the instance if such property has been obtained as a result of criminal activities".

The main purpose of the new edition of the article is to meet the need to indicate that the crime must be accompanied by giving a legitimate appearance to the origin of the property. This rule made it possible to distinguish the usual turnover of criminal revenue from legalization.

When studying the theory of criminal law, one can come to the conclusion that any property obtained by criminal means can be sold in one way or another. However, this is not always a mandatory sign of legalization. Only if there is a subjective side, namely the desire to give a legitimate form of a criminal income, there is a possibility of the qualification under the relevant article of the Criminal Code of the Republic of Uzbekistan. The resolution of the Plenum of the Supreme Court "On the certain issues of the judicial practice in cases of the legalization of revenue received from criminal activities" of February 11, 2011 states that courts should distinguish between the legalization of revenue from a crime in the form of the acquisition or sale of property obtained by criminal means. In particular, it does not constitute the legalization of the revenue (the Article 243 of the Criminal Code), the acquisition, or the sale of the property which was obtained through the crime (e.g. theft of another's property) from other people, if such property is not given the visibility of legally obtained (for example, technical forged passport or a power of attorney for sale of stolen car).

Depending on the specific circumstances of the case (in particular, on the purpose of making a transaction with the stolen property), these actions can be qualified as complicity in the theft of someone else's property (in the form of complicity) or the acquisition or sale of property obtained by the criminal means (Article 171 of the Criminal Code), and if there are grounds for this – and as a forgery of the documents [22-28].

Conclusion

To sum up, it should be said that the process of the unification and the alignment with the best international standards of national criminal legislation taking into account the modern criminal law doctrine is the most important task of improving domestic legislation.

As it became clear from the analysis of national and foreign legislation, international law and doctrinal studies, the conceptual apparatus of the legalization of the revenue received from criminal activities as a whole is not formed, there is no unified approach to the definition and classification of this crime, the object, and subject of this category of socially dangerous acts are not identified.

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