

Legalization of Proceeds from Crime: Problems of Criminal Prosecution in Russia

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ABSTRACT: The problem being investigated is due to the insufficiency of the criminal law measures taken to counter crimes related to the laundering of proceeds from crime, through which terrorism is often financed. In this regard, this article is aimed at increasing the criminal liability of persons who committed this type of crime, as well as developing effective preventive measures in this criminal environment. The purpose of the study: to identify the dependence of the number of crimes on the legalization of proceeds from crime, and total crime in Russia, analysis of the data and the establishment of latency of such crimes. The leading approach to the study of this problem is the use of methods of logical analysis and synthesis, comparative legal, idealization, which allows you to compare the norms of international and Russian law in the field of money laundering, to analyze statistical data on crime in this area and to identify problems criminal prosecution. The analysis of statistical data and the share of crimes in the field of money laundering in the total number of crimes showed the insignificance of the initiation of criminal cases under Articles 174 and 174.1 of the Criminal Code of the Russian Federation (hereinafter – CC of Russia). A study of individual criminal cases on the legalization of proceeds of crime revealed a formal approach and the absurdity of the sentences. The Russian enforcement of criminal liability does not fully comply with the international recommendations of the Financial Action Task Force (FATF). The results can be used for further scientific development, as well as for the development of a state policy on criminal liability for crimes in the field of money laundering.

Keywords: legalization of proceeds from crime, criminal liability.

INTRODUCTION

Over the past decades, the problem of money laundering and terrorist financing has become particularly relevant in the international community (Ezhov et al., 2019). Aware of the threat to their national interests and the complexity of the process of identifying laundered money in the international financial system, the states came to understand the urgent need to develop collective measures to combat this type of criminal activity. The construction of a system to combat money laundering and the financing of terrorism (hereinafter - AML / CFT) began in Russia with the adoption of the Federal Law dated 07.08.2001 No. 115-FZ "On combating the legalization (laundering) of proceeds

from crime and the financing of terrorism” (hereinafter - Law No. 115-FZ). Law No. 115-ФЗ was adopted on the eve of powerful terrorist attacks on the United States, which subsequently naturally affected the acceleration of the implementation of the new legislative bloc in Russia.

However, such a concept as legalization (laundering) of cash and other property obtained by criminal means was introduced earlier in the very first edition of the CC of Russia of 1996. The Financial Monitoring Committee, created in 2001, laid the foundation for a long way: if Russia was originally faced with the task of withdrawing from the FATF “black list”, now the goals that the country's leadership sets for the whole system are much wider, more global and sometimes go beyond state borders.

Despite the significant work done over two decades to create a financial intelligence system, the issues of counteracting the legalization (laundering) of proceeds from crime, taking into account the high corruption and certain features of the mentality, remain difficult to solve in Russia. By the number of criminal cases initiated in the sphere of money laundering, it can be concluded that Russia does not have a problem of money laundering and other property (Pushkarev et al., 2019; Bahremand, 2015). In reality, the opposite is true - corruption schemes are changing and are always ahead of the current legislation and law enforcement, the amount of embezzlement of public funds grows proportionally to financing from the budget, and the gap between rich and poor is widening.

METHODOLOGICAL FRAMEWORK

Research Methods

The methodological basis of the study is materialistic dialectics, which determined the use of general and particular methods of cognition of objective reality. In the research process, both general scientific and special methods of scientific knowledge are used, methods of empirical and theoretical research, allowing to study the problem in many ways. In the course of the study, the following methods were used: historical, logical, systemic, functional, formal legal, comparative legal and idealization.

The Stages of the Research

The study of the problem was conducted in three stages:

1. A study of international regulation of the system for countering the legalization of proceeds from crime and the financing of terrorism;
2. A research of the Russian regulatory system for countering the legalization of proceeds from crime and the financing of terrorism; comparison and analysis of the compliance of the Russian system with international standards;
3. An analysis of the statistical data on the application of criminal liability measures in Russia for the legalization of proceeds from crime; identification of problematic aspects of non-criminal liability for the legalization of proceeds from crime in Russia.

RESULTS

Analysis of the Conceptual Apparatus of Russian Legislation

The basic document in the construction of the Russian system for countering the legalization of proceeds from crime and the financing of terrorism is Federal law No. 115-FZ dated 07.08.2001 "On countering the legalization (laundering) of proceeds from crime and the financing of terrorism" (hereinafter – Law No. 115-FZ). Over the past eighteen

years, Law No. 115-FZ has been edited more than fifty times, bringing the "anti-laundering» system in line with the requirements of international acts and changing Russian reality. Legislative amendments expanded the scope of the "anti-laundering" mechanism and deepened the system of control over suspicious transactions of business entities and individuals. Law No. 115-FZ regulates such fundamental concepts as proceeds from crime and legalization (laundering) of proceeds from crime (Public report on the activities of the Federal Financial Monitoring Service for 2015, 2016).

At that time the national "anti-money laundering" system essentially consisted of two elements - ensuring compliance with international standards by transforming the country's legislative base to the requirements of FATF materials and anti-money laundering. Over the years, it systematically covered more and more new segments of the domestic economy in order to make financial flows in them as transparent as possible, prevent illegal operations, save state funds, and identify and stop the financing of terrorist organizations. Proceeds of crime are defined as money or other property obtained as a result of the commission of a crime.

The concept of income in the Russian law is regulated by the Tax Code of the Russian Federation (hereinafter - the TC of Russia), in accordance with Art. 41 of which the income is recognized as an economic benefit in cash or in kind, which is taken into account if it can be estimated and to the extent that such a benefit can be measured. The income in relation to an individual is regulated by the norms of Art. 208 of the TC of Russia (tax on personal income), as applied to a legal entity and individual entrepreneurs - Art. 248 of the TC of Russia (corporate profit tax). For example, income from renting out property obtained by criminal means, or income in the form of remuneration for the performance of labor duties that were not actually performed by an individual ("dead" souls) refers to income received in monetary form.

Income received in kind must be classified in accordance with the definition of "property" given in article 5 of the Criminal Procedure Code of the Russian Federation (hereinafter - CPC of Russia), including monetary funds, while monetary funds should be considered as a special, separate category of property. So, the property means any things, including cash, in connection with which it is advisable to consider cash as a special, separate category of property. Other things in the direct public understanding include tangible objects of property value. All property in accordance with Art. 128 of the Civil Code of the Russian Federation is divided into movable and immovable property. As regards real estate, there is some legal certainty, as in Art. 130 of the Civil Code of the Russian Federation, the main feature is fixed - the continuity of communication with the earth. Movable property includes all other property, the list of which is constantly expanding in connection with the development of technology, information exchange, law enforcement, and public relations in general. So, movable property is securities, including non-documentary, property rights, results of work and services, intellectual property rights, intangible benefits, etc. (Article 5 of the CPC of the Russian Federation, Article 128 of the Civil Code of the Russian Federation).

Based on the foregoing, the proceeds of crime in kind are recognized, for example, as a ten-day vacation of a criminal with his family at the Marriot Hotel in Sochi, when payment is made at the expense of a person (physical, legal, affiliated with the beneficiary, etc.) received illegal permission to build the facility. In terms of real estate, there is some legal certainty, since article 130 of the civil code of the Russian Federation fixes the main feature-the continuity of communication with the land. Movable property includes all other property, the list of which is constantly expanding due to the development of technology, information exchange, law enforcement, and in General public relations. Thus, the movable property are securities, including uncertificated property rights, results of

works and services, intellectual property, intangible benefits, etc. (article 5 of the code of criminal procedure, article 128 of the civil code).

Based on the above, income obtained by criminal means in kind is recognized, for example, a ten-day vacation of the criminal with his family in the Marriot hotel in Sochi, when the payment is made at the expense of a person (physical, legal, affiliated to the beneficiary, etc.) who received an illegal construction permit for the object. The essence of Law No. 115-FZ does not specify the crimes resulting from the receipt of income, i.e., using an expanded interpretation, the proceeds of crime are recognized as income from any crime stipulated by the CC of Russia. Thus, a predicate offense is a socially dangerous act, as a result of which a subject or other third party received any property.

The legalization (laundering) of proceeds of crime is legally defined as giving a lawful form of possession, use or disposal of money or other property obtained as a result of a crime. At the same time, by giving legitimate one can understand the action or set of actions to change the status of property from “illegal” to “legal”. In the general understanding, the content of Article 174 “Legalization (laundering) of money or other property acquired illegally”, which was in force in the first edition of the criminal law of 2006, complies with the international recommendations of the FATF. FATF Recommendation No. 3, Money Laundering Crimes, considers money laundering an offense under the Vienna Convention and the Palermo Convention. Also, according to the recommendation, countries should apply the concept of money laundering crime to all serious crimes in order to cover the widest possible range of predicate offenses (The recommendations of the FATF, 2020).

Analysis of Statistical Data on the Application of Criminal Liability Measures

Based on the analysis of the conceptual apparatus of the “anti-laundering” legislation, criminal law, as well as international acts, a conclusion is drawn on the direct interdependence of crimes on money laundering with the general state of crime. Nevertheless, the analysis of statistical data refutes this conclusion.

Table 1. Dynamics of crimes in the sphere of money laundering in 2014-2019

Indicator	2014	2015	2016	2017	2018	2019
Legalization (laundering) crimes	774	863	818	711	993	946
Including preliminary investigation	618	734	679	609	712	795
Identified persons whose criminal cases were sent to court	448	558	596	530	619	624
Total crimes	2 190 578	2 388 476	2 160 063	2 058 486	1 991 532	2 024 337

Source: data of the Ministry of Internal Affairs of the Russian Federation

In 2019, 946 income-laundering crimes were recorded, of which 624 criminal cases were sent to court. In the total number of crimes in Russia, crimes on money laundering (legalization) are insignificant - only 0.05%, which can be defined as a non-representative indicator, the fluctuations of which are so insignificant (The state of crime

in Russia, 2020; Bakhyt, et al, 2018). In 2018, according to the Ministry of Internal Affairs of Russia, 993 crimes were identified for the legalization (laundering) of money or other property acquired by a person as a result of committing a crime or acquired by other persons through criminal means. The share of such crimes was also only 0.05 % in the total number of registered crimes for 2018. In 2017, 711 such crimes or 0.035% were detected, and in 2016 - 818 crimes of money laundering or 0.04%. In 2015, the situation was not radically different: out of 2.4 million people, 863 crimes of money laundering were detected, which amounted to 0.036%, in 2014 - 774 or 0.035%. The data on crime for six years presented in table 1 do not allow us to identify certain trends due to the insignificance of the studied indicator. However, it is obvious that these statistics confirm the applicability of the concept of "non-working" to articles 174 and 174.1 of the CC of Russia.

Predicate Crimes for the Legalization of Proceeds of Crime

It is known that the vast majority of crimes committed has a self-serving factor, which is often associated with the desire to obtain a certain economic (financial) benefit. As J. Robinson (2003) rightly notes: "If we leave aside psychopaths and people who break the law out of "a love to art", most criminals go for it for money. That's why they rob banks, why they extort money. That is why they invent fraudulent schemes. And that's why they sell heroin. Criminals become criminals because they believe that crime is profitable" (Robinson, 2003). The usual (typical) goal of the offender is to legalize the benefits received from the crime (Batyrsin, Korchagin & Kolesnikov, 2013). That is why, if, according to official statistics for 2019, 1,172,290 crimes against property were committed in Russia, then the number of crimes related to money laundering cannot have a deviation of 1,100 times. Some researchers of the problems of disclosing crimes on the legalization of income (Volkov, 2017; Kosarev, 2014), narrow the range of predicate crimes, considering the subject of legalization as a legal entity. Such approaches are objectively justified when applying the induction research method.

Significantly new approaches to the judicial practice for the legalization of income are set out in the Resolution of the Plenum of the Supreme Court of the Russian Federation of 07.07.2015 No. 32: " ... to draw the attention of courts to the fact that the subject of crimes provided for in the articles 174 and 174.1 of the CC of Russia are not only the cash or other property, the unlawful acquisition of which is a sign of a specific *corpus delicti* (for example, theft, receiving a bribe), but also cash or other property received as a tangible remuneration for the crime committed (for example, for murder for hire), or as a payment for the sale of items limited in civil circulation."

Given the statistics of the crimes not only against property, but also against individuals, it can be assumed that the real number of crimes aimed at the legalization of proceeds of crime is estimated at hundreds of thousands, and not 946 crimes officially registered in 2019. The Plenum of the Supreme Court also ruled that, within the meaning of the law, the court's conclusion on the criminal nature of the acquisition of property, the possession, use or disposal of which the offender seeks to give a lawful appearance, along with other materials of the criminal case can be based on three documents:

- 1) in a guilty verdict in the case of a specific crime;
- 2) in the resolution of the preliminary investigation body on termination of the criminal case (criminal prosecution) for the commission of the main crime;
- 3) in the resolution of the preliminary investigation body on the suspension of the inquiry or preliminary investigation (The resolution of the Plenum of the Supreme Court, 2015).

At the same time, the crimes provided for in the articles 174 and 174.1 of the CC of Russia committed through financial transactions should be considered completed from the moment the person directly used the proceeds of crime to pay for goods or exchange or submitted (transferred) a bank transfer order to the bank and etc. The conclusions of the Plenum of the Supreme Court generally expand the approaches to existing practice under the articles 174 and 174.1 of the CC of Russia, with the exception of p.11 of the Resolution: "On intent to legalize money or other property acquired by criminal means (as a result of committing a crime) is not evidenced by their disposal for personal consumption (purchasing food, essential goods, receiving household services, etc.)".

For a correct understanding of such formulation, it is necessary to determine the concepts. There is no concretization of the definition of personal consumption in normative acts, so we will use the definitions of dictionaries. The personal consumption is the use of goods, services produced and sold on the markets in order to satisfy personal, individual, and family needs (Raizberg, Lozovsky & Starodubtseva, 2011). The characteristics of the personal consumption are the following ones: the consumer is an individual; the need is the need for tangible and intangible benefits sufficient for "normal" life.

A specific feature of personal consumption is the radically different monetary needs of individuals, usually depending on their social status. Thus, for a typical Russian pensioner, personal consumption in the amount of 9,311 rubles per month is legally recognized as "normal" one (The cost of living in the Russian Federation, 2020). But, just this category of citizens in the general composition of predicate offenses and the further legalization of income is practically not represented. In contrast to pensioners, according to some estimates of the Ministry of Internal Affairs of Russia, about 250 - 300 billion rubles are laundered every year in the country. For each registered crime in 2017 there were 146 thousand rubles, and for each crime of corruption (29 634 ones) fall 10 million rubles of "laundered" income.

In turn, the essential goods are understood to be the goods which consumption amount does not change significantly when income changes (Raizberg, Lozovsky & Starodubtseva, 2011; Kvet, & Matiasko, 2018). A similar concept of "essentials" is recorded in Resolution R 22.3.05-96 of the RF Committee for Standardization, Metrology and Certification of June 13, 1996 N 370 "Safety in emergency situations. Life support of the population in emergency situations. Terms and definitions": "Provision of basic necessities in the emergency zone: meeting the needs of the population in clothes, shoes, bedding, simple household utensils, detergents in the emergency zone. "

The enumeration of examples of personal consumption in the decision of the Plenum of the Supreme Court of Russia is open, which allows a broad interpretation of the concept at all stages of criminal prosecution. Such an interpretation of the above concepts guarantees the subjective (individual) approach of officials in determining the corpus delicti and deciding whether to institute criminal proceedings. The range of personal consumption in Russian reality, based on actual enforcement, is estimated from 100 thousand rubles per year up to 10 million rubles. Against the backdrop of the recognition by law enforcement agencies of the fact of laundered proceeds in billions of dollars and the absence of criminal cases, it looks like absurd the cases of criminal prosecution according to Art. 174.1 of the Criminal Code of Russia upon the sale of jars of honey in the amount of 150 rubles. (criminal case No. 200402014/10 on charges of citizen S.A. Novikov in the Tyumen region), or on the sale of several illegally cut pines (criminal case No. 100747 on charges of a citizen A.V. Lyukhanov in the Sverdlovsk region) (Mironov & Mironova, 2016).

Based on the above, the position of the Plenum of the Supreme Court of Russia, set out in paragraph 11, can be interpreted as follows: if the offender had stolen money for which he bought 100 kg of red caviar not to starve to death, then legalization of income does not arise, since there is no intent. But if he decided to resell this caviar, then only then does legalization arise. The Russian interpretation of legalization can be represented in the wording: the offender commits a crime in order to start honestly earning on this capital.

DISCUSSIONS

Studying the scientific works of specialists on the problems of combating money laundering and the financing of terrorism such as V.A. Zubkov and S.K. Osipova (2012), M.M. Proshunin and M.A. Tatchuk (2014) allows us to state the absence of special studies in the field of problems of applying criminal liability in Russia on this topic. M.N. Krivenko (2017) in his research addresses the problems of qualification and bringing to criminal responsibility for committing illegal actions related to the legalization of money and other property, using private methods to identify the reasons for non-initiation of criminal cases due to the complexity of proving and identifying the composition of the crime.

M.A. Filatova (2015), considering the problem of criminal liability in Russia for the legalization of proceeds from crime, suggests clarifying the qualifying features of the crime and making changes to the criminal code of the Russian Federation. Researches in this area in Russia are mostly focused on strengthening control over income and expenses, both for individuals and organizations.

However, the problem of bringing to criminal responsibility for the legalization of money and other property in Russia requires a more comprehensive and versatile identification of the causes, as well as a systematic approach to finding solutions. Statistical data for six years showing extremely insignificant fluctuations in the number of registered crimes on money laundering. This indicates the absence of a significant effect on the enforcement of such a significant document as the resolution of the Plenum of the Supreme Court of Russia of 2015 (2016).

The logical understanding of legalization is that any crime that results in the criminal obtaining property benefits (directly by the criminal or another person) is a predicate crime in relation to the legalization of income. Any chain of the financial operations (transactions) that are conducted by the criminal, has the goal of only final consumption. The same conclusion follows in the analysis of international legal norms.

CONCLUSION

Thus, in Russian reality there is a distortion of the original essence of the laid down criminal norms on the legalization of income. Judicial acts containing clarifications on issues of law enforcement in the field of legalization of income do not significantly affect the change in established approaches to non-initiation of criminal cases. In this regard, it is necessary to highlight the main problems of criminal prosecution in Russia under art. 174 and 174.1 of the Criminal Code of Russia:

1. Failure to fully comply with the FATF normal international agreements on the maximum expansion of predicate offenses for the legalization of proceeds of crime.
2. The lack of a clear government policy to define and expand the range of predicate offenses.
3. Uncertainty of existing criminal law in the field of legalization of income.
4. Latency of 99% of crimes in the sphere of money and property legalization.

Returning to the quote by J. Robinson (2003), the main goal of the State in reducing crime is to make the crime unprofitable, that is, to make it impossible to legalize the proceeds.

RECOMMENDATIONS

The materials in this article may be of interest both to the scientific community that studies the issues of criminal liability for the legalization of proceeds from crime, and to practitioners who study law enforcement practice in this area.

REFERENCES

1. Batyrshin, I.I., Korchagin, O.N. & Kolesnikov, K.A. (2013). *Organization of counteraction to legalization (laundering) of proceeds from crime, including from illegal drug trafficking*. Moscow: Research center of the Federal Drug Control Service of Russia.
2. Ezhov, K.S., Cherdymova, E.I., Prokopyev, A.I., Fabrikov, M.S., Dorokhov N.I., Serebrennikova, Y.V., Belousov, A.L. & Efimova, O.S. (2019). Conflict features depending on stay duration at workplace. *Dilemas contemporáneos: Educación, Política y Valores, Special Edition VI*, article number 38.
3. Filatova, M.A. (2015). *Criminal liability for the legalization (laundering) of money or other property acquired by criminal means under the laws of Russia and Austria*. Moscow: Yurlitinform.
4. Kosarev, S.Yu. (2014). Some features of the investigation of legalization (laundering) of proceeds from crime. *Bulletin of the Saint Petersburg Law Academy*, 3, 80-83.
5. Krivenko, M.N. (2017). Problems of qualification and criminal prosecution for committing unlawful actions related to the legalization (laundering) of money or other property acquired by a person as a result of a crime. *Law and Order*, 3, 18-19.
6. Mironov, S.B. & Mironova, T.B. (2016). The main problems of operational-search activities in identifying the facts of legalization (laundering) of proceeds from crime. *Questions of Russian and international law*, 10, 237-247.
7. Proshunin, M.M. & Tatchuk, M.A. (2014). *Financial monitoring (counteraction to legalization (laundering) of incomes obtained in a criminal way and financing of terrorism)*. Kaliningrad: Kant Baltic Federal University.
8. Public report on the activities of the Federal Financial Monitoring Service for 2015. (2016). URL: http://www.fedsfm.ru/content/files/activity/annualreports/otchet_verstka_3.pdf (Retrieved September 1, 2016).
9. Pushkarev, V.V., Cherdymova, E.I., Prokopyev, A.I., Kochurov, M.G., Shamanin, N.V., Ezhov, S.G., Kamenskaya, S.V. & Kargina N.V. (2019). Motivation and needs in the area of the spouses with different experiences of cohabitation. *Dilemas contemporáneos: Educación, Política y Valores, Special Edition VI*, article number 41.
10. Raizberg, B.A., Lozovsky, L.Sh. & Starodubtseva, E.B. (2011). *Modern economic dictionary*. Moscow: INFRA-M.
11. Robinson, D. (2003). *The Sink: Crime, Terror and Dirty Money in the Offshore World*. Toronto: McClelland & Stewart.

12. The cost of living in the Russian Federation. (2020). Pension Fund of the Russian Federation. Official site. URL: http://www.pfrf.ru/grazdanam/pensionres/soc_doplata/~4684. (Retrieved April 21, 2020).
13. The recommendations of the FATF. (2020). The Federal service for financial monitoring. URL: <http://www.fedsfm.ru/content/files/documents/fatf/%D1%80%D0%B5%D0%BA%D0%BE%D0%BC%D0%B5%D0%BD%D0%B4%D0%B0%D1%86%D0%B8%D0%B8%20%D1%84%D0%B0%D1%82%D1%84.pdf>. (Retrieved March 20, 2020).
14. The resolution of the Plenum of the Supreme Court. (2015). The resolution of the Plenum of the Supreme Court of the Russian Federation dated 07.07.2015 No. 32 "On juridical practice in cases of legalization (laundering) of money or other property acquired by criminal means, and on the acquisition or sale of property knowingly obtained by criminal means". Moscow: Government.
15. The state of crime in Russia. (2020). Ministry of Internal Affairs of Russia. Official site. URL: <https://мвд.рф/reports/item/19412450/> (Retrieved March 20, 2020).
16. Volkov, V.V. (2017). Initial investigative actions in the investigation of the legalization of proceeds from crime. *Bulletin of the Ural Institute of Finance and Law*, 2(8), 33-36.
17. Zubkov, V.A. & Osipov, S.K. (2012). *International standards in the field of countering money laundering and financing of terrorism*. Moscow: Jurisprudence.
18. Bakhyt, S., Kalimbetov, B., & Khabibullayev, Z. (2018). Possibilities of mathematical problems in logical thinking. Development of secondary education pupils. *Opción*, 34(85-2), 441-457.
19. Bahremand, A. (2015). The concept of translation in different teaching approaches and methods. *UCT Journal of Social Sciences and Humanities Research*, 3(1), 5-9.
20. Kvet, M., & Matiasko, K. (2018). Temporal Data Performance Optimization using Preprocessing Layer. *Journal of Information Systems Engineering & Management*, 3(2), 13.