



THE CONCEPT OF LEGALIZATION OF INCOME, CRIMINALLY OBTAINED

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Article history:	Abstract:
Received: November 10 th 2022 Accepted: December 6 th 2022 Published: January 6 th 2023	The article discusses the origin of the term "legalization (laundering) of proceeds from crime". The opinions of scientists regarding the content of this concept are given. The definitions given in the regulatory legal acts of the Russian Federation containing the concept of "legalization (laundering) of proceeds from crime" are considered. Based on the analysis of legislative definitions and doctrinal concepts, the author proposes his own definition of the concept of "money laundering".
Keywords: proceeds from crime; legalization; laundering; criminal proceeds; criminal activity; opposition to legalization; legalization process	

Today, organized crime is rapidly changing, using all new technologies to avoid responsibility. At one time, I.I. Karpets correctly noted that "the forms of organized crime are constantly changing, and if in the 60s. in the first place among them were crimes in the field of usury, then in the late 70s manipulations with shell companies began to prevail, and it was in the international plan" [7, p. 62].

It was since then that a clear trend towards the criminalization of society began to be traced, which is especially clearly manifested in the field of economic crime, including in the field of crimes that are somehow related to the legalization of proceeds from crime. Traditionally, in science, the point of view has been established that the concept of "legalization", or "laundering", of proceeds that were obtained by criminal means, originated in the United States at the beginning of the 20th century. These incomes, as a rule, were received from the drug business and illegal alcohol trafficking. The term "laundering" denoted the process of converting money obtained illegally into legal ones.

According to Jeffrey Robinson, "Money laundering is called so because it is what it is, and not because Al Capone had a chain of laundries that he used to hide his income – this is just a legend. This verb (wash) very accurately describes the process. Dirty money generated by illicit activities is "injected" into legitimate businesses and through them into the legal financial system, where it is laundered through a strategy of "covering the tracks": moving between shell companies, secret bank accounts, and multiple jurisdictions so that law enforcement could

not trace them, and then appear at the opposite end, clean and shining, giving the impression of legitimately earned profits" [18, p. 12–14].

You can trace the appearance of the term "legalization" in the monuments of Russian law. Thus, with the adoption in 1467 of the Pskov Judicial Charter [15], they began to distinguish between legal and illegal receipt of property. In particular, Art. 47 of the said document said: "If someone identifies the thing that was missing from him from another, and the latter says: "I bought it at the market, but I don't know from whom," then the defendant should take an oath that he really bought the identified thing at the market, but did not receive it from the thief, although he did not present him, and rumors or rumors. In the Sudebnik of 1550, the requirement to prove the legitimacy of receiving a thing was expanded: a surety for the seller was included as a condition for the legitimacy of the transaction of sale and purchase [16, p. 69]. In 1885, with the adoption of the Code of Criminal and Correctional Punishments, liability was established for the sale of obviously stolen goods [17, p. 49].

The official definition of "laundering" was given in the United States in 1984, when the US Presidential Commission on Organized Crime noted that money laundering should be understood as the process by which the existence, illegal origin or use of proceeds is concealed and attempts to present such proceeds as having legal origin [24, p. 109–111].

Today, the Criminal Code of the Republic of Uzbekistan in Article 243 understands legalization as



“giving a lawful form to the origin of property (money or other property) by transferring, transforming or exchanging it, as well as concealing or concealing the true nature, source, location, method of disposal, movement, genuine rights in relation to money or other property or its belonging, if money or other property is obtained as a result of criminal activity. This definition is blanket in nature and cannot be used outside the criminal law context. It should be noted that the legislation of the Republic of Uzbekistan also has a second official definition of the concept under consideration, in particular, in Article 3 of the Law “On counteracting the legalization of proceeds from crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction” [22], legalization means “a criminally punishable socially dangerous act, which is giving a lawful form to the origin of funds or other property by transferring, converting or exchanging them, as well as concealing or concealing the true nature, source, location, method of disposal, movement, true rights in relation to funds or other property or its belongings, if the money or other property is obtained as a result of criminal activity.

The doctrine also shows a variety of concepts of legalization of proceeds from crime. For example, Yu.V. Korotkov understands legalization as deliberate concealment of the origin of income by distorting information about their true nature [10, p. 4]. V.A. Nikulina speaks of legalization as the final legalization of material values obtained by criminal means [13, p. 17]. K.N. Aleshin speaks about the incorrectness of the term “legalization” at all, since in the process of “laundering” a lawful appearance is given, but neither the property itself nor the actions associated with it become legal” [13, p. 17]. The author believes that it is more appropriate to use the term “laundering”, which has long been complicated in international law. Apparently, in the latter case, the author speaks of legalization in the context, for example, of the legalization of certain documents.

In our opinion, the use of the terms “legalization” and “laundering” as identical is justified at least by the fact that it fully complies, among other things, with international documents, in particular the UN Vienna Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances [9, p. 133–157].

The subject of the crime provided for in Article 243 of the Criminal Code of the Republic of Uzbekistan is money or other property that was knowingly acquired by other persons through a crime.

If we talk about property, you should pay attention to the provisions of Art. 81 of the Civil Code of the Republic of Uzbekistan, which provides a list of objects of civil rights, which include things, including cash, documentary securities, non-cash funds, etc. These objects of civil rights (of course, the exception is intangible benefits) are considered in the theory of law as the subject of a crime [1].

As for the acquisition of property by criminal means, here in science, not everything is so simple. For example, I.A. Klepitsky says that the money that the drug dealer receives from his buyer will be acquired in a criminal way, while the same money, but transferred to the head of the criminal group, is acquired as a result of a crime [8, p. nineteen]. In practice, as a rule, the definitions under consideration are not differentiated, as a result of which the concept of “acquired as a result of a crime” is used. B.V. Volzhenkin understands this phenomenon as a variety of actions, whether they are various financial transactions or other transactions carried out to hide the presence or origin of property obtained illegally (criminally) in order to then derive a certain benefit from such property [3, p. 271]. At the same time, the formulation proposed by N.V. Yusupov, “the introduction into the legal economic circulation of property knowingly obtained by criminal means” [24, p. 110].

Legalization is a certain action in which they hide either the presence of income or its illegal source. In this context, we should dwell on the concept of “income”, which refers to the economic category and which should be understood as cash or material values received as a result of a particular activity in a certain period of time. In economic theory, income is understood as the money that a person can spend, while leaving his wealth unchanged [23, p. 589–605]. In domestic legislation, one can speak of income in the context of the Tax Code of the Republic of Uzbekistan [12] as income of legal entities or individuals; one can speak of income of a particular budget within the framework of the Budget Code of the Republic of Uzbekistan [2].

It is noteworthy that the legislator speaks not only about money, but also about other property. Article 81 of the Civil Code of the Republic of Uzbekistan contains an open list of objects of civil rights, which means that they can include not only cash, but also other property, such as services or results of intellectual activity. At the same time, as O.V. Zimin, judicial-investigative and operational-search practice completely refutes the arguments that the



service can be the subject of legalization. In particular, the author writes that "only 1% of the total number of respondents answered that the subject of money laundering could be a service, 5% - information. In the process of studying the materials of criminal cases, not a single fact of laundering a service or information was revealed. It can be stated with a high degree of certainty that it is impossible to launder a service or information due to the lack of such expediency. For example, the rendered service and information are paid for, but in themselves they do not have a measure of value" [6, p. 92–98]. Thus, it seems that other property under Article 243 of the Criminal Code of the Republic of Uzbekistan should include securities and property rights, which is also confirmed by international law, where not only tangible or material objects, but also non-property, intangible and intangible, such as certain legal acts or legal documents. Thus, it is obvious that if the right to property can be the subject, for example, of fraud or extortion, then such a right can also be the subject of legalization of proceeds from crime.

At the same time, it seems that it is advisable to fix in the Criminal Code of the Republic of Uzbekistan a clear definition of what exactly should be attributed to other property, which will contribute to the uniformity of the practice of applying the rules on the legalization (laundering) of criminal proceeds. The Criminal Code of the Republic of Uzbekistan in the disposition of Article 243 also contains such concepts as transfer, transformation or exchange. These concepts mean any operations, such as: with cash, cashless payments, transfers, exchange, cash transactions, etc. In particular, in paragraph 3 of the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On some issues of judicial practice in cases of legalization of income received from criminal activity", states that for the purposes of Article 243 of the Criminal Code of the Republic of Uzbekistan, financial transactions include any operations with funds (cash and non-cash payments, cash transactions, including crediting funds to an account, dispersing them on deposits in various banks, transfer into another currency, purchase of securities, transfer of funds abroad with their subsequent return to a bank deposit, etc.). Transactions as a sign of these crimes may include actions aimed at establishing, changing or terminating civil rights and obligations, as well as creating the appearance of the emergence or transfer of civil rights and obligations" [14].

Circumstances that may indicate legalization are also indicated, for example: the acquisition of luxury

goods or transactions for the alienation of property that was acquired by criminal means, when no real settlements are made or when the economic feasibility of such transactions is completely absent or transactions with funds through offshore and electronic means of payment. At the same time, it should be noted that this list is approximate, as a result of which, with its broad interpretation, we get guilty verdicts that may not be substantiated in any way. Therefore, the list of circumstances indicating money laundering should be exhaustive, excluding its broad interpretation, which the legislator should pay attention to when improving the rules on money laundering.

It follows from the foregoing that the fact of performing a particular operation or transaction or the use of illegal income, for example, in business activities cannot be legalization, if there is no such sign as giving such income a legal form. Legalization, in fact, lies in the fact that the perpetrator seeks in every way to make it difficult to identify the criminal origin of property and creates for others or for himself such conditions for the possession or use of property that make it possible to consider these incomes received legally.

If the subject does not have the goal of giving funds or other property the form of lawful use, disposal or possession, then the operations and other transactions performed by him or her to acquire property by the subject or other persons by criminal means or the use of such funds cannot be recognized as legalization, otherwise legalization any transactions with proceeds from crime, regardless of their purpose, may lead to an unjustified expansion of the objective side of the legalization of criminal proceeds [11, p. 93–99].

As a rule, in practice, in the absence of the goal of legalizing criminal proceeds, sentences passed under article 243 of the Criminal Code of the Republic of Uzbekistan are often cancelled. It is quite difficult for the courts to trace and identify such a goal due to the fact that for this it is necessary to strengthen control over the movement of funds and income not only of legal entities, but also of individuals, which is the case in the United States. As E.A. Ershov, today this practice exists in relation to municipal and state employees, but so far only in the framework of combating corruption [5, p. 106–109].

The term "laundering" looks unconvincing and inappropriate today, which, according to the correct remark of V.S. Tangarov, does not have any independent meaning, but is used in brackets as a synonym.



Thus, summarizing what has been said, we propose the following definition of legalization of proceeds from crime: committed actions (inaction) aimed at introducing into the economic circulation of property acquired by criminal means, as well as concealment and disguise of the origin of property and the right to property in order to legitimize its origin.

REFERENCES

1. Алиев В.М. Уголовно-правовая характеристика легализации (отмывания) денежных средств или иного имущества, приобретенных незаконным путем // Российский следователь. 2001. № 1.;
2. Budget Code of the Republic of Uzbekistan dated December 26, 2013;
3. Волженкин Б.В. Преступления в сфере экономической деятельности по уголовному праву России. СПб., 2007. ;
4. Civil Code of the Republic of Uzbekistan (part one) dated 21.12.1995. ;
5. Ершов Е.А. О толковании специальной цели легализации // Юридическая наука и практика: вестник Нижегородской академии МВД. 2015. № 4. ;
6. Зимин О.В. Характеристика понятия «преступные доходы» // Вестник экономической безопасности. 2009. № 6. ;
7. Карпец И.И. Преступления международного характера. М., 1979. ;
8. Клепицкий И.А. «Отмывание денег» в современном уголовном праве // Государство и право. 2002. № 8. ;
9. United Nations Convention on the Fight against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (signed in Vienna on December 20, 1988) // ;
10. Коротков Ю.В. Уголовно-правовые и криминологические аспекты борьбы с легализацией (отмыванием) незаконных доходов: Автореф. дис. ... канд. юрид. наук: 12.00.08. М., 1998. ;
11. Курченко В.Н. Толкование легализации преступных доходов // Российский юридический журнал. 2012. № 5. ;
12. Tax Code of the Republic of Uzbekistan dated 12/30/2019;
13. Никулина В.А. Правовые аспекты соучастия в легализации незаконных доходов: Дис. ... канд. юрид. наук: 12.00.08. СПб., 2000. ;
14. Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan dated February 11, 2011 No. 1 "On some issues of judicial practice in cases of legalization of proceeds from crime" ;
15. Псковская судная грамота. Ст. 47 // URL: https://ru.wikisource.org/wiki/Псковская_судная_грамота (дата обращения 24.03.2017). ;
16. Российское законодательство X–XX веков. В 9 т. Т. 2. Законодательство периода образования и укрепления Русского централизованного государства. М., 1998. ;
17. Смагина А.В. Легализация преступных доходов: сравнительный анализ уголовного законодательства России и зарубежных стран: Дис. ... канд. юрид. наук. М., 2006. ;
18. Собчук С.О. Некоторые теоретические аспекты противодействия легализации (отмыванию) незаконных доходов, полученных преступным путем // Вестник института: преступление, наказание, исправление. 2010. № 10. ;
19. Тангаров В.С. Легализация денежных средств, приобретенных преступным путем: проблемы квалификации // В сборнике: Уголовный закон Российской Федерации: проблемы правоприменения и перспективы совершенствования: Материалы Всероссийской научно-практической конференции. 2016. ;
20. Criminal Code of Austria // URL: <http://www.crimpravo.ru/page/zar.uk> (Accessed 03/25/2017). ;
21. Criminal Code of the Republic of Uzbekistan dated 22.09.1994;
22. Law No. 660-II dated 26.08.2004 "On combating the legalization of proceeds from crime, the financing of terrorism and the financing of the proliferation of weapons of mass destruction".;
23. Экономическая теория: Учебник / Под общей редакцией академиков В.И. Видяпина, А.И. Добрынина, Г.П. Журавлёвой, Л.С. Тарасевича. М.: ИНФРА!М, 2002. ;
24. Юсупов Н.В. К вопросу о понятии легализации (отмывания) имущества, полученного преступным путем // Вестник экономической безопасности. 2009. № 12. ;



25. Ражабов, Бекзод; ,ПЕРСПЕКТИВЫ УЛУЧШЕНИЯ ПРЕДВАРИТЕЛЬНОГО РАССЛЕДОВАНИЯ, Review of law sciences,,2,209-212,2020,ООО «Grand Inter Media»
26. Ражабов, Бекзод; ,ПЕРСПЕКТИВЫ УЛУЧШЕНИЯ ПРЕДВАРИТЕЛЬНОГО РАССЛЕДОВАНИЯ, Review of law sciences,,2,209-212,2020,ООО «Grand Inter Media»
27. Kudratillaev K. SPECIFIC FEATURES OF THE USE OF PRECAUTIONARY MEASURES //СОВРЕМЕННЫЕ НАУЧНЫЕ ИССЛЕДОВАНИЯ: АКТУАЛЬНЫЕ ВОПРОСЫ, ДОСТИЖЕНИЯ И ИННОВАЦИИ. – 2022. – С. 215-218.
28. Кудратиллаев Х. З. ВОПРОСЫ ИМПЛЕМЕНТАЦИИ ПРОЦЕССУАЛЬНЫХ НОРМ МЕЖДУНАРОДНЫХ КОНВЕНЦИЙ ПО РЕГУЛИРОВАНИЮ АРЕСТА И КОНФИСКАЦИИ. – 2022.
29. Kudratillaev X. Z. EVALUATION OF EVIDENCE IN CRIMINAL PROCEEDINGS (international experience) //Herald pedagogiki. Nauka i Praktika. – 2022. – Т. 2. – №. 2.