UDC 343.985:343.37(477+4/8)

DEFINITION OF LEGALIZATION (LAUNDERING) OF PROCEEDS FROM CRIME

Anna ABU ELASAL,
Postgraduate Student at the Department of Forensic
of National University "Odessa Academy of Law"

SUMMARY

In the paper under consideration the definition of the legalization (laundering) of proceeds from crime is reviewed and analyzed. The various scientific points of view of foreign and domestic scientists have been reviewed.

In the forensic aspect, the concept of the legalization (laundering) of proceeds from crime is characterized according to international and national legal acts.

The essence of the development and establishment of the definition of the legalization (laundering) of proceeds from crime is defined from the point of view of the historical appearance of this phenomenon and up to modern days.

Key words: legalization of proceeds from crime, money laundering, criminal activity, criminal proceeds.

ПОНЯТИЕ ЛЕГАЛИЗАЦИИ (ОТМЫВАНИЯ) ДОХОДОВ, ПОЛУЧЕННЫХ ПРЕСТУПНЫМ ПУТЁМ

Анна АБУ ЕЛАСАЛ,
аспирантка кафедры криминалистики
Национального университа «Одесская юридическая академия»

АННОТАЦИЯ

В данной статье рассматривается и анализируется понятие легализации (отмывания) доходов, полученных преступным путём. Исследуются разные точки зрения зарубежных и отечественных учёных. Характеризуется в криминалистическом аспекте понятие легализации (отмывания) доходов, полученных преступным путём, согласно международным и национальным правовым актам. Определяется сущность развития и становления понятия легализации (отмывания) доходов, полученных преступным путём, с точки зрения исторического появления данного явления и до современных дней.

Ключевые слова: легализация доходов, полученных преступным путём, «отмывание» денег, преступная деятельность, преступные доходы.

Introduction. Counteract the legalization of proceeds from crime is not only the detection, identification, and prosecution of perpetrators of criminal acts, primarily it is the removal of the favorable economic environment for the existence of specific occurrences of criminal activity. The legalization of proceeds from crime is an important part of the technology of organized economic crime. This criminal activity is a global phenomenon that takes many forms in all states of the world. The content of the concept of this phenomenon is expressed in different opinions. Thereby, it is necessary to clarify it in order to eliminate differences and make adjustments that in the future would help raise the national legislation to the appropriate level.

Relevance of research. The legalization of proceeds from crime is the process used to disguise the source of money or assets derived from criminal activity. Profit-motivated crimes span a variety of illegal activities from drug trafficking and smuggling to fraud, extortion and corruption. The scope of criminal proceeds is significant – estimated at some $590 billion to $1.5 trillion (U.S.) worldwide each year [14].

Previously unsettled problem constituent. Important in studying this problem in the forensic aspect were the scientific concepts developed in the writings of domestic scientists, such as L.I. Arkusha, V.P. Bakhin, V.D. Bernas, I.O. Vozgrin, A.F. Volobuev, V.A. Zhuravel, A.N. Kolesnichenko, V.O. Konovalova, V.V. Lysenko, V.V. Tishchenko, V.Yu. Shepitko, and others, as well as foreign scientists such as K.K. Williams, D. Massciandaro, F. Schneider, George Farrugia, D. Hopton, M. Levy, P. Reuter, R. Baron etc.

Main purpose of the article. The purpose and objectives of the research are focused on the integrated and systematic analysis of theoretical (forensic) aspects of the definition of legalization (laundering) of proceeds from crime, at both the international and national levels, in order to form general and specific features of this criminal activity.

Materials and methods. The following research methods were used in this article: *historical* – to reveal the content of key elements of the international and national regulatory framework; *comparative* – to establish general and specific characteristics of the definition of legalization (laundering) of proceeds from crime; *formal-logical* – for the analysis of the current legislation and the existing theoretical provisions. The basic research is formed by legal acts of international and European communities, domestic legislation, as well as scientific research.

Results. For a long time, the international communities have devoted significant effort and resources towards counteracting the legalization (laundering) of proceeds from crime.

However, these efforts have intensified over the past two decades. Following the arbitrary connection that was made between the financing of terrorism and money laundering, a renewed interest in the topic has emerged within the broader agenda of dealing with security issues.

First-ever a concept of "money laundering" was mentioned in the 1930s in the United States of America. A legendary American gangster Al Capone is a case in point. He laundered the money received from criminal activity through a network of laundries known as "the Laundromat" [8].

Furthermore, it should be noted another one of the "founding fathers" of the legalization of criminal funds – Meyer Lansky known as the "Mob's Accountant", one of the major organized crime figures and creators of the "National Crime Syndicate" in the USA. At the expense of the Cuban gambling houses, he transferred the funds generated by illegal operations from Switzerland to Cuba and then sent them to Florida to make it appear that "foreign investments are legitimately returning to America" [15].

In the official vocabulary, the term "money laundering" first appeared in the newspapers in the time of the Watergate scandal of 1973, and in the legal context, this term was used in the USA as early as in 1970. One of the first definitions of "laundering" was worded by the US President's Commission on Organized Crime in 1984: "Money laundering is an action by which one conceals the existence, illegal source, or illegal application of income, and then disguises that income to make it appear legitimate" [15].

Soon after the international society acknowledged the importance to counteract «money laundering» using an effective system for prevention the criminal money to the world economy. The first step to the international cooperation in this issue was the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances dated December 20, 1988. By its nature, the Vienna Convention considers only the offenses (criminal activities leading to "money laundering") related to the illicit traffic of drugs. But in the course of time, the world community has concluded that the offenses preceding "money laundering" must include other offenses related to the illegal drug trafficking [4, c. 3–4].

A forthcoming milestone in the development of anti-money laundering standards was the signing of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, also known as the Strasbourg Convention, in 1990. In accordance with article 6 of the Convention, it is given an advanced list of money laundering predicate offenses.

The United Nations Convention against Transnational Organized Crime known as The Palermo Convention is the first instrument of criminal law designed to combat the phenomenon of transnational organized crime. Under the Convention, four offenses considered to comprise the structural characteristics of organized crime are required to be addressed by the States in their domestic law: criminal organization, money laundering, corruption and obstruction of justice. The definition of money laundering is provided in Article 6 of the Convention, which in fact adopts the definition of the 1988 Convention against Illicit Traffic in Narcotic Drugs [2].

Also significantly, together with the international instruments is to mention a number of anti-money laundering standards at the European Union (EU), such as EU Directives that also play a significant role in combating this phenomenon.

In the context of reform, it is necessary to draw attention to the following considerations of recent amendments to the EU Directives.

On 12 November 2018, Directive No 2018/1673 on combating money laundering by criminal law was published. It complements the Directive (EU) No 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, which amended the Regulation (EU) No 48/2012 of the European Parliament and of the Council. The Directive aims at closing loopholes in the definition and sanctioning of money laundering across the European Union. The definition fully reflects the concept of money laundering provided for in the Vienna and Palermo Conventions.

According to the above EU Directive, the term "money laundering" is:

1) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;

2) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity;

3) the acquisition, possession or use of property, knowing at the time of receipt, that such property was derived from criminal activity [9].

The important mechanism, the objective of which is to set standards for the development and promotion of national and international policies to combat money laundering and terrorist financing is an intergovernmental body FATF. Its recommendations increase transparency and enable countries to take successful action against the illicit use of their financial systems [13].

UN Security Council Resolution 1617 (2005) and the Annexed Plan of Action of Resolution 60/288 of the UN General Assembly (20 Sept 2006), stress the importance of the implementation of the FATF 40 Recommendations and the 9 Special Recommendations on terrorist financing. The Resolution reads in part: "…Strongly urges all Member States to implement the comprehensive, international standards embodied in the Financial Action Task Force's (FATF) Forty Recommendations on Money Laundering and the FATF Nine Special Recommendations on Terrorist Financing" [11]. So, states should consider the definition of "money laundering" as a criminal offense on the basis of the UN Vienna Convention and the UN Palermo Convention.

The aforementioned demonstrates that the international definition of "money laundering", it is the conversion and transfer of property derived from criminal activity or complicity in criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such an activity in order to evade the legal consequences of this activity.

There are strikingly different views that have been expressed on the term "money laundering" in the context of academic research. Therefore, money laundering figures like crime, action, procedure, etc. Some foreign researchers, when giving the definition of "money laundering" focus on the particular stages of such illegal activity.

Thus, American researcher J. Robinson holds that the term «money laundering» became widespread because it correctly reflects the process used by criminals, "Dirty

money obtained from illegal activity is injected into legal companies and through them, into the financial system where it is clean washed with the help of the "cover up the traces" strategy – transferred among shell companies, secret bank accounts and numerous jurisdictions so that law enforcement agencies could not trace it. Then it appears on the other side, clean and brilliant, creating the impression of legal income" [8].

For example, P. Reuter and E. Truman "money laundering" is defined as the conversion of criminal incomes into assets that cannot be traced back to the underlying crime [12].

George Farrugia describes "money laundering" as the process by which the proceeds of crime (dirty money) are put through a series of transactions that disguise their illicit origins and make them appear to have come from a legitimate source (clean money) [10].

The above-mentioned interpretations of the definition appear to be too narrow. They characterize only one stage of the laundering of criminal assets at a time when there are several such stages.

Consequently, that situation compounds the limited view of the nature of this negative phenomenon. It makes it impossible to lack a comprehensive overview of the negative consequences that cause this criminal offense.

"Money laundering" is a criminal offense through which criminals give an apparently legitimate origin to the proceeds of crime. It is an increasingly international phenomenon.

Current estimates of the amount of money laundered worldwide range from $500 billion to a staggering $1 trillion, with disastrous effects on the global economy, especially in vulnerable, developing economies [14].

Ukraine is a rather fragile country. In view of the fact that money laundering causes corruption and can destabilize the economies of susceptible countries. It is therefore essential to give sufficient attention to this issue as well as legal and law enforcement agencies should continue detecting and combating such a phenomenon as money laundering. To do so, the first step should be to develop the definition of "legalization of proceeds from crime" to guide the concept that is universal and has not led to much debate on the organization of the detection of this offense, at both the national and international levels.

The concept of "legalization (laundering) of proceeds from crime" is described in the Ukrainian legislation, particularly, in the new Law of Ukraine "On prevention and counteraction to legalization (laundering) of proceeds from crime or terrorism financing as well as financing proliferation of weapons of mass destruction" dated 2014.

According to Article 4, legalization (laundering) of the proceeds of crime covers any acts related to the proceeds (property) obtained from commitment of crime, directed to conceal the origin of such proceeds (property), right for the ownership, the origin, location, disposition, transformation as well as purchase, possession or use of the assets obtained from commitment of crime [7].

The concept of "legalization" and "laundering" of proceeds from crime is often synonymous. In scientific literature, the term "legalization of proceeds from crime" is regularly found to be "money laundering". However, the term "money laundering" is widespread in international areas, compared with domestic legislation, the term "legalization of proceeds from crime" is viewed.

For better understanding these terms, it would be necessary to address the academic opinions. It is appropriate to highlight the scientific points of view, including the following academics:

The researcher V.G. Skliarenko explains that legalization was borrowed from French (legal) and came from legalis (Latin) meaning "legal, legislative" that derived from lex (legis) – "law, law principle". In the Ukrainian definition dictionaries legislation is defined as the provision of legal force, legitimization or becoming legal [6, p. 21].

V. Mandybura names "money laundering" as a process of transferring criminal money via banking and financial systems. As a result, the dirty money becomes clean, that is they are considered as a legal income and the law enforcement agencies fail to find the criminal source of this money [3].

O.M. Bandurka considers "legalization of proceeds from crime" as concealing the nature and origin location or possession of the illegal material assets, particularly legalization of such proceeds, transformation of the illegal cash into the other assets, concealing the origin or the owner of illegal money, giving a cover of legality to the source and owner of the assets [1].

Hence, "legalization (laundering) of proceeds from crime" is a multi-stage process, in which a significant amount of money illegally obtained is transformed through a variety of methods and transactions into funds coming from legitimate sources and gaining legal status, masking the origin and source of criminally derived proceeds, as well as persons involved in these offenses, for further use of apparently legitimate money outside the shadow economy.

Conclusions. Comparison of international legal sources and academic researches aimed at counteracting money laundering. It can be argued that the legalization (laundering) of proceeds from crime is still a relevant and global concern. This phenomenon negatively affects security in general (both economic and legal). It endangers the integrity of legitimate financial systems and institutions. It also provides organized crime the funds it needs to conduct further criminal activities [14].

The definition of "legalization (laundering) of proceeds from crime" is interpreted as actions (conversion, transfer, concealment, disguise, acquisition, possession, etc.) for the purpose of providing legality and a clean form of property derived from predicate crimes. Predicate crimes should include a wide range of serious crimes, that enshrined in the national legislation.

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INFORMATION ABOUT THE AUTHOR

Abu Elasal Anna Oleksandrivna – Postgraduate Student at the Department of Forensic of National University "Odessa Academy of Law"

ИНФОРМАЦИЯ ОБ АВТОРЕ

Абу Еласал Анна Олександровна – аспирантка кафедры криминалистики Национального университета «Одесская юридическая академия»

agryshenko20@gmail.com

УДК 343.01

ЗАРУБЕЖНЫЙ ОПЫТ ПРОТИВОДЕЙСТВИЯ ОРГАНИЗОВАННОЙ ПРЕСТУПНОСТИ В ФИНАНСОВОЙ СФЕРЕ

Любовь АНДРОСОВИЧ,
аспирант кафедры оперативно-розыскной деятельности
в сфере борьбы с коррупцией и организованной преступностью
Национальной академии Службы безопасности Украины

АННОТАЦИЯ

Данное исследование посвящено изучению опыта зарубежных государств по предотвращению организованной преступности в финансовой сфере. Приведены организационно-правовые механизмы противодействия организованной преступности в таких странах, как Нидерланды, США, Великобритания, Италия.

В частности, рассмотрены перспективы взаимодействия государств в сфере противодействия организованной преступности в рамках международных соглашений, особенности функционирования и сотрудничества с правоохранительными органами отдельных государств. Приведены направления реализации стратегии влияния на организованную преступность не только для теории, но и, прежде всего, для практики предупреждения преступности в Украине.

Ключевые слова: организованная преступность, зарубежный опыт, международное сотрудничество, предотвращение организованной преступности в финансовой сфере.

FOREIGN EXPERIENCE OF INFRINGEMENT OF ORGANIZED CRIME IN THE FINANCIAL FIELD

Lyubov ANDROSOVICH,
Postgraduate Student at the Department of Operational-Search Activity
in the Fight Against Corruption and Organized Crime
of the National Academy of Security Service of Ukraine

SUMMA RY

This research is devoted to studying the experience of foreign countries in preventing organized crime in the financial sector. Organizational and legal mechanisms of counteraction to organized crime in such countries as the Netherlands, USA, Great Britain, Italy are presented.

In particular, possibilities of interaction of the states in the sphere of counteraction to organized crime in the framework of international agreements, peculiarities of functioning and cooperation with law-enforcement bodies of separate states are considered. The directions of realization of the strategy of influence on organized crime are given not only for the theory but also primarily for the practice of prevention of crime in Ukraine.

Key words: organized crime, foreign experience, international cooperation, prevention of organized crime in the financial sector.

Постановка проблемы. Экономическая преступность в Украине на современном этапе достигла таких масштабов, что представляет реальную угрозу национальной безопасности. Средства, получаемые в результате экономических преступлений, являются финансовой основой различного рода проявлений терроризма. Следует констатировать, что криминал в экономической жизни общества стал обычным явлением, нормой экономического поведения субъектов хозяйственной деятельности. Среди преступлений экономической направленности следует выделить группу преступлений в сфере финансовой деятельности, которая в данный момент представляет наибольшую общественную опасность, поскольку связана с аккумулированием и распределением денежных средств и формированием государственного бюджета [4, с. 291].

Следует отметить, что в настоящее время по сравнению с 90-ми годами прошлого века проблема организованной преступности рассматривается иностранными странами гораз-