International Journal of Science and Research (IJSR)
ISSN: 2319-7064
ResearchGate Impact Factor (2018): 0.28 | SJIF (2018): 7.426

Anti-Money Laundering: International Law and Practice of Foreign Countries

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Abstract: ***This article the author analyzes the issues of responsibility for the legalization of income derived from criminal activity (money-laundering) in international legal acts and legislation of foreign countries. The author studied this crime through the prism of Uzbek law. The legalization of proceeds derived from criminal activities is a criminal socially dangerous act representing imparting a lawful type to the origin of money or other property by transferring or exchanging it, non-disclosure or concealment of the true nature, source, location, method disposition, movement, rights with respect to money or other property or its accessories if money or other assets derived from criminal activity.***

Keywords: criminal law, responsibility, legalization of income, money-laundering, international standards, crime

1. Introduction

In accordance with the Constitution of the Republic of Uzbekistan, generally accepted principles and norms of international law and international treaties of Uzbekistan have priority action.

The preamble reads: "*The people of Uzbekistan, recognizing the priority of the generally recognized norms of international law, accept, through their authorized representatives, the present Constitution of the Republic of Uzbekistan*".

Constitutional norms are also confirmed in Article 2 of the Law of the Republic of Uzbekistan **"**On international treaties of the Republic of Uzbekistan", article 1 of the Criminal Code of the Republic of Uzbekistan.

In this regard, the study of international standards and foreign practices is relevant both from a scientific-theoretical and from a practical point of view.

Especially important is the analysis in the framework of the study of such a current phenomenon as countering the legalization of criminal proceeds.

To this end, it is necessary to begin with, to define the legalization of criminal proceeds, according to Uzbek legislation. According to article 243 of the Criminal Code of the Republic of Uzbekistan, the legalization of income should be understood as giving the guilty a legitimate type of property derived from criminal activity by giving the rightful type of origin of property (cash or other property), concealment or disguise of the true nature, source, location, method of disposal, relocation, genuine rights in relation to money or other property or its affiliation. The Law of the Republic of Uzbekistan **"**On the counteraction of the legalization of incomes obtained from criminal activity, the financing of terrorism and the financing of the distribution of the weapon of mass destruction" of August 3, 2004, No. 660-II in Article 3 states that "the legalization of proceeds derived from criminal activities is a criminal socially dangerous act representing imparting a lawful type to the origin of property (money or other property) by transferring it, transforming it or exchanging it, non-disclosure or concealment of the true nature, source, location, method disposition, movement, rights with respect to money or other property or its accessories if money or other assets derived from criminal activity ".

2. International Legal Acts

Most countries subscribe to the definition adopted by the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) (Vienna Convention) and the United Nations Convention Against Transnational Organized Crime (2000) (Palermo Convention).

Vienna Convention became the first universal international treaty providing for the development of cooperation in the fight against money laundering. In its norms the concept of "legalization" ("laundering") was formulated in detail. It recommends that each party take such measures as may be necessary in order to criminalize the relevant acts [1].

"Vienna Convention gives course of action for implementation of the framework for preventing money laundering, through law enforcement and control bodies. The regulatory nature of anti money laundry laws aim to immobilize the criminals. This involves identifying, arresting, and imprisoning the criminals. The regulatory nature of the anti money laundry is based upon voluntary compliance or punishment" [2].

In order to create a system to combat money laundering, the UN Convention provided the obligation of the member states to take measures to enable their competent authorities to identify, detect, freeze or seize assets, accounts with a view to the subsequent confiscation of proceeds from illicit trafficking in narcotic drugs and psychotropic substances.

A new contribution to countering the legalization of criminal proceeds was made by two UN Conventions: on November 15, 2000, the UN Convention against Transnational Organized Crime [3] was adopted, and on October 31, 2003, the UN Convention against Corruption [4].

They also described the actions forming the composition of the laundering of criminal proceeds, the criminalization of which is obligatory for all the acceding member countries.

There is no summarizing document at the UN level, however, the issues of interstate cooperation in the area of combating money laundering have been fairly intensively developed with the help of an international organization specializing in the development of international standards for combating money laundering income.

The Financial Action Task Force on Money Laundering (FATF), which is recognized as the international standard setter for anti-money laundering efforts, defines the term "money laundering" succinctly as "the processing of…criminal proceeds to disguise their illegal origin" in order to "legitimize" the ill-gotten gains of crime. [5].

3. Legislation of Foreign Countries

Countries should criminalise money laundering on the basis of the Vienna Convention and the Palermo Convention. Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences, or a combination of these approaches. [6].

The criminal legislation of the countries of the Commonwealth of Independent States has much in common due to the adoption on February 17, 1996 of the Model Criminal Code for the CIS states [7].

In this code, the legalization of income received illegally is enshrined in Article 258, which has the same name.

This crime belongs to the category of moderate severity. As a qualifying attribute is called the same act, committed by an organized group:

1) Concealing or distorting the illegal sources and nature of the origin, location, location, movement or actual ownership of funds or other property or rights to property that are knowingly obtained by unlawful means, as well as using such money or other property to engage in business or other economic activity is a crime moderately severe.
2) The same act committed by an organized group is a serious crime.

The criminal legislation of the CIS countries contains a rule on the legalization (laundering) of income acquired by criminal means.

So in the title of the article the term "legalization (laundering)" is used. In the Criminal Code of Armenia [8] (Art. 190), Turkmenistan [4] (Art. 242) and the Russian Federation [5] (Art. 174-1741), as in the domestic criminal law, only the term "legalization" is used, and in Moldova [9] (Art. 243) only the term "laundering".

A distinctive feature of the Criminal Code of Argentina [10] is that the rules enshrining criminal responsibility for harboring crimes (art. 277) and money laundering (art. 278) are located in one chapter: "Concealment and laundering money of criminal origin". Also, the code establishes criminal liability for money laundering committed "due to recklessness or gross negligence" (part 2 of article 278), i.e., according to the criminal law of Argentina, the legalization of criminal proceeds can be carried out either intentionally or by negligence.

In the Swiss Criminal Code [11], criminal liability for money laundering is enshrined in article 305.2, located in section 17 "Crimes and misconduct against justice". Thus, the objects of money laundering under the Swiss criminal law are the interests of justice.

The article on money laundering under the Criminal Code of Switzerland also fixes the qualifying signs - the actions of a person:

a) As a member of a criminal organization;
b) As a member of a gang that has organized itself for the constant commission of money laundering;
c) As a result of money laundering, she made a significant profit (part 2 of article 305.2).

In order to counteract the legalization of criminal proceeds, not only in the banking sector, but also in the entire financial sector, Switzerland adopted the Law on the Prevention of Money Laundering, Art. 9 which provides for an additional obligation of financial intermediaries, which is not stipulated in the Swiss Criminal Code, to report on any operations suspicious of involvement in money laundering.

In the Criminal Code of China [11], legalization refers to the provision of a financial settlement account; assistance in handling property in cash or in promissory notes; assistance in the transfer of funds by transfer to the account or by using other methods of payment; assistance in the transfer of funds abroad; concealment and concealment by other means of the sources and nature of the proceeds from crime.
At the same time, the aforementioned actions will be a crime only if they know that the proceeds are derived from criminal activities related to drugs, the black market, smuggling, or activities performed to conceal criminal sources (Art. 191).

In January 2003, China adopted in 1994 the Rules of Financial Organizations for Combating Money Laundering, and the Rules for Managing Reports on Large and Doubtful Deals. The fundamental law regulating countering the legalization of criminal proceeds in China is the Law "On Combating Money Laundering", which entered into force on January 1, 2007. [12]

Article 2 of the Law refers to the fight against money laundering to take measures on hindering prevent money laundering and various means of concealing, hiding sources of income and making profit related to committing crimes in the sphere of drug trafficking, crimes committed by organized crime, mafia crimes terrorism, smuggling, corruption and bribery, crimes that violate the order in the field of financial management, crimes in the field of financial fraud and others.

The legal framework for countering the legalization of criminal proceeds in the United States [13] is a combination of regulatory legal acts, including Bank Secrecy Act-BSA (Bank Secrets Act 1970); The Money Laundering Control Act (Money Laundering Act 1986); Art. 2532 of the Crime Control Act (Anti-Crime Act 1990) and others.

4. Conclusion

Taking in consideration all mentioned above, it should be said that the process of unification and harmonization with the advanced international standards of Uzbek criminal law is the most important task of improving domestic legislation, however, the following novelties are proposed: confiscation of property as a form of punishment, concept of criminal liability of legal persons and the inclusion of the term "money-laundering " in Uzbek Criminal Code.

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Fazilov Farkhod received the B.S. and M.S. degrees in Tashkent state institute of law in 2010 and 2012, respectively. Since 2012 he has been teaching law modules in Tashkent state university of law. From 2016 Farkhod is a member or Uzbek Bar Association. Now he is working under the PhD dissertation in criminal law sphere.