

OBJECTIVE COMPOSITION OF LEGALIZATION OF ILLEGAL INCOME. SUBJECT OF ACTION. BENEFIT HAVING PROPERTY VALUE, MATERIAL VALUES, BANKROLL, PROPERTY AS THE SUBJECT OF CRIME

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Abstract

It is essential to define the subject of crime as the right qualification of legalization depends on it. The issue related to the subject of crime is disputable in the theory of criminal law as well as among practitioners of different countries of the world. To clarify this issue first of all should be discussed those types of phenomena that are defined in the theory and international practice as the forms of crime.

Keywords: Money laundering, benefit, illegal operation, legalization

Some German scholars often use the concept “benefit” in their works. Money or anything that has property values belong to it [1, 2]. The term “property values” is used in the paragraph 261 of the Criminal Code of the Federal Republic of Germany. Such approach causes some contradictions: 1) The existing definition implies not legal good, but the subject of crime. M. Turava notes that legal good is interest first of all [3]. 2) Service can be provided for the purpose of legalization though, it is not property value. 3) The given terminological definition of the subject of legalization is rather abstract as a legalization provider can use absolutely different methods that do not match with the concept of “property value”.

The concept “legal good” is used in the Articles 28, 30 and 31 of the Criminal Code of Georgia. The Civil Code of Georgia has the concept of intangible property. The Article 152 says: “Intangible property is claims and rights that may be transferred to other persons, or that are intended either for bringing a material benefit to their benefit to their possession, or for entitling the latter to claim something from other person”. The Criminal Code of Georgia is based on this definition, namely, the Article 53 says: “Seizure of object or instrument of a crime means deprivation without reimbursement of an article, which a convict had used in the commission of a deliberate crime and still gas in his property of legal possession. The question of seizure is determined by the court. Such measure may be applied in cases where it is necessary for the interest of the State or society or for protection of right and freedoms of particular persons or for prevention of commission of a new crime”.

European Commission Convention on “Laundering, Search, Seizure and Confiscation of the Proceeds from Crime” adopted in Strasbourg on November 8, 1990 states “converted or transferred material values” as the subject of crime [4]. This approach is right to some extent. Though, it does not consider that financial operations are not material values, but the means of getting such values. Notwithstanding this, they are also used in the process of legalization.

In the beginning of the 80s of XX century, within the broadened financial market, “bankroll” was defined as the main subject of crime. It was exactly the time when developed countries were involved in struggle against money laundering.

In the process of working out the recommendations by Basel Committee on Banking supervision, “bankroll” was defined as the subject of crime. Basel Committee included as members the representatives of the

Central Banks of Great Britain, Italy, Germany, USA, France, Switzerland, Sweden and Japan. In December of 1988, the Committee adopted the declaration on “Prevention of the Use of Bank System for the Purpose of Laundering Illegally Obtained Money”.

International acts substantiating this institution were being worked out according to this declaration. Among them are: United Nations Convention on struggle against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988); recommendations on transnational organized crime made by the group of chief experts of the ministers summit of “the Group of Eight” (Paris, April 12, 1996); European Commission Convention on Laundering, Search, Seizure and Confiscation of the proceeds from Crime (1990), and other documents.

International interest towards the problem of money laundering at first started because of drug trade, as cash flow on borders is the characteristic feature of operations related to laundering money obtained from drug business. Among the existing international documents in the sphere of struggle against money laundering, first of all should be named the United Nations Convention on “Struggle against Illicit Traffic in Narcotic Drugs and Psychotropic Substances” adopted in Vienna in 1988 (Vienna Convention) and ratified by over 100 countries. In the national legislation, alongside the required responsibilities on crimes related to drug preparation, transfer and trade, also organizing, financing and handling illegal operations on drugs, the Convention demanded from the member states to define drug-related money laundering as a crime. Taking into account the main statutes and the constitutional principles of the legal systems of their own countries, the participants of the Convention take responsibility to define obtaining property, possessing property and using property as a crime if, while

obtaining this property, it was known that the property was purchased illicitly as a result of crimes related to drugs [6].

Among different definitions of a subject of crime, the “bankroll” institution is most widely spread. Generally, bankroll or other property that is purchased illicitly or as a result of crime is considered as a subject of legalization. Bankroll is cash or cashless money in any currency: currency notes – banknotes or coins of the state bank that are in circulation as the legal means of payment in cash; currency notes withdrawn from circulation that are subject to change; bankroll on bank accounts and deposits. Foreign currency: currency notes – banknotes in circulation, treasury tickets, coins that are legal means of payment in cash on the territory of the corresponding foreign country (group of foreign countries), also the above mentioned currency notes withdrawn from circulation that are subject to change; bankroll on bank accounts and deposits in foreign currency.

A subject of crime can be internal securities – these are emission securities the normal value of which is stated in material currency and the issue of which is registered in the country; other securities confirming the right be converted into currency, foreign securities, i.e. securities that may not belong to internal securities, etc.

Bankroll can be in tills, on currency accounts of credit organizations inside and outside of the country. The main sources of getting bankroll are: incomes received from sales of goods, work and service; incomes received from financial operations; bank credit and other means of loan; purposeful assignats and incomes.

The concept “money” is wider than concept “bankroll”. In the concept “money” we have to recognize the bankroll existing in national and foreign currency that are placed in tills, on circulation, currency and other accounts of local and foreign banks, securities as well as in taxation and

monetary documentations. That is why under bankroll should be implied not only money and currency, but also bank and travel cheques, money transfer, investment securities, bonds, certificates, documents allocating goods presentation of which is enough to gain right, purchase contracts, loan contracts, crediting documents.

Bankroll laundering means transferring illicitly obtained cash into other assets, also, hiding that real source or property from which money was obtained illegally and legalizing the source and property. In this case we deal with a crime that considers withdrawing bankroll (“criminal” money) from the sphere of “shadow” capital and bringing it in the sphere of legal circulation. Otherwise saying, we deal with giving bankroll or other property the status of legal property.

In the theories of criminal law of foreign countries, the term “property” is comprehended in different ways. This is greatly caused by the faults met in civil legislation that lacks the legal definition of the given concept.

According to the Article 147 of the Civil Code of Georgia, Property, according to this Code, is everything as well as any intangible property benefit, which may be possessed, used and disposed of by natural and legal persons, and which may be acquired without restriction, unless this is prohibited by law or contravenes moral standards.

Mostly under property is meant a thing or unity of things. Sometimes it is the unity of things having monetary value and property rights. In such a case, the property right is spread not only on things but also on corresponding income and other rights.

The concepts “property” and “bankroll” are in such relation with each other, as the concepts “whole” and “part”, i.e. the first of them is wider concept than the second one and there is no point in separating them. It

should be underlined that in the disposition of a lot of Articles of the Criminal Code of Georgia, legislators themselves placed the sigh of equality between them stating that “bankroll” is though “different”, but still “property”. Besides, as it was mentioned above, according to the statutes of the Civil Code Georgia, the concept “property” includes also money that belongs to movable property. In the Criminal Code of Georgia, the term “property” has long been used for constructing different compositions of crime to indicate that thing which is the object of encroachment. It comprised bankroll and as well as other property. The subject of crime considered by the Article 194 of the Criminal Code of Georgia is nor divided into “bankroll” and “property”, though it includes both of them.

Proceeding from the above mentioned, illegally obtained income can be defined as follows: this is things (including money and securities), and other property, among them property right, obtained as a result of crime or other kind of law abrogation.

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