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MONEY LAUNDERING IN THE USA CRIMINAL LAW

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Abstract:

The article concerns one of the difficult and interesting problems of comparative criminal law – money laundering in the USA criminal law. As a result of the analysis of the existing legislation, it is ascertained that the issue of money laundering is not reflected in the USA legislation in the form of one certain law. This is conditioned by the fact that a codified mode of criminal law does not exist in this country. Besides, the analysis of the USA criminal legislation showed that money laundering is given in the legislation in the form of two models: as obtaining property by committing a crime and as generating property as a result of unlawful activities. A lot of countries, where Romano-Germanic system of law dominates, support the model of the law of money laundering. Georgia is not an exception.

Introduction

The issue of money laundering is not given in the USA legislation as one of the forms of law. This is conditioned by the fact that the codified model of criminal law does not exist in this country. Unlike other countries of the world, the USA legislation is developed peculiarly and money laundering is given in the USA legislation in the broad sense even today. It comprises not only the property acquired by a criminal way, but also the property generated as a result of unlawful deeds. American science is also developed in this direction. The subject of research of the given paper is the peculiarity of the approach of the USA legislation towards money laundering.

Money laundering in the historical aspect and in the USA law

The traditional understanding of criminal law is that an offender should be arraigned and punished for the crime committed by him/her. This axiom is so obvious that it is not even considered as the principle of criminal law. There does not exist any legist who would cast doubt on the verity of this fact. But the last century were developed the modernistic tendencies

which still maintain their significance. They were generated on the bases of juridical pragmatism and neglect the mentioned axiom for the purpose of controlling the economic side of criminal deeds especially effectively. One of them pertains to the development of the norms about tax crimes and the norms about "money laundering". The homeland of this tendency is the United States of America. That is why it is rational to start researching the legal norms about "money laundering" from the American law.

On October 17, 1931, after hours-long meeting in the Federal Court of Chicago, the jurors convicted one of the leaders of organized crimes in the USA Alphonse Capone of evading taxes. The court sentenced him to 11 years for evading tax payment what finally put an end to his criminal career. In this case the victory of the American system of the justice of criminal law over the organized crime is obvious. But the prosecution could not manage to prove even one episode of getting revenues from "racket" by a criminal way or the facts of participating in more dangerous crimes. Among them the most well-known crime was St. Valentine's Day Massacre in 1929 when six gangsters from competing groupings were killed during the struggle for controlling the criminal world. Capone's case did not make new rules of law, but it had a significant impact on legal conscience. It became evident that the leader of the organized crime could be severely punished not because of the crime committed by him in reality, but for evading tax payment if he could not manage to pay taxes. It seemed that the leaders of the criminal world appeared in hopeless situation. In order to pay taxes it is necessary to show the source of income, i.e. to admit guilt. The natural way-out for them was "money laundering", i.e. to pretend that they had legal income. It gave them the opportunity to pay taxes and shirk responsibility for evading tax payment.

There are different ways of money laundering. They are mostly determined by the specificity of national legislation concerning the control of cash and clearing money turnover [2]. The easiest way is organization of legal industries whose activity is related to getting significant amount of cash. One of such ways, which was used by American gangsters even in the period of "dry law", gave bases to the name "money laundering": the laundry net was established where, in order to launder money, revenues gained from selling alcohol, exploiting prostituted and different types of racket were deposited. This gave the opportunity to pay taxes from these revenues and then use them openly. But the perspective of "laundering" of revenues with this scheme is very restricted from the viewpoint of the amount of laundered money as well as the possibility of controlling "laundries" and similar industries by national police (what Capone's case showed clearly enough). Other similar schemes have the same deficiencies which, as a rule, are related to making large-scale fictitious and unequivalent

bargain (e.g. real estate) as well as to ostensible winnings in allowed gambles, in the lottery, etc. That is why money laundering acquires the character of international financial operations.

Money received by criminal activity is taked outside the USA with a "suitcase", on the territory of other country where function strict legal norms of keeping bank secrecy. There this money is placed in the bank; a commercial or other type of organization is established which implements investment in the United States of America, for instance establishes there a representative office or a corporation. A culprit or his/her close people occupy the posts of managers in such corporation what enables them to use thus "laundered" means easily enough. Clearings are also broadly used while taking "dirty" money abroad. At this time bank officers are often bribed who keep such operations from controlling bodies. Development of electronic communications caused spreading of computer money laundering what is contributed by the anonymity of "digital money" used in computer nets [1].

The international character of money laundering conditioned the necessity of international collaboration for struggle against such activities what was expressed in international agreements as well as other documents. At first the initiative of collaboration came from the United States of America. Some states were openly growing rich (but some of them are still growing rich) by making convenient conditions in the national banking system for money laundering. Nowadays, almost everybody has realized the necessity of struggle against money laundering.

The modern law on struggle against "money laundering" in the United States of America exists on the federal level and not on the level of states [7, 54]. The federal legislation is based on the Bank Secrecy Act of 1970, Money Laundering Control Act of 1986, Anti-Drug Act of 1988 and other federal acts whose statutes are incorporated mainly in the volume 18 ("Crimes and Criminal Procedure") and the volume 31 ("Money and Finances") of the Collection of Laws of the United States of America. From the point of view of material criminal law, those norms are most interesting which are fixed in the chapter 95 of the volume 18 of the Collection of Laws – "Racket" and take into consideration the liabilities for "Laundering of monetary instruments" (Article 1956) and for "Participation in monetary operations with properties generated as a result of certain type of unlawful activities" (Article 1957) [3].

The following peculiarities of the federal legislation concerning the USA money laundering can be mentioned: 1) Criminal money laundering includes not only concealment but also participation in the crime and actions of a performer of a crime; 2) For money laundering is considered more severe punishment than for any other form of concealing a crime [5, 9-10];

3) Especially strict requirements are considered for those individuals whose professional activities are related to the growing risk of participation in "money laundering". They bear responsibility for accomplishing the operations connected with "dirty" money even in that case when nobody intends to perform any kind of crime or hide it; 4) While using a norm, the desire of the court or the police is utmost significant; 5) There is the possibility of replacing criminal penalty with "civil penalty".

The mentioned peculiarities are characteristic to the USA legislation on laundering the money of the States; though, it also has its peculiarities.

For instance, the code of the criminal law of New York in the Articles 470.05 – 470.20 divides money "laundering" in four degrees on the basis of the amount of laundered revenues, heaviness of the main crime and other circumstances. The similar norm is ascertained by the Article 186.10 of the code of criminal law of California. Any person who conducts or attempts to conduct a transaction or more than one transaction within a seven-day period involving a monetary instrument or instruments of a total value exceeding five thousand dollars or a total value exceeding twenty thousand dollars within a 30-day period, through one or more financial institutions (1) with the specific intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any criminal activity, or (2) knowing that the monetary instrument represents the proceeds of, or is derived directly or indirectly from the proceeds of, criminal activity, is guilty of the crime of money laundering.

The legislation of the states quite often determines the features of money "laundering" more narrowly than federal. The methods of the struggle against money laundering in other states of the "Anglo-American family" are the same as the American ones. Thus, the Article 462.31 of the code of the criminal law of Canada takes into consideration the liabilities for "laundering proceeds of crime": "Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of (a) the commission in Canada of a designated offence; or (b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence".

Conclusion

The analysis of the legislation of criminal law showed that money laundering in the legislation is given in its broad sense: 1) as the property acquired by a criminal way; and 2) the property generated as a result of unlawful deeds. As a result of the comparative-criminal research can be ascertained that a lot of countries of the followers of the Romano-Germanic system support this model. Georgia is not an exception.

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