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SUBJECT OF THE CRIME: MONEY LAUNDERING

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Abstract

The article delves into the fundamental notion of money laundering, which is universally acknowledged by the international community, including the United Nations, as one of the most pervasive and perilous transnational crimes worldwide.

Keywords: *crime, criminal liability, proceeds of crime, money laundering, legalization, punishment*

СУБЪЕКТ ПРЕСТУПЛЕНИЯ: ЛЕГАЛИЗАЦИЯ ПРЕСТУПНЫХ ДОХОДОВ

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Аннотация.

Статья рассматривает основное понятие отмывания денег, которое всеобщее признано международным сообществом, включая Организацию Объединенных Наций, как одно из наиболее распространенных и опасных транснациональных преступлений во всем мире.

Ключевые слова: *преступление, уголовная ответственность, преступные доходы, отмывание денег, легализация, наказание*

Introduction

The legitimization of illicit gains stands as one of the prevalent and high-risk transnational criminal activities. As per expert assessments, the proceeds stemming from diverse criminal undertakings within the domain of legitimizing illicit gains have accounted for roughly 2 to 5% of the overall global gross product in recent

years. This translates to an economic magnitude ranging from 1 to 3 trillion US dollars.

This significant financial volume underscores the immense scale of money laundering activities on a global scale. It emphasizes the necessity for concerted international efforts to combat this issue effectively, given its substantial impact not only on the financial systems but also on the social and economic well-being of countries across the world¹.

The nation's economic security and stability face potential jeopardy due to the repercussions of these adverse elements.

Presently, the escalating public peril posed by the legitimization of criminally acquired proceeds elicits widespread apprehension across the global community of nations. As the world's financial system becomes increasingly interlinked through globalization, the imperative emerges for international coordination among countries to combat the legitimization of criminally acquired proceeds effectively. In light of these circumstances, Uzbekistan cannot afford to remain detached from this issue.

The negative factors at play here could undermine the economic foundation and stability of a country. The growing global concern regarding the legalization of illegally obtained funds highlights the need for international cooperation to counter this issue effectively. In this era of interconnected financial systems, Uzbekistan, like other nations, must actively engage in addressing these challenges to preserve its own economic well-being.

In the realm of criminal law, the individual responsible for committing a crime and meeting the age requirements stipulated by the legal system is regarded as the subject of the offense. If any of these essential criteria are missing, it implies the absence of the crime's perpetrator and consequently negates the existence of the crime itself..

The examination uncovers noteworthy fluctuations in the occurrence of money laundering offenses and the accompanying figures related to the extent of income legalization during the observation period. Nevertheless, there is a distinct trend

¹ Course of criminal law of the Republic of Uzbekistan. Special part. T.1 Uzbekistan, 2016.

towards decreasing criminal activities in recent years, with a reduction of over 50% in the number of reported offenses.

Furthermore, Uzbekistan reportedly grapples with a substantial shadow economy, with approximations proposing that it constitutes around 50% of the total economy. This significant share of the shadow economy implies a substantial GDP loss, which could reach as high as 16-17 billion US dollars, according to these estimations.

Materials and methods

The research within this paper was conducted using a diverse array of general scientific methods. Historical analysis was employed to trace the evolution of money laundering as a transnational crime. A comparative legal approach was applied to assess how different countries address the issue. Furthermore, logical methods such as analysis and synthesis were utilized to delve deep into the subject, allowing for a comprehensive examination of the trends and factors surrounding money laundering.

These methods collectively provided a rigorous framework for understanding the intricacies of money laundering as a global problem. The historical analysis illuminated the roots and transformations of this crime, shedding light on its ever-changing nature. The comparative legal approach facilitated a cross-jurisdictional assessment, enabling a nuanced examination of diverse legal systems and their responses to money laundering.

In addition, the logical methods, including in-depth analysis and synthesis, allowed for the synthesis of information and data from various sources. This comprehensive approach not only deepened the understanding of money laundering but also uncovered insights into trends and countermeasures.

By embracing this multifaceted methodology, this paper provides a thorough and insightful exploration of money laundering, serving as a valuable resource for researchers, policymakers, and anyone interested in addressing this significant transnational issue.

Research results and discussion

Money laundering crimes encompass a wide array of subjects across various jurisdictions, involving individuals, entities, and organizations engaged in the complex process of concealing the illicit origins of unlawfully acquired funds. Although specific criteria for identifying these subjects may vary, several universally acknowledged categories are typically recognized:

Individuals: Across most countries, individuals who knowingly participate in money laundering activities are considered subjects of this crime. This classification generally includes those who willfully aid in the movement or transformation of illicit funds, often through intricate financial transactions or arrangements.

Financial Institutions: Many nations place stringent obligations on financial institutions, such as banks, to deter and report money laundering endeavors. These institutions are entrusted with the responsibility of conducting thorough due diligence on their clientele, reporting transactions that raise suspicion, and establishing robust anti-money laundering (AML) programs.

Designated Non-Financial Businesses and Professions (DNFBPs): Some countries extend AML obligations beyond financial entities to encompass designated non-financial businesses and professions. This category can encompass diverse sectors like real estate, casinos, legal and accounting services, and trust and company service providers. Individuals and entities operating within these sectors may be subject to money laundering regulations and related obligations.

Corporate Entities: In select jurisdictions, corporate entities can be held accountable for money laundering offenses. This includes companies or organizations that actively facilitate or reap benefits from money laundering activities, whether directly or indirectly.

The inclusion of these subjects is vital in addressing the multidimensional nature of money laundering, ensuring a comprehensive approach to combat this global predicament effectively. By targeting individuals, financial institutions, non-financial businesses, and corporate entities, legal systems aim to create a robust deterrent against this intricate and harmful transnational crime.

Indeed, the specific definitions and criteria for identifying the subjects of money laundering crimes can exhibit notable disparities among different jurisdictions. Every country maintains its distinct legal framework, regulations, and interpretations concerning the categorization of individuals, entities, or organizations subject to these offenses. This divergence in approaches and definitions reflects the complex and multifaceted nature of money laundering, which transcends borders and necessitates tailored responses to address its various manifestations effectively. Hence, a thorough understanding of the local legal context and jurisdiction-specific definitions is imperative for accurately determining who falls under the purview of money laundering laws in a particular region.

Pavlov V. G. posits that the subject of a crime is a legal term that defines the legal attributes of the individual who has committed the offense. It is delineated solely by the elements (individuality, age, sanity) required for the imposition of criminal responsibility upon the person who engaged in a socially harmful act. However, these elements represent only a fraction of the characteristics encompassing the individual involved in the criminal act².

In the theory of criminal law, the subjects of crime are traditionally classified into the following types.

General subject - having all the characteristics specified in the Article 17 of the Criminal Code of the Republic of Uzbekistan.

A special subject of a crime is a person who, along with the general characteristics of the subject (reaching the age of criminal responsibility and sanity) also meets additional special features specified in the disposition of the articles of the Special Part of the Criminal Code, which are subject to mandatory establishment when qualifying and limiting the circle of persons who may be liable under this article³. A special subject must be defined by criminal law⁴.

² Pavlov V.G. The subject of the crime. - St. Petersburg: Publishing House "Legal Center Press", 2001. - P. 270.

³ Rustambayev M.H. Course of criminal law of the Republic of Uzbekistan. Special part. T.2: Uzbekistan, 2016.

⁴ Abdurasulova K. A Jinoyatning maxsus su'bekti. O'quv qo'llanma [Special Subject of the Crime] Manual-T.: TSUL, 2005. - B. 110

According to the viewpoints expressed by local scholars like R. Kabulov, A. A. Otajonov, and I. A. Sattiev, in cases where a crime involves both a general subject and a special subject, the special subject is considered the perpetrator, while the general subject assumes the role of an organizer, instigator, or accomplice based on their actions⁵.

After a comprehensive analysis of the corpus delicti related to the legalization of proceeds from criminal activities, it can be reasonably concluded that the Criminal Code of the Republic of Uzbekistan does not specifically designate a unique subject for this offense. Therefore, it implies that money laundering can be committed by any mentally competent individual who has reached the age of 16. In the domestic legal scholarship, there is a consensus regarding the interpretation of both the general and specific elements outlined in Article 243 of the Criminal Code of the Republic of Uzbekistan.

According to Professor N.A. Lopashenko, the term "subject of self-laundering" refers to "an individual who has reached the age of 16 and has acquired money or property through criminal means, with the specific intention of giving a legitimate appearance to the ownership, use, and disposal of the criminal proceeds or other assets. If such intention is not established, the crime is not committed."

The term "subject of money laundering" typically encompasses individuals who knowingly and consistently involve themselves in the concealment of the source of unlawfully acquired funds or other assets. These individuals can take various forms, including financial intermediaries, lawyers, accountants, banks, asset management firms, or other entities providing services related to financial transactions. Money laundering subjects actively partake in establishing intricate schemes and mechanisms designed to legitimately convert illegal assets while obstructing the tracing of their origins.

The subject of the crime is a competent individual who has reached the age of sixteen and has not participated (in any form of complicity) in the commission of a crime resulting in the acquisition of monetary funds or other property. This may

⁵ Jinoyatlarni kvalifikatsiya qilish [Qualification of crimes]: a textbook for higher education institutions of the Ministry of Internal Affairs / R. Kabulov, A.A. Otajonov, I.A. Sattiev end others.T.-2012.- p.87

include employees of financial institutions, professional participants in the securities market, companies involved in real estate transactions, etc.

Conclusions

The state's policy in the realm of money laundering prevention is founded upon the international legal commitments of the Republic of Uzbekistan and the imperative of safeguarding the seamless operation of the national economic system. International legal guidelines for tackling money laundering present typical strategies for addressing this concern, while considering both the general principles of countering this phenomenon, which are universal to every state, and the requirements for shielding against transnational criminal activities. While adhering to international norms, the state must also factor in the intricacies of their implementation within the framework of the national legal framework and under specific socio-economic circumstances. These multifaceted factors delineate the path to resolving this intricate challenge, entailing a delicate equilibrium between upholding international standards and accounting for national interests.

Studies of the theory, legislative and law enforcement practice allow us to conclude that, despite the high degree of public danger of money laundering, the practice of applying the Article 243 of the Criminal Code of the Republic of Uzbekistan still does not meet the real scale of this crime.

The Law of the Republic of Uzbekistan 660-II "On countering the legalization of revenue received from criminal activities, the financing of terrorism and the financing of the proliferation of weapons of mass destruction" of 26.08.2004 shall be further improved, taking into account the requirements of international law, in particular, the Recommendations of the Financial Action Task Force on Money Laundering (FATF). For instance, it should include issues related to virtual assets, financial investigations, and others.

Considering all the aspects discussed above, it can be inferred that the challenges related to combatting money laundering are of such significant magnitude that they warrant more extensive examination in the context of additional research endeavors.

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