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**ECONOMIC AND LEGAL NORMS OF ECONOMY UNSHADOWING AS A
MEANS OF PREVENTION LEGALIZATION (LAUNDERING) OF INCOMES
RECEIVED BY WAY OF CRIME**

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The article analyzes basic premises of origin and spread of such a phenomenon as "shadow economy", with the emphasis on the issues of fight against legalization of proceeds of crime. Highlighted the prospects of improvement of economic legislation in this area. In the article is determined the relevance and necessity of application the enumerated in normative legal acts means of combating laundering money received by way of crime.

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The problems of shadow economy are closely intertwined with the problems legalization of "dirty" money. Legalization of "dirty" money is bordered by the shadow turnover, as a number of tax offenses intersect with crimes in the part of money laundering. This circumstance was clearly pointed by the Ukrainian Supreme Court in Plenary Session Decree No.5 from 15.04.2005. In particular,

the funds or other property that a person has got (received) not by the way of crime, but which it has illegally keep, hidden away, not transferred to the State in the presence of obligation to do this cannot be considered as obtained as a result of the commission of a predicate action, namely: the funds that are unpaid as taxes, fees and other compulsory payments; hidden revenue in foreign currency from the sale of export goods (works, services) or hidden goods, other material assets derived from such gains, as in such cases there is no direct getting of assets or other property by the way of crime, but illegal (criminal) disposal these assets (if the right of their ownership was acquired illegally). Also, assets (regardless of size), received as subsidies, subventions, grants or loans, as a result of providing false information by entities mentioned in the disposition of part 1 of article 222 of the Criminal Code of Ukraine, are not the subject of legalization.

Relationship of other crimes with legalization of “dirty” money, as well as implementation another actions in the economic sphere, which are administrative misconduct in connection with their low public danger, characterizes shadow economy as a predecessor or companion of the legalization of “dirty” money.

To date, no one denies the presence of the shadow economy in Ukraine. According to various sources, the share of the shadow economy is about 30-45% of the official level of gross domestic product of the country. In the shadow business involved a lot of the economically active population, what indicates that there are significant problems in the economy of our country.

The phenomenon of shadow economy can be detected not only in Ukraine. It takes place in all countries. According to estimates of Austrian economist Friedrich Schneider, the highest values of parameters of the informal sector are registered in the countries that are developing and in countries with transition economies, the lowest - in developed countries [1, 14].

So, U. P. Zubakov notes that “legalization (laundering) of proceeds from illegal way - a powerful economic factor for the growth of organized crime in the most dangerous forms (drug trafficking, arms trafficking, smuggling, etc.). This phenomenon threatens national security of countries and undermine the prospects for trends development of the free movement of capital” [5, 13].

Legalization of illegally acquired income is closely related to such negative phenomena as terrorism and transnational organized crime, international drug trafficking, arms trafficking, etc. As a rule, exactly the incomes of criminal activity connected with these phenomena are the basis for the process of legalization criminal capital. In turn, criminal capital having passed through all the stages

of legalization becomes the source for committing many types of economic crimes. Thus, we have a whole system – a closed circuit of criminal elements, which are a serious threat to economic security of both individual nations and the world community as a whole.

As rightly noted by A. S. Benitsky, social danger of the process of money laundering is in the following: “uncontrolled influx to legitimate economy of shadow capital increases inflation processes; turnover of illegal funds in the economic sector introduces distortions in the use of legal mechanisms of implementation economic activities, encroaching on the normal functioning of the economy; undermines the legitimate order of entrepreneurial and other economic activities, as well as the principle of equality of participants in economic relations, which leads to restriction of fair competition” [2, 8].

Experts attribute the sources of obtaining criminal proceeds, which require further legalization (laundering), to two groups:

- drug trafficking, illicit manufacturing and trafficking of arms, prostitution management, trafficking in human beings (material gain from the exercise of such frauds is usually sent to “shadow”. According to experts, these operations constitute more than 50% of the total illicit turnover);

- crimes in the sphere of economic activity and high technologies; the misappropriation of money (including budgetary), or other property by way of stealing, fraud, fraudulent bankruptcy, forgery of payment documents, smuggling (material gain from their implementation is accompanied by some share of non-cash turnover and is about 25%) [11, 44].

The world community has recognized that the legalization of proceeds from criminal activities has become a global threat to the economic security and political stability of any state.

That threat manifests itself in the following negative consequences:

- inability of the state and society to combat money laundering facilitates the enrichment of groups of people through crime, thereby making the very criminal activity more attractive and economically convenient;

- use of legalized “dirty” money, not only for continuation of criminal activity, but also for investment in the most perspective types of economic activities;

- expansion and strengthening of the economic and technological base of organized crime;

- reduction in the turnover of taxes and allocation of funds for state public spending due to concealment of income lists threatens the financial system of the country as a whole, leads to the disruption of the national economy;

- use of “dirty” money to bribe employees of state power, the penetration of criminal elements in the political institutes and, in some cases, for the organization and financing of terrorism, what leads to disruption of democratic system and national security, makes a real threat of losing by Government the control over the state and its usurpation by criminal elements.

Legalization of illegal incomes in developed countries in recent decades remains a serious problem – international experts estimate the size of capital that is laundered in the world ranging from 100 to 500 billion dollars per year [7, 12].

On March 09, 2011 was issued the order of the Cabinet of Ministers of Ukraine “On approval of the Development Strategy of the system for prevention and counteraction to legalization (laundering) of proceeds from crime and financing of terrorism up to 2015”.

Such documents are developed by all the leading countries of the world, usually for one year. The main goal of the Strategy – is determining measures of a legislative, organizational and institutional nature aimed at ensuring stable and efficient functioning of the national system for the prevention and counteraction to legalization (laundering) of proceeds from crime and terrorist financing.

The strategy consists of the following parts:

a) general part, which determines the need to address the problems of the relatively rapid development of laundering of “dirty” money.

b) analysis of the situation and current trends in the field of combating money laundering and terrorist financing in Ukraine. This part includes an assessment of the role of the Financial Intelligence (State Financial Monitoring Service), law enforcement agencies, Prosecutor’s Office, courts in this process, analysis of the level of coordination of departments, participation in international cooperation.

c) the other two blocks of the concept can be named basic ones – they are the priority objectives of Ukraine in the field of combating money laundering and financing of terrorism for the next few years, and longer-term objectives, mechanisms and means to implement the goals and objectives proposed in the previous block of the concept. This is a legislative ensuring, law enforcement activity, prosecutors and the courts activity, oversight activities, coordination of departments, participation in international cooperation.

d) in the last block are the expected results [9].

In this context, we can identify the strategic objectives of economic and legal regulation in this area: the formation of such a block of economic legislation, which prevents the legalization of “dirty” money, facilitates fixing offenses and counteracts its effects.

Among the relevant tactical tasks can be distinguished those with economic and legal nature and represent at least one third of all the other tasks identified in the relevant Strategy, in particular:

- to ensure approval of Ukraine's status as a reliable partner of the international community by "increasing the investment attractiveness of Ukraine's economy for foreign investors" and "overcome barriers to the recognition it as a state with market economy";

- to take measures to prevent the development of prerequisites for laundering the proceeds of crime or financing of terrorism through: "improvement of means to monitoring of financial flows and combating illegal withdrawal of capital from Ukraine", "improve the efficiency of analysis of methods and financial schemes to legalization (laundering) proceeds obtained by way of crime or terrorist financing and the development of relevant typologies", "analysis of foreign economic operations that are carried out by business entities through offshore zones", "introduction classification of clients of nonbank financial institutions and exercising by such institutions appropriate events in respect of customers, the activity of which evidences the increased risk of their financial transactions", "ensuring regulation of activity in the organization and conduct of lotteries and gambling in Ukraine";

- minimizing the risks of using Ukrainian financial system to launder the proceeds of crime or financing of terrorism through: "strengthening informational transparency of the financial system", "increase the share of non-cash payments and reducing the use of cash", "introduction of a mechanism for collecting by reporting entities information on the activities of foreign financial institutions, with which have been established correspondent relations";

- improvement of the mechanism of regulation and supervision over reporting entities through: "analyzing the effectiveness of events, operation of the financial monitoring system in the state", "improving the efficiency of regulating and supervision over reporting entities ...", "establishing a procedure for the use of measures to prevent forming the charter capital of relevant reporting entities at the expense of money, the source of which cannot be confirmed", "determination and application of a clear mechanism for checking impeccable business reputation of persons who manage and control reporting entities";

- organization of effective international cooperation through continuation participation of Ukraine in international events in the field of prevention and counteraction to legalization (laundering) of proceeds from crime and financing of terrorism, which are carried out within the framework of the activities of the Financial Action Task Force on Money Laundering (FATF), the European Union, the Council

of Europe, the World Bank, the International Monetary Fund, the Egmont group, the Eurasian Group on combating money laundering and terrorist financing, and other international organizations (although this is a common problem, but given the current orientation of international organizations to the complex, including the economic and legal impact on legalization of “dirty” money, it cannot fail to be noted here).

From all appearances, the given tasks can be realized only within the development of relevant regulators in the economic and legal legislation, forcing economic agents, in particular, entities of financial monitoring to perform the programmed by the state events for combating legalization of “dirty” money.

Formation of a national strategy for combating money laundering and terrorist financing is a targeted process, which is based on the conceptual and strategic forecasting, accounting wide range of objective economic, political and social conditions, trends and factors.

Quality of financial strategy depends largely on the efficiency of institutes of ensuring national interests. Thus, when considering the issues of countering money laundering the most important is the institutional sphere.

The main subject of countering the threat of economic security related to laundering proceeds of crime is the state, which operates through a set of bodies, through law-making and law-enforcement activities [10, 99].

Regulatory aspect of the state activity in the combat against money laundering and countering the growth of the informal sector is manifested primarily in such functions as sanitation and promotion of business activity of entrepreneurship, business competitiveness, acting within the framework of legal environment. Particularly important this provision seems in relation to the spread of crime growth, in a situation where business activity within the framework of current legislation is more often unprofitable and non-remunerative.

In turn, the smaller the shadow economy, the easier it will be to identify operations aimed at laundering of “dirty” money, because the flow of funds from the informal sector to legal one will be an exception, but not a common phenomenon, which it is today.

It is in this context, to the number of threats to the economic security of Ukraine on the part of the shadow economy can be referred massive tax evasion. Tax crimes and tax offences inflict enormous harm to Ukraine’s budgetary system. Statistics cited by the State Tax Service shows, that over 90% of the enterprises of Ukraine violate tax legislation. A large proportion of these violations is related to imperfect legislation, limited skills of participants of relationships in tax sphere,

with an ambiguous understanding of laws, with constant amendments in them. All this is illustrated by the following data:

- mass production of products that do not meet sanitary, technical and other requirements, what distorts fair competition and threatens the health of citizens;
- massive copyright infringement, as well as infringement the rights of inventions, samples and useful models;
- unlawful export of capital abroad;
- clandestine manufacture of prohibited and restricted for civilian purposes goods, the spread of which could harm the health of population;
- providing lawful nature of possession, use and disposal of funds obtained by illegal means;
- wide turnover of unaccounted cash and so on.

Specified circumstances require the state to take the decisive measures regarding reducing the scale of the shadow economy, first of all the scale of the “dark” economy. Measures aimed at combating the legalization of proceeds from crime should be become the most important in this direction.

For economic entities, moving into the shade is closely connected with significant operating expenses in lawful activity. Events to reduce these expenses, which can be initiated by the state, are the following: creation of a stable legislation, reducing macroeconomic instability, reduction of administrative barriers, creating an effective tax system, improvement of labor legislation, elimination of the shadow economy, and increase in the legal economy [3, 100].

Development of similar processes in the field of economic relations is promoted by a different understanding of financial agreements, when individual jurists deny economic-law norms [4, 184], what makes it possible to use, for example, foreign currency as the currency of debt [8, 67]. It is possible to mark such causes as disorderliness, corruption, and, after all, inefficiency of the state financial control, at least, due to the fact that there is a large shadow economy in Ukraine, which, according to the calculations of specialists, already exceeds 39%, and in the case of not applying urgent measures will reach 70% of GDP before 2015 [6, 110].

Summarizing the above, we can conclude that the objective of economic and legal measures against legalization (laundering) of proceeds from crime reduces to two main processes: to lay in the mechanism of exercising economic activities such levers that would made unprofitable any shadow operations and the use of funds received by way of crime; revealing, documented recording of the fact of an suspicious transaction or agreement, and transfer this information to the public authority responsible for combating money laundering and terrorist financing.

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