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Liability and the Digital Age: Comparative Analysis of the Australian, South African and CIS States Legislative Approaches

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Abstract

The specific set of means of criminal law protection of the monetary sphere in the state is determined by many factors, among which economic ones are of primary importance. In this regard, approaches to the construction of a set of these means may vary depending on the economic system of the state. States with a develop economy establish criminal law prohibitions in the monetary sphere, mainly concerning counterfeiting of currency, as well as money laundering. Countries with a different, for example, mixed economic system are characterized by the consolidation of additional means of criminal law protection of the monetary sphere, including liability for failure to return funds from abroad, smuggling, etc. With that the rapid proliferation of digital assets platforms has democratized capital flow relations, enabling a vast spectrum of chances to bypass so called analog legal barriers has also raised concerns regarding means of counteracting of unlawful actions in the digital sphere. The study outlines approaches of some different countries, including Australia, South Africa, CIS states, which can be taken into account. It argues that differences in the type of economic systems of the states do not at all predetermine

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the impossibility of conducting a comparative legal study of their approaches in the digital sphere. On the contrary, the coincidence in the type of economic systems of two or more countries, in the digital age cannot serve as correct grounds for confirming the thesis on the relevance. The author summarizes the need for changes in the liability regulatory framework.

Keywords

digital currency; money; digital assets; liability; comparative analysis; regulatory framework.

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Introduction

The specific set of means of criminal law protecting the currency sphere in the state is determined by many factors; among them economic ones are of primary importance. Therefore approaches to the construction of a set of these means may vary depending on the economic system.

States with a market economy establish criminal prohibitions in the currency sphere, mainly concerning counterfeiting of currency and currency valuables, as well as money laundering. Countries with a different, for example mixed, economic system are characterized by the consolidation at the legislative level of additional means of criminal protection of the currency sphere, including rules on liability for failure to return funds from abroad, smuggling, etc.

At the same time, differences in the type of economic systems of such states in no way predetermine the impossibility of conducting a comparative legal study of their approaches to criminal-legal protection of the currency sphere, especially taking into account the dependence of money on the legal basis. And, on the contrary, the coincidence of the type of economic systems of two or more countries, as well as the commonality of prohibitions provided for in their criminal legislation, in the digital age [Khabrieva T., Chernogor N., 2018] cannot serve as correct grounds for confirming the thesis on the relevance of such foreign experience, since the economic system of a single state, especially a mixed one, is historical, that is, it depends on the characteristics of the region, the amount of resources and other conditions that

differently affect the nature of the patterns of economic processes within society, and, consequently, the vector of transformation of the means of criminal-legal protection of relations in the monetary sphere.

Thus, the economic system of the Russian Federation has many features of a mixed type. Taking this into account, and also based on the similarity of trends in counteracting criminal encroachments in the currency sphere, in comparative legal terms, researchers pay attention to the experience of the CIS member states.

In particular, using the examples of the Republics of Kazakhstan, Belarus, Uzbekistan, etc., issues of criminal liability for evasion of repatriation of funds, concealment of funds in foreign currency, etc. are analyzed [Kucherov I., 2021]. However, despite the commonality in approaches to regulating the means of criminal-legal protection of the currency sphere and a certain coincidence of the type of economic systems, the experience of these countries can be considered relevant only in part.

According to the World Bank assessment[1] despite the conditions of unprecedented sanctions pressure in 2023, the economy of the Russian Federation, based on gross domestic product at purchasing power parity, took 4th place among all economies in the world, ahead of countries like Germany (6th place), France (9th place), Great Britain (10th place), second only to China, the USA and India (1st, 2nd and 3rd places in the ranking, respectively). For comparison, the CIS states occupy much more modest positions in this ranking: Kazakhstan (38th place), Uzbekistan (59th place), Belarus (68th place), Azerbaijan (75th place), Tajikistan (128th place), etc.

Similar results were recorded when turning to the analysis of international gold and foreign exchange reserves of the noted states in 2023, the volume of that significantly affects the stability of relations in the currency sphere. In this case, the Russian Federation took 6th place in the world, behind the United States (4th place), but significantly ahead of Germany (12th place), France (14th place), Great Britain (20th place), as well as CIS states like Kazakhstan (49th place), Uzbekistan (52nd place), Azerbaijan (71st place), Belarus (83rd place), Tajikistan (108th place), etc.[2]

[1] Gross domestic product 2023. PPP (current international $) // World Development Indicators database. Available at: https://data.worldbank.org/indicator/NY.GDP.MKTP.PP.CD?start=1990&end=2023&view=chart (accessed: 29.07.2024)

[2] Total reserves (includes gold, current US$) // World Bank. Available at: http://data.worldbank.org/indicator/FI.RES.TOTL.CD (accessed: 29.07.2024)

In addition to the above, it also seems important to draw attention to the fact many means of criminal law protecting currency sphere in the Russian Federation and the CIS states are similar, that prevents the use of comparative methodology to substantiate the results of the study. Thus, the Criminal Code of the Republic of Belarus provides for provisions on liability for the production, storage or sale of counterfeit money or securities (Article 221), failure to return from abroad by an individual entrepreneur or official of a legal entity funds in an especially large amount, subject in accordance with the legislation of the Republic of Belarus to mandatory transfer to accounts in an authorized bank of the Republic of Belarus (Article 225), legalization ("laundering") of funds obtained by criminal means, that is, the performance of financial transactions with funds obtained by obviously criminal means, in order to give a legitimate appearance to the ownership, use and (or) disposal of these funds for the purpose of concealing or distorting the origin, location, placement, movement or actual ownership of these funds (Article 235), etc.

Similar provisions are enshrined in the criminal legislation of other CIS states. In this regard, the commonality of approaches to the regulation of the specified means of criminal-legal protection of the monetary sphere, as well as the uniform historical conditions of the formation and development of their legal system, do not allow the integration requirements of comparative legal research to be met in order to obtain its proper results [Kudratov M., Pechegin D., 2021], excluding the digital sphere[3]. That is why the article took into account such jurisdiction as Australia, South Africa and some CIS countries (on a general example of the Republic Uzbekistan).

[3] The digitalization of the sphere of financial relations, the spread and popularization of cryptocurrencies, the introduction of artificial intelligence and distributed ledger technologies (blockchain) into the sphere of public relations today form a completely new financial and digital ecosystem of public relations, which can seriously change the balance of power of financial market participants around the world. Nevertheless, despite all the positive aspects of the introduction of modern financial technologies into public and state life, it is necessary to state an insufficient degree of predictability of these phenomena in order to ensure effective protection of the national monetary system and the realization of citizens' rights and freedoms. In the absence of proper legal protection for citizens, researchers tend to assess the risks in the field of digital finance very highly. Many countries continue to develop regulatory regulations and means of protecting public relations that develop in the process of using digital financial instruments. The complexity of this regulation will create conditions for ensuring an appropriate level of protection of the national economy and the rights of citizens, including by criminal law means.

1. Australia: Special Attention to Tax Evasion and "Money Laundering" within the Digital Currencies

The criminal legislation of Australia largely repeats (or reproduces) the approaches and traditions approved in the UK, including in the field of countering currency crimes. This circumstance leads to the possibility of a concise presentation of the experience of the specified jurisdiction, which, at the same time, has own characteristic features.

Leaving aside the traditions common with the United Kingdom of regulating the norms on criminal liability for fraud, that is quite common in the field of currency and monetary circulation, it is useful to focus on some features of the reflection in the sector Australian legislation of measures to counter money laundering (legalization), counterfeiting and smuggling of cash and monetary instruments.

1.1. "Ordinary" Monetary Crimes

The composition of money laundering is fixed in an independent part 10.2 (Section 400) of the Criminal Code of Australia and provides for criminal liability measures not only for transactions with money and property obtained by criminal means, but also with those funds (property) that became or should have become a means of committing (instrument) a crime. At the same time, the components of the specified act are classified depending on the size of legalized (laundered) property in Australian dollars: from 1,000 to 10,000 (section 400.7); from 10,000 to 50,000 (section 400.6); 50,000 to 100,000 (Section 400.5); 100,000 to 1,000,000 (Section 400.4); 1,000,000 to 10,000,000 (section 400.3); over 10,000,000 (section 400.2B). Each of these compounds has own measures of criminal legal impact.

Thus, in the case of legalization of money or property in excess of 10,000,000, a sentence of life imprisonment may be imposed. The amount of punishment in the form of imprisonment for legalization for a smaller amount is reduced, respectively, proportionally and in general can be up to 25, 20, 15, 10, 5 years and 12 months [Kucherov I., Zaytsev O., Nudel S., 2020: 276]. At the same time, depending on the circumstances of the case, the judge may appoint in place of the specified or as an additional punishment penalty units, the maximum size of which is set in the marked sections.

Counterfeiting of money and monetary instruments is subject to criminal prosecution in Australia under the provisions of the Federal Currency

Offences Act 1981. By this act the manufacture of counterfeit money and securities, their sale or introduction into circulation, purchase or sale, possession for the purpose of sale, import or export from the country are considered a crime, for which penalties may be imposed in the form of imprisonment (for individuals) for up to 14, 12, 10 and 10 years, respectively, or penalty units (for legal entities) in the amount of 750, 600 or 500 dollars. Also, as in the United Kingdom, Australian legislation provides for liability measures for counterfeiting out-of-circulation banknotes if a person has not complied with the requirements of the Copyright Act of 1968 and the Guidelines for the Reproduction of Banknotes[4].

It is noteworthy in this regard that the Law on Currency Crimes of 1981 specifically identifies offences providing for criminal liability measures for: manufacture, possession, purchase or sale of equipment, machine tools, other items intended for counterfeiting, as well as paper and paints (imprisonment for up to 10 years); theft or removal from the restricted territory of enterprises engaged in printing banknotes and minting coins, any equipment or parts thereof and materials (including paints) intended for the manufacture of banknotes (imprisonment for up to 10 years); dissemination of information about the means and methods of self-production of counterfeit banknotes and coins, as well as disclosure patented, confidential information on technologies for the manufacture of genuine banknotes (imprisonment for up to 5 years); intentional damage or destruction of Australian banknotes or coins in circulation (imprisonment for up to 2 years); manufacture and import into the country of imitation (comic, souvenir, etc.) banknotes similar to genuine Australian banknotes and capable of misleading a citizen about their authenticity (imprisonment for up to 2 years). For the commission of each of these acts, the court may appoint penal units instead of the main one or as an additional punishment, including in relation to legal entities.

Just as in the United Kingdom, in Australia the grounds for applying criminal law measures against a person for violating the procedure for moving cash or monetary instruments across the border are fixed in the provisions of sector legislation on countering money laundering, namely the federal Law on Combating Money Laundering and Terrorist Financing of 2006. Nevertheless, Article 53 of the Act expressly establishes responsibil-

[4] Reproducing Banknotes Guidelines // The Reserve Bank of Australia. Available at: https://banknotes.rba.gov.au/legal/reproducing-banknotes/ (accessed: 22.08.2024)

ity for the undeclared import into and export from Australia of monetary instruments in the amount of over 10,000 Australian dollars. The specified act is punishable by imprisonment for up to 2 years and (or) the appointment of penal units [Kucherov I., Zaytsev O., Nudel S., 2021: 264].

1.2. Digital "Monetary" Crimes

In Australia digital currencies are subject to criminal law regulation related to non-payment of taxes and fees, as well as combating the legalization (laundering) of funds, gambling and the issuance of tokens (digital currency). In accordance with the document "Tax regime of digital currencies"[5] digital financial instruments in the form of digital currencies are neither legal tender nor a currency of value in Australia. Moreover, they cannot be subject to the legal regime for services or goods.

Digital currencies in Australia are an intangible asset, the operation of which may be accompanied by taxable income for the user. For this reason, an obligation has been introduced to retain operational information and electronic data on all transactions with digital currencies made by a user of a particular network, including the time, purpose, type, quantity, and equivalent amount of transactions in national currency. The legal regime for taxation of transactions with digital financial instruments varies depending on the purpose of their implementation, which can be of a personal, business or stock exchange nature [Clark J., Ryznar M., 2019: 70].

Short-term transactions for the acquisition and sale of digital financial instruments for the purpose of acquiring items for personal use are not subject to taxation, unlike investment activities. The sale or exchange of purchased digital currency at a higher price, as a general rule, involves the payment of capital gains tax, taking into account the market indicators of the value of assets on "authoritative digital currency exchanges". An exception is, for example, a situation of network division and the emergence of a new branch of the same block chain, called a fork.

The exchange of pre-fork coins for new ones will not entail any consequences from the standpoint of the need to fulfill the taxpayer's obligation, but only until the moment of exchange or sale of such funds subsequently.

[5] Crypto asset investments // Australian Taxation Office. Available at: https://www.ato.gov.au/general/gen/tax-treatment-of-crypto-currencies-in-australia--specifically-bitcoin/ (accessed: 19.06.2024)

Responsibility for tax crimes in Australia is very specific, since it is regulated in detail in special industry legislation, while the norms of the Criminal Code of Australia, in fact, are blanket. The most common are the following socially dangerous acts in the tax sphere: illegal financial gain, tax fraud, conspiracy to defraud and tax evasion. Each of them is an independent crime violating a specific article of sections 134 and 135 of the Criminal Code of Australia. For example, committing a crime related to obtaining financial gain by deception (Article 134.2 of the Criminal Code) is punishable by imprisonment for a term of 10 years. Knowingly obtaining a financial benefit illegally carries a penalty of 12 months' imprisonment. However, the tax offences outlined above do not contain any reference to the special requirements that must be met in connection with the protection of financial and digital relations. In other words, cryptocurrencies in this regard act as a means of committing a tax offence under Australian criminal law [Lane A., Adam L., 2023].

The Australian Criminal Code contains only one reference to digital currencies in the part related to counteracting terrorism. According to Article 100.1 of the Australian Criminal Code, funds are legal documents or documents in any form, including electronic or digital, confirming ownership of or interest in such property or assets, including, but not limited to, bank loans, travellers' cheques, bank cheques, transfers, shares, securities, bonds. This reference is directly related to legislative changes in 2017 [Lane A., Adam L., 2023: 148], when digital currency was recognized as a medium of exchange for the purposes of Australia's Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2017[6].

According to the Australian Anti-Money Laundering and Counter-Terrorism Financing Act 2006 (hereinafter referred to as the 2006 Act)[7] digital currency means:

a) a digital representation of value that is used as a medium of exchange, a store of economic value or a unit of account, or consideration for the supply of goods or services, that is not issued by or held by a public authority but is fungible with money (including by means of crediting funds to

[6] Commonwealth. Parliamentary Debates. House of Representatives. 17 August 2017. P. 8833 (Michael Keenan, Minister for Justice and Minister Assisting the Prime Minister for Counter-Terrorism).

[7] Anti-Money Laundering and Counter-Terrorism Financing Act 2006 // Available at: https://www.legislation.gov.au/Details/C2019C00011 (accessed: 02.08.2024)

an account) and is generally available to members of the public without restriction;

b) a means of exchange or credit for digital processes that is declared to be digital currency under the AML/CFT/CFTP Regulations, but does not include any rights or things that are not considered to be digital currency under the AML/CFT/CFTP Regulations for the purposes of the 2006 Act. However, it is not legally classified as property. In Australia, AUSTRAC is the Registrar of Digital Currency Exchanges under Part 6A of the 2006 Act. Only a person who is registered with AUSTRAC may buy and sell digital currency.

Under section 76A(1) of the 2006 Act, a person (called the first person) must not provide a registered digital currency exchange service to another person unless the first person is a registered digital currency exchange service provider. A breach of this prohibition is an offence and carries a criminal penalty of imprisonment for 2 years and/or 500 penalty units.

A repeated single commission of such actions entails a punishment in the form of imprisonment for a term of 4 years and (or) 1000 fine units. Recidivism is punished more severely. Repeated multiple commission of the described actions is punishable by 7 years of imprisonment and (or) 2000 fine units, which is the maximum punishment under this article. Article 142 of the 2006 Law also provides for the elements of an offence related to the conduct of 2 or more transactions by a person (the first person) with the aim that each of the transactions does not lead to threshold values, the excess of which implies the need for legal justification of the transaction to state authorities. The first person to carry out or cause another person to carry out transactions in such a manner or form with the sole or dominant purpose of procuring or attempting to procure that money, digital currency or property involved in the transactions was transferred in a manner or form that would not result in a threshold transaction that would be reportable under section 43 is guilty. This is because registered exchanges must collect and verify the identity of their customers and report to AUSTRAC details of suspicious matters and transactions involving $10,000 or more of fiat currency involved [Lane A., Adam L., 2023: 153]. These laws apply when customers exchange digital currency for money or vice versa. Failure to comply with control or verification, i.e. committing the above acts, is punishable by imprisonment for 5 years and/or 300 penalty units.

Crypto currency used in gambling (casinos) in Australia is equivalent in status to physical casino chips, only expressed in digital form. In contrast,

tokens cannot be a tool for conducting gambling events and are a licensed digital product associated with crowd funding processes (ICO). Accordingly, the above regulation and protection measures do not apply to these categories of digital entities due to the special specificity of the procedure for their acquisition and localized use.

However, this fact does not imply the exclusion of criminal law remedies for the protection of participants in public relations arising in the process of issuing and turnover of tokens or other digital entities. This is due to the general prohibition of behavior that can mislead or deceive, including in the context of the digital finance sector. Such laws and rules may apply even if tokens (ICO) or digital assets are issued, traded or sold in offshore jurisdictions. It is noteworthy that the specific nature of digital entities themselves dictates the need for extraterritorial extension of the Australian criminal law[8]. In this regard, the theft of citizens' funds, their deception, and other illegal actions related to these digital entities are not singled out in Australian legislation as separate offenses, but involve the qualification of the act within the framework of specific provisions provided for by the Criminal Code of Australia and industry legislation.

2. South Africa: Emphasis on Interconnection between Digital and Cyber Crimes

South Africa Republic, like Australia, is one of the jurisdictions in which the legal space is built taking into account the traditions of common law family. This means that the norms on criminal liability for ordinary currency crimes in the ordinary and statutory law of South Africa are defragmented, that is, they are distributed among many acts and (or) judicial decisions. Nevertheless, despite the difficulty of finding norms on liability for currency crimes in South Africa, we note that the provisions of the acts reflect the specifics of criminal prosecution for counterfeiting, money laundering and money smuggling.

2.1. "Ordinary" Monetary Crimes

Under provisions of the Prevention of Counterfeiting of Currency Act 16 of 1965 (as amended 31 March 2003) it is illegal to counterfeit any currency. So, specific criminally punishable acts are classified in this act into

[8] Available at: https://asic.gov.au (accessed: 02.08.2024)

groups, taking into account the sanctions for their commission. Accordingly, four groups of acts are distinguished for imprisonment terms:

not exceeding fifteen years;

not exceeding five years;

not exceeding three years;

not exceeding twelve months.

For instance, any person shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding fifteen years, if he or she: (a) counterfeits or performs any part of the process of counterfeiting any current coin; (b) forges or alters a bank note; (c) utters, tenders or accepts any counterfeit coin, knowing it to be counterfeit, or a forged or altered bank note, knowing it to be forged or altered; (d) with intent to counterfeit current coin or to forge a bank note, makes, mends, obtains, has in his possession or disposes of any tool, instrument or machine, which (i) intended for making any counterfeit coin or forged bank note, (ii) intended for the marking of coin round the edges with letters, grainings or other marks or figures resembling letters, grainings, marks or figures round the edges of any current coin, or (iii) capable of being used for preparing any material for receiving any impression resembling that on any current coin; (e) gilds, silvers or colors any piece of metal of a size or figure fit to be coined, for the purpose of coining it into counterfeit coin; (f) makes any piece of metal into a size or figure fit to be coined, with intent to facilitate the coining therefrom of counterfeit coin or for the purpose of coining therefrom counterfeit coin; and (g) impairs, diminishes or lightens any current coin with intent that such coin when so impaired, diminished or lightened may pass as current coin.

The other acts in the context of counterfeiting are divided into the abovementioned groups as follows (Fig. 1).

Despite the indicated differentiation of responsibility for certain stages of counterfeiting, it is important to pay attention to the fact that the subject of the crime is legal tender, including banknotes and coins, as well as counterfeit coins (not in circulation) and the means of their manufacture.

Money laundering is prosecuted in South Africa according with the Prevention of Organized Crime Act № 121 of 1998. By chapter 3 of the Act it is criminally punishable to legalize the proceeds of criminal activity, as well as to assist in the commission of relevant actions or the storage, possession and use of criminal proceeds.

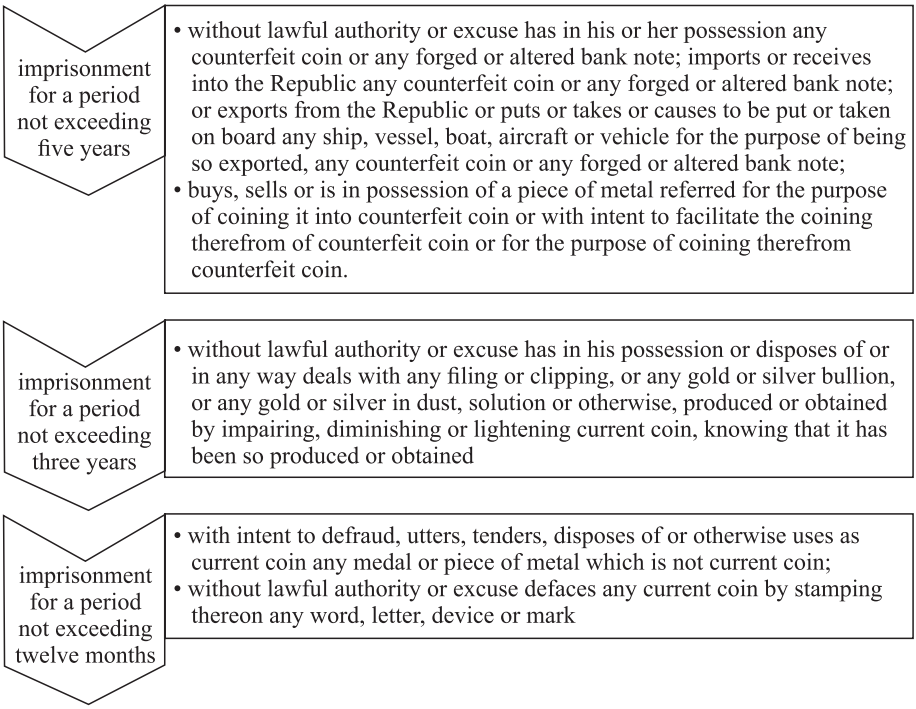

Fig. 1

A distinctive approach of South Africa to the regulation of criminal liability for this act is the establishment of a single sanction for the commission of these crimes, that is, regardless of the degree of involvement directly in the legalization of criminal proceeds. So, according to section 8 any person convicted of an offence contemplated in Chapter 3 (sections 4–6) shall be liable to a fine not exceeding R100 million, or to imprisonment for a period not exceeding 30 years.

It is important criminal liability arises for this act even if any transaction or action has not yet acquired legal force. That is, criminal liability for legalization in South Africa will also occur if actions are initiated with the intention of enriching oneself or another person through criminal income, including in the context of complicity in concealing or withdrawing property from the jurisdiction of the state. Thus, this crime is committed by any person who knows or should have reasonably known that the property is or forms part of the proceeds of illegal activities, and (a) enters into any agreement or participates in any arrangement or transaction with anyone in connection with this property, regardless of whether does such an agreement, arrangement or transaction have legal force or not; or (b) performs

any other actions in connection with such property, regardless of whether they are performed independently or jointly with any other person, that have or may have consequences—(i) concealment or disguise the nature, source, location, disposition or movement of said property or ownership thereof or any interests that anyone may have in relation to this; or (ii) providing an opportunity or assistance to any person who has committed or is committing an offense, whether in the Republic or abroad — (aa) to avoid prosecution; or (bb) to seize or reduce any property acquired directly or indirectly as a result of the commission of an offense, is considered guilty of committing an offense.

Finally, South African law establishes liability for smuggling cash or monetary instruments, but in the context of liability for violation of customs clearance rules. Thus, excess currency in terms of South African Reserve Bank (SARB), Exchange Control Regulation is any amount in excess of R25 000 or any foreign currency is convertible to Rand in excess of R25 000. Travellers must obtain written permission from the SARB before entering or leaving South Africa with excess currency. Travellers may on voluntary basis declare currency in their possession through the online traveller declaration form or the manual Traveller Card (TC-01). The cash/currency to be declared is South African bank notes as well foreign currency, securities and gold[9].Violation of this obligation may result in criminal prosecution of a person if, during customs control, surpluses are found with him, which he should have declared, while there are signs of an offence.

Under Section 15 of South African Customs And Excise Act 91 Of 1964 (with amendments) any person entering or leaving the Republic shall, in such a manner as the Commissioner may determine, unreservedly declare(a) at the time of such entering, all goods (including goods of another person) upon his person or in his possession which he brought with him into the Republic which (i) were purchased or otherwise acquired abroad or on any ship, vehicle or in any shop selling goods on which duty has not been paid; (ii) were remodelled, processed or repaired abroad; or (iii) are prohibited, restricted or controlled under any law; (b) before leaving, all goods which he proposes taking with him beyond the borders of the Republic, and shall furnish an officer with full particulars thereof, answer fully and truthfully all questions put to him by such officer and, if required by such officer to do so,

[9] Excess Currency–External Policy SC-PA-01-06. Available at: https://www.sars.gov.za/customs-and-excise/travellers/ (accessed: 10.09.2024)

produce and open such goods for inspection by the said officer, and shall pay the duty assessed by such officer, if any, to the Controller.

These goods also include excess currency in cash and in the amount indicated above. So, any person who (a) deals or assists in dealing with any goods contrary to the provisions of the Act [including provisions of Section 15. — D.P.]; or (b) knowingly has in his possession any goods liable to forfeiture under the Act; or (c) makes or attempts to make any arrangement with a supplier, manufacturer, exporter or seller of goods imported or to be imported into or manufactured or to be manufactured in the Republic or with any agent of any such supplier, manufacturer, exporter or seller, regarding any matter to which the Act relates, with the object of defeating or evading the provisions of this Act, shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment, and the goods in respect of which such offence was committed shall be liable to forfeiture (Section 83 of South African Customs And Excise Act 91 Of 1964, here and after — the Act). At the same time, such goods, including excess currency, are subject to forfeiture (Section 87 of the Act).

2.2. Digital "monetary" crimes

South Africa considers the Cybercrimes and Cyber Security Bill of 2016 (hereinafter CCB) to be the foundation for the criminal law protection of financial and digital relations. By force of the Section 3 of it, it is an offence to: unlawfully and intentionally overcome any security measure designed to prevent access to data in order to obtain data located on a computer or transmitted to or from a computer system; unlawfully and intentionally possess data that a person knows to have been obtained by criminal means; possess data where there is reasonable ground to suspect that they have been obtained by criminal means, when there are no grounds for possessing such data. The commission of the offences listed in paragraphs 1 and 2 under Section 14 of the Bill is punishable by a fine and/or imprisonment for a term of up to 10 years. Possession of data under suspicion is punishable by a fine and/or 5 years in prison. At the same time, the provisions of the articles cover almost all possible ways of committing crimes in cyberspace, including hacking, phishing, use of malicious codes and social engineering tactics [Eveshnie R., 2019: 2].

Article 7 of the CCB establishes: a criminal offense is the illegal acquisition, possession, provision, receipt or use of a password, access codes or similar data or devices. These include, in particular, private keys for crypto currencies (private key), since paragraph 3 of Article 7 of the Bill establishes that information may be a secret code or PIN code, an image, a security token, an access card, a device, biometric data, a word or a set of letters and symbols used to make financial transactions or identify a user. The intentional commission of this crime for the purpose of unlawfully overcoming any security measures aimed at preventing access to data and obtaining data (CCB Article 3 (1) is punishable by a fine and/or imprisonment for up to 10 years. The commission of such acts in the presence of reasonable suspicion is punishable by a fine and/or 5 years' imprisonment.

The commission of the above acts in relation to protected computer systems (i.e. computer programs, computer storage media or computer systems under the control or exclusively used by any financial institution, public authority, including judicial authorities, or constituting critical information infrastructure) is considered a serious crime under Article 11 of the Bill and is punishable by a fine and/or 15 years' imprisonment.

Similar criminal protection measures are provided for by the CCB for the purposes of theft and fraud in cyberspace. At the same time, money laundering using new financial and digital technologies remains outside the scope of the described legislative regulation of South Africa. In other words, South African legislation does not directly describe this crime in relation to digital entities. However, given the specifics of legislative regulation in South Africa, it is not an obstacle to the criminal prosecution of money laundering since the current definition of money laundering is not limited to offline funds and is not limited to money. According to the South African Law Reform Commission, money laundering is "the manipulation of illegally acquired wealth in order to conceal its true source or nature. As crypto currency qualifies as data, and not money in the legal sense, this provision could therefore be used to prosecute any cyber fraud (including Ponzi schemes) that uses crypto currency as a tool in the facilitation of the fraud. However, the onus is on prosecutors and the courts at large to interpret this provision in so far as it relates to such offences" [Eveshnie R., 2019: 6].

As it mentioned by R. Eveshnie, the provisions of the CCB can be used to effectively investigate and successfully prosecute offenses committed with or directed at crypto currencies (and other new online technologies).

However, their investigation can be hampered by a lack of understanding on the part of investigators and prosecutors. In this context, it may be necessary to rely on existing common law and statutory law criminalizing money laundering approach.

3. CIS States and Approach of the Republic of Uzbekistan: the Trend to Criminalizing Crypto Crimes

The CIS countries largely follow the approach to regulating liability for currency crimes are perceived in the Russian Federation. The appeal to the criminal legislation of many CIS states, as mentioned above, generally makes it possible to identify in their structure such types of currency crimes as money laundering, counterfeiting, etc. From these positions, such jurisdictions are of interest within the framework of the association of states under consideration, in which these approaches have been developed taking into account the digital transformation of the sphere of economic relations in all its diversity. In this study, the experience of Uzbekistan is used as an example of such a jurisdiction.

3.1. "Ordinary" Monetary Crimes in the Republic of Uzbekistan

The criminal legislation of Uzbekistan reflects both fairly common "ordinary" monetary crimes and their individual varieties that deserve special attention. So, the Criminal Code of the Republic consists provisions on liability for manufacturing or sale of counterfeit bank notes (banknotes), metal coins, excise stamps, as well as securities or foreign currency or securities in foreign currency. These crime described in Article 176 of the Code are punishable by restriction of liberty from two to five years or imprisonment for up to five years.

In addition, Article 182 establishes liability for the movement of goods or other valuables across the customs border of the Republic in addition to or with concealment from customs control or with the fraudulent use of documents or means of customs identification, or involving non-declaration or declaration of a wrong name, committed on a large scale. These crimes are punishable by a fine of up to three hundred basic calculation units or compulsory community service of up to 480 hours or correctional labor of up to two years or restriction of liberty of two to five years or imprisonment

of up to five years. However, criminal prosecution for this crime becomes possible only after the application of an administrative penalty for the same action, that is using the mechanisms of administrative prejudice.

More interesting for the review are the compositions of "ordinary" monetary crimes that are not regulated in the criminal legislation of the Russian Federation. Among these, one can distinguish "Illegal acquisition or sale of currency valuables" (Article 177) and "Concealment of foreign currency" (Article 178).

So, illegal acquisition or sale by citizens of currency valuables are punishable by a fine from seventy-five to one hundred basic calculation values or correctional labor from two to three years or restriction of liberty for up to one year or imprisonment for up to one year, but only if it was committed after the application of an administrative penalty for the same actions (the mechanisms of administrative prejudice). At the same time the features of exemption from criminal punishment are established — a person who voluntarily reported an impending or committed crime and actively contributed to its disclosure is not liable.

On the contrary, another sample of monetary crime do not consist the link to administrative prejudice. Deliberate concealment of foreign currency to be credited to accounts in authorized banks of the Uzbekistan by persons engaged in foreign exchange transactions at enterprises, institutions or organizations, is punishable by a fine from seventy-five to one hundred basic calculation units or deprivation of a certain right from three to five years or restriction of liberty from two to five years or imprisonment for up to five years. At the same time, a person who has committed a crime for the first time, provided for in reliable manner or out of self-interest or by prior agreement of a group of persons, shall be released from liability if, within thirty days from the date of detection of the crime, he voluntarily provided for the transfer of hidden foreign currency to accounts in authorized Uzbekistan banks.

So, exemption from criminal liability will not mean the absence of a crime event or neutralize the fact of criminal prosecution of a particular person. Such a person is released from responsibility, but with the recognition of the composition of the committed act.

3.2. Crypto crimes in the Republic of Uzbekistan

In the legal space of the CIS, tools for combating cybercrime related to the illegal use of digital financial instruments are being actively developed.

In particular, in Article 2 of the Model Law on Combating Cybercrime defined that cybercrimes are: unauthorized access to, seizure of, or influence on digital information; legalization (laundering) of funds or other property acquired by criminal means using ICT; other crimes committed in cyberspace, that is, in the digital environment. It is noteworthy that one of the versions of the presentation of the norm on criminal liability for committing these acts indicates (Article 9, option 2) that criminal prosecution of an individual does not exclude criminal prosecution of a legal entity and vice versa. Special attention is paid to building international cooperation in the field of combating cybercrime to maintain financial security, the goals of which, among other things, are: prevention, detection, and suppression of international transfers of assets used or intended to commit cybercrimes, as well as those obtained as a result of committing cybercrimes; return of the said assets moved abroad (Article 11 of the Law).

In addition, the other Model Law, that is On the Digital Financial Assets, defines the legal basis for the liability of holders and participants in the digital financial assets market. In particular, it is stipulated that subjects of the digital financial assets market are liable in accordance with national legislation, the rules of the information system and the lawful terms of the contracts concluded by them. In addition, crypto currency holders are liable for violating national legislation on the circulation of crypto currency throughout the CIS, while crypto currency that is a source of income obtained by criminal means may be confiscated (Articles 11, 21).

In the context of the focus on solving the problem of ensuring the stability of the national currency and national currency sovereignty, the instruments proposed in the said acts, interconnected with the legal protection of the currency sphere, including criminal law means, are integrated into the national legal orders of the CIS states in different ways. At their core, certain integrative solutions come down to recognizing various digital financial instruments as the subject of currency crimes. At the same time, there are cases of criminalization of the illegal use of the auto-identification data of the owner of a digital wallet.

Thus, the basis for combating cybercrime in the Uzbekistan is such a currency crime as legalization of proceeds from criminal activity (Article 243 of the Criminal Code of the Republic). It is noteworthy disposition of this norm does not contain any references to digital financial instruments or digital information, however, the Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan of 11.02.2011 No. 1 “On issues

of judicial practice in cases of legalization of proceeds from criminal activity" explains taking into account Recommendation 15 of the Financial Action Task Force on Money Laundering (FATF), crypto-assets (cryptocurrency) may also be related to proceeds from criminal activity, that is, to the subject of this act. At the same time, the Criminal Code of the Republic also criminalizes crimes, the additional object of encroachment of that are relations developing in the field of digital technologies.

Among them it is important to note crimes provided for in Articles 278.8 "Violation of legislation in the sphere of crypto-assets circulation" and 278.9 "Illegal implementation of mining activities" of the Criminal Code.

The crime provided for in Article 278.8 of the Criminal Code is designed with an administrative prejudice and establishes criminal liability for repeated illegal acquisition, sale or exchange of crypto-assets, the activities of service providers in the field of crypto-assets without obtaining a license in the established manner, or the implementation of transactions with anonymous crypto-assets by service providers in this area. The maximum penalty is imprisonment for up to one year. At the same time, grounds for exemption from criminal liability are also provided if a person voluntarily reported a crime being prepared or committed and actively contributed to its disclosure.

Article 278.9 of the Uzbekistan Criminal Code provides a person engaged in the mining of anonymous crypto-assets or mining in violation of the established procedure may be punished with imprisonment for up to one year. This crime also provides for an administrative prejudice and a similar ground for exemption from criminal liability as described above.

It is noteworthy in accordance with Section 8 of the Criminal Code of the Uzbekistan, the meaning of the terms "Crypto-asset" and "Mining" is defined. In particular, a crypto-asset is a property right representing a set of digital records in a distributed data registry that has value and an owner; mining is the activity of maintaining a distributed data registry, creating blocks and confirming their integrity by performing computational operations.

In this case, it is very difficult to understand without explanations from the regulator or the law enforcement officer: what exactly is meant by such an activity? It is a disadvantage of the described approach. So, for comparison, in German–speaking legal systems, mining is considered an entrepreneurial activity in cases where it corresponds to the general understanding of entrepreneurial activity — a focus on systematic profit-making, inde-

pendence, risk-taking, etc. [Ehrke-Rabel T., Eisenberger I., Hödl E. et al., 2017]. In addition, positions are expressed regarding the need to differentiate responsibility for illegal mining depending on its type — solo-mining; pool-mining; cloud mining [Enzinger N., 2017].

Conclusion

Despite all the controversial positions in the vast majority of leading jurisdictions, regulation of the financial and digital sphere of relations is not focused on maintaining the protection of the rights and freedoms of citizens in the virtual space. All protective measures developed or approved today, including criminal law ones described above, are mostly based on the so-called analog legal regulation, i.e. approaches to regulating public relations. For these purposes most countries seek to develop measures to counteract socially dangerous acts in the financial and digital sphere of relations, specifying the distinctive features of tax crimes, clarifying the legislation or adjusting judicial practice in the sphere of counteracting the legalization (laundering) of funds, recognizing new digital entities as a means (method) of committing crimes already established in certain norms of criminal legislation. In this context, it is important to pay attention to the prospects for improving the criminal law regulation of these relations under the Criminal Code of the Russian Federation in the context of not only legalization, but also the composition of tax and other crimes, especially in the context of the fact that digital tools can legally be attributed to property [Nudel S., 2023]. However, a sufficiently detailed explanation of such innovations at the level of the Supreme Court of the Russian Federation will be required to exclude a formal approach to assessing what happened. At the same time the sphere of financial and digital relations is something completely new in terms of principles and operating environment. It is enough to return to the examples of crypto jacking qualification mentioned above. It seems that the experience of building a system of criminal law protection for participants in digital relations in South Africa and Uzbekistan is could be quite in demand in the domestic legal space.

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