Countering the legalization (laundering) of proceeds of crime committed using cryptocurrency: the legal basis for international cooperation in the field of criminal justice

The author comes to the conclusion of existence of the need to organize international cooperation in the investigation of crimes committed with the use of cryptocurrency, taking into account the fact that they are transnational in most cases by means of operating and other circumstances to be proven.

Keywords: cryptocurrency; legalization (laundering) of proceeds of crime; international cooperation in criminal matters; transnational crimes.


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Recently, legalization (laundering) of proceeds of crime is more often carried out with the use of cryptocurrency\(^1\), in particular, the most famous of them - Bitcoin\(^2\).

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1 *Cryptocurrency* is a subspecies of non-fiat (private) electronic money, emission (often associated with significant computational costs that determine the internal value of monetary units) and accounting based on cryptographic methods, and the functioning of the payment system itself is decentralized in a distributed computer network.

2 *Bitcoin* - non-fi electronic means representing cryptographic (mathematical) hash codes. At the same time, *Bitcoin* is a decentralized P2P network serviced by its users, functioning without governing bodies and intermediaries in the absence of centralized control. This network is based on a public register (Blockchain, or “block chain”), which stores information about all transactions made by network users among themselves and thereby confirms or refutes the fact of a transaction.
The legal unregulated status of cryptocurrencies in the law of most countries of the world complicates not only the assessment of its usage in qualifying the deed\textsuperscript{3}, but also significantly complicates the disclosure and investigation of crimes committed using cryptocurrency.

At the domestic level, the investigative and judicial practice of investigating and resolving criminal cases of crimes committed using cryptocurrency is gradually accumulating. For example, the practice testifies that since 2012 criminal communities (criminal organizations) have been operating in Russia committing serious crimes and felonies in the field of illicit trafficking in drugs and psychotropic substances using the capabilities of modern telecommunication networks, including the Internet, and the new settlement instrument - cryptocurrencies. The functioning of such criminal communities (criminal organizations) is based on a non-contact way of illegal sale of drugs through the production of caches (bookmarks), using the Internet (Darknet) to exchange information on committed crimes between partners, communication with drug users, receiving electronic payments in the form of a cryptocurrency for drugs sold as a payment for illegal actions\textsuperscript{4}.


Such crimes are characterized by organization and activities of criminal community (criminal organization) not only at the regional level (within a specific subject of the Russian Federation), but also at inter-regional level as well as, most importantly, at the international level. For example, “according to a part of the sentences analyzed during the study, the organizers, leaders, as well as individual members of criminal groups in a number of cases resided in Ukraine, the USA, Holland, Germany, the Czech Republic, and Thailand. A number of convicted persons are citizens of Ukraine, where they underwent preliminary preparation for committing crimes and then were in a organized manner sent to specific regions of the Russian Federation to commit crimes. According to 19 sentences (or 20% of all examined), packages with drugs were sent to the guilty by postal items from the USA, Holland, CIS countries and others. Despite such a wide geography, none of the verdicts mentions evidence that would testify the investigation of these circumstances, nor does it contain any data on the separation of cases on these facts, and even more so on the results of their investigation or referral to criminal prosecution to the competent authorities of foreign countries. The investigating authorities, and the courts ignored the organizational role of the “foreign element” and did not take it into account when qualifying the deed by the convicts”\(^5\).

However, "international component" of these crimes did not lead to an international collaboration in criminal proceedings, primarily due to the unsettled legal status of cryptocurrency and the absence of any specific international law mechanisms acceptable in relation to cryptocurrency.

It seems that rejecting international cooperation in the field of criminal proceedings in cases of crimes committed using cryptocurrency is a mistake in conditions when other states actively use the opportunities of international cooperation in this area to ensure that those who commit such crimes are held accountable. Starting with the widely known investigation held by the US authorities of the activities of the Silk Road website organizer, through which

\(^5\) In the same place.
drugs and other items withdrawn from free circulation were sold on the Darknet network, international cooperation in the investigation of crimes using the cryptocurrency has been constantly expanding:

- in 2014 a joint investigation of the activities of the virtual drug distribution network was completed, in which the competent authorities of 14 countries took part (“Onimys”)

- in 2016 an investigation of crimes committed by an international organized crime group related to the sale of large parties of fake Euros using cryptocurrencies was completed in the territory of the EU countries (cooperation was provided by 8 countries);

- in July 2017 criminal activity carried out through the Darknet sites AlphaBay and Hansa specializing in drug trafficking was stopped as a result of an investigation by the FBI of the USA (“Bayonet”), during which cooperation with law enforcement agencies of Lithuania, Canada, the United Kingdom, France, Holland, Thailand and Europol.

Determination of the appropriate legal basis for such cooperation is the main question that arises when organizing international cooperation in cases of crimes involving the use of cryptocurrency as a means to legalize (launder) the proceeds of crime.

In this regard, we would like to recall that according to Part 1 of Art. 453 of the Criminal Procedure Code of the Russian Federation in case of necessity “the court, prosecutor, investigator, head of the investigating authority, the inquiry officer shall make a request for production an interrogation, examination, seizure, search, forensic examination or other procedural actions provided for by this Code

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in a foreign state by the competent authority or official "by a person of a foreign state in accordance with an international treaty of the Russian Federation, an international agreement or on the basis of the principle of reciprocity".

Despite absence of mentioning cryptocurrency and crimes with its usage in international agreements involving Russia, the existing international legal framework does not prevent international cooperation in criminal proceedings for this category of cases. Nowadays experts have recognized that one of the most popular areas of criminal usage of cryptocurrency is the legalization of criminal proceeds from drug trafficking, the activities of criminal organizations and the financing of terrorism. Regardless of cryptocurrencies usage in the commission of such crimes, the international legal framework for counteracting them has already been created and includes well-known anti-drug conventions (the Unified Convention on Narcotic Drugs of 1961 and others), anti-terrorism international treaties (48 “anti-terrorism” international treaties - 19 universal (14 instruments and 5 amendments) and 29 regional), the UN Convention against transnational organized crime, and many others multilateral and bilateral treaties on extradition and mutual legal assistance in criminal matters.

The competent authorities prosecuted several criminal cases on extortion of cryptocurrency committed using computer viruses blocking information on the computers of the victims. That is the evidence of sufficiency of existing international treaties for sending and executing applications for legal assistance. According to the author's information, the Russian competent authorities complied with requests for legal assistance in these cases sent to Russia on the basis of the European Convention on Mutual Legal Assistance in Criminal Matters.

In some countries execution of applications for mutual legal assistance in criminal cases involving the usage of cryptocurrency in the near future will be based not only on international treaties, but also on domestic law. This primarily applies to member countries of the European Union. Inside this integration entity there exists Directive (EU) 2018/843 of the European Parliament and of the Council of May 30, 2018 on amending the EU Directive 2015/849 on the
prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138 / EC and 2013/36 / EU⁹.

The Directive:

- requires platforms that provide transfer of cryptocurrencies and electronic wallet providers to take comprehensive measures to identify their customers;
- obliges EU Member States to ensure that providers of virtual currency exchanges for fiat money and providers of virtual currency purses are registered, for proper monitoring of such currency exchange and cash offices of such suppliers;
- amplifies requirements to transparency of cryptocurrency operations predetermining their deanonimization;
- opens to national law enforcement services wide access to information about cryptocurrency transactions, including registration data of individuals and legal entities participating in this.

Thus, the Directive created the legal basis for the progressive development of cooperation between both EU member states and non-EU countries in the fight against laundering of proceeds of crime using cryptocurrency¹⁰.

It should be noted that the bodies of preliminary investigation of Russia are now charged with a minimum range of responsibilities for establishing the circumstances that contributed to the commission of the crime and eliminating them by introducing appropriate submissions (part 2 of article 158 of the Code of Criminal Procedure of the Russian Federation). However, this is not enough to

eliminate the circumstances that contribute to the commission of transnational crimes. This is due to the fact that in the field of transnational criminal activities of Russian acts: 1) as an area at which criminal activity from the territory of a foreign state is directed, 2) as a country from whose territory the criminal activity is directed at the territory under another state jurisdiction, 3) as a transit country for transnational crimes\(^\text{11}\).

Therefore, the refusal from international cooperation in criminal justice creates favorable conditions for the uncontrolled transnationalization of crime using cryptocurrency.

This problem in the framework of the current criminal procedure legislation and international treaties should be resolved at the pre-trial stages by implementing institutions of mutual legal assistance in criminal matters, issuing and referring criminal cases for criminal prosecution to the competent authorities of foreign states (in cases of non-extradition of persons subject to criminal liability) in all criminal cases in the investigation of which there are grounds - sufficient data, testify about the transnational nature of the method of committing crimes and other circumstances to be proved.

For targeted prevention transnationalization of crimes committed with the use of cryptocurrency, it seems necessary to inform competent authorities of foreign countries about such crimes using the opportunities offered by a wide range of international treaties. In particular according to paragraph 4 of Art. 18 of the UN Convention against Transnational Organized Crime “without prejudice to domestic law, the competent authorities of the State Party may, without prior request, transmit information relating to criminal matters to the competent authority in the other State Party in case where they consider that such information

may assist this body to implement or successfully complete an investigation and prosecution, or may lead to a request made by that State-party to this Convention”.

Making a decision about further investigation in case of detection of a "foreign element" in crimes involving the use of cryptocurrency to legalization (laundering) of proceeds of crime, along with other factors, it must be assumed, that refusal from taking action on the organization of international cooperation and participation in the investigation of criminal cases of such crimes, contradicts to interests of the full disclosure and investigation of such crimes, the identification of the entire circle of persons guilty and preventing such crimes both at the domestic and international levels.

**Literature**


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