

Responsibility for Counterfeiting According to the Legislation of the Russian Federation

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Abstract: In the study, the components of the crimes relating to money, securities and payment cards counterfeiting are analyzed. In the Russian Federation production, keeping, transfer for purposes of sale and sales of counterfeit money or securities are punishable (Art. 186 of the Criminal Code of the Russian Federation hereinafter CC RF) and production or sales of counterfeit credit or pay cards and other payment instruments (Art. 187 CC RF) are punishable. The disputable points of classification and criminal prosecution for commitment of crimes provided for by the Articles 186 and 187 of the Criminal Code of the Russian Federation are specified. In Russia criminal responsibility for counterfeiting is incurred only in case of counterfeiting of bank notes and metal coins for the purposes of sale, i.e., to be used as an instrument of payment or other disposition at that the number of the counterfeit money and their value do not matter. At the same time, counterfeiting of pay cards with no intent of disposition but for the purpose of use as a payment instrument involves incurrance of responsibility for fraud with the use of pay cards (Art. 159³ CC RF). The international anti-counterfeiting acts are reviewed (International Convention for the Suppression of Counterfeiting Currency of April 20, 1929). It is found out that the local criminal law of Russia complies with the international regulations in this area.

Key words: Counterfeiting, money counterfeiting, securities counterfeiting, payment cards counterfeiting, fraud with the use of payment cards

INTRODUCTION

Historically, the first economic crime in Russia that was made a criminal offence was an act consisting in production and sale of the counterfeited monetary notes (counterfeiting). The social danger of the crime provided for by the Article 186 of the Criminal Code of the Russian Federation (Criminal Code of the Russian Federation, 1996) consists in causing injury to the monetary system of the Russian Federation in flooding of the monetary market, Foreign currency market or securities market with counterfeit cash and securities which results in depreciation of real money, escalation of inflation.

TEXT OF THE PAPER

Counterfeiting is an international crime as according to the International Convention for the Suppression of Counterfeiting Currency (1929) (which the USSR joined in 1931) persons committing counterfeiting of monetary notes or securities are liable to criminal proceedings regardless of the scene of crime, regardless of their

citizenship and no matter against the monetary system of which state convention members the crime was committed. However, it shall be noted that quite a number of the convention provisions is obsolete and its text requires substantial alterations. In first line this refers to the extension of the term , monetary notes'. In the convention monetary notes' means paper money including bank notes and metal coins effective by virtue of law (Art. 2). Today both in Russia and in other countries counterfeiting of bills of exchange, letters of credit, checks and other securities as well as bank cards are common. However such acts are not considered as criminal by the convention.

Counterfeiting in Russia has sustainable practice. The number of the recorded cases of counterfeiting varies depending on the social-economic conditions, currency reforms, anti-criminal policy. In the 90's unprecedented rise in counterfeiting was observed in Russia. Its rate increased in tens of times. In 1995, 45299 of bank notes for the value of 2 billion 330 million rubles 16578 of foreign currency were withdrawn From the currency circulation from the guilty. In 2003, the law enforcement authorities of

the Russian Federation detected 26033 cases of production and sales of the counterfeited money or securities in 2006, 59805. Starting from the year 2007 the number of such recorded crimes began reducing. In 2014, 17 20525 cases of production and sales of the counterfeited money or securities were detected.

According to the International Convention for the Suppression of Counterfeiting Currency the following shall be punishable as common criminal crimes:

- All deceptive practice relating to production or changing of monetary notes regardless of the method used for achievement of such result
- Sales of counterfeited monetary notes
- Actions aimed at selling, importing or acquisition for own needs of monetary notes in respect of which it was known that they are counterfeited

In the Russian Federation according to the Art. 186 of the Criminal Code of the Russian Federation the actions relating to production, keeping, transferring for the purposes of sales as well as sales of counterfeit money or securities are punishable. The prerequisite for incurrance of the criminal responsibility for such actions in Russia is counterfeiting as well as transportation and keeping (possession) for sale (Tufetulov *et al.*, 2015). If a person counterfeits monetary notes for example, for the purpose of use as decorative means or toy-like money no criminal responsibility will incur. If monetary notes are counterfeited for sale then the nominal value of the counterfeited notes or coins will not affect the classification, i.e., if one note for the value of ten rubles will be counterfeited the criminal responsibility will be incurred. It shall be noted that there will be counterfeiting (Art. 186 CC RF) only given that the bank notes or metal coins being instruments of payment are counterfeited. If coins of another historical era are counterfeited and thereafter, sold as real money then criminal responsibility will incur for stealing of other persons' money by false pretences or abuse of trust (fraud).

Intensive implementation in the sphere of banking transactions involving private individuals of non-conventional forms of non-cash payments as well as rise in the number of crimes committed with the use of credit and settlement cards determined incurrance of liability for production or sales of counterfeited credit or settlement cards or other payment instruments (Art. 187 CC RF).

The corpus delicti provided for by the Art. 187 CC RF is constructed in the image and likeness of the corpus contained in the Art. 186 CC RF and namely production, keeping (possession), transportation or sales of

counterfeited money or securities. In the middle of 90's, the social danger of the credit card counterfeiting became obvious. It can be assumed that a law-maker by approving the Criminal Code of the Russian Federation believed that counterfeiting of different instruments of payment always remains to be counterfeiting no matter if it is referred to money or credit cards. According to the Art. 187 of the CC RF the actions relating to counterfeiting for sale as well as sales of counterfeited credit or settlement cards or other payment instruments are punishable.

As of today, the most disputable point is the question what shall be meant by counterfeiting of credit or settlement cards. A number of authors believe that sales of counterfeited credit or settlement cards mean the use thereof as an instrument of payment. For example, Naumov (2005) notes that sales of the specified cards and other payment instruments shall be generally understood both as alienation (transfer, sale) and use as a payment instrument, i.e., to pay for products and services. However, the mentioned author makes a reservation immediately: along with that the point of view shall be recognized as correct consisting in the fact that by payment with a credit card the card itself remains in possession of the emitter or acquirer of the counterfeited plastic card and may be used by him further on. Therefore, the viewpoint of Naumov (2005) remains not completely clear. Skuratova and Lebedeva (1997) by commenting the Art. 187 of the CC RF and giving definition to the term 'sales of counterfeited credit cards' provides a reference to the comment to the Art. 186 of the CC RF. Consequently, it may be assumed that by sales V.İ. Lebedev means also the use of credit cards as an instrument of payment.

The opposite point of view consists in the fact that by sales of counterfeited credit or settlement cards or other payment instruments one shall mean only alienation (transfer) thereof in any way. In our opinion, it makes sense to agree with this statement (Gracheva *et al.*, 2014a, b; Tomlin and Sverchkov, 2010; Lopashenko, 2007).

Until November 2012, the issue of classification of actions relating to production of counterfeit credit cards upon absence of the alienation purpose remained unsettled. As a rule by counterfeiting credit cards the criminals intend to use them as instruments of payment for products or services or mean for cashing through ATM. It is not clear why they have to transfer the counterfeit cards if they can use them on their own. Upon absence of the purpose of sale no responsibility according to the Art. 187 of the CC RF can be incurred. If a person confers funds with the use of the counterfeit credit or settlement cards causing damage to the owner

then such actions shall be classified as stealing by fraud, i.e. by false pretences or abuse of trust. By the Federal Law d/d November 29, No. 207-FZ 'In introduction of Amendments to the Criminal Law of the Russian Federation and certain legislative acts of the Russian Federation' (Federal Law, 2012) the criminal law of Russia was complemented with the Art. 159³ 'Payments card fraud'.

By analyzing of the corpus delicti provided for by the Art. 187 of the CC RF another questions arises: how to classify an action if a person produced a counterfeit credit card but did not intend to sale it but to use it as a payment instrument, i.e., as has been already established, there was intent to commit a fraud? Such actions shall be considered as preparation for fraud with the use of payment cards as conditions for commitment of the crime in the future are created. However as is known criminal responsibility is incurred for preparation of heavy and especially grave crimes only. Since the crimes provided for by the Part 1, 2 and 3 of the Art. 159³ of the CC RF are the minor and medium-gravity crimes then if a person produces a counterfeit card for the purpose of committing fraud with the use of payment cards provided for by the Part 1, 2 and 3 of the Art. 159³ of the CC RF, no criminal responsibility is incurred. Therefore, the actions on production of a counterfeit payment card if a person intended to use it as an instrument of payment but this intention has not been fulfilled for the reasons beyond the control of such person most frequently does not incur criminal responsibility being nevertheless, socially dangerous in our opinion. This problem may be solved only by modification of the criminal.

Today production and sales of counterfeit money, securities and payment cards has gained the features of a transnational business. This is related both to the international flow of national currencies of different countries and to the development of international specialization of criminal organizations at particular stages operations of this criminal business production, accumulation, sales.

In the history of development of the criminal law of Foreign countries there are vivid examples of committing such crime by criminal gangs. The largest producers of counterfeits throughout the history of circulation of the American dollars were the Canadians Real Dupont and Joseph Bagdasaryn acting in the 70's of the past century. Real Dupont and his three brothers produced and sold about 112 million dollars, the value of the 'Dupont's dollar at the beginning of circulation made 15-20% from the nominal and amounted 50% at the distributor at the end of the chain. Joseph Bagdasaryan and members of his family did not manage to develop

such a large-scale production as Duponts', however; they also produced and sold about 15 million dollars. Bagdasaryan also printed money alone, having constructed a printing plant in the Montreal Mountains (the Quebec province). 'Starting from the 18th century state counterfeiting transformed into a method of economic sabotage of one state against the other one and found a wider use in the 20th century' Mukashev (2000) notes.

Organized criminal groups (gangs) are quite a common phenomenon for counterfeiting. Commitment of a crime by such a group may consist in the detailed distribution of roles and responsibilities between its members (one procures raw materials or equipment for counterfeit production, the others produce them physically, still others deal exclusively with transportation to other regions or sales). Here allocation of roles and responsibilities may be performed not only between counterfeit producers and sellers. Such a group may also include persons keeping the counterfeit currency. At the same time, there may exist organized gangs dealing exclusively with production or sale of counterfeit money. The members of the organized gangs discuss the plans of the crime commitment in details, agree their behavior in case of failure as well as get remuneration from the head for performance of some or other criminal assignments.

Many Criminal Codes of the foreign countries provide for criminal responsibility for counterfeiting including for performance of the specified activity by organized groups. At that the Art. 199, 224 of the Criminal Code of Ukraine (Anonymous, 2001) and Art. 206, 207 of the Criminal Code of Kazakhstan (Rogov, 2001). mean an organized group, of the Criminal Code of France an organized gang (Krylova, 2002) and the Criminal Code of Germany a gang organized for continuous commitment of criminal actions (Criminal Code of Germany, 2000). The Criminal Code of the People's Republic of China provides for the enhanced responsibility for the heads of the counterfeiting groups (Akhmetshin and Akhmetshin, 1999). Therefore, the legislative body of the People's Republic of China provides for possibility of creation of a special group for committing counterfeiting.

SUMMARY

It shall be noted that the criminal law of the Russian Federation establishing responsibility for counterfeiting requires further improvement. The anti-counterfeiting measures will be efficient only in case of settlement of the above-mentioned disputable issues of classification of counterfeiting of monetary notes, securities and payment cards.

CONCLUSION

International Convention for the Suppression of Counterfeiting Currency of April 20, 1929 being the main anti-counterfeiting international legal act is obsolete as it provides for responsibility for counterfeiting of paper money and metal coins only without regulating the counterfeiting of securities and payment cards. The criminal law of Russia providing for responsibility for counterfeiting does not contravene the International Convention for the Suppression of Counterfeiting Currency of April 20, 1929.

The criminal responsibility in Russia is incurred only in case of counterfeiting of banknotes and metal coins for the purpose of sale, thereat the number of the counterfeit notes or coins and their value are not relevant. Counterfeiting of payment cards without the purpose of sale but for the purpose of use as a payment instrument assumes incurrance of criminal responsibility for payment card fraud (Art. 159³ of the CC RF).

Counterfeiting features transnational nature as national currencies are counterfeited by citizens of foreign states and the process of counterfeiting, transportation and sales affects interests of a few states at the same time. The criminal law of the most of foreign countries provides for criminal responsibility for counterfeiting.

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