

#### 4. Pavel Repievsky

##### *“Fighting Money Laundering in Belarus-Legal Regulation”*

**Theme:** The investigation of first legal cases of money laundering in Belarus shows that even though recently accepted Belarus law against money laundering has a great perspective to be developed and brought in conformity with international norms and standards, it is not perfect and needs to be revised and improved.

The goal of a large number of criminal acts is to generate a profit for the individual or group that carries out the act. Money laundering is the processing of these criminal proceeds to disguise their illegal origin. This process is of critical importance, as it enables the criminal to enjoy these profits without jeopardizing their source. According to the statistics, provided by United Nations, about 500 billions of US dollars is being “laundered” yearly. Law-enforcement agencies manage to find out and to withdraw the most of 500 millions, or about a quarter of percent.<sup>1</sup>

One of the first definitions of money laundering was provided in Strasbourg Convention “On laundering, search, seizure and confiscation of the proceeds from crime” from 1990. According to article 6, money laundering is:

- a. the conversion or transfer of property, when such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
- b. the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, when such property is proceeds; and, subject to its constitutional principles and the basic concepts of its legal system;
- c. the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;
- d. participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences listed above.<sup>2</sup>

In accordance with the Strasbourg Convention, as well as Vienna United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, each country should criminalize money laundering and subject such activities to stringent criminal sanctions<sup>3</sup>. Most of the countries had already adopted national laws against money laundering. The legislative regulation of this issue in Belarus had happened only by the end 1990s. In the Criminal Code from June 2, 1999 (in action since January 1, 2001), article 235, states that financial operations with illegally received property, material and monetary resources, as well as hiding or distortion of a nature, origin, belonging movement or accessory of the specified values, is punished by the penalty of fine or restriction of freedom.<sup>4</sup>

A little bit earlier, 30<sup>th</sup> June 2000, in civil legislature of Belarus there was adopted a special legal act “About the measures on preventing legalizing criminally received income.” According to this law, “the legalization of the incomes received by an illegal way is a giving in any forms of a lawful kind to possession, usage or order by the incomes, received by an illegal way, including their concealment, placement and moving, distortion, performance of the items of information, false or entering in error, about a site or valid belonging of these incomes.”<sup>5</sup> For prevention of money laundering, the strict control on realization of a number of financial operations will be performed in our country. It includes operations with cash money; the international translation of money resources and operations using the bank accounts; operations with credits, use of movable and immovable property (especially in large sizes); operations with valuable papers; granting operations. Besides on a number of state bodies (Committee of the State Control, Ministry of Foreign Businesses and Investments,

Ministry of the Finance, National Bank, State Tax Committee) the function of the control of fulfillment of the above-stated operations is assigned. The sphere of state controlled financial operation is very broad, which makes it possible to control most of the financial ways of money laundering.

Last summer, when the law just became in effect, the author of this paper had an internship with the prosecutor's office of Gomel city and participated in the investigation of one of the first cases of money laundering in Belarus. The situation was as follows. A group of 7 people, being promoters of a commercial joint venture (JV), received illegal cash income. They "donated" it to a local NGO, which "re-invested" the money back into JV, enabling criminals to legally use their "gray" income as "clean investments".

Before the anti-money laundering Belarus law adoption, there was a problem with convicting in this type of crimes in our country. Belarus could have been considered the outsider and proclaimed the country allowing money laundering. But New Criminal Code of Belarus and the anti-money laundering law allowed the government not only to control major financial operations, but to charge people with money laundering.<sup>6</sup> (the scope of punishment is from simple fine to 10 years of imprisonment with property confiscation).

However, the case, mentioned above, was not an easy one, since there are certain exceptions to the anti-money laundering law. One of which allows not to declare the source of income when investing into enterprises (both domestic and foreign). The government to attract more investments, which Belarus really needs, did this. But as a result, any natural person or legal entity can now invest illegal income into legal business without declaring the source of money origin. Which was actually done by the criminals in the case. The only reason the fact of possible money laundering was discovered was the bank, which together with the tax offices thoroughly checked the transaction. And even then the state will have difficulties proving the original of money income and the whole chain of laundering. Besides this, there are some other exceptions, when there is no need to declare the origin of money used (with fulfillment of the property bargains connected to construction, reconstruction or purchase of inhabited premises for personal usage, sale and purchase of the bonds of the state advantageous currency loan and bonds of National bank).<sup>7</sup>

It is obvious, that adopting anti-money laundering law was a big step forward in regulating money laundering problem in Belarus. But since these exceptions leave some channels for criminals to launder illegal earned incomes and reinvest it into legal economies, something needs to be changed in legal regulation of this issue. One would not suggest total state control, but adequate measures, adopted by major countries should be implemented. Analyzing Belarus legislature it is necessary to admit, that the country does its' best to comply with measures set in Political Declaration and action Plan against Money Laundering (20<sup>th</sup> special UN General Assembly, NY 10 June 1998) as well as 40 Recommendations of Financial Action Task Force on Money Laundering, especially what concerns the requirement of financial institutions to report all suspicious transactions to competent national authorities (Recommendation 15) and to implement a comprehensive range of internal control measures (Recommendation 19).<sup>8</sup> Already adopted legal acts are the first step in Belarus integration into international anti- money laundering fight. More actions like establishment of legislative frameworks, international cooperation links, ratification of conventions and legal documents, creating effective information-sharing mechanisms and implementation of other law enforcement measures should be taken, so our country will become a real barrier for international crime.