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SOME ISSUES OF IMPROVING CRIMINAL LEGISLATION PROVIDING FOR LIABILITY FOR THE PRODUCTION AND SALE OF COUNTERFEIT MONEY, EXCISE STAMPS OR SECURITIES

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ABSTRACT

In this article, an analysis of the objective and subjective indicators of the corpus delicti leads to the proposal to exclude excise stamps from the list of objects of crime specified in Article 176 of the Criminal Code. The conclusion is justified by the need to broaden the scope of the objective aspect of the discussed crime, encompassing socially perilous activities such as the storage and transportation of counterfeit currency or securities. Considering this perspective, it is recommended to revise the title and wording of Article 176 of the Criminal Code, addressing the responsibility for the production and sale of counterfeit currency, excise stamps, or securities in a new edition.

KEYWORDS

Forgery, money, excise stamp, security, foreign currency, manufacture, storage, transportation, sale, individual, sanity, direct and indirect intent.

INTRODUCTION

Today in Uzbekistan, as in all spheres of public life, reforms are being carried out in the judicial and legal domain. The fight against crime and its prevention is thus one of the crucial directions of state policy, with

comprehensive measures being implemented to prevent offenses and combat crime.

The lack of timely crime prevention can lead not only to violations of the rights of individuals and legal

entities but also to other negative consequences. Combating crime should be a primary activity of government agencies, not just the task of law enforcement agencies.

It is noteworthy that the prevention of any crime, including the production of counterfeit money, tax stamps, or securities, holds great importance today. Article 176 of the Criminal Code of the Republic of Uzbekistan stipulates liability for the production and sale of counterfeit money, excise stamps, or securities.

The social danger of manufacturing and selling counterfeit money or securities lies primarily in the fact that the commission of these actions leads to an excess of banknotes or securities, i.e., a violation of the ratio of money and commodity supply. Banknotes not backed by goods enter circulation, leading to inflation, economic instability, and causing damage to the foundations of the state's economy[1].

The production and sale of counterfeit bank notes, metal coins, securities of the Republic of Uzbekistan, or foreign currency or securities in foreign currency was recognized as a serious crime at all stages of the development of Uzbekistan. However, this crime becomes especially dangerous in the context of the emergence of a market economy, the existence of “transparent” borders with neighboring countries, and the intensification of business contacts with developed countries.

Counterfeiting for the purpose of sale or sale of counterfeit money and securities undermines the monetary and credit systems of the state, contributes to the development of inflationary processes and thereby damages the economy of the entire republic. Based on this, the generic object of this crime is the fundamentals of the economy of the Republic of Uzbekistan. When committing this crime, the exclusive

right of the state to issue banknotes and put them into circulation is violated, therefore, as a direct object of the crime provided for in Art. 176 of the Criminal Code, stands for the monetary and credit system of the Republic of Uzbekistan, as well as other countries, since in accordance with the International Convention “On the Suppression of Counterfeiting of Banknotes” of April 20, 1929, criminal liability is established for counterfeiting not only one’s own money, but also the currencies of other states party to the Convention, which included Uzbekistan in 1931. In some cases, the property of individual enterprises, institutions, organizations or citizens may act as an optional direct object.

The subject of the crime in question is bank notes (banknotes) in circulation in the Republic of Uzbekistan and metal coins of any denomination issued by the Central Bank of the Republic of Uzbekistan, excise stamps, government and other securities in the currency of the Republic of Uzbekistan, as well as foreign currency or securities in foreign currency that are in circulation in one country or another.

Law of the Republic of Uzbekistan “On Currency Regulation” dated On May 7, 1993, it was established that the monetary unit of the Republic of Uzbekistan is the soum[2]. The emission of soums is carried out only by the Central Bank of the Republic of Uzbekistan. The subject of counterfeit can be amounts in circulation, as well as amounts withdrawn from circulation, but subject to exchange, in the form of bank notes and metal coins.

Sum – is a monetary sign that has a form strictly defined by law. Banknotes are printed, and metal ones are minted of a certain size, quality, material, color and shape of the design of the front and back sides, and coins are also of a certain weight. Banknotes, along

with metal coins, are cash in the Republic of Uzbekistan, represent an unconditional obligation of the Central Bank of the Republic of Uzbekistan and are secured by all its assets. The value of banknotes and metal coins is established by the state.

Paper money occupies the number of the series indicated by the letters of the series, individually assigned to each banknote. However, not all banknote details are equivalent in meaning. Since a banknote certifies or, better said, acts on behalf of the state as an equivalent of a product that replaces gold or silver[3], the main details of a banknote are the sign of its state affiliation, the name and designation on the front and back, in words and figures of the nominal value (in metal coins, respectively, the coat of arms, the name of the country and the designation of the nominal value). The remaining details of the banknote are additional, making it easier to distinguish one banknote from another and, in addition, serving as a means of protecting them from counterfeiting.

An excise stamp– is a document with the necessary details, indicating the payment by legal entities or individuals of tax on excisable consumer goods produced in the Republic of Uzbekistan or imported into the customs territory of the Republic of Uzbekistan.

Consequently, the excise stamp acts as a documentary means of control over the production and import of excisable goods (services). Products of mass consumption that do not have excise stamps are considered illegally imported or exported and are subject to confiscation and subsequent conversion into state revenue[4].

A security is a document that certifies property rights in compliance with the established form and required details, the exercise or transfer of which is possible

only upon presentation. In other words, a security is a monetary document certifying property rights or a loan relationship between the person who issued it and their owner, providing for the payment of income in the form of dividends or interest and the possibility of transferring the rights arising from these documents to other persons. Securities include government bonds, bills of exchange, checks, deposit and savings certificates and other documents that are classified as securities by the securities law or in the manner prescribed by it.

Foreign currency can be money in the form of paper notes and metal coins that are in circulation and are legal tender in a foreign state or group of states, as well as banknotes withdrawn or withdrawn from circulation, but subject to exchange.

Securities in foreign currency include payment documents (checks, bills, letters of credit, etc.), stock values (stocks, bonds, etc.) and other debt obligations denominated in foreign currency.

The listed items can be considered as a constructive sign of a crime under Article 176 of the Criminal Code only if they are in circulation on the territory of the Republic of Uzbekistan or used in other states at the time of their counterfeiting or sale. In this regard, counterfeiting for the purpose of selling banknotes that are not currently in circulation (for example, counterfeit coins minted by Russian tsars, Soviet rubles, etc., which have only collection value) cannot be qualified under Article 176 of the Criminal Code, since their production or sale cannot in any way cause damage to the functioning monetary and credit system of the state. Therefore, such actions, in the presence of all other mandatory signs, must be qualified as fraud under Article 168 of the Criminal Code.

The actions of a person engaged in the production, counterfeiting, or sale of money, clothing lottery tickets, personal savings books, sales receipts, and similar documents do not fall within the scope of the crime under consideration. For instance, when selling a lottery ticket, government bodies or public organizations do not undertake specific obligations, meaning they do not guarantee the buyer a mandatory refund of the ticket price. Therefore, a lottery ticket that does not win loses all its value. It's essential to note that a lottery ticket is not a security; rather, it is a document granting the right to participate in the drawing of specific material assets. Counterfeiting and selling such tickets, given other necessary characteristics, should also be classified as fraud under Article 168 of the Criminal Code [5].

As stated above, the law also includes excise stamps among the items of the analyzed crime [6]. It seems that the inclusion of excise stamps in the disposition of Article 176 of the Criminal Code and consideration of them as a subject is erroneous. Excise stamps, representing special forms of strict reporting, do not relate to securities and do not act as the equivalent of money or goods, since they do not have a nominal value, which is typical for banknotes and securities. Because of this, they do not take part in money circulation. Their counterfeiting for the purpose of sale or sale cannot disrupt social relations that ensure the normal functioning of the monetary and credit system of the state. Based on this, it seems logical to exclude the excise stamp from the disposition of Article 176 of the Criminal Code as the subject of the crime in question.

It is generally accepted that official documents are written acts certifying certain facts, granting rights or relieving from obligations [7]. The excise stamp is also an official document. This conclusion is based on the fact that excise stamps provide their owners with the

right to carry out certain legally significant actions in the field of trade. Thus, as an official document, the excise stamp is fully covered by the concepts of document and form, which are discussed in Article 228 of the Criminal Code, which provides for liability for the production, forgery of documents, stamps, seals, forms, their sale or use. Counterfeiting for the purpose of sale or sale of counterfeit excise stamps encroaches on public relations in the sphere of the procedure established by law for the preparation and use of official documents. Consequently, such actions of the guilty person, in the presence of other relevant signs, form a crime under Article 228 of the Criminal Code and are subject to qualification under this article of the criminal law. The correctness of this classification of the crime is confirmed by the judicial practice of some CIS countries. Thus, due to the fact that the excise stamp is not the equivalent of banknotes and does not represent a security, illegal actions related to it are qualified under the current criminal legislation, for example, of the Russian Federation in accordance with Art. 324 of the Criminal Code of the Russian Federation, which provides for liability for the illegal acquisition or sale of official documents granting or exempting from duties, as well as state awards of the Russian Federation, RSFSR[8].

The objective side of the composition of the socially dangerous act in question can be expressed in the manufacture for the purpose of sale or in the direct sale of the items of crime listed in Part 1 of Article 176 of the Criminal Code.

Manufacturing refers to the complete or partial counterfeiting of crime items. In case of complete counterfeiting, counterfeit money or securities are created without using real ones, from scratch.

In judicial practice, complete counterfeiting of money or securities is more common than partial

counterfeiting. Thus, of the total number of criminal cases studied, in 82% of cases counterfeit money was completely counterfeited and only in 18% of cases it was partially counterfeited. At the same time, partial counterfeiting is associated with the use of real money by criminals, including currency and securities.

In judicial practice, complete counterfeiting of money or securities is more common than partial counterfeiting. Thus, of the total number of criminal cases studied, in 82% of cases counterfeit money was completely counterfeited and only in 18% of cases it was partially counterfeited. At the same time, partial counterfeiting is associated with the use of real money by criminals, including currency and securities. The culprit changes, for example, the nominal value of a banknote, skillfully gluing or adding additional zeros or numbers, changes the series of a security, etc. in US dollars, criminals often change the names under the portraits of presidents, and in the digital value of the denomination they add zeros in ink and change the verbally expressed nominal value.

Sometimes banknotes (notes) are made by dissecting a vertical, oblique or cross-section of a genuine banknote to create an additional copy. Adhesive tape or a strip of paper is inserted into the cut areas.

In any case, both in case of complete and partial counterfeiting, the manufactured banknotes (bills, coins) or securities must have significant similarities in shape, size, color and other details with the genuine banknotes or securities in circulation. Gross counterfeiting of banknotes and securities, excluding their participation in circulation, does not form signs of the crime under consideration.

A winning cash lottery ticket is not a security, therefore its counterfeit for the purpose of selling or illegally obtaining winnings qualifies as preparation for fraud.

In the case of selling a counterfeit lottery ticket or receiving winnings from it, what the perpetrator did should be classified as fraud[9].

The objective side of the crime under consideration is formed not only by the production of counterfeit banknotes or securities, but also by their sale. Sales mean their use as a means of payment when paying for goods, services, bills, donation, lending, depositing in a bank, presenting to a bank for exchange, selling counterfeit currency on the market, exercising any property rights certified by a security, and as well as their transfer to another person free of charge or for a fee, and other possible actions related to the putting into circulation of these counterfeits. Sales can be carried out either by the manufacturer of counterfeit money or securities or his accomplices, or by other persons to whom counterfeit banknotes reach in various ways.

At the same time, it should be emphasized that the concepts of production and sale do not cover cases of “storage” or “transportation” of counterfeit money or securities for the purpose of selling them. As a result, those responsible for storing or transporting counterfeit money or securities for the purpose of selling counterfeit money or securities may go unpunished. Taking these circumstances into account, some foreign states provide for criminal liability not only for the production and sale of counterfeit money or securities, but also for their storage or transportation. So, for example, in accordance with Art. 186 of the Criminal Code of the Russian Federation criminalizes both the production or sale of counterfeit money or securities, as well as their storage, as well as transportation.

The implementation of this innovation into the criminal legislation of the Republic of Uzbekistan will make it possible to more accurately determine the objective

side of the crime, which will ensure the uniform application of Article 176 of the Criminal Code. In this case, the storage of counterfeit money or securities is understood as the commission of any actions related to the presence of these items in the possession of the perpetrator (on one's person, if this is not related to transportation, indoors, in a cache, etc.), regardless of its duration .

Transportation means any action to move counterfeit money or securities, regardless of the method of transportation and the place of storage of the transported counterfeit money or securities[10].

The subject of the crime in question is a natural and sane person who has reached 16 years of age. Individuals subject to criminal liability for the manufacture or sale of counterfeit money or securities include citizens of the Republic of Uzbekistan with legal capacity, whether full or partial, as well as foreign citizens, stateless persons, and bipatrids (persons with dual citizenship).

Establishing the age of criminal responsibility is associated with a specific stage of intellectual development, enabling the subject to weigh actions, fully realize their social significance, and choose a socially useful behavior option. For the production of counterfeit money or securities, criminal law (Article 17 of the Criminal Code) establishes liability upon reaching the age of 16. In this case, a person is considered to have reached the age of sixteen not on their birthday but starting from the next day[11].

Responsibility, as a mandatory feature of the subject of the crime, is a prerequisite for guilt and criminal liability, as a person capable of recognizing the factual and legal nature of their behavior and managing it is

capable of bearing criminal responsibility for the commission of a crime.

The concept of insanity, contained in Part 1 of Article 18 of the Criminal Code, reflects a legal criterion expressed in a person's ability to recognize the social danger of their act during the commission of a crime and to direct the act. Sanity includes both intellectual and volitional characteristics. Intellectual sanity is the ability to recognize the socially dangerous nature of one's act, while volitional sanity is the ability to control one's behavior. The medical criterion of sanity considers the level of development of a person's psyche, allowing them to understand the actual nature of their actions, their social danger, and their ability to manage them. This medical criterion covers a range of mental states, including those with certain mental disorders that do not exclude sanity.

The subjective side of the crime in question is characterized only by direct intent. The person is aware that they are making counterfeit money or securities for the purpose of selling them and wishes to do so. A mandatory feature of the subjective side of the crime is sales, requiring the identification of the criminal's intent to sell counterfeit goods during manufacture, storage, or transportation. In the absence of such intent, the listed acts do not constitute a crime. For example, the purpose of demonstrating one's abilities in making counterfeit money or creating it for a 'collection' excludes criminal liability. A person who does not know that the banknotes or securities they are selling are counterfeit is not subject to criminal liability[12].

To summarize the above, it is necessary to emphasize that the analysis of objective and subjective characteristics of the crime in question and the legislation of individual foreign countries determine the introduction of appropriate changes to the current

legislation of the Republic of Uzbekistan. In this regard, we consider it appropriate to state the title of Article 176 of the Criminal Code in the following wording: "Manufacture, sale of counterfeit money or securities", and the disposition of part 1 of the same article: "Manufacture, storage or transportation for the purpose of sale or sale of counterfeit bank notes (banknotes)), metal coins or securities, or foreign currency or securities in foreign currency...". The implementation of the noted recommendation in legislative activities in the field of improving criminal legislation, in our opinion, will significantly increase the effectiveness of legal measures to combat such crimes.

REFERENCES

1. Рустамбаев М.Х. Курс уголовного права Республики Узбекистан. Особенная части: Учебник/. – Т.: ТДЮИ, 2009. – С.98.
2. 2.Законом Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан» от 23 сентября 1994 г. термин «рубль» заменен на «сум» // См.: Ведомости Верховного Совета Республики Узбекистан. – 1994. - №11-12.- Ст. 285.
3. Порядок изъятия и обращения немаркированных товаров в доход государства регулируется положением о порядке учета, оценки и реализации имущества, подлежащего обращению в доход государству, утвержденным Постановлением Кабинета министров Республики Узбекистан от 21 января 2003г. // См.: Сборник постановлений правительства Республики Узбекистан. – 2003. - №1. – С. 9.
4. Артыков А. Словарь экономико-правовых терминов. – Т., 1997. – С.10.
5. Уголовное право. Особенная часть: Учебник/ Р. Кабулов, А. Отажанов и др.; Отв. Редактор Ш.Т.Икрамов. – Т.: Академия МВД Республики Узбекистан. 2016. – С.351.
6. Отметим, что акцизная марка как предмет преступления, предусмотренного ст. 176 УК, введен Законом Республики Узбекистан «О внесении изменений и дополнений в некоторые законодательные акты Республики Узбекистан» от 29 августа 1998г. // См.: Ведомости Олий мажлиса Республики Узбекистан. – 1998. - №9. – С. 181.
7. Уголовное право. Особенная часть: Учебник/ Р. Кабулов, А. Отажанов и др.; Отв. Редактор Ш.Т.Икрамов. – Т.: Академия МВД Республики Узбекистан. 2016. – С.625.
8. Уголовное право России. Общая и особенная части: Учебник/ Под ред. д-ра юрид. наук, профессора В.К. Дуюнова. – М.: РИОР, 2008. – С.630.
9. Уголовное право. Особенная части: Учебник / Под ред. д-ра юрид. наук, профессора Л.М. Прокументова. – Томск.: ТГУ, 2019. – С.269.
10. Уголовное право России. Части Общая и Особенная: Учебник/ Под ред. А.И. Рарога. – 10-е издание, перераб и доп. – М.: Проспект, 2018. – С.578.
11. Niyozova Salomat Saparovna. Strong Emotional Arousal (Effect) As A Criminal Law Norm. The American Journal of Political Science Law and Criminology (ISSN – 2693-0803) Published: March 31, 2021 | Pages: 96-102 Doi: <https://doi.org/10.37547/tajpslc/Volume 03 Issue p. 03-15>.
12. S.S.Niyozova. Prevention of Crime in the Family and the Role of Victimology in the Republic of Uzbekistan. International Journal of Advanced Science and Technology Vol. 29, –No. 3, (2020), – pp. 3962.