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THE PROBLEMS

OF QUALIFICATION OF ADMINISTRATIVE OFFENSES RELATED TO
ILLEGAL CURRENCY TRANSACTIONS

**LOS PROBLEMAS DE CALIFICACIÓN DE OFENSAS ADMINISTRATIVAS RE-
LACIONADAS A TRANSACCIONES ILEGALES DE DINERO**

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ABSTRACT

The article deals with the problem arising from insufficiently legally regulated issues of illegal currency transactions. When writing the article, the materials were considered of judicial practice. As a result of the analysis, it can be assumed that currency transactions are the main part of a developed financial market. Russia's highly efficient economy is impossible without a developed financial market, the main part of which is the foreign exchange market and foreign exchange operations conducted on it. The federal law of December 10th, 2003 No. 173-FZ "On Currency Regulation and Currency Control" reorganizes the mechanism of currency regulation and currency control in our country. Based on the analysis, it can be concluded that the development of the currency regulation and currency control system depends on the financial and investment climate of the country.

Keywords: Currency operations, money capital, currency regulation, foreign exchange market.

RESUMEN

El artículo aborda el problema derivado de problemas de transacciones ilegales de moneda insuficientemente regulados. Al escribir el artículo consideró los materiales de la práctica judicial. Como resultado del análisis, se puede suponer que las transacciones de divisas son la parte principal de un mercado financiero desarrollado. La economía altamente eficiente de Rusia es imposible sin un mercado financiero desarrollado, cuya parte principal es el mercado de divisas y las operaciones de cambio realizadas en él. La ley federal del 10 de diciembre de 2003 No. 173-FZ "Sobre la regulación de la moneda y el control de la moneda" reorganiza el mecanismo de regulación de la moneda y el control de la moneda en nuestro país. Con base en el análisis, se puede concluir que el desarrollo del sistema de regulación y control de divisas depende del clima financiero y de inversión del país.

Palabras clave: Operaciones monetarias, capital monetario, regulación monetaria, mercado de divisas.

INTRODUCTION

The relevance of this article lies in the establishment of a civilized currency market in the Russian Federation, which is associated with the need to actively accumulate the experience of countries with developed market economies that have extensive and fruitful experience in conducting foreign exchange transactions and working in foreign exchange markets.

State regulation in the field of monetary relations is an expression of the monetary policy of the state, which is an integral part of its economic policy (Akhmetshin, et al., 2018; Sharafutdinov, et al., 2019). The need for state regulation of foreign exchange relations determines the need for:

- Firstly, to protect and ensure the stability of the national currency, to achieve its convertibility;
- secondly, to ensure the receipt of foreign currency from abroad on foreign economic transactions;
- stimulate the development of the domestic foreign exchange market with a view to economic potential and enhance the role of the Russian Federation in the system of international relations.

Currently, the relevance of the topic lies in the fact that today it is necessary to pay close attention to the problems of the currency regulation market in the Russian Federation, since the mechanism of currency regulation depends on how well built, the effective functioning of the entire national economy depends. One of the main problems that economists of the Russian Federation face in modern conditions is the development of instruments and a new currency regulation regime (Rozentsvaig & Kovalenko, 2018).

METHODOLOGY

The solution of the tasks posed in the article was based on the application of general scientific research methods in the framework of studying various sources of information, comparative and statistical analysis, as well as through analysis of the content of court decisions, methods of currency analysis, analysis of the information received.

RESULTS

The Law on Currency Regulation has radically changed the approach to regulating currency transactions between residents and non-residents. According to previous legislation, only current operations were carried out without restrictions, the list of which was fixed by law and could be supplemented by the Government of the Russian Federation only in terms of non-commercial transfers.

With respect to other foreign exchange operations (foreign exchange transactions related to the movement of capital), the Bank of Russia could arbitrarily establish the procedure for their execution, with the exception of operations whose execution regime was expressly specified in the law. Now, the Law provides an exhaustive list of currency operations of capital flows, the Bank of Russia (2017), may establish currency restrictions. All other foreign exchange transactions that are not included in the list, as well as those from the number of regulated foreign exchange transactions in respect of which the procedure for their performance is not specifically established, are carried out without restrictions. Despite the progressive nature of this approach, it should be noted that the absence in the Law of criteria for dividing currency operations into current and capital ones made it possible, for example, to classify settlements and transfers when providing loans and loans in foreign currency to residents as non-residents, regardless of the loan term.

According to some scholars, such a change cannot be recognized in any way consistent with the proclaimed goal of liberalizing currency legislation, since in the previous law loans and loans in foreign currency between residents and non-residents for up to 180 days were referred to current currency transactions, i.e., they were carried out without restrictions. It is also obvious that far from all operations that are not specified in the Law as capital, there are reasons to consider current. Under these conditions, the lack of certainty in qualifying the types of foreign exchange transactions can seriously complicate relations between Russia and international financial organizations that clearly separate the measures for regulating current and capital operations.

Cases of bringing Russian residents to administrative responsibility for committing illegal foreign exchange transactions under Part 1 of Art. 15.25 Administrative Code of the Russian Federation, the basis of which may be a trivial economic transaction - the sale of any property, for example, a vehicle to a non-resident-individual for cash (Russian Federation. State Duma, 2001).

Such a transaction committed on the territory of the Russian Federation is very likely to be regarded by the competent authorities as an illegal currency transaction, entailing an administrative penalty in the form of a fine of three quarters to one the amount of the amount of the illegal currency transaction. It is not difficult to identify such operations when it comes to property that is subject to customs declaration when crossing the Russian border, such as vehicles. Meanwhile, bringing to administrative responsibility for such operations does not meet the current conditions of the legal and social state, which claims

to be harmonized with the European economy, and the accepted international obligations of Russia (Fardeeva, et al., 2018).

In order to understand what problems arise in connection with the insufficiently regulated issue of regulating illegal foreign exchange transactions, you need to turn to the case law:

A legal entity appealed to the Arbitration Court to declare it illegal and annul the decision of the Administrative Body, which brought the legal entity to administrative responsibility, provided for in paragraph 1 of Article 15.25 of the Code of Administrative Offenses, in the form of a fine. As an objective part of the administrative offense to a legal entity, it was charged with carrying out an illegal currency transaction, which was expressed in the receipt of cash from a foreign citizen in goods in the currency of the Russian Federation (Russian Federation. State Duma, 2001).

In the opinion of the administrative authority, the legal entity committed a violation of part 3 of article 14 of the Federal Law on Currency Regulation and Currency Control (hereinafter referred to as the Law on Currency Regulation), according to which the calculations currency transactions are carried out by residents through bank accounts with authorized banks, the procedure for opening and maintaining which is established by the Central Bank of the Russian Federation. By the decision of the court of first instance, the requirement of the legal entity was satisfied. The court of cassation instance quashed the decision of the court of first instance, refused to satisfy the claim. Canceling the decision, the cassation court concluded that it was lawful to bring to administrative responsibility, on the basis that the specified currency transaction was committed in violation of the established procedure.

In an application filed with the Supreme Commercial Court of the Russian Federation for Supervisory review of the decision of the court of cassation instance, the legal entity asked to cancel it, referring to the improper application of the court of law, the decision of the court of first instance to leave unchanged.

After checking the validity of the parties' submissions, the Presidium of the Supreme Arbitration Court of the Russian Federation came to the conclusion that the application is subject to satisfaction on the following grounds. Part 1 of Article 15.25 of the Code of Administrative Offenses of the Russian Federation provides for administrative liability for illegal currency transactions, that is, currency transactions prohibited by the currency legislation of the Russian Federation, or currency transactions with non-compliance with established requirements for the use of a special

account and reservation requirements, as well as write-off and (or) crediting funds, internal and external securities from a special account and to a special account with failure to comply with the established reserve requirements (Russian Federation. State Duma, 2001).

In accordance with part 9 of Article 1 of the Currency Regulation Law, foreign exchange transactions include the alienation by a non-resident in favor of a resident of the currency of the Russian Federation legally, as well as the use of the currency of the Russian Federation as a means of payment. According to clause 1, part 1 of Article 1 of the Law, the currency of the Russian Federation is recognized as banknotes and coins of the Bank of Russia (2017), which are in circulation as legal tender in cash on the territory of the Russian Federation, funds in bank accounts and bank deposits. As follows from paragraphs 6 and 7 of part 1 of article 1 of the Currency Regulation Law, foreign citizens who cannot be attributed to persons permanently residing in the Russian Federation on the basis of a residence permit provided for by the legislation of the Russian Federation are non-residents.

In connection with the foregoing, the receipt by a legal entity of a foreign citizen on account of the transfer of goods or cash to the latter in the currency of the Russian Federation is a currency transaction. The Presidium of the Supreme Arbitration Court of the Russian Federation indicated that proceeding from part 1 of Article 15.25 of the Administrative Offenses Code of the Russian Federation, illegal currency transactions should be understood as currency transactions prohibited by the currency legislation of the Russian Federation and currency transactions committed in violation of established requirements for the use of a special account and reserve requirements, as well as debiting and (or) crediting funds, internal and external securities from a special account and to a special account with failure to comply with the established reservation requirements.

Thus, the settlements when performing a foreign exchange operation not prohibited by law, as well as an operation not regulated by the requirements for the use of a special account and reservation, does not form the objective side of the administrative offense provided for in paragraph 1 of Article 15.25 of the Administrative Code of the Russian Federation. The Presidium of the Supreme Arbitration Court of the Russian Federation noted that the currency legislation of the Russian Federation does not contain a ban on receiving cash from a non-resident in cash in the currency of the Russian Federation as payment for the transfer of goods, performance of work, and the provision of services (Court of the Russian Federation, 2002). Based on Section 6 of the Currency Regulation

Law, foreign exchange transactions between residents and non-residents are carried out without restrictions, with the exception of certain foreign exchange transactions provided for by the Law, to which the named operation does not apply, and therefore, it is an operation permitted by currency legislation.

The procedure for carrying out such a currency transaction, as well as the requirements for the use of a special account when it is completed, are also not established. According to Part 2 of Article 5 of the Currency Regulation Law, if the procedure for conducting currency transactions, the procedure for using accounts (including the establishment of the requirement to use a special account) are not established by the currency regulation bodies in accordance with the said Law, currency operations are carried out without restrictions (Korniychuk, 2006).

Thus, a foreign exchange transaction performed upon receipt by a Russian individual or legal entity from a foreign citizen or organization in exchange for the transfer of goods, performance of work, the provision of cash services in the currency of the Russian Federation, not prohibited by law and not limited by the requirements for the use of a special account and reservation, cannot be classified as illegal currency transactions, the performance of which forms the objective side of the administrative offense provided for in part 1 s Articles 15.25 Administrative Code of the Russian Federation. Based on the foregoing, the Presidium of the Supreme Arbitration Court of the Russian Federation canceled the ruling of the court of cassation, and upheld the decision of the court of first instance.

The formation of a highly efficient economy in Russia is impossible without a developed financial market, the main part of which is the foreign exchange market and foreign exchange transactions conducted on it (Varlamova & Varlamova, 2008).

To date, the Russian Federation has established a system of currency regulation and currency control. There is a regulatory framework that defines the rules of currency regulation, control bodies function, sanctions are applied to violators (Fardeeva, et al., 2017). In general, the new Federal Law (Korniychuk, 2006) laid a serious liberal economic basis for a radical restructuring of the mechanism of currency regulation and currency control in our country. However, it also contains a number of inconsistencies with the modern society open to international cooperation.

Since, by the nature of the object of regulation, the sphere of currency regulation and currency control affects many branches of law, quite often due to inaccuracies in the rule of law, legal conflicts arise, which are all the more dangerous because the responsibility is too high.

There are different opinions of legislators regarding the further development of currency regulation, however, the development of legislation in this area is still moving along the path of tightening ("tightening the screws"). The essence of currency regulation and currency control cannot stop the export of capital from Russia if the financial climate of the country does not favor investment.

Consequently, the need to improve the Law of the Russian Federation "On Currency Regulation and Currency Control" (Korniychuk, 2006) and other acts of currency legislation regarding liability remains. Such responsibility should, on the one hand, be consistent with the Constitution of the Russian Federation, and on the other, reliably ensure the application of government measures to combat illegal capital flight.

CONCLUSIONS

When making decisions on currency regulation, it is necessary to take into account the fact that liberalization of the foreign exchange market can have consequences leading to an increase in social tension in Russian society, therefore, the study of issues of liberalization of the foreign exchange market requires clear wording of the purpose of each event and an assessment of the consequences of its adoption.

Our state needs to create a comprehensive system of currency regulation and currency control, providing a flexible approach to solving problems that arise in the process of implementing the state economic policy and regulating foreign exchange transactions, both in the domestic foreign exchange market and in the foreign economic sphere.

Thus, we can conclude that the system of currency regulation and currency control is not a fundamental institution of financial law and its development depends entirely on the financial and investment climate of the country. The existing regulatory regulation of foreign exchange transactions seems to be at least not sufficiently clear, the ban on cash settlements between residents and non-residents - which does not correspond to the nature of currency regulation and international obligations of Russia, and holding Russian residents administratively liable for cash payments with non-residents - seems to be discrimination and violation of industry-wide principles of public law regarding the ultimate formalization of administrative prohibitions.

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