

CRYPTOCURRENCY AS AN OBJECT OF CRIMINAL ENCROACHMENT IN TRANSNATIONAL ECONOMIC CRIMES

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Abstract. *The article is devoted to the scientific research of cryptocurrency as an object of criminal encroachment in transnational economic crimes and the necessity for further research and improvement of national and international legislation in this area.*

Keywords: *cryptocurrency, Bitcoin, transnational economic crime, transnational crime, criminal encroachment, the object of criminal encroachment in transnational economic crimes.*

Relevance of the research topic. In today's world, cryptocurrency transactions play an increasingly important role. The economies of many individuals, legal entities, and states have begun to seriously consider cryptocurrency assets when planning for the future. At the same time, transnational crime, which always tries to use cutting-edge technology, is paying close attention to cryptocurrency. Cryptocurrency is being actively used both as a tool for transnational economic crimes and as an object of criminal encroachment. Over time the number of transnational crimes involving cryptocurrency is increasing.

Meanwhile, in Ukraine, the legislation regarding the regulation of cryptocurrency and operations with cryptocurrency is in its inception. The Law «On Virtual Assets» adopted by the Verkhovna Rada of Ukraine on February 17th, 2022, has not yet entered into force, because amendments to the Tax Code of Ukraine are not ready yet. But even when this Law comes into force on the territory of our state, it will not save cryptocurrency owners from many problems related to the lack of protection of their property from transnational economic crimes.

Analysis of recent researches and publications. Cryptocurrency as a tool and object of transnational

economic crimes has been studied by such foreign scientists as Tom Seddon, Sona Mkrtychan, Robert J. DeNault, Olga Kharif, Matthew Lessing, and others. In Ukraine, cryptocurrency as a component of transnational economic crimes is studied by A. Prytula, V. Lysyuk, A. Svyatoshniuk, O. Tkalia, K. Kalachenkova, A. Kysil, V. Logoida, and several other experts. However, the problem of studying cryptocurrency as an object of a criminal offense remains open, especially in the context of the signing of the Law «On Virtual Assets» by the President of Ukraine.

The purpose of the article is to study and analyze the problems related to cryptocurrency as an object of a criminal offense in transnational economic crimes, and to propose possible options for solving these problems by making changes to the current legislation.

Presenting main material. Cryptocurrency operations are currently widespread throughout the world, and Ukraine is no exception. Even more: the daily volume of cryptocurrency transactions in Ukraine, according to representatives of the New York Times newspaper, was approximately 150 million US dollars in 2021 [7]. This significantly exceeds the daily turnover of all Ukrainian interbank exchanges, which is

carried out in hryvnias. According to the data of the leading analytical blockchain company The Chainalysis, as of 2021, our state occupies an honorable fourth place in the Global Cryptocurrency Adoption Index. This means that in 2021, the circulation of cryptocurrency involving Ukrainians (that is, cryptocurrency entering and leaving the country) amounted to approximately 8 billion US dollars. The Chainalysis also notes that in 2021, Ukrainians earned approximately 400 million US dollars by selling bitcoins [7].

In 2022, due to the invasion of the Russian Federation on the territory of Ukraine, cryptocurrency became even more popular in our country. After the first days of the war, cryptocurrency is rapidly becoming one of the most operational channels of financing the Armed Forces of Ukraine (AFU) and filling various types of charitable funds. This happens because of two reasons:

1) speed and efficiency of transaction processing. The virtual asset market offers transaction processing in just 5-10 minutes. Such speed, incredible for traditional financial institutions, guaranteed an almost instantaneous response to any needs of the Armed Forces, and also made collecting money and purchase of equipment necessary for soldiers and medical institutions much more efficient;

2) absolute decentralization of cryptocurrency. Blockchain technology, which is the basis for cryptocurrency transactions, does not involve the participation of regulatory authorities in the process at all. Because of this, the restrictions of the National Bank of Ukraine (NBU) on electronic money transfers and foreign currency withdrawals, which were introduced due to martial law, did not work. Therefore, it simplified and accelerated the delivery of military and humanitarian aid [8].

But the same thing that makes cryptocurrency attractive to volunteer organizations and charitable foundations also provides significant opportunities for transnational economic crime. Therefore, cryptocurrency acts both as a tool and as an object of criminal encroachment in transnational economic crimes.

International law enforcement agencies, in particular Europol, while analyzing the level and specifics of modern crime, state that cryptocurrency is especially popular in the field of legalization (laundering) of proceeds obtained through criminal activity, in the field of human trafficking, drugs, psychotropic substances, counterfeiting, forgery of documents, as well as in the field of financing international terrorism. Therefore, the number of transnational economic crimes is increasing every year, first of all, fraud with cryptocurrencies and their investment.

Leading blockchain analytics company The Chainalysis recently released the 2022 Chainalysis Crypto Crime Report. According to this report, transnational criminal organizations are increasingly committing crimes with cryptocurrency. For example, the report claims that \$11 billion worth of cryptocurrency fraud was committed in 2021, compared to just \$3 billion

in 2020. In 2021, the theft of cryptocurrency funds accounted for 93% of all transnational economic crimes in this area and was carried out in the amount of 9.8 billion dollars. The second place was occupied by operations on the darknet market (payment for drug trafficking, human trafficking, etc.) for a total amount of 448 million dollars. The following places were occupied by: fraud with cryptocurrency in the amount of 192 million dollars; fraudulent stores worth \$66 million and ransomware worth \$30 million. Moreover, the criminal balance in 2021 increased from \$6.6 billion in July to \$14.8 billion in October.

The report also states that the US Department of Justice has seized \$2.3 million worth of cryptocurrency from DarkSide ransomware operators who were prosecuted for the 2021 attack on Colonial Pipeline. During 2021, US criminal investigators seized \$3.5 billion worth of cryptocurrency, while London's Metropolitan Police seized £180 million worth of cryptocurrency from a suspected money launderer in the same year. In February 2022, the US Department of Justice seized \$3.6 billion worth of cryptocurrency linked to the 2016 Bitfinex hack [2].

International organizations are active in the prevention and detection of criminal activities involving the use of cryptocurrency. In particular, this includes the preparation of methodological recommendations, round tables, symposia, conferences, and meetings, as well as training courses, seminars, the creation of special law enforcement agencies, rapid response groups, etc. But, as previously mentioned, the prevention and fight against crime through the use of cryptocurrency are significantly complicated by the high level of anonymity of transactions. Other problems that arise during the investigation of such crimes are the rapid development of digital technologies and the lack of unity in the global community in determining the legal nature of cryptocurrency.

According to V.G. Soslovskiy and I.O. Kosovsky, cryptocurrency is a means of settlement that does not have a material form, but exists in the form of a software code, that uses cryptographic protection methods, the issuance and accounting of which is often decentralized and known to settlement participants; as well as the payment system formed by the payment unit and transactions with it [11, p.236]. Therefore, cryptocurrency, which is the object of a criminal offense, is a digital asset that has a material value, in connection with which or concerning which a crime was committed [3, p.272].

In Japan, cryptocurrency is allowed as a means of payment. Also, in El Salvador, on March 7th, 2021, a law was passed, according to which Bitcoin was recognized as a means of payment, on par with the US dollar (in El Salvador there is no national currency) [6].

The position of the Central Bank of the Republic of Cyprus seems interesting: «Bitcoin is not illegal, but at the same time it is not subject to control or regulation.» Thus, cryptocurrency management in

Cyprus is carried out by the general norms of civil legislation. The existing tax legislation in Cyprus assumes that profits from cryptocurrency trading are not taxed (rate 0%), as «Cyprus tax on profits from trading in shares or other securities, including forex or bitcoins, is 0%» [4, p.213]. So, we see that the Central Bank of the Republic of Cyprus treats cryptocurrency as securities. Similarly, in the USA, cryptocurrency is officially recognized as securities in digital form. Individuals and legal entities have the right to use it for exchange, as a unit of account, or as a certain way of accumulating assets. At the same time, approximately 23,000 ATMs in the United States can accept bitcoins – this is 86% of the total number of such ATMs in the world. The second place in the number of such ATMs is occupied by Canada, where their number is somewhere around 1.8 thousand.

In Switzerland, cryptocurrency is equated with foreign currencies – transactions with it are exempt from VAT, but are taxed as property.

In Bulgaria, cryptocurrency is recognized as a so-called financial asset. In Poland, the sale and mining of cryptocurrency are allowed, but providers of virtual assets are subject to state registration. In Finland, cryptocurrency is defined as a financial instrument, which transactions are considered private transactions and are exempt from VAT.

In Croatia, Kyrgyzstan, Indonesia, and Lithuania, cryptocurrency is not recognized as a legal means of payment, and in Bolivia and Bangladesh, its circulation is prohibited altogether [9].

The state of cryptocurrency in Mexico is quite uncertain. The Central Bank of Mexico calls cryptocurrency an extremely speculative phenomenon and warns of the dangers of investing in it. On the other hand, the Central Bank equated cryptocurrency to goods in the relevant subordinate legal act. However, taking into account that the authorities have extended the same restrictions to cryptocurrency as to cash, in practice in Mexico the legal status of crypto assets is equated to the national currency [9, p.213].

The Ukrainian legislator followed the path of recognizing cryptocurrencies as securities. The main problem of cryptocurrency from the point of view of Ukrainian legislation is its complete decentralization. Issuers of cryptocurrency may not be states or even transnational corporations, but individuals and legal entities. Therefore, Ukrainian legislation for a long time pretended that cryptocurrency does not exist at all – or that it does not have the right to be distributed in Ukraine.

The Law of Ukraine «On Virtual Assets» also can not completely get rid of the attitude towards cryptocurrency as something that needs a greater degree of regulation on Ukrainian territory than it has according to its initial characteristics. So if we analyze this law carefully enough, we can understand that it refers to cryptocurrency as securities rather than means of payment. It directly assumes that virtual assets are not means of payment on the territory of

Ukraine, and generally avoids the concept of «cryptocurrency», suggesting the term «virtual assets». According to Clause 1 of Article 1 of the said Law, a virtual asset is an intangible good that is the object of civil rights, has value, and is expressed by a set of data in electronic form. The existence and turnover of a virtual asset are ensured by the system that ensures the turnover of virtual assets. A virtual asset can testify to property rights, in particular, rights of claim to other objects of civil rights [1].

According to Article 4 of the Law of Ukraine «On Virtual Assets», the following types of virtual assets may exist in Ukraine:

1) unsecured - so-called assets that are themselves (for example, Bitcoin);

2) secured – assets secured by money, property, and property rights that give the right to claim such assets (NFT tokens);

3) financial – assets secured by securities or hryvnia (security tokens and stable coins) [1].

At the same time, the law has not yet gone into effect, since no changes have been made to the Tax Code of Ukraine, and we do not know what they will be: how cryptocurrency will be taxed; will there be a difference in the tax on the ownership of cryptocurrency assets by individuals and legal entities, what documents should confirm the right of ownership, etc. It is quite possible that the circulation of cryptocurrencies in our country, due to significant difficulties in legal regulation, will again go «into the shadows», and therefore will be defenseless against transnational economic crime.

Regarding the court settlement of cryptocurrency circulation, the most famous case in Ukraine is case No. 753/599/16-ts dated March 24th, 2016, which concerns the payment of a programmer's work with bitcoins. A contract for the exchange of goods for work was concluded between the programmer and the customer, according to which the programmer undertook to create software according to the technical task and hand it over to the customer, who, in turn, had to hand over to the programmer the amount of Bitcoin digital products determined by the contract for the total amount of 10,000 hryvnias. The programmer fulfilled the terms of the contract, but the customer did not provide bitcoins. The court decided that it cannot oblige the defendant to hand over to the plaintiff things that do not have signs of the material world [10]. We hope that after the Law of Ukraine «On Virtual Assets» goes into effect, the judicial practice on similar issues will change significantly.

As an example of a successful disclosure of a transnational economic crime related to cryptocurrency, we cite the experience of Georgian law enforcement officers who worked together with Eurojust.

In 2021, the Prosecutor's Office of Georgia charged 10 Georgian citizens and 1 Israeli citizen with fraudulently obtaining money from foreign citizens in large amounts, encroaching on personal data, and legalizing illegal income.

The conducted investigation showed that in the spring of 2019, Israeli citizen J. with his accomplices - H.G. and H.L. formed a criminal group that for long time fraudulently obtained funds from foreign citizens interested in trading cryptocurrencies and distributed them among group members. The organizers gradually involved some people who knew a foreign language (in total, as of 2021, there were 11 people in the group). Members of the criminal group, illegally obtaining personal data of foreign citizens interested in cryptocurrency trading from an office rented in Tbilisi, systematically contacted potential victims and offered to purchase cryptocurrency by cashless settlement. In case of interest, the aforementioned persons registered them remotely on the relevant website, after which they bought cryptocurrency on their behalf while ensuring the transfer of electronic currency corresponding to the paid amount to accounts accessible not to the victim, but to an organized group. As a result of active cooperation with Eurojust, dozens of affected citizens of the European Union were identified, and the number of damages established for 2021 amounted to 620,000 euros [5].

The need for special legislation for the crypto sphere is absolute. But we need clear and understandable rules, simple procedures that will work in practice [12], and currently, Ukrainian legislation is unable to provide them, and therefore, cryptocurrency becomes a rather easy and at the same time desirable area for transnational economic crime. As an object of criminal encroachment in this area, cryptocurrency will continue to be desirable in Ukraine.

The existing legislative framework in Ukraine and the world in the field of cybercrime and the investigation of transnational economic crimes do not

fully correspond to modern realities. The world community is obliged to establish and develop uniform rules for the circulation of cryptocurrency both for its daily use and for combating its criminal circulation [4, p.212]. And first of all, in our opinion, it should be recognized that regardless of the civil law status and civil law regulation of cryptocurrency circulation, this type of payment already exists and in many cases is the object of criminal encroachment.

Conclusions. In the world in general and in Ukraine in particular, cryptocurrency does not have a simple and clear system of legal regulation. Partly, this is caused by the very nature of cryptocurrency savings, because the main features of cryptocurrency are its decentralization and fairly significant anonymity of the owners of cryptocurrency savings. But if we will choose the path of bans, then cryptocurrency will only go «into the shadows», and huge sums will remain in the hands of transnational economic crime. Therefore, cryptocurrency as an object of criminal encroachment requires a fundamental innovation in legislation, and Ukraine (like every other country in the world) may even lead the process of developing legal regulation of cryptocurrency savings.

Prospects for further research. Further research, in our opinion, should concern the determination of the legal status of cryptocurrency, which combines the features of a currency, securities, and electronic programs and exists exclusively in the immaterial (electronic) world. It is necessary to understand how legislation should regulate this intangible world and such crimes and how to provide assistance to victims and expose criminals during the investigation of transnational economic crimes in the cryptocurrency sphere.

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