

The imperfection of the legal regulation of non-cash payments as a criminogenic factor

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Abstract — This article is devoted to the analysis of the legal regulation of non-cash payments in the Russian Federation in the context of considering the imperfection of the legal regulation of the relevant field as a factor that has a negative impact on the criminal situation in the Russian state. In this article, the authors came to the conclusion that the current Russian legislation now lags behind the dynamics with which electronic payments are developing, as evidenced by, in turn, is an incomplete legal regulation of different ways of using electronic money. Statistical data are provided, from which it follows that after a certain amount of time, the number of payments with plastic cards, as well as the number of payments made in cash, will remain at one mark. At the same time, unfortunately, we have to admit that an increase in the amount of non-cash payment is accompanied by a concomitant increase in fraud.

Keywords — *cashless payments, criminogenic situation, payment systems, Central Bank of the Russian Federation, electronic money, fraud.*

I. INTRODUCTION

There is no doubt that the issue of improving the legal regulation of cashless payments in the Russian Federation is relevant.

Considering article 861 of the Civil Code of the Russian Federation, we can come to the conclusion that calculations performed by citizens who are not related to entrepreneurial activity can be made in cash or in cashless form, without limiting the amount [2].

As for the monetary settlements of individual entrepreneurs and legal entities, these relations, the domestic legislator regulates more severely. That is, all individual entrepreneurs and organizations are required by law to keep all available funds in the bank. As for the settlements, which are carried out with the participation of legal entities, then, as a general rule, should be carried out by cashless. However, Article 861 of the Civil Code of the Russian Federation, namely in paragraph 2 indicates that settlements between legal

persons may be held in cash, unless otherwise provided by law.

To date, the Russian Federation, the procedure for non-cash payments, regulations of the Central Bank of the Russian Federation dated October 3, 2002 (as amended on 16 December 2011) «Regulations on non-cash transactions».

It must be said that this provision, regulates the processes of non-cash payments, which occur between legal entities and individual entrepreneurs in the Russian currency, ie in rubles. This provision has its spread throughout the Russian Federation and does not apply to the procedure for non-cash payments with the participation of individuals.

II. MATERIAL AND METHODS

The research was based on the general philosophical dialectical method of scientific knowledge. In addition, private scientific methods were used, namely: system-structural, formal-logical, statistical and others.

III. RESULT AND DISCUSSIONS

The domestic legislator, proposes to carry out non-cash payments via credit institutions and the Bank of Russia. In the Russian Federation, there are four basic forms of cashless payment:

- The first - settlements under a letter of credit;
- The second - settlements on payment orders;
- The third - payments for collection;
- Fourth - settlements on checks;

Customers of banks have the right to choose for themselves the form of non-cash payments, this information is in contracts with their counterparties. By law, banks do not have the authority to interfere in the contractual relations of customers. At emergence of claims on calculations between the recipient of means and the payer, except arisen because of

banks, are solved in the order established by the law, but already without participation of banks.

When cashless payments are made, the following settlement documents can be used [10]:

- letters of credit;
- payment order;
- payment claim;
- cheque;
- collection order.

Considering the estimated payments for the orders, it must be said that these payments are by direct order of the account holder to the service of his Bank on the direction specified in the current document amount to the account of the payee, opened in this or another Bank. As practice shows, payment orders are executed before the deadline stipulated by the legislation.

So, payment by payment orders can be made by:

The first is the transfer of funds for work performed or goods delivered.

The second is the transfer of funds to the budgets of all levels.

Third-the transfer of funds to repay the loan, as well as interest on it.

Fourth-transfers of funds for other purposes provided by the legislator.

To date, this type of non-cash payment is one of the most common, as modern banking technologies allow for electronic payments day to day [9]. The main distinctive feature of this form is based on the fact that the initiative comes from the payer.

The Bank, which has accepted the order for execution, is obliged not only to write off the amount of money from the account, but also to ensure its transfer to the account of the recipient. That is, the payment order is considered to be fully executed only when the funds reach the recipient's account. The Central Bank of Russia, says that the total term of non-cash payments does not exceed 48 hours within the subject, and no more than 120 hours within the Russian Federation [6].

The civil Code of the Russian Federation in article 865, in point 3 fixes a direct duty of Bank at execution of the order, immediately to inform the client. Article 866 of the Civil code establishes the rules relating to the liability of banks for non-execution or improper execution of payment orders.

Considering this form of non-cash payments, as a letter of credit, note that it is a conventional monetary obligation assumed by the Bank on behalf of the payer to execute a payment in favour of the beneficiary upon presentation of the appropriate documents under the terms of the letter of credit.

Today, there are two types of letter of credit:

The first type-uncovered (or otherwise guaranteed) and covered (deposited)

The second type-irrevocable and revocable

It should be noted that when opening an uncovered letter of credit, the element Bank enables the executing Bank to write off funds from its correspondent account within the amount of the letter of credit. As for the covered letter of credit, in this case, the member Bank transfers the amount of the letter of credit at the expense of the payer to the executing Bank for the duration of the letter of credit.

As for the second type, the letter of credit is irrevocable, which can be canceled only with the consent of the recipient [6]. And the opposite of an irrevocable letter of credit is revocable, that is, in this case it can be canceled or changed without the prior consent of the recipient, but only with the written order of the payer.

Следующая форма безналичного расчета, которая требует рассмотрения, является – чек. Прежде всего, чек – это ценная бумага, которая содержит в себе распоряжение чекодателя банку, произвести денежный платеж чекодержателю [5]. В данном случае имеются три стороны: первая сторона – чекодатель, им является юридическое лицо, которое имеет денежную сумму на счету в банке и имеет право ими распоряжаться; вторая сторона чекодержатель- юридическое лицо, в чью сторону направлен чек; третья сторона – плательщик, им является банк, в котором находятся средства чекодателя. Гражданский Кодекс Российской Федерации регулирует порядок и условия использования чеков в платежном обороте.

The Civil Code states that:

First: the cheque is paid by the payer at the expense of the cheque giver.

Second, the cheque-giver does not have the right to withdraw the cheque before the expiration of the established period.

Third: providing the cheque to the Bank that serves the checkmaker to receive payment is considered to be the presentation of the cheque for payment [7]. A banking transaction is a collection payment by means of which the Bank on behalf and at the expense of the client on the basis of settlement documents performs actions on behalf of the payer of the payment.

For the implementation of this form of non-cash payments, the member Bank has the full right to involve another Bank in the relationship. This provision is enshrined in the Civil Code of the Russian Federation.

As for settlements by payment claims, they are settlement documents that reflect the requirements of the creditor to the debtor to repay a certain amount of money through the Bank.

As practice shows, payment requirements are applied in the calculations for goods delivered, works performed, as well as in other cases stipulated by the contract.

IV. CONCLUSION

It seems that the main factors influencing the bringing to a certain level of quality of the regulatory legal framework for the regulation of non-cash payments in Russia are the sufficiency and sensitivity of the attention shown by the legislator to regulatory legal acts in the field of Informatics, contracts concluded regarding the exchange of electronic

documents, as well as legal liability for such actions as distortion or loss of banking information.

There are various measures, the adoption of which may well entail a more effective in terms of information security legal regulation of non-cash payments [8]. One of these, in turn, is an administrative measure, the essence of which is to expand the powers of the Central Bank of Russia in the area we are considering. At the same time, it is possible to implement this option by excluding from article 862 of the Russian Civil code regulations referring to the fact of regulation of legal relations related to settlements directly by Federal laws [2].

In the doctrinal literature, when considering and discussing issues concerning the regulatory legal regulation of relations related to the implementation of non-cash payments, attention is often focused on the belonging of the relevant legal relations to a particular branch of law.

The classical position is based on the point of view, according to which the sphere of non-cash settlements should be referred to the subject of financial law, since non-cash settlements receive their legal regulation from the body of legislation, which in fact formed the financial and legal acts of the Russian Central Bank.

In the context of this topic, it is impossible not to pay attention to payment systems. In particular, it should be noted that their regulation is carried out by information and legal, as well as financial and legal norms.

Assessing the structure of the components of the non-cash payment system, it is possible to state that its regulation is carried out by mandatory regulatory legal acts of the Central Bank of Russia [4].

It is noteworthy that the functions related to the control and regulation of non-cash payments can be carried out not only by state bodies. It is allowed to delegate some of these functions to legal entities and individuals who do not have the status of a state body or official.

So, for example, according to the resolution of the constitutional Court of the Russian Federation of 12.10.1998 № 24-O «on the case of check of constitutionality of point 3 of article 11 of the Law of the Russian Federation of 27.12.1991 «about bases of tax system of the Russian Federation», it is possible to state assignment to credit organizations or banks of numerous functions of public legal character [3].

The above is expressed, for example, in the fact that the execution of settlement relations is accompanied by the implementation of financial control by credit institutions of their clients. Thus, proceeding from the above, it is permissible to believe that legal relations in the field of non-cash settlements to a certain extent are regulated, and basically the legal framework for regulating the relevant legal relations consists of mandatory financial and legal acts of the Central Bank of the Russian Federation.

At the same time, it is obvious that a mandatory solution requires such a problem as the lack of full regulation of the state of security of the use of such means of payment as electronic money. First of all, we mean such areas as:

1. claim of funds;
2. confidentiality of personal data provided;

3. receiving compensation for program failures.

Accordingly, it is possible to conclude that in these areas there is a «ground» for the implementation of fraudulent intentions, which, in turn, even more determines the need to ensure the security of electronic money systems.

A positive attitude is caused by the idea of the need for legislative consolidation of the criteria for attribution of a monetary means to a monetary surrogate.

In accordance with the Federal law «on the Central Bank of the Russian Federation (Bank of Russia)», as well as the Constitution of the Russian Federation, the ruble acts as the Federal currency of the Russian state, the issue of which is the exclusive competence of the Central Bank of the Russian Federation [1].

Russian law, in addition, prohibits the introduction, as well as the issuance of money surrogates in Russia.

The European Central Bank has proposed a classification of surrogates of funds depending on the legal regime:

1. the issue, carried out in a centralized manner:
 - physical form: coupons, tickets, national currency;
 - digital form: online coupon, virtual currency;
2. the issue, carried out in a decentralized manner:
 - physical form: commodity money;
 - digital form: platforms for foreign exchange operations;
 - digital form (with cryptographic protection): cryptocurrency.

We can say that in today's conditions do not receive the necessary legal regulation in the Russian state such means of payment as:

- virtual currency;
- platforms for foreign exchange operations;
- cryptocurrency.

Analysis of statistical data shows that the trend associated with the transition of Russian citizens to non-cash payments is increasing.

According to the considered statistics, it is possible to conclude that after a certain amount of time, the number of payments by plastic cards, as well as the number of payments made in cash will remain at the same level.

At the same time, unfortunately, we have to state that the increase in the number of payments in non-cash form is accompanied by a concomitant increase in fraud.

For clarity, we indicate what methods are most often used by scammers:

- 1) theft carried out through the use of remote terminals - 58 %;
- 2) theft committed with the help of ATMs – 40 %;
- 3) theft carried out through electronic money settlements – 2%.

In recent years, attackers have been using so-called phishing attacks, which, in turn, should mean deception or social development of clients of organizations in order to subsequently steal their identification data, as well as transfer their confidential information for criminal use.

Phishing attacks are usually implemented in the following ways:

1. use of email and spam;
2. using web content;
3. IRC and IM messaging;
4. the use of Trojans.

In conclusion, it is possible to come to a conclusion about the negative impact of insufficient legal regulation of non-cash payments in the Russian Federation on the criminal situation in the country.

Legal relations in the sphere of non-cash settlements are regulated to a certain extent, and, basically, the legal framework for regulating the relevant legal relations consists of mandatory financial and legal acts of the Central Bank of the Russian Federation.

At the same time, it is obvious that a mandatory solution requires such a problem as the lack of full regulation of the state of security of the use of such means of payment as electronic money. First of all, we mean such areas as:

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It is obvious that the current Russian legislation does not keep up with the dynamics with which electronic payments are developing, which, in turn, is evidenced by the incomplete legal regulation of the various ways in which electronic money is used.

The criteria fixed by the Russian legislation of reference of this or that money to the money surrogate promotes restraint of criminogenic influence of insufficiently effective legal regulation of non-cash payments in Russia.

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Expand the powers of the Central Bank of Russia in the area we are considering. To make it, in turn, by means of an exception from article 862 of the Russian Civil code of the regulations referring to the fact of regulation of the legal relations connected with calculations, directly, Federal laws.

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