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## **The securities market as a legal benefit in the criminal law of the Russian Federation and the State of Israel**

There is a need for the protection of the securities market rules of the Criminal code of the Russian Federation based on civil law and derived from the requirements of other branches of law. It corresponds to the dominant trend of the exhaustive complete codification of the Criminal code of the Russian Federation based on its imperative of part 1 of article 1.

The modern reality is that it should be stated incompatible phenomena occurring in the protection of the securities market. On the one hand, we see an increase in the number of criminal prohibitions aimed at its protection in order to be attractive to investors.

Two articles of the Criminal code of the Russian Federation was for the protection of the securities market in the first version of the Code. This is article 185 "Abuse upon issuance of securities" and article 186 "the Manufacture, storage, transportation or sale of counterfeit money or securities".

Article 185.1 "Malicious evasion from disclosure or provision of information defined by the legislation of the Russian Federation on securities" was introduced by Federal law dated 04.03.2002.

Article 185.2 a "Violation of order of accounting of rights on securities", article 185.3 "market Manipulation", article 185.4 "Obstruction or unlawful restriction of the rights of holders of securities" were introduced by Federal law dated 30.10.2009.

Article 185.5 "Falsification of the decision of the General meeting of shareholders (participants) of an economic society or the decision of the Board of Directors (Supervisory Board) of the economic society" was introduced by Federal law of 01.07.2010.

Article 185.6 "Misuse of insider information" was introduced by Federal law of 27.07.2010.

This fact testifies to the increased attention of the state to protect the market and trying to ensure its effective performance not only the norms of civil and administrative laws, and criminal law mechanism. On the other hand there is the instability of criminal law prohibitions.

Article 185.3 "price Manipulation on the securities market" was introduced by Federal law dated 30.10.2009 and had such a name. The article was amended by Federal law from 27.07.2010 and began to be called "market Manipulation". The disposition of the first part of the article was amended by Federal law 11.07.2011. Sanctions two parts were modified

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by Federal law of 07.12.2011. Note to article 185 of the acts is in the wording of 03.07.2016.

This adversely affects the ability to assimilate the contents of the relevant rules. Minimization of the contradictory properties of any negative effects to be protected, in particular the securities market, achieved by treating them as a unified system composed of interrelated elements. This approach helps to create a logically coherent concept of the security market.

The shortcomings of the criminal law for the protection of the securities market (e.g., redundancy of criminalization) due to the lack of relationship in the formulation of prohibitions with other branches of law. Need to focus in order to statement criminal law regulations on their linkage with the provisions of the code of administrative offences of the Russian Federation and civil law. This means that the basis for criminalization of the act on the securities market should be based on the idea of priority of the civil law in regard to the understanding of the object of protection and legal assessment of the acts acting as a legal fact, and thus, understanding the norms of other branches of law as complementarily. Observing logical sequence, the second stage of protection needs to be administrative rules, and only then should resort to the provisions of the criminal law as an extreme means of protection acceptable to the society of public relations.

There is not elaborated definition of the concept of "securities market" at the legislative level. The structure of the Federal law dated 22.04.1996 "On securities market"<sup>2</sup> allows to allocate such components of the market, as the area of securities issuance and circulation, as well as the activities of professional participants of the market. So those three components make up the scope of the securities market and act as legal benefits, subject to the protection of the three-tier system of law: civil law, administrative law, criminal law.

The importance of market enforcement, indicates his understanding of how the infrastructure element of economic policy. It is not enough for the required substantial aspect at the same time for consistency in criminal prohibitions for the protection of the market.

The criteria by which a distinction should be made between criminal and administrative regulations set in the form of deriving income. Two key points that require clarification in this regard: the method of income and its size. On the securities market from the civil law that constitute the basis of the carried out entrepreneurial activities, the purpose of which is profit. Therefore it will be wrong to establish liability for any income. Its only illegal extraction should be subject to criminal influence. Size to establish a unified approach to the computation proposed to determine the note to article 169 of the Criminal code of the Russian Federation. Excessively in relation to each crime contained in Chapter 22 of the Criminal code of the Russian Federation, to establish their quantitative expression signs.

The state manifests itself as a regulator of social relations in this case, as only he can in the face of legislative regulates relations occurring in the securities market, and defines what acts should be considered offences and entail application of measures of state coercion.

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<sup>2</sup> Collection of legislation of the Russian Federation. 1996. № 17. Article. 1918.



We should pay attention to the statistically significant lack of court practice, as the measurement of quantitative and qualitative properties expressed in the form of values of the corresponding elements of the offences, is the beginning of the process modeling of crime, including on the securities market as a structural element of the system of socially dangerous acts<sup>3</sup>.

The need to study foreign criminal prohibitions for the protection of securities market caused by a number of factors. In particular, on the one hand, the lack of Russian statistics on cases in this category, with the other valid cash offences, causing harm to investors or other persons involved in RZB, which in turn has a negative impact on the investment climate. Requires extension used by professional information and, accordingly, to analyze other national systems of criminal law. To navigate it should be in economically developed countries. Documents of the International Monetary Fund are important in this situation.

For example, as of 2011, the International Monetary Fund provided the country with a developed economy and 150 countries, usually called emerging market and developing countries which belonged to Russia<sup>4</sup>. As of January 2016, Russia is a country with Emerging Market and Developing Economies<sup>5</sup>.

Show how the State of Israel is currently under criminal law provision of the securities market.

Basic practical importance is the Act on securities of 1968. It regulates relations arising in securities market. The act provides for acts established as crimes in their market. Also the Israel Securities Authority was established in accordance with this Act<sup>6</sup>. This Authority is authorized state body which investigates crimes on the securities market.

In accordance with the Act of 1968 crimes committed on securities market recognized acts, responsibility for which is provided in the article: 53 (a) violation of statutory duties, non-disclosure or disclosure of misleading information in the prospectus, periodic or immediate document with intent to deceive, 53 (b) – failure to comply with certain provisions of the Act 54 (a) (1) the inducement or attempt to force individuals to buy or sell securities by way of statement, promise or in the future – in writing, verbally or otherwise which the person knows or should know, with-holding of false or misleading information or by concealment of material facts, (2) fraudulent influence on the fluctuation of prices of securities.

It is quite clear that criminal-legal risks for the securities market of Israel are associated with the secondary market as most prone to abuse by, first, the professional participants of the market, and second, others. It is a deal with yourself and the mechanism of deal with yourself is as follows. The person performs operations, for example, with shares; access

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<sup>3</sup>For example: Vitsin S.E. A systematic approach and crime. M., 1980.

<sup>4</sup> World economic outlook: a survey by the staff of the International Monetary Fund. Washington, DC: International Monetary Fund, 2011. P. 177-179.

<sup>5</sup> World economic outlook: a survey by the staff of the International Monetary Fund. Washington, DC: International Monetary Fund, January 19, 2016. P. 3.

<sup>6</sup> The Israel Securities Authority [Electronic resource]. – URL: <http://www.tase.co.il/Eng/AboutTASE/RegulationInIsrael/IsraelSecuritiesAuthority/Pages/IsraelSecuritiesAuthority.aspx>



the registry which is due to official duties. To do this, he sells them to some fictitious or false person "C", writing off from the register using a working computer. Then on behalf of the person "C" sells at an inflated price, that is returns "in place" of the action, again making the appropriate entry in the registry. The difference from the sales goes to a pre-account in the name of "C". After that, on a fake power of attorney on behalf of "C" the attacker goes to the Bank and cash account or transfer to your account the difference received from a "distillation" of the shares. Implementing securities at one price, then another person is found guilty of manipulating prices.

In practice, there are a variety of situations. One of them is when deal with yourself enters into a professional participant of the securities market.

Mr. "A", having a license for securities management and having a school for teaching people the game (at the time of the crime, he had 10 students), entered into about 1,200 self-transactions, thereby commercialized in an amount equal to 300 thousand shekels (or 2 486 700 RUB). The line of defense was built on the principle that he was not going to steal the money, however, at the pretrial stage the offender pleaded guilty, and was concluded plea-bargain (out-of-court transaction, which occurs in 90% of cases). The court sentenced him to 27 months in prison). The actions of a person qualified under article 54 (b) of the securities Act.

Being responsible in the management of securities, using his position and aiming to make a profit, the entity enters into agreement with itself. Among the significant negative impact of such actions is the undermining of investor confidence and the impact on the prices of securities, particularly shares.

Norm providing responsibility for the act is not established by the Criminal code of the Russian Federation. There is a minimal similarity with the article 185.3 of the Criminal code of the Russian Federation. However, article 54 (b) of the Act of State of Israel of 1968 provided in the lapidary formulation of the 8 words liability for fraudulent influence on the fluctuation of securities prices. The Article 185.3 of the Criminal code of the Russian Federation is consisted from the 112 words focused responsibility for illegal acts, in which price, demand, offer or volume of trading in financial instruments, foreign currency and (or) goods deviated from the level or were maintained at a level substantially different from the level which would have been formed without regard to unlawful actions. It is quite obvious that tricky wording of the domestic legislation are difficult to implement in practice.

The presented example indicates the necessity of the summary criminal legal ban in accessible language that will enhance the ability to be suitable for enforcers.

The legislator defined the legal benefit subject to protection, and pointed acts that infringe on the legal benefit, the Commission of which is punishable. Thus, the excessive detail of all possible varieties act does not provide the proper level of protection for the legal good.

The second situation, which can be divided into two subgroups, characterized by the fact that deals with yourself are other persons.

The first covers the illegal acts that harm other subjects. The Bank employee made 354 deals with yourself, thereby causing the employer damage. For committing deals with yourself person was prosecuted under article 54 (b) of the securities Act and the injury to



the employer, i.e. the Bank, is charged with theft (4 articles), responsibility for the Commission of which is provided in the penal Law of Israel.

As in the case described above, such abuses of persons undermining the trust of the honest actors in the securities market, diminishing the authority, in this case, the Bank. Therefore, it is justified, probably the prosecution's request on the appointment of a person severe (by Israeli standards) punishment.

The second subgroup is characterized by the fact that the entity enters into transactions and with itself by a certain amount, thereby obtaining the illegal income, and damage does not occur.

In one case, a Bank employee "K" made a deal with yourself in the amount of 1.5 million shekels, with the result that he was sentenced to 22 months of prison. At the pretrial stage K. pleaded guilty, and was concluded plea-bargain.

Measures of the state compulsion are applied both to individuals and businesses. Moreover, the practice knows cases when a criminal punishment is applied simultaneously to the natural person (provided that it occupies a high position in the organization), and to the Corporation.

In respect of corporations is used as a punishment fine.

In accordance with the current legislation of Israel to individuals may be imposed a fine, suspended sentence or imprisonment. Despite the provision of the law the possibility of an alternative to assign the guilty person these types of punishment, the court usually sentences the accused to the actual departure of punishment in imprisonment, the term of which not less than 20 months. You should pay attention to the certainty of punishment. The implementation of this principle is due not only a correct statement of the law, as well as a certain level of consciousness. It is understandable to persons for any acts liable, what is the legal benefit protected by the norm.

In connection with the above stated, I think you need some different approach to the presentation of criminal law prohibitions in Russia. The Israeli experience in this case is not a literal transfer of these norms in domestic criminal law, and to the knowledge of the ways of describing dispositions. It is quite obvious that simplicity and brevity contributes to the comprehension and understanding of what I wanted to say the legislator. Therefore, the reproach of the state shall be expressed in very accessible language.

For correction it should be stated that the Russian sternness and harshness does not guarantee the implementation of criminal law prohibitions and lead to the fact that the person under punishment, will not commit legal acts.