SCIENTIFIC OPINION
(expert's report)

I was informed in writing by legal firm Blokh Solicitors of the need to prepare a scientific opinion (expert's report) on the legal issues, related to the case of Dmitry Isaakovich Leus.

It is evident from the provided materials that D.I. Leus was found guilty, by the order of Zamoskvoretsky district court of Moscow dated March 9, 2004, in committing the crime, specified in part 3 article 174 (FZ as amended on June 13, 1996 No. 63) of the Criminal Code of the Russian Federation (hereinafter the RF CC), and sentenced to the "4-year imprisonment in the minimum-security penitentiary facility"; as to the accusation of committing several other crimes the accused D.I. Leus was acquitted (p. 63 of the verdict). His conviction was expunged by the resolution of the judge of Gagarinsky district court of Moscow dated June 27, 2007.

In view thereof the expert was asked questions below.

A. Regarding the court sentence and defense arguments.

1. Is the guilty verdict legally grounded and substantiated – for example, are the conclusions of the court grounded as to the signs of the objective aspect of the crime, specified in article 174 of the RF CC and other fundamental legal principles?

2. Did the judge make any legal errors regarding the elements of the above crime?

3. Were there any procedural errors in the judge's conclusions?

B. What is the burden and the standard as to the money laundering accusation under part 3, article 174 of the RF CC? Does the prosecutor have to prove the guilt

so that the court does not have any doubt of the guilt of the accused, or it is based on the principle of higher probability, or another standard?

C. What are the elements of providing the evidence of committing the money laundering crime specified in part 3, article 174 of the RF CC? In particular:

1. Does the prosecutor have to prove that the funds in question were received illegally while committing a crime?

2. Does the crime, under which the monetary funds were gained, have to be completed by the time of the funds legalization, i.e. do the funds have to be gained by knowingly criminal means so that the very handling the funds is considered a crime?

3. What is the mental element of crime – does the defendant have to know that the funds were gained illegally or it is sufficient to have a suspicion of thereof? Would it be enough for the defendant to deliberately turn a blind eye to the truth?

4. Does the court assess the mental element of crime, referring to the fact that the defendant knew himself (subjective test) or to the fact that a reasonable person had to know in similar circumstances (objective test)?

D. What are the methods of defense against the accusation of the money laundering crime specified in part 3, article 174 of the RF CC?

E. What is the procedure of expunging a conviction in the Russian Federation? Does the procedure consider the evidence, underlying the sentence or the correctness of the judge’s decisions?

F. Under which circumstances the prosecutor may at the pre-trial stage of the proceedings back down, having already indicated that there will be no criminal prosecution? Is it possible to appeal to the decision on holding criminally liable under these circumstances, if so, then specify the procedure?

Being a specialist in the judicial system, criminal proceedings and substantive criminal law, one of the authors of the Concept of the new criminal law of the Russian Federation[1] and a developer of the project of the currently valid Criminal Code of the Russian Federation, it is honor for me to provide response and the opinion to all the questions.

Regarding question A.

The verdict is administered justice. It is passed in the name of the Russian Federation. The verdict must be legal, grounded, motivated and just, that is passed in compliance with the requirements of the RF CPC and based on the correct application of the substantive law: criminal, civil and other laws (articles 297, 305, and 307 of the RF CPC).

The RF Constitutional Court has noted a number of times that the "…the administration of justice in its essence may be recognized only on condition that it meets the requirements of justice and ensures effective legal rehabilitation. Within criminal proceedings it implies that at least evidence-based identification of the circumstances of the event causing the initiation of the criminal case, its correct legal assessment, specifying the damage, cased to the community and individuals, and the actual extent of the guilt of the person in committing the crime he is charged with".[2]

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[1] See: I.M. Galperin, A.I. Ignatov, S.G. Kelina, Yu.A. Krasikov, G.M. Minkovsky, M.S. Paleev, S.A. Pashin, E.F. Pobegailo, O.F. Shishov The Concept of the criminal law of the Russian Federation // State and Law. – 1992. – No 8. – P. 39 – 46; G.V. Dashkov, B.V.Zdravomyslov, Yu.A. Krasikov, E.F. Pobegailo, A.I.Rarog, S.A. Pashin Criminal Code of the Russian Federation: a draft // The Notes of criminologists. – M., 1993. – Issue 1. – P. 221 – 246.

[2] See: The ruling of the RF Constitutional Court dated December 8, 2003 No 18-P regarding the case of verifying the constitutionality of the provisions of articles 125, 219, 227, 229, 236, 237, 239, 246, 254, 271, 378, 405 and 408, as well as parts 35 and 39 of the Criminal Procedural Code of the Russian Federation following the requests of the general courts and

As a result of the performed analysis I am coming to the conclusion that the verdict passed by Zamoskvoretsky district court of Moscow dated March 9, 2004 under D.I.Leus's criminal case does not meet the abovementioned criteria. The assessment of the evidence was replaced in the verdict with random listing. The evidence was described chaotically, with gross violation of the requirements of the criminal-procedural law. The verdict passed by Zamoskvoretsky district court of Moscow dated March 9, 2004 did not prove the guilt of D.I. Leus under the federal law in the crime he was charged with, which is required in part 1 article 49 of the RF Constitution and part 1 article 14 of the RF CPC. This conclusion arises out of the following grounds found in the expert's examination.

Investigation reports and other documents are mentioned in the verdict in the way that their sense and meaning remain unclear (p. 14 – 41).[3] For example, the verdict alleges that the guilt of the accused D.I. Leus was confirmed "with material evidence", "the record of car [examination][4] UAZ…, in which bank collectors transported 20 m USD on September 5 and 6, 2002…", with "the record of seizure" (p. 35) given in volume 1 on pages 63 – 65. This list of the case materials lacks content. It is obvious that the examination of the collectors' car, where the money used to be transported does not in any way prove the guilt of D.I. Leus in committing the crime. Laying out the evidence in this manner, the judge grossly violated the direct instructions of the RF Supreme Court: "Referring in the verdict to …, investigation and judicial reports as well as other documents, confirming, according to the court, specific actual circumstances, it was necessary to describe

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complaints of citizens // RF official gazette. – 2003. – No 51. – Article 5026; the ruling of the RF Constitutional Court dated January 14, 2016 No 96-O on refusal to accept for consideration the complaint of citizen Denis Aleksandrovich Sugrobov about the violation of his constitutional rights by parts one and two of article 154 of the Criminal Procedural Code of the Russian Federation // legal reference system "Consultant Plus".

[3] Hereinafter, unless otherwise specifically provided, references to pages are given to the pages of the verdict of Zamoskvoretsky court of Moscow dated March 9, 2004.

[4] Probably, it implies the record of the car examination; the word "examination" is omitted due to the judge's negligence.

their content".[5] The above law violation deprives the sentence of Zamoskvoretsky district court of Moscow dated March 9, 2004 its ***motivation*** basis.

The eye-witness testimony provided in the verdict did not prove the guilt of D.I. Leus in committing the crime, specified in part 3 article 174 of the RF CC.

Many witnesses did not mention D.I. Leus in their testimony: S.V.Arnaautova (p. 46), I.N.Gavrilov (p. 55–56), Ye.A.Ilin (p. 54), M.Yu.Kvasova (p. 55), N.A.Kozlova (p. 56), D.A.Kolabushkin (p. 51–52), M.V.Kolomeitseva (p. 50), T.Ya.Lapaayeva (p. 52), L.A.Markova (p. 42), V.I.Merzlikin (p. 54–55), A.A.Nevmyanova (p. 51), T.A.Pyatetskaya (p. 42), N.A.Razdvenko (p. 55), A.S.Sadunova (p. 53), M.V.Seliverstov (p. 46), I.F.Selinsky (p. 55), O.V.Sorokin (p. 46), O.N.Frolova (p. 57), A.V.Chanov (p. 54), I.G.Cheremnykh (p. 54), Ya.L.Shevelev (p. 57).

Some witnesses mentioned D.I. Leus briefly, as an acquaintance or colleague: M.A.Galiakberova (p. 52), M.Sh.Daudov (p. 56), N.A.Dynnikova (p. 52), A.R.Magomedov (p. 48), G.I.Marchukova (p. 53), A.A.Saptsov (p. 43), O.V.Shcherbakova (p. 44 – 45), L.S.Ukolina (p. 50 – 51) and others. For instance, witness A.R.Magomedov said that "He has known Leus since 1999… They had good relations" (p. 48). "Questioned by court witness M.A.Galiakberova testified that from December 2001 to April 2002 she worked being managed by Leus…, after which she resigned" (p. 52).

Witness N.A.Dynnikova confirmed that D.I. Leus preferred to work personally with bank clients (p. 52). Witness Ye.A.Obzhirov stated virtually the following as to D.I. Leus: "…I did not see Leus in the bank, but according to

[5] Paragraph 2 of point 3, which was in force in 2004, of the Resolution of the Plenum of the RF Supreme Court dated April 29, 1996 No 1 "On Court Verdict" // Bulletin of the Supreme Court of the Russian Federation. – 1996. – No 7. The requirements that were set to the verdict of the Russian court in the twentieth century are still set to it at present. For instance, according to point 8 of the Resolution of the Plenum of the RF Supreme Court dated November 29, 2016 No 55 "On Court Verdict", "the court in the whereas part of the verdict is not entitled to be limited only to the evidence list or indication of the procedural records and other documents, where they are recorded, but it must reveal their essential content".

Niyazova he learnt that the accused visited the bank in summer 2002. She said that she showed him the bank premises …, and Leus liked everything" (p. 44). It is evident that no proof or, furthermore, revealing meaning is provided in the above testimony since they do not refer to the subject matter of the criminal proceedings.

A number of witness testimonies, seemingly confirming the guilt of D.I. Leus, do not touch upon any circumstances, being the subject to be proved under the criminal case. In particular, such testimony was given by witnesses I.N.Gavrilov (p. 55–56), Yu.S.Filatova (p. 56), Ye.L.Shevelev (p. 57). The latter, for example, declared to the investigator that "since 1999 he had been working as the chairman of OAO JSCB Metallinvestbank. He learnt about the transaction on receiving the foreign currency of RBD LLC from the papers some time later" (p. 57).

The testimony given by some witnesses were declared partially untrustworthy in the verdict (p. 58-59), however, nobody was held criminally liable under part 1 Article 307 of the RF CC for perjury. This circumstance indirectly confirms the doubts as to the judge's conclusion on the untrue statements given by witnesses S.V.Arnautova (p. 46), I.V.Korolyov (p. 48–50) etc.

During the court hearing witnesses Yu.V.Karnisonov (p. 47–48) and I.V.Korolyov (p. 48–50) refused from the testimonies of the pre-trial investigation, explaining that at the pre-trial stage illegal methods of threats were applied to them; these actions of the authorities are prohibited by Article 21 of the RF Constitution, part 4 Article 164 of the Criminal Procedural Code and entail recognizing the evidence as unacceptable (Article 75 of the RF CPC). The court had to verify the witnesses' statements, take sufficient and effective measures as to investigating the facts, but did not do it.

The verdict provides testimonies, fully or partially assumptive, where the witness did not specify the source of information. These are, in particular, testimonies by witnesses M.A.Galiakberova (p. 52), G.I.Marchukova (p. 53), T.A.Pyatetskaya (p. 42), A.S.Sadunova (p. 53). For example, G.I.Marchukova stated during the interrogation in the court, meaning the opening of the Swan City company account, that she seemed "to believe that Galiakberova agreed this matter

with Leus…" (p. 53). However, «the guilty verdict may not be based on assumptions" (part 4 Article 14, part 4 Article 302 of the RF CPC). According to point 2 part 2 Article 75 of the RF CPC "the testimony of the affected party, a witness, based on speculations, assumptions, rumour, and also witness's testimony with no source of the information", refer to unacceptable evidence.

In the court hearing the statements by witnesses Ye.A.Ilina (p. 54), A.V.Chanova (p. 54), I.G.Cheremnykh (p. 54) and others were announced. In effect, it is impossible to find in them the facts revealing the D.I.Leus's guilt in committing the crime. Nevertheless, referring these to the accusatory testimonies, the judge had to verify that during the preliminary investigation, the accused was given an opportunity to appeal to these testimonies, in particular, during face-to-face witness confrontations. This requirement is from the revealed by the European Court of Human Rights legal meaning of paragraphs 1 and 3 (d) Article 6 of the European Convention on Human Rights. The RF Supreme Court repeatedly interpreted criminal-procedural norms as follows: "… The court is not entitled to announce the testimonies of the absent affected person or witness without the consent of the parties, …and also refer in the verdict to this evidence, if the accused was not given an opportunity to appeal to these persons in a legal manner during the previous stages of the proceedings (for example, during the face-to-face confrontation, which he or she was a party of, to interrogate the affected person or the witness, whose testimonies the accused does not agree with, and express his or her objections to them)".[6] The evidence, used during the legal proceedings in this way, violating the right of the accused to protection, would refer in common law countries to the category of *hearsay*, and in the Russian Federation they are

[6] Paragraph 2 point 4 of the Resolution of the Plenum of the RF Supreme Court dated November 29, 2016 No 55 On Judgment // Bulletin of the Supreme Court of the Russian Federation. – 2017. – No 1; similarly – par. 2 p. 2 of the Resolution of the Plenum of the RF Supreme Court dated April 29, 1996 No 55 On Judgment // Bulletin of the Supreme Court of the Russian Federation. – 1996. – No 7, as well as pr. 2 p. 11 of the Resolution of the Plenum of the RF Supreme Court dated December 19, 2017 No 51 On the Practice of Law Enforcement while considering criminal cases in the courts of the first instance (general legal proceedings) // Rossiyskaya Gazeta. – 2017. – December 29.

considered unacceptable under part 2 Article 50 of the RF Constitution, Article 75 of the RF CPC, as well as under the explanations of the RF Supreme Court.[7]

The mixed accusatory and absolvent evidence contained in the verdict: documents and witness testimony, in support of the accused D.I. Leus, was announced as evidence against him. For example, the opinions of graphology examinations show that the signatures on some documents were not put by D.I.Leus, but to solve the issue of whether the other signatures were made by Wu Phuong Nam, whose identity was doubted by the defense, "was impossible" (p. 38–39). Witness M.V.Dolgikh, the deputy chairman of Russian Deposit Bank LLC, informed the court that the application of the non-resident individual Wu Phuong Nam for the receipt of 20 m USD in cash was handed to him according to the standard procedure and in the standard format. At the same time it was D.I.Leus who told him about the financial transaction, but vice versa, M.V.Dolgikh "called Leus and informed him thereof. The accused said that it was necessary to control everything well" (p. 47). The willingness of the court to show absolvent evidence as accusatory, to evade the correlation and assessment of the evidence confirms the lack of objectivity of the completed legal proceedings and contradicts the instructions of the RF Supreme Court: "Sentencing must include the assessment of all evidence considered in the court hearings as both those supporting the court conclusions regarding the issues, resolved by the sentence, and contradicting these conclusions.[8]

These violations of law make the sentence of Zamoskvoretsky district court of Moscow dated March 9, 2004 ***groundless*** and call in question its ***legality***.

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[7] See, e.g. point 16 of the Resolution of the Plenum of the RF Supreme Court dated October 31, 1995 No 8 On certain issues of judicial application of the Constitution the Russian Federation when administering justice // Bulletin of the Supreme Court of the Russian Federation. – 1996. – No 1; par. 3 p. 6 of the Resolution of the Plenum of the RF Supreme Court dated November 29, 2016 No 55 On Judgment // Bulletin of the Supreme Court of the Russian Federation. – 2017. – No 1.

[8] Point 3 of the valid in 2004 Resolution of the Plenum of the RF Supreme Court dated April 29, 1996 No 1 On Judgment // Bulletin of the Supreme Court of the Russian Federation. – 1996. – No 7; similarly – See: point 6 of the currently valid Resolution of the Plenum of the RF Supreme Court dated November 29, 2016 No 55 On Judgment // Bulletin of the Supreme Court of the Russian Federation. – 2017. – No 1.

This kind of violations is, unfortunately, rather frequent in Russian courts; they were negatively received by the European Court of Human Rights. In one case the European Court noted that "the court of the first instance did not explain how the mentioned… materials proved the guilt of the claimant and how generally they are relevant to the case. …Therefore, according to the European Court, finding the claimant guilty… was mainly based on the assumption…"[9]

In addition to the above violations of the criminal-procedural law, Zamoskvoretsky district court neglected the arguments of the accused and his defendants, which it was obliged to assess and to which it was obliged to reply. In particular, the guilty verdict left the following points without consideration:

the version of the accused D.I.Leus of the distribution of the responsibility between different banks, namely, of the role of Deutsche Bank, which, according to D.I.Leus, "had to verify" the compliance of a number of financial transactions under the "formalities, procedures and law" (p. 32 – 33);

the statement of the accused D.I.Leus that he did not give any instructions to the collectors on the day of cashing (p. 34);

the opinion expressed by attorney A.V.Vorobiev in the presentation of the case that the money transfer and its receiving in the bank may not be considered a form of legalization to the fact of its possession and disposal;

the opinion expressed by attorney A.L.Yenkov in the presentation of the case that the identity of Wu Phuong Nam was not verified, whereas his appearance did not correspond to the photo.

However, according to the legal opinion of the RF Supreme Court, "… The guilty verdict must be passed under reliable evidence, when all the available versions related to the case have been investigated, and the existing controversies

[9] The Resolution of the ECHR dated July 13, 2006 under the case of *Popov vs Russian Federation*, par. 182 // Russian bulletin of the European Court (Rossiyskaya Chronika Yevropeyskogo Suda). – 2008. – No 1.

clarified and assessed.[10] The RF Constitutional Court indicates that the guilty verdict may be passed "only after considering and refuting the defense arguments…; the arguments that are not refuted against accusatory court orders may be interpreted only in support of the accused.[11]

In the whereas part of the verdict of Zamoskvoretsky district court of Moscow dated March 9, 2004 there is no reliable evidence that the financial transaction was effected with the funds, gained illegally, that D.I.Leus knew about it. It becomes evident from the text of the verdict that no legal entity or individual was found affected by fraud, both accused in fraud were acquitted (p. 63). "…The prosecution did not provide the evidence of the person whom the 20 m USD, transferred from an account in the Central Bank of Turkmenistan to an account with a foreign bank in July – August 2002, belonged to. The conclusion of the prosecution that the funds belonged to the budget of the Republic is based only on assumptions…" the verdict states (p. 17). Making the conclusion of the awareness of the accused D.I.Leus and his design the court used general wording instead of the detailed analysis of the evidence, which is "confirmed by the total of the evidence under the case" (p. 61); "The design by the accused is proved by the circumstances of the committed crime, its character and the manner of action" (p. 63).

The above violations of law make the sentence of Zamoskvoretsky district court of Moscow dated March 9, 2004 its ***legality***.

General impression from the evidence included in the verdict is in the fact that it mainly confirms the fact of the financial transaction, but not the criminal

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[10] Point 4 of the valid in 2004 Resolution of the Plenum of the RF Supreme Court dated April 29, 1996 No 55 On Judgment // Bulletin of the Supreme Court of the Russian Federation. – 1996. – No 7; similarly – See: par. 2 point 17 of the currently valid Resolution of the Plenum of the RF Supreme Court dated November 29, 2016 No 55 On Judgment // Bulletin of the Supreme Court of the Russian Federation. – 2017. – No 1.

[11] The ruling of the RF Constitutional Court dated January 25 2005 No 42-O on the complaints of citizens Pavel Alekseevich Astakhov, Sergey Dmitrievich Zamoshkin, Vera Konstantinovna Kartseva and Yuri Artemovich Kostanov to the violation of the constitutional rights and freedoms by the provisions of articles 7 and 123, part three of article 124, articles 125, 388 and 408 of the Criminal Procedural Code of the Russian Federation // Bulletin of the RF Constitutional Court. – 2005. – No 4.

objectives D.I.Leus is charged with and not his awareness of the *initial* crime, if any. “In case of using the persons unaware of the criminal origin of the monetary funds or other property, to commit crimes under articles 174 and 174.1 of the RF CC, it is recognized that their performers are the persons who actually control corresponding financial transactions and deals as well as manage the actions of the above persons”.[12] The conviction of a person for the actions, undistinguishable from ordinary commercial activities, is unacceptable.[13]

Regarding question B.

The essential principle of the Russian criminal legal proceedings is the presumption of innocence (Article 49 of the RF Constitution, Article 14 of the RF CPC). The provisions of the presumption of innocence and the norms related to its content fully apply to the criminal prosecution and the court consideration of criminal cases regarding the crime, specified in part 3 Article 174 of the RF CC.

For example, according to part 4 Article 14, part 4 Article 302 of the RF CPC “The guilty verdict may not be based on the assumptions and is passed only on condition that during the legal proceedings the guilt of the accused in committing the crime is confirmed with the total of the court evidence”.

The accused, as well as the defense on the whole, does not have to prove his innocence; the prosecution is responsible for the burden of proving the accusation and refuting the arguments given in support of the accused (part 2 Article 49 of the RF Constitution, part 2 Article 14 of the RF CPC), that is the state prosecutor (prosecutor, a deputy prosecutor, an assistant).

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[12] Point 13 of the Resolution of the Plenum of the RF Supreme Court dated July 7, 2015 No 32 On Legal Practice on Legalization (money laundering or other property legalization) cases, and on purchasing or selling the illegally gained property” // Bulletin of the Supreme Court of the Russian Federation. – 2015. – No 9.

[13] Resolution of the ECHR dated February 23, 2016 under the case of Navalnyy and Ofitserov vs. Russian Federation, par. 115 // Bulletin of the European Court of Human Rights. – 2016. – No 5 (167).

Interpretation of the standards of proof in the Russian legal doctrine and precedents is virtually missing.[14] Nonetheless, it is undoubted that the guilty verdict, passed according to the general procedure, must meet the highest degree of reliability from the standpoint of the conclusions; some authors even require these conclusions to be true.[15]

To accuse a person of committing a crime, it is necessary to provide sufficient evidence (part 1 Article 171, part 1 Article 215 of the RF CPC), and the court assesses their sufficiency (part 1 Article 88 of the RF CPC). When passing a guilty verdict the court may not still have any doubts of the guilt of the accused person, and if these doubts still exist, the court must interpret them in his/her support (part 3 Article 49 of the RF Constitution, part 3 Article 14 of the RF CPC). "…the arguments interpreted in support of the accused include not only irremediable doubt of his/her guilt on the whole, but also irremediable doubt, related to the specific episodes of the indictment, form of guilt, the degree and nature of participation in committing a crime, mitigating and aggravating circumstances etc."[16] In fact, these requirements are equivalent to the *beyond the reasonable doubt* standard accepted in the United Kingdom and other common law countries.

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[14] The attempts to introduce understanding in law enforcement authorities of the proof standards are made by some scholars, specializing in the issues of civil process and arbitration. See, e.g.: S.L. Budylin Punitive damages. Now and in Russia? // Bulletin of Civil law. – 2013. – No 4. – P. 19-52.

[15] See: G.F.Gorsky, L.D.Kokorev, P.S. Elkind The Problems of Evidence in Soviet Criminal Process. – Voronezh: Publisher of Voronezh University, 1978. – P. 64-65; Democratic bases of Soviet Socialistic Law / Ed. by M.S.Strogovich. – M.: Nauka, 1965. – P. 40; Constitutional bases of justice in the USSR // A.M.Larin, A.A.Melnikov, I.L.Petrukhin etc.; ed. by V.M.Savytsky. – M.: Nauka, 1981. – P. 238; P.F.Pashkevich Undeniable truth in criminal proceedings. – M.: Gosyurisdat, 1961. – P. 31 – 32; M.S.Strogovich Material truth and judicial evidence in Soviet criminal proceedings. – M.: Publisher of the USSR Academy of Sciences, 1955. – P. 65 – 69, 74; The evidence theory in Soviet criminal proceedings. – 2nd edition, revised / Ed. by N.V.Zhogina. – M.: Yuridicheskaya literatura, 1973. – P. 47; S.A.Sheyfer Evidence and proving in criminal cases. – M. Norma – Infra – M. – 2012. – P. 45); etc.

[16] Paragraph 3 p. 4 of the Resolution of the Plenum of the RF Supreme Court dated April 29, 1996 No 55 On Judgment // Bulletin of the Supreme Court of the Russian Federation. – 1996. – No 7; similarly – See: par. 2 p. 17 of the Resolution of the Plenum of the RF Supreme Court dated November 29, 2016 No 55 On Judgment // Bulletin of the Supreme Court of the Russian Federation. – 2017. – No 1.

Regarding question C.

Article 174 of the RF CC, for the purpose of provisions of part 2 Article 13 of the Federal Law dated August 7, 2001 No 115-FZ On counteraction to legalization (laundering) of the proceeds from crime or terrorism financing,[17] provides for the criminal liability for legalization (laundering) of the money or other proceeds from other persons' crime. The point is in the *concern* in the initial crime, as a result of which money or other proceeds (property) came to the illegal possession. The object of the crime is public relations on the legal civil money and other property circulation.

Pursuant to article 3 of Federal Law dated August 7 2001 No 115-FZ:

legalization (laundering) of the proceeds from crime is the provision of legal appearance to the possession, use or disposal of the money funds or other property proceeds from crime;

proceeds from crime are the money or other property, received as a result of committing a crime.

To sentence D.I. Leus, similarly to any other person, for the crime, specified in part 3 Article 174 of the RF CC (FZ edition of June 13, 1996 No 63, that is the original edition of the Criminal Code of the Russian Federation), it was required to prove the circumstances below:

the accused effected at least one financial transaction, that is an action with the money, securities or other property (regardless of the form and means of implementation), aimed at setting, changing or terminating related thereto civil rights or obligations;

the above money or other property were other persons' proceeds from crime (as a result of committing a crime);

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[17] See: Federal Law dated August 7 2001 No 115-FZ On counteraction to legalization (laundering) of the proceeds from crime or terrorism financing // RF official gazette. – 2001. – No 33 (part I). – Article 3418.

the person who performed financial transactions was reliably aware of the fact that the money or other property were other persons' proceeds from crime;

the accused performed the above financial transaction or a number of financial transactions to provide legal appearance to the possession, use and disposal of the money or other property; this aim may be manifested, in particular, in performing financial cashing transactions or deals related to the proceeds from crime (as a result of committing a crime).[18]

According to the sense of law, these "financial transactions… knowingly for the guilty person mask the link the legalized property to the criminal source of origin (the essential crime).[19]

According to the legal determination of the RF Supreme Court, "Crimes under articles 174 and 174.1 of the RF CC, committed through financial transactions, should be considered completed from the moment that the person, acting with the aim indicated in these articles, actually illegally used the money for settlements or change or provided (handed) the bank with an order on money transfer etc." [20]

The use of the official position as a qualifying element of the crime, specified in Article 174 of the RF CC, implies, firstly, that the accused has the position, i.e. he/she is a dedicated subject performing managerial functions in an organization, and secondly, that he/she abuses the position by acting contradictory to the purpose and sense of his/her service.

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[18] See: points 19, 20 of the valid, at the time of convicting D.I. Leus, Resolution of the Plenum of the RF Supreme Court dated November 18, 2004 No 23 On legal precedents of the cases of illegal entrepreneurship and legalization (laundering) of the proceeds or other property from crime // Bulletin of the Supreme Court of the Russian Federation. – 2005. – No 1; similarly – points 5, 7, 10, 19 of the Resolution of the Plenum of the RF Supreme Court dated July 7 2015 No 32 On legal precedents of the cases of legalization (laundering) of the proceeds or other property from crime, and on purchasing or selling the property that was knowingly received from crime // Bulletin of the Supreme Court of the Russian Federation. – 2015. – No 9.

[19] See: the ruling of the RF Constitutional Court dated May 26 2016 No 1129-O on refusal to accept for consideration the complaint of citizen Konstantin Petrovich Dyachenko about the violation of his constitutional rights by part four of article 159 and part two of article 174.1 of the Criminal Code of the Russian Federation // Legal Reference System Consultant Plus.

[20] Point 8 of the Resolution of the Plenum of the RF Supreme Court dated July 7 2015 No 32 On legal precedents of the cases of legalization (laundering) of the proceeds or other property from crime, and on purchasing or selling the property that was knowingly received from crime // Bulletin of the Supreme Court of the Russian Federation. – 2015. – No 9.

The crime is recognized as committed by an organized group, if it is committed by a stable group of persons, who beforehand united to commit one or more crimes (part 3 Article 35 of the RF CC).

The large scale of the legalization (laundering) of the proceeds, Article 174 of the RF CC, was not originally mentioned in the verdict in question under D.I.Leus's case; in 2004 the large scale of the legalization (laundering) was an amount exceeding 1 million roubles; today large scale money or other property financial transactions re understood as the financial transactions performed for an amount exceeding one million five hundred thousand roubles, and grand scale – six million roubles (notes to Article 174 of the RF CC in its currently valid edition).

Judicially supporting state prosecution regarding the commission of the crime under Article 174 of the RF CC, the prosecutor must positively prove that the money *laundered* was the proceeds from crime, that is as a result of committing a specific crime. This is confirmed, in particular, by the provisions of point 4 of the above quoted Resolution of the Plenum of the RF Supreme Court dated July 7 2015 No 32 On legal precedents of the cases of legalization (laundering) of the proceeds or other property from crime, and on purchasing or selling the property that was knowingly received from crime: "…the conclusion of the court, considering a criminal case under article 174… as to the criminal proceeds, possession, use or disposal, which the accused tried to legalize, along with other materials of the criminal case may be based on:

The guilty verdict on a crime case specified in one of the articles of the Special Part of the Criminal Code of the Russian Federation (on substantive offence);

The order of the preliminary investigation body on terminating the criminal proceedings (criminal prosecution) for committing the substantive crime…, if the materials of the criminal case contain the evidence, showing the occurrence of the event and the corpus delicti of the substantive crime, and the preliminary investigation body provides correspondent assessment;

The order of the preliminary investigation body on suspending inquiry or initial investigation due to the absence at the time of the criminal case consideration of the person to be accused of the substantive crime, if the materials of the criminal case contain the evidence, demonstrating the occurrence of the event and the corpus delicti of the crime, and the preliminary investigation body provides correspondent assessment.[21]

Criminal way of taking the possession of the money and property is confirmed, in particular, by the affected person's complicity in the case; the affected person was not engaged in D.I. Leus's case.

In the whereas part of the verdict "there must be the evidence the court conclusion ground on, stating that the money or other property were the proceeds from crime (as a result of committing a crime)…".[22]

The initial crime, under which the money was received, must be completed at the time of money laundering, according to the common law. This is first of all related to the fact that the greed-motivated crimes are considered accomplished when the criminal is able to dispose others' property as if it were his own property. For example, "Fraud, that is embezzlement by deceit or trust abuse is recognized complete from the moment this property came to the illegal possession of the accused or other persons and they were given with a real opportunity (depending on the consuming properties of the property) to use or dispose of it at his or her discretion. [23]

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[21] Bulletin of the Supreme Court of the Russian Federation. – 2015. – No 9.

[22] Point 5 of the Resolution of the Plenum of the RF Supreme Court dated July 7, 2015 No 32 On legal precedents of the cases of legalization (laundering) of the proceeds or other property from crime, and on purchasing or selling the property that was knowingly received from crime // Bulletin of the Supreme Court of the Russian Federation. – 2015. – No 9; the Ruling of the RF Constitutional Court dated May 26, 2016 No 1129-O on refusal to accept for consideration the complaint of citizen Konstantin Petrovich Dyachenko about the violation of his constitutional rights by part four of article 159 and part two of article 174.1 of the Criminal Code of the Russian Federation // Legal Reference System Consultant Plus.

[23] Point 5 of the Resolution of the Plenum of the RF Supreme Court dated November 30, 2017 No 48 On the Legal Precedents under the cases of fraud, embezzlement and misappropriation // Rossiyskaya gazeta. – 2017. – December 11.

Nevertheless, the subject of the crime specified in Article 174 of the RF CC may include “not only money or other property, whose illegal possession is the evidence of a specific crime (e.g., embezzlement, bribery), but also the money or other property, received as material reward for committing a crime (e.g., for hired killing/assassination) or as a payment for selling the objects, whose public circulation is restricted”.[24] In these cases the initial crime may be committed at the preparatory stage or an attempt.

Regardless of the crime, being the source of the funds to be legalized, it stays the crime even at the stages of the preliminary criminal activity (preparation, attempt).

Financial transactions with money and other property, in relation to which the fact that they are proceeds from crime has not been proved, are not considered a crime.

The RF Constitutional Court notices that “the existence of guilt as an element of the subjective side of the crime is a generally accepted principle of holding legally liable in all areas of law”.[25]

The mental element of the crime, specified in Article 174 of the RF CC, features direct design: the accused, firstly, knows that the money, with which he or she performs financial transactions, is other people’s proceeds from crime, and secondly, he or she, knowing this, pursues aims at making it look as legal possession, use and disposal.

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[24] Point 1 of the Resolution of the Plenum of the RF Supreme Court dated July 7, 2015 No 32 On legal precedents of the cases of legalization (laundering) of the proceeds or other property from crime, and on purchasing or selling the property that was knowingly received from crime // Bulletin of the Supreme Court of the Russian Federation. – 2015. – No 9.

[25] The Ruling of the RF Constitutional Court dated December 8, 2017 No 39-P regarding the case of verifying the constitutionality of the provisions of articles 15, 1064 and 1068 of the Civil Code of the Russian Federation, sub-point 14 point 1 article 31 of the Tax Code of the Russian Federation, article 199.2 of the Criminal Code of the Russian Federation and part one of article 54 of the Criminal Procedural Code of the Russian Federation due to the complaints of citizens G.G. Akhmadeeva, S.I. Lysiak and A.N. Sergeev // Rossiyskaya gazeta. – 2017. – December 22, 2017.

The performance of financial transactions "itself may not pre-determine the court conclusions regarding the guilt of a person in legalizing (laundering) money or other property, being the proceeds from crime (as a result of committing a crime). In each specific case it is necessary, considering all the circumstances of the case, identify that the person knowingly effected a financial transaction or a deal to legalize the possession, use and disposal of the above money or other property… When qualifying the action under article 174… of the RF CC the court needs to find out that the accused person beforehand knew about the criminal origin of the property, with which financial transaction were performed…".[26] Thus, personal assumptions about a potentially criminal source of money, with which financial transactions are performed, as well as his negligence (carelessness) when assessing the origin of the money do not create any pre-conditions for his criminal prosecution and conviction for the committed crime. The accused person may not be deprived of an "opportunity to realize the unlawfulness of his/her actions and foresee liability that may follow".[27]

Consequently, the objective criterion of the intellectual aspect of the mental element of the action under consideration ("any reasonable person must in these circumstances understand and foresee public danger of the action and its consequences") for the purpose of criminal prosecution and conviction under Article 174 of the RF CC is not applicable. Otherwise, there would be strict liability (imputation), prohibited by part 2 Article 5 of the RF CC.[28]

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[26] Points 10 and 19 of the Resolution of the Plenum of the RF Supreme Court dated July 7 июля 2015 No 32 On legal precedents of the cases of legalization (laundering) of the proceeds or other property from crime, and on purchasing or selling the property that was knowingly received from crime // Bulletin of the Supreme Court of the Russian Federation. – 2015. – No 9.

[27] The ruling of the RF Constitutional Court dated June 21 2011 No 851-O-O on refusal to accept for consideration the complaints of citizenVasiliy Leonidovich Vakulenko about the violation of his constitutional rights by articles 160 and 174.1 of the Criminal Code of the Russian Federation // Legal Reference System Consultant Plus.

[28] See also: the ruling of the RF Constitutional Court dated May 27, 2003 No 9-П regarding the case of verifying the constitutionality of the provisions of article 199 of the Criminal Code of the Russian Federation due to the complaints of citizens P.N. Beletsky, G.A. Nikova, R.V. Rukavishnikova, V.L. Sokolovsky and N.I. Talanov // RF Official gazette. – 2003. – No 24. – Article 2431.

Regarding question D.

The accused (defendant) personally and via the lawyer is entitled to defend against the indictment and protect his/her legal interests by any means, not clearly prohibited by law (part 2 Article 16, point 11 part 4 Article 46, point 21 part 4 Article 47, point 11 article 1 Article 53 of the RF CPC).

The defense arsenal comprises numerous rights, provided for not only in the RF CPC, but also in Federal Law dated May 31, 2002 No 63-FZ On Lawyers' activity and legal profession in the Russian Federation,[29] including:

the knowledge of the indictment (suspicion) content;

the receipt of the copies of a number of procedural documents;

examination of expert's opinions in the course of the preliminary investigation;

examination of all the materials of the criminal case upon the completion of the preliminary investigation;

presentation of evidence and collection of materials subject to be included into the criminal case (expert's opinions, eye-witness explanations upon their consent); the accused (suspect) is entitled to testify or refuse from testifying;

submission of petitions and recusals;

presentation of complaints;

personal participation in court hearings on equal conditions with the prosecution; take part in the case presentation and debates of the parties; the accused is entitled to announce the final statement;

objection to the actions of the presiding judge and demand of including the objections into the minutes of the court hearing;

study of the minutes of the court hearing and making notes thereto; etc.

All these means may be used in the defense against the prosecution under the crime, specified in part 3 Article 174 of the RF CC.

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[29] RF official gazette. – 2002. – No 23. – Article 2102.

The key objectives of the defense in this kind of proceedings:

raising doubts of the court in the fact of the criminal event (e.g., indication to the lack of evidence proving the fact of the very performing the financial transaction);

raising doubts of the proof of the accused person's complicity in committing the crime;

indicating the lack of the corpus delicti in the actions taken by the accused person (i.e, his lack of awareness of the criminal nature of receiving these funds or the absence of his wish to legalize the money or other property possession, use and disposal; it is also possible to insist on the lawful (or at least non-criminal) origin of the funds); in the latter case it is promising to challenge the qualification of the fact of the initial action as a crime, pointing, e.g., to its civil law character, though tort; the *initial* crime must be found in the prejudicial report – the verdict or investigator's resolution on terminating the criminal case, whereas in the absence of the above decisions the conviction for legalization (laundering) is impossible.[30]

Provided the court agrees with the position of the defense at least in one of the above points, it must pass a non-guilty-verdict.

In case it is impossible to acquit the accused, the lawyer must put his/her efforts to mitigate liability, including – the exclusion of individual qualifying signs from the indictment. For example, if the indictment involves committing a crime with misconduct, it is necessary to find out whether he or she was in the office, which could enable him/her to take the actions he/she is charged with.

If the imputation includes the qualifying feature of the "by a group of people in collusion" or "conspired", it is worth checking whether the point is indeed about the formations, described in Article 35 of the RF CC. it is to be borne in mind that "in those cases when the crime is committed by a group of people, a group of

[30] See also: point 15 of the Resolution of the Plenum of the RF Supreme Court dated June 27, 2013 No 21 On the enforcement by common law courts of the European Convention for the Protection of Human Rights and Fundamental Freedoms dated November 4, 1950 and protocols thereto // Bulletin of the Supreme Court of the Russian Federation. – 2013. – No 8.

people in collusion or conspired, the description of the criminal act must indicate the specific criminal actions taken by each accomplice of the crime.[31] If the indictment and the verdict lack detailed description of the roles of accomplices of the criminal gang it is not allowed to charge the accused with the respective qualifying element.

Regarding question E.

The conviction is a special legal state of a person, determined by the fact of convicting him/her for committing a crime and applying punishment to him/her. The person, free from punishment, is considered a person with no criminal record.

A person, convicted for committing a crime, is considered convicted from the effective date of the court guilty verdict суда till the time of expiry or clearing the criminal record. The conviction is taken into account in case of a repeated crime, identifying the punishment and entails other adverse legal effects (part 1 Article 86 of the RF CC).

Cancellation from the conviction is carried out as a result of its expiry or clearance. The expiry or clearance cancels all the criminal law adverse effects, related to the conviction; some other adverse consequences may remain effective also after the expiry or clearance of the conviction (impossibility to be a candidate to the positions in law-enforcement bodies, prohibition to purchase weapons etc.).

The expiry of the conviction is automatic as a result of the expiration of the specific period, provided for different crimes in the RF CC. The maximum period of the kind is 10 years after serving the punishment; for the convicts for felonies the conviction expiry period is 8 years, for the convicts for medium-gravity crimes is 3 years.

If a convict behaves flawlessly after serving the punishment, and also paid the damages, then upon his/her application the court may cancel and clear his/her

[31] Paragraph 1 p. 18 of the Resolution of the Plenum of the RF Supreme Court dated November 29, 2016 No 55 On Judgment // Bulletin of the Supreme Court of the Russian Federation. – 2017. – No 1.

criminal record prior to the expiry of the conviction (part 5 Article 86 of the RF CC).

The application of the convict who has served punishment for cancelling the conviction must be submitted to the person's local court and is considered by on judge according to the procedure set in Article 400 of the RF CPC. Depending on the crimes the person was convicted for, this may be a federal judge (district or garrison court-martial) or an arbiter.

The consideration of the application for cancelling the conviction "is performed as the administration of justice in an open court hearing".[32] The participation in the court hearing of the person, whose application for cancelling the conviction is considered, is compulsory. The prosecutor informed of the application is entitled to participate in the court hearing. The application consideration begins with hearing explanations of the applicant, after which the provided materials are examined (e.g., records given to this person by the employer, educational establishment, place of residence; certificates of paying up damages) and the prosecutor and other persons invited to the court hearing are heard. These persons may include the affected, police officers, applicant's colleagues. In case of refusing to cancel the conviction a repeated application with this purpose may be submitted to the court at least one year after the day of passing the order of refusal.

This procedure is performed not as a part of considering the consideration of the case on the merits, but at the stage of the sentence execution. Therefore, the legality and grounds of the verdict are not challenged, the evidence underlying the verdict, are not re-verified. The subject of the consideration is the circumstances, which emerged after serving the punishment by the convict, showing his or her correction: compensation for the damage and further flawless behaviour at work and at home.

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[32] Point 2 of the Resolution of the Plenum of the RF Supreme Court dated December 20 2011 No 21 On the practice of judicial enforcement of the laws on the execution of the sentence // Rossiyskaya gazeta. – 2011. – December 30th.

Regarding question E.

The produced documents show that on November 6, 2002 the first deputy of the inter-district prosecutor of Moscow informed the Russian Depositary Bank of the fact that the investigation did not find the elements of the crime from the part of the Bank. On January 13, 2003, the prosecutor of the Fourth Department of the Prosecutor's Office of Moscow concluded that there were no legal grounds for the criminal liability of citizen Leus. On January 14, 2003 the first deputy prosecutor of Moscow also indicated that there were no grounds to hold citizen Leus criminally liable. However, D.I. Leus was, finally, held criminally liable and convicted under the accusation of committing the crime, specified in part 3 Article 174 of the RF Criminal Code.

During the considered period of time the prosecutor, without using discretion authority, was obliged "in any case of finding criminal elements" to take measures "to identify the fact of the crime, detection of the person or persons guilty of committing the crime" (part 2 Article 21 of the RF CPC). To perform this duty, supervising the compliance with law by investigation and pre-investigation authorities, the prosecutor was entitled to initiate a criminal case, refuse to initiate it, terminate a criminal case (person's criminal prosecution), as well as cancel resolutions of an inferior prosecutor and investigator on initiating, refusing to initiate and terminate a criminal case (criminal prosecution).

The prosecutor could renew criminal prosecution only with the prior cancellation of the earlier contradictory resolutions on refusing to initiate a criminal case or terminating the criminal case (criminal prosecution). Holding a person liable as the accused and submitting his or her case to the court with the indictment are impossible, if there is an earlier resolution on refusing to initiate a criminal case or on terminating the criminal case (criminal prosecution).

The resolution on refusing to initiate a criminal case and on terminating the

criminal case (criminal prosecution) could be cancelled by the prosecutor in the cases below:

Unlawfulness or groundlessness of the resolutions;

Finding new circumstances (evidence), requiring re-initiation of the criminal case or the renewal of the criminal prosecution of a person.

At the same time, it was repeatedly mentioned by the RF Constitutional Court that "…when solving the issues, related to the renewal of the terminated criminal cases it is required to follow the need of ensuring the defense of the justice interests, rights and freedoms of the affected persons as well as the rights and legal interests of the persons, held criminally liable and considered innocent…, and unacceptability of maintaining for the person, whose proceedings were terminated, a constant threat of criminal prosecution, and consequently, the restriction of his or her rights and freedoms. This implies unacceptability of the repeated renewal of the terminated proceedings on the same grounds (in particular, due to the incompleteness of the investigation)".[33]

This general provision, excluding multiple deliberate return to the criminal prosecution of the person, is now specified by the RF Constitutional Court as follows: "…The common procedure of canceling or changing the resolution on terminating a criminal case or criminal prosecution on the grounds, entailing the worsening of the position of the rehabilitated person, is permitted within the period of up to one year from the date of its issue; upon the expiry of the year the resolution on terminating the criminal case or the criminal prosecution may be cancelled only judicially upon the Prosecutor's application… with compulsory

[33] The ruling of the RF Constitutional Court dated December 27, 2002. No 300-O regarding the case of verifying the constitutionality of the provisions of articles 116, 211, 218, 219 and 220 of the Criminal-Procedural Code of the Russian Soviet Federated Socialistic Republic due to the request of the Presidium of the Supreme Court of the Russian Federation and citizens' complaints // RF official gazette. – 2003. – No 3. – Article 267. Also see: the ruling of the RF Constitutional Court dated March 25, 2004 No 157-O on refusal to accept for consideration the complaints of citizen Vladimir Vladimirovich Kirichenko about the violation of his constitutional rights by part one of article 214 of the Criminal Procedural Code of the Russian Federation» // Legal Reference System Consultant Plus.

delivery to the person, whose criminal prosecution was terminated, and (or) his/her representative of the possibility to participate in the court hearing".[34]

The Prosecutor's resolution on initiating the criminal case (renewal of criminal prosecution) under part 1 Article 19 of the RF CPC could be appealed to during the period under consideration according to the procedure, specified in:

Article 123, 124 of the RF CPC – to the superior prosecutor;

Article 125 of the RF CPC – to the pre-investigation local court.

During the judicial inspection of the lawfulness of the resolution on initiating the criminal case "no issues, which might further become the subject of the legal proceedings on the merits, may be settled. …the court is entitled to find, essentially, whether the procedure of issuing the order was complied with, whether there are any reasons to initiate a criminal case, whether there are no circumstances, excluding the legal proceedings under the case".[35]

The RF Supreme Court indicated:

"When considering the complaint arguments to the resolution on initiating the criminal case against a person a judge should verify the compliance with procedure of issuing the resolution, whether the executive, who issued the resolution, had respective powers, if there are any grounds and basis to initiate a criminal case, if there are no circumstances, excluding the case proceedings.

Therewith, the judge is not entitled to legally assess the actions of the suspect, as well as the collected materials regarding their completeness and information content, significant to identify the circumstances, subject to proving …".[36]

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[34] Point 4.2 of the ruling of the RF Constitutional Court dated November 14, 2017 No 28-P regarding the case of verifying the constitutionality of the provisions of the Criminal Procedural Code of the Russian Federation due to the complaint of citizen M.I. Bondarenko // Official legal information internet portal http://www.pravo.gov.ru, 16.11.2017

[35] The ruling of the RF Constitutional Court dated December 27, 2002. No 300-O regarding the case of verifying the constitutionality of the provisions of articles 116, 211, 218, 219 and 220 of the Criminal-Procedural Code of the Russian Soviet Federated Socialistic Republic due to the request of the Presidium of the Supreme Court of the Russian Federation and citizens' complaints // RF official gazette. – 2003. – No 3. – Article 267.

[36] Point 16 of the Resolution of the Plenum of the RF Supreme Court dated February 10 2009 No 1 On the practice of complaint judicial consideration in compliance with

Therefore, the criminal prosecution of D.I. Leus after repeated applications of prosecutor's executives on the lack of the grounds for his criminal prosecution is voluntary nature and contradicts to the legal positions of the Constitutional and Supreme Court of the Russian Federation.

I can confirm that this scientific opinion may be presented to the court or other competent bodies according to the instructions, received from legal firm Blokh Solicitors owing to the application of Mr Leus on him with, another license by the competent bodies of the United Kingdom: the Financial Conduct Authority and/or the Prudential Regulation Authority.

I understand that my duty in making the conclusion is to help the court and other competent bodies in the issues, which may be settled considering my experience and understanding the situation. I realize that thus duty fully excludes any obligations to the person, from whom I was given orders. I confirm that fulfilled his/her obligations in the due manner when considering this scientific report.

I understand that I can be duly asked extra questions as information clarifications.

January 21, 2018

PhD in Law,
Honorary lawyer
of the Russian Federation **S.A. Pashin**

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article 125 of the Criminal Procedural Code of the Russian Federation" // Bulletin of the Supreme Court of the Russian Federation. – 2009. – No 4.

Enclosed: Curriculum Vitae on 4 pages.