Criminal regulation and criminalistic aspects of money laundering with special focus on the criminal legislation of the Republic of Serbia

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Abstract:

The author discusses and analyzes the criminal offense of money laundering in accordance with the legal regulations of the criminal legislation of the Republic of Serbia. The author starts from the first incrimination of this work in the criminal legislation of the Republic of Serbia from 2001, pointing out all the changes that have been made so far in the content of the provisions which prescribed this criminal offense. The author devotes special attention to the interpretation of certain provisions of this criminal offense and to problems related to their practical application. In the second part of the paper, the author points out the basic ways of executing of this criminal offense, taking into account the legal regulation of the criminal offense in the Republic of Serbia. At the end of the paper, the author provides basic guidelines for the effective conduct of criminalistic investigation and criminal investigation of the criminal offense of money laundering.

The aim of the paper is to present in a comprehensive and detailed manner, all the confusions about the interpretation of the legal provisions on criminal legislation of the Republic of Serbia related to the criminal offense money laundering and to offer the answers on the same confusions, as well as to present criminal instructions in order to increase the efficiency of work on the field of countering of money laundering in the Republic of Serbia.

Keywords: *money laundering, criminal law of Republic of Serbia, criminalistics, investigation, prosecution*

I. Introduction

The criminal offence of money laundering from a phenomenological point of view is a special form of economic crime that has recently taken on enormous proportions and at the same time poses a major threat to the economic system of each state. Namely, professional criminals, and especially organized criminal groups, achieve their enormous unlawful property gain by their criminal activity, which is why they face the fact that unlawful property they should be used unhindered, without leaving a trace that could indicate their criminal activity. In order to reduce or completely exclude the risk of seizing unlawfully acquired funds and avoid punishment for the crimes they commit, they resort to the commission of a criminal offense of money laundering (Nicević & Ivanović, 2013).

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The term money laundering means those activities that are directed to the legalization of money that has been acquired through criminal activities. These are such activities that convert money or other property benefits that are acquired through criminal acts or other illegal activities into „clean" money, i.e. money that can be used as a legal income in banking, shopping, sales, investment, forex and other business or ways of investing (Babić, 2008).

Therefore, it is about the material gain that, according to the provisions of positive legislation, should be seized because it was created as a result of criminal activity. The enforcement of the criminal offense of money laundering also conceals the execution of a criminal offense by which has acquired the unlawful material gain, as well as the material gain obtained by the execution of that part. The essence of money laundering is reflected in the fact that the money, that is, the material gain obtained illegally by the criminal offense of tax evasion, trafficking in narcotic drugs, illegal smuggling and trafficking in arms and ammunition or trafficking in human beings, etc., in legal transactions and transactions used unhindered as money, or assets acquired in a legal way. In order to achieve this goal, the „money laundering" procedure is used, that is, the concealment of the existence and origin of illegally acquired funds and their inclusion in legal financial flows. Thus, money laundering is a type of crime, the purpose of which is to conceal the existence and origin of illegally acquired funds, by including these funds through transformation, transfer, exchange, concealment of intentions by interfering with legal means or otherwise into legal financial flows, by which, beside the hiding of illegal origin of assets, conceals criminal activity and achieves the ultimate goal of money laundering – unhindered use of revenues from criminal activity and avoidance of punishment for committed criminal acts (Bošković, 2005). The money was „laundered" that moment when the transaction gets a green light and money come in into financial flows as legal.

The term „money laundering" originated in the United States during the prohibition period (the time of banning the production and sale of alcoholic beverages) in the third decade of the last century, when criminals shown money earned from illicit production and smuggling of alcoholic beverages, as an earnings in the chain of their laundry and car washing facilities. On the occasion of this phenomenon in journalism, the term „money laundering" began to be used, from which it was taken over by criminological and criminal science (Teofilović & Jelačić, 2006).

Incorporating illegally acquired revenues into legal financial flows endangers the economic system and market competition and has an impact on economic, political and social flows on a national and international level. The most common negative effects of money laundering are manifested through: unfair competition with legal entities, reduction of tax revenues due to the movement of money by illegal financial flows, damage to financial institutions, the impact on public confidence in economic and other social institutions, the promotion of corruption and impeding economic development (Bošković, 2009). Money laundering is a phenomenon whose harmful consequences manifest both domestically and internationally. Money laundering as a criminal offense in Serbia appears as one of the most common forms of organized crime, along with drug trafficking, extortion, kidnapping, human trafficking, corruption (Pavlović & Bošković, 2015). Organized opposition to this negative phenomenon implies the existence of legal frameworks for the fight against money laundering, and in Republica Serbia such frameworks were set by the adoption of the Law on the Prevention of Money Laundering. This law criminalizes money laundering for the first time and in some way

establishes the criminal liability of all entities that commit or participate in the execution of unauthorized actions prescribed by such law. An effective system of measures and methods in suppressing money laundering constrains the ability of criminals and criminal organizations to use unlawfully acquired funds, thus destroying the economic barriers of the power of criminal organizations.

II. Criminal offense money laundering in criminal legislation of Republic of Serbia

Thus, in the criminal legislation of the Republic of Serbia, the criminal offense of money laundering was first time systematized as a criminal offense by passing the Law on the Prevention of Money Laundering in 2001 (which entered into force on 1 July 2002)[1]. Article 27 of the aformenthioned law defines the concept of money laundering, ways, procedures, actions and forms of its manifestation. Also, the law contains a number of measures, procedures and the manner of acting of authorized entities in order to detect, prevent and suppress the activities of natural and legal persons related to concealment of illegally acquired money and other property benefits.

According to the provisions of Article 27 of the Law on Prevention of Money Laundering, the criminal offense of money laundering had two basic forms. The first basic form of criminal offense of money laundering is reflected in the deposing of money (cash, foreign currency and other financial assets) acquired through the conduct of illegal activities (gray economy, arms trade, drugs, psychotropic substances, etc.) to accounts with banks or other financial organizations and institutions on the territory of the Federal Republic of Yugoslavia, contrary to the provisions of the law on the prevention of money laundering. The second basic form of this criminal offense consisted in the inclusion in another way of such money into legal financial flows – which domestic and foreign physical and legal persons perform in order to carry out the permitted economic and financial activity, for which offender knew that it was obtained by the criminal offense (Škulić, 2003).

From this way legal description, there were established two forms of the act of committing the criminal offense of money laundering emerged: 1) the deposit of „dirty" money on the account, and 2) the inclusion of „dirty" money in legal financial flows.

This definition of the criminal act of money laundering was not clear enough. Different interpretations of this provision resulted in inadequate application in practice. One of the problems was related to defining the notion of predicate offence[2], as a

[1] Law on the Prevention of Money Laundering („Official Gazette of FRY", no. 53/01).

[2] Pursuant to Article 2, h) United Nations Convention against Transnational Organized Crime, Official Gazette of FRY, International Treaties, no. 6 of 27.06.2001. year, „predicate criminal offense" means any offense whose execution is a gain that may be the subject of a criminal offense as defined in Article 6 of this Convention. Article 6 under the heading „Criminalization of laundering of proceeds of crime" in paragraph 2 of this convention states: For the purpose of applying paragraph 1 of this article: point (a), each State Party shall seek, by applying paragraph 1 of this Article, predicate offenses; paragraph (b), any State Party shall include in the predicate criminal offenses all the grave crimes defined in Article 2 of this Convention (crimes punishable by a maximum sentence of at least four years' imprisonment or some serious punishment) and offenses established in accordance with Articles 5 (punishment of participation in organized crime groups), 8 (punishment of corruption) and 23 (determination of interference with justice as a criminal offense) of this Convention. In the event that the legislation of the Member States provides for a list of specific predicate offenses, they shall, as a minimum, include a wide range of criminal offenses related to organized crime groups".

necessary element for the existence of a criminal offense of money laundering (Nikolić-Rsitanović & Ćopić, 2007). By analyzing the provision of the article law that prescribes this crime, it was noticed those vague terms such as „illegal activities", „gray economy" and „deposing."

There was also a question about what, in the sense of this law, are considered illegal activities. Does this term mean only activities that are considered unlawful under domestic law or wider (according to the provisions of the Strasbourg Convention of 1990[3]). Also, in this context, a question was raised as to whether the illegal activities, in the sense of this law, consider all activities which are contrary to the legal provisions in general or just criminal offenses, which is related to the question of what is considered to be a predicate criminal offense. As far as the term „gray economy" is concerned, it was quite clear that it was not legally defined in our country. And the question here is whether this term is interpreted restrictively or extensively. In addition to the aforementioned, money laundering under the 2001 Law on Prevention of Money Laundering encompassed only the placement of money into accounts with banks or other financial organizations, while the other two phases, namely the concealment stage and the integration phases, were not included. This law contained a very vague and imprecise definition of money laundering. Predicate offenses were also vaguely defined. The concept of a transaction was determined in a restrictive way. Because of all of the above, it was difficult to apply in practice (Marković, 2009).

With the adoption of the new Criminal Code of the Republic of Serbia from 2005[4] (which entered into force on January 1, 2006) the criminal offense of money laundering has been moved from the „secondary" into the basic criminal legislation into the head of criminal offenses against the economy. The criminal act of money laundering is incriminated in the aforementioned code in a different manner in relation to the criminalization in the 2001 Law on the Prevention of Money Laundering. Thus, the Criminal Code of the Republic of Serbia prescribes one basic (paragraph 1), three qualified forms of this criminal offense (paragraphs 2, 3 and 4) and one privileged form (paragraph 5) (Ivanović & Ivanović, 2014).

The legislator in article 231 defines the basic form of criminal offense of money laundering as the execution of a conversion or transfer of property with the knowledge of the perpetrator that this property originates from a criminal offense with the intention of concealing or falsely depicting the unlawful origin of the property or concealing or falsely presenting facts about the property originate from a criminal offense, or acquire, hold or use property with knowledge at the time of receipt of such property that its originate from the criminal offense (Article 231 paragraph 1 of the CC). It is a complex, legal and linguistically complicated and bulky disposition, for which Dragoljub Simonovic In his work titled: „Criminal offenses in Serbian legislation", rightly points out that „it is an example of way how a criminal law norm, and especially a criminal offense, should not be prescribed. Namely, legal and linguistically complicated provisions are difficult to grasp, since they are placed in a single sentence, and because of that are bulky and confusing, which here has be done with this way of prescribing of criminal offence of money laundering" (Simonović, 2010). The same author, in the aforementhioned work also pointing into the existance of a disagreement between the

[3] Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, ETS No.141.

[4] Criminal Code of the Republic of Serbia („Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005, 107/2005").

name of the criminal offence and the content of the provision. Namely, the criminal offense is titled as „money laundering" and in the basic form of this criminal offense (paragraph 1) word „money" does not mentioned at all, while word „property" are mentioning even for seven times in the content of provisions of this criminal offence, even the property has broather has a wider meaning then term money (Simonović, 2010). Because of this, most of the domestic theoreticians who deal with problems of money laundering from the criminal legal perspective do not dare to interpret, ie explain the meaning of the legal provision of the basic form of criminal offense of money laundering in their papers or textbooks and even in Comments of Criminal Code.

With the amendments to the Criminal Code of 2016[5], the criminal offense of money laundering with a small change in the content of the provision is now prescribed in the head twenty-two entitled „Criminal offenses against the economy" in Article 245 (Jovašević, 2018). In contrast to the old provision of this criminal offense (former Article 231 of the Criminal Code), which contained expresion: „property originate from a criminal offense" in the current provision (Article 245 of the Criminal Code), stand that it should be that: „property originate from criminal activity". At the same time, it should be noted that this is the only change in relation to the incrimination of this criminal offense under the provision of Criminal Code from 2005. Namely, law maker, in the amendments of 2016, deliberately instead of a precise term (property originate from a criminal offense), used an insufficiently precise term (property originate from criminal activity), which is more criminologycal, rather than criminaly legal term. Earlier use of a more precise term „criminal offense" led to the fact that in the practice it was mainly advocated that a final verdict for a so-called „predicate criminal offese". This led to the unjustified narrowing of the criminalization of money laundering in use (Stojanović, 2017). Using the term „criminal activity" instead of the term „criminal offense", conditions have been created for more efficient application of the provisions of the Criminal Code that prescribe the criminal offense of money laundering, because in practice, it is sufficient, for the needs of the concrete criminal case, to determine that the money or property were acquired by the activity which realisation contains elements of provision of criminal offense, that is, it is not necessary existence of final judgment for this offense.

Based on the aforementioned legal provision, we can conclude that the possible ways of executing the basic form of criminal offense of money laundering are as follows:

– conversion or transfer of assets with the intention of concealing or falsely displaying the unlawful origin of such property;

– concealment or misrepresentation of the facts about the property illegally obtained;

– acquisition, possession or use of illegally acquired property.

Conversion or transfer of assets in order to conceal or fraudulently display the unlawful origin of the property constitutes a performance action which is reflected in the transformation of a non valid legal transaction into a valid legal transaction whit retaining the same or similar economic effects achieved by the original legal transaction (Marković, 2009). Under the term „conversion or transfer of assets" means any action when a conversion is made from one form of property to another. For example, the use of unlawfully acquired cash for the purchase of precious metals or real estate, or the sale of illegally acquired immovable property, as well as the situations in which assets are

[5] Law on Amendments to the Criminal Code („Official Gazette of the Republic of Serbia", No. 94/2016).

transferred from one place to another or from one jurisdiction to another, as well as from one bank account to another (Nicević & Ivanović, 2013). For the existence of this form of criminal offense of money laundering, it is not necessary that the intention is achieved. For this part, an objective requirement of incrimination is prescribed, which is reflected in the fact that the property whose conversion or transfer is carried out must originate from the commission of a criminal activity. It also prescribes the subjective requirement of incrimination that is reflected in the fact that the perpetrator of the work has the knowledge that the property whose conversion or transfer is performs, originates from the criminal activity, as well as a direct intent, which is reflected in the intent to conceal or falsely display an unlawful origin property (Ivanović & Ivanović, 2014).

The concealment or misrepresentation of the facts of the property that is illegally obtained is reflected in the restraint or false presentation of facts regarding the property that is illegally obtained. Undercover means the activity by which other persons try to create a belief that it is not about the property that originates from the criminal activity, but about the legally acquired property (Babić, 2008). In this case, the perpetrator does not make a conversion, that is, the transfer of illegally acquired property already conceals or falsely presents facts indicating that the property is acquired by the commission of an offense. This is done by fabricating counterfeit documentation that fictitiously shows that it is a legally acquired property. As with the previous form it is necessary that the subjective condition is fulfilled, which is reflected in the fact that the perpetrator of the work has the knowledge that this property originates from the criminal activity?

Acquisition, possession or use of property, with knowledge, at the time of receipt, that property arises from criminal activity, is reflected in the acquisition of property that arises from criminal activity in any way, the exercise of a state, that is, factual authority over illegally acquired property or its use, ie. disposing of the said property in any way. Under acquisition, it is necessary to understand any activity by which acquires assets acquired through the commission of a criminal offense. Therefore, for the existence of the criminal offense of money laundering, is not important what kind of activity is in the question, but it is only important that by this activity realizing the possession of property that originates from the commission of the criminal activity. In this regard, the acquisition of property arising from the commission of a criminal activity can be accomplished by purchase, by swap, by receiving a gift, by confiscation, and the like. For the existence of a work, it is important that when acquiring the work of the perpetrator, there is knowledge at the moment of receipt of that property from the criminal activity. The methods of committing the criminal offense were alternatively given and each act in this sense represents the way of executing the basic form of criminal offense of money laundering. The criminal offense of money laundering is consider finished by executing some of the by criminal law prescribed alternative actions (or more simultaneously). For existence of the criminal offense there is no need for determination the occurrence of a certain negative consequence, since it is not even envisaged in the law. This is because money laundering belongs to the category of so called „formal" criminal offenses, or offense by doing (commision). In addition to the act of commision, the criminal offense of money laundering in relation to certain actions can also be carried out by omission. Namely, although this work is legally defined as an act of doing, it is possible to achieve it by omission, in the form of a failure to act (Article 15, paragraph 2 of the CC). The prepetrator of this offense by omission can only be a person who is located in a obligatiory position to do something. Namely, according to the provisions of the Law on the Prevention of

Money Laundering and Financing of Terrorism (about it will be more words in further part of this papaer) if during the performance of certain tasks, the lawyer carries out actions and measures for the prevention and detection of money laundering, when it helps in the realization of the sale of immovable property for the party (Articles 5 and 46 LPMLFT). If it establishes that, in relation to the person or transaction, there is a suspicion of money laundering, he is required to notify the Administration for the Prevention of Money Laundering (Article 48 LPMLFT). Therefore, the lawyer is a guarantor that the money supply agreement will not be carried out with the sales contract he makes for the client. If, however, a lawyer forms such a contract, knowing for the intention of the buyer that the purchase of real estate conceals the fact that the money for the payment of the price originates from the criminal activity, he may be responsible for money laundering as a co-perpetrator (Đorđević, 2016). The object of the execution of the basic form of the criminal offense of money laundering is the property for which the offender knows that it has been obtained by the criminal activity. Therefore, an important element of the basic form of criminal offense of money laundering is knowledge of the fact that the money is obtained by a criminal activity, and it is irrelevant whether the existence of that criminal activity (criminal offense) has been determined by a court decision. In the absence of this element, it will not be about the existence of the basic abundance of the criminal offense of money laundering, but about the privileged form envisaged in paragraph 5 of Article 245 of the Criminal Code of the Republic of Serbia.

The perpetrator of this from of criminal offense money laundering can be any person, except for the responsible person in the legal entity (because in the case of this category of perpetrator it will be form of criminal offense prescribed in paragraph 6 of Article 245 of the Criminal Code of the Republic of Serbia will be dealt with). From the point of view of guilty, there needs to be premeditation that must include the knowledge of the fact that the money originated from the crime, that is, the so-called „dirty money". For this form of work cumulatively, a prison sentence of six months to five years is envisaged and a fine.

Paragraph 2 gives a qualified form of this criminal offense, which exists when the amount of money or property that is the subject of the criminal offense exceeds the amount of one million and five hundred thousand dinars. For this form of criminal offense, a cumulative sentence of one to ten years in prison and a fine (Article 245 paragraph 2 of the CC) is envisaged.

Paragraph 3 foresees the special form of this criminal offense that exists when someone commit the basic (paragraph 1) and the first qualified form (paragraph 2) of the criminal offense of money laundering with the property he himself obtained by committing the crime. The perpetrator of this form of criminal offense of money laundering shall be punished by a fine prescribed for the basic and first qualified form and fine (Article 245 paragraph 3 of the CC).

Paragraph 4 provides for a second qualified form that exists when the basic form of the offense and the first qualified form are committed in the group. For this form of criminal offense, a cumulative sentence of imprisonment of two years to twelve years is envisaged and a fine (Article 245 paragraph 4 of the CC). It is a collective criminal offense of money laundering. Therefore, this form of work will exist when it is collectively, i.e. by at least three or more organizational connected persons, the operation of the basic form and the first qualified form of criminal offense of money laundering has been performed. Persons who commit this crime can be organized on various ways, with different roles of

individuals in the group. It is only important that there is their joint action in the commission of this criminal offense.

In paragraph 5, the legislator prescribes a privileged form of this criminal offense, when the perpetrator of the basic and first-qualified form of money laundering was not aware of the origin of the money or property, and he may have been obliged to know that the money or property constitutes the proceeds of the crime. It is about sanctioning unconscious negligence as a way of committing the crime of money laundering. For this form of criminal offense, a prison sentence of up to three years is prescribed (Article 245 paragraph 5 of the CC).

Paragraph 6 defines the responsibility of the responsible person in the legal entity that makes the basic form and the first qualified form of criminal offense. With regard to the guilty of the perpetrator, premeditation and unconscious negligence is sought, if he knew, or could and should have been aware that the money or property constituted the proceeds of the criminal activity (Article 245, paragraph 6 of the CC).

Paragraph 7 prescribes the obligation to apply the security measure of seizing money and assets that are the subject of the act of committing the criminal offense of money laundering.

In addition to the provisions of Article 245 of the Criminal Code[6], money laundering is also regulated in the positive criminal law of the Republic of Serbia by the Law on the Prevention of Money Laundering and Financing of Terrorism. The Law on the Prevention of Money Laundering and Financing of Terrorism[7] was adopted in 2009 in the Republic of Serbia as one of the steps towards harmonizing domestic legislation with the international legislation and guidelines of the European Union, in order to meet the requirements that the Republic of Serbia as a candidate for EU membership should fulfill in order to became a full member.

According to the current Law on Prevention of Money Laundering and Financing of Terrorism[8] (Article 4), entities that are obliged to apply this Law are: banks; authorized exchangers, economic operators who perform exchange transactions on the basis of a special law regulating their activity of the investment fund management company; voluntary pension fund management companies; financial leasing; insurance companies, insurance brokerage companies, insurance advisors and insurance agents, who have a license to perform life insurance activities, with the exception of representation firms and insurance agents, the work of which is the responsibility of the insurance company in accordance with the law; broker-dealer companies; organizers of special games of chance in toys and organizers of games of chance through means of electronic communication; audit company and independent auditors, e-money institutions; payment institutions; brokers in real estate and real estate leasing; factoring society; entrepreneurs and legal entities engaged in the provision of accounting services; tax advisers; a public postal operator based in the Republic of Serbia, established in accordance with the law regulating postal services, engaged in the provision of services for the purchase, sale or transfer of virtual currencies or the replacement of such

[6] Criminal Code of the Republic of Serbia („Official Gazette of the Republic of Serbia", No. 85/2005, 88/2005 – ispr., 107/2005 – ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108 / 2014 and 94/2016).

[7] Law on Prevention of Money Laundering and Financing of Terrorism („Official Gazette of the Republic of Serbia", no. 20/2009 and 72/2009").

[8] Law on Prevention of Money Laundering and Financing of Terrorism („Official Gazette of the Republic of Serbia", No. 113/2017).

currencies for money or other assets through an internet platform, physical devices or otherwise, or who intervene in the provision of these services. To apply this Law is also obliged to lawyers when: 1) they assist in the planning or execution of transactions for a party in relation to: the purchase or sale of a real estate or a company; asset management; opening or disposing of the account with a bank (bank account, savings deposit or securities account); by collecting the funds necessary for founding, performing activities and managing companies; establishment, operation or management of a company or entity of foreign law; 2) carry out a financial transaction or a real estate transaction on behalf of and for the account of the client.The notaries are also obligated to apply this Law in accordance with the special provisions of this Law. The applicable Law on the Prevention of Money Laundering and Financing of Terrorism in Article 2 defines the concept of money laundering. Thus, the following details are considered as money laundering: a) conversion or transfer of property acquired through the commission of a criminal offense, b) concealment or misrepresentation of the true nature, origin, location of the movement, movement, disposal, ownership or rights in relation to property acquired through the commission of a criminal offense and c) acquiring, holding or using property acquired through the commission of a criminal offense. In addition, Article 3 provides the definition and content of terms that are incorporated into the criminal offense of Money Laundering. Thus, according to these legal solutions, the object of execution on the criminal offense of money laundering is defined as: a) assets – things, money, rights, securities and other documents in any form, which can determine the property right and other rights, b) money – cash (domestic and foreign), funds on accounts (dinars and foreign exchange) and electronic money, and v) physically transferable means of payment – currency, checks, bills and other physically transferable means of payment, payable to the bearer. As acts of committing a criminal offense of money laundering, this Law explicitly specified: a) a transaction – the receipt, giving, substituting, keeping, disposing or other treatment of property with the taxpayer, b) cash transaction – physical acceptance or cash withdrawal, and v) cash funds – any transaction that is carried out electronically by at least part of the payment service provider on behalf of the payer, with the aim of making such funds available to the payee of the payment service provider, regardless of whether the payer or the payee kid paying the same person and are payer provider of payment services and the provider of payment services of the recipient to pay the same person. In order to prevent and disclose committed, tried or planned criminal offenses of money laundering, the Law in Article 5 foresaw a number of preventive actions and measures that are taken before, during and after the transaction or establishing a business relationship. These actions and measures include the following activities: 1) knowledge of the client and monitoring of its business; 2) provision of information, data and documentation to the Administration for the Prevention of Money Laundering, 3) appointment of the authorized person in charge of fulfilling obligations from the law and his deputy, as well as providing conditions for their work, 4) regular vocational education, training and training of employees, 5) ensuring regular internal control of the performance of obligations under this law, as well as internal audits, if this is in accordance with the scope and nature of the business of the obligor 6) creating a list of indicators (indicators) for identifying persons and transactions for which there are grounds for suspecting money laundering, 7) keeping records, protecting and storing data from those records, 8) implementing measures under this law in business units and subordinated companies of a legal person in the majority ownership of taxpayers in

foreign countries; and 9) the execution of other actions and measures pursuant to this Law. In carrying out preventive activities in the fight against various forms and forms of manifestation of the criminal offense of money laundering, the role of the Administration for the Prevention of Money Laundering is emphasized, in addition to the Tax Administration, the Customs Administration and regular criminal justice bodies (police, public prosecution and courts of general and special jurisdiction). The Administration for the Prevention of Money Laundering (Article 72) is formed as an administrative body within the ministry responsible for finance. It performs financial information activities such as: collecting, processing, analyzing and forwarding to the competent authorities information, data and documentation obtained in the exercise of its competencies and performing other activities related to the prevention and detection of money laundering.

III. Methodology of commiting of criminal offense money laundering

Money laundering is a process by which criminals try to conceal the true origin and ownership of assets acquired through criminal activities. Consequently, money laundering involves many different techniques that are commonly complex, imaginative and secretive. It is common for them to hide the original origin and ownership of the money, and that the criminals want to keep the control over the procedure itself and, if necessary, to make some changes within the procedure (Šikman, 2011). Money laundering is a complex system of criminal activities that is constantly evolving, and in which new methods and techniques of money laundering are constantly applied, and the money launderers themselves are increasingly improving techniques in realization of this type of criminal manifestation. Criminals hide behind complicated transactions involving international transfers, shrinking the transaction to smaller amounts or transferring to accounts of a larger number of people, changing the form of money, and in doing so, they also use advice from top bank experts, brokers, investment bankers, accountants, consulting firms, notaryes and lawyers. The money laundering process never stops: no matter how many phases of laundering „dirty" money has gone through, and how many forms of illicit assets have changed, such funds will never be „clean" in the eyes of the law (Bejatović, 2009). In accordance with the above-mentioned, modern forms of money laundering, it is characterized by:

– Continuous improvement of money laundering through the application of new sophisticated techniques and methods;

– Greater investment of funds derived from narcotics, terrorism and other illegal activities in legal affairs with the aim of increasing the amount of funds and masking the flow of the money in question;

– The instrumentation of the money laundering network, in which more and more countries and financial centers were imported;

– Intentional mixing of legal and illegal funds with the aim of obstruction the entry of audit or of official investigative authorities in the trace of illegal origin of the money;

– Increased money laundering activity among traders in actions that deal with illegal funds. After the passage of such funds through such a financial flow, such funds are no longer related to their initial illegal activities (Šaković, 2002).

The perpetrators of criminal offense of money laundering, so-called „money launderers" have elaborated a number of seemingly simple techniques by which trying

to fraud the legislation and financial controls of countries in which they want to legalize dirty money. Therefore, there are no easy recipes for the fight against money laundering in the first place because each case is special and a story for itself within legal financial and criminal transactions. Relying on the experience in the prevention and suppression of the criminal offense of money laundering, we think that special attention in countering this type of criminal manifestation must be focused on the following fields, ie activities: the real estate transaction; life insurance; gambling; gifts and inheritances, loans from abroad, as well as fictitious payments to other countries through fictitious invoices for non-existent goods or services.

Unlawful means mostly go through three basic channels. A relatively small portion of the illegal amount of funds is immediately reinvested into illegal actions and maintenance and jobs. Most of the funds are invested in sectors that have „lenient entrance membranes" with high profit margins and a high degree of competence (construction, agriculture, retail and the like), while most of the funds are usually in cash carrying out in abroad. For international money laundering, the perpetrators of this crime, for reasons of safety and efficiency, recruit financial experts with a task to perform their jobs based on the existence of differences in financial regulations and banking legislation. Therefore, funds moving through the first channel have no contacts with legal funds because they are used to expand legal affairs, while other funds that move through the other two channels launder through legal financial institutions (Šaković, 2002).

The money laundering procedure takes place in three phases:

a) the placement phase (depositing, or laying);

b) the phase of concealment (transformation, or stratification);

c) the integration phase.

The placement phase (placement) implies the physical placement of financial assets acquired through criminal activity, that is, cash, whose criminal origin the money launderers try to conceal, into the financial system of a country. Placement can be done in many ways, depending on the circumstances of the situation, or the available possibilities. In practice, two situations in which this phase is realized are possible. The first, in which „dirty money" is placed or deposited in the country in which it was acquired by the criminal activity, and the other in which it is carried out in another country. And in one and the other situation, the same activity is done, whereas in a different situation, that is, in a situation when money is deposited in the financial system of another state, the physical cash of criminal origin is first transported across the state border to a country where money laundering, and then transported (smuggled money) into the financial system of that country. The cash that is acquired by the criminal is physically transported to another country in one of the following two ways (Nicević & Ivanović, 2013):

– physical smuggling (transferring over the customs line avoiding customs control measures) into a country where tax laws are more liberal, so-called. countries of financial paradise;

– depositing cash in parallel banking systems (this is done by the one who makes money laundering deposits as a deposit with some of the „underground banks" (which do not provide a transaction report) and receives a certificate which is then presented to a similar banker in another country and from it receives the cash, minus the commission fee.

Money, which is physically transferred to another country, then deposits into the financial system of that country. It should be noted here that, in addition to physically

entering a „dirty money" into one country, a situation of direct inclusion into the financial system of another country is possible through bank orders or electronic money transfer. In this situation, by the transfer itself, the deposit is opened, ie the deposit of „dirty money" in the financial system of that country, i.e. It is about the same mode of operation as in the situation when „dirty money" is placed in the financial system of the country in which it was acquired by criminal activity.

Depositing „dirty money" into the financial system of a country is carried out in such a way that the cash obtained from criminal activities is mainly paid to bank accounts, usually under the pretext of some regular activity. Namely, most often deposits are claimed under the pretext of a false business where payment is mostly done in cash, such as garages, luxury boutiques, galleries, commissions, pizzerias, restaurants, antique shops, etc. (Teofilović & Radović, 2006).

The most effective system for placing dirty money is where cash obtained by criminal activites interacts with incomes acheived through legal business, because this reduces the possibility of quickly detecting „dirty" money. Payment of financial assets acquired through criminal activity to bank accounts is mainly done in the following ways:

– paying „dirty money" with excuse that it is a regular cash operating income;

– the establishment of false or phantom companies, the so-called „phantoms" that do not actually do business, but exist only as a paravane for payments, or the deposit of cash that has been acquired by criminal activities into accounts in banks, on the pretext that these are proceeds from their legal business;

– by breaking large amounts of „dirty money" on the more small amounts and placing them in financial system by more people, on several occasions, on several different bank accounts in sums, that is, amounts that are too small or below the legal censuses, which is why they are not suspicious to bank workers. It is a method of placing „dirty money" through the structuring of financial transactions, which is mainly applied in countries where financial regulations require banks to report all transactions above a certain amount. Money launderers therefore conduct a series of transactions in a number of banks in order to keep the amount of deposited „dirty money" below the limit, that is, the amount that is lower than the one that must be declared by law, and the cash is subsequently transferred to the central account (Šikman, 2003);

– conversion of „dirty money" into market instruments of payment, which is reflected in the purchase of checks, bills of exchange, guarantees, bonds and the like. from financial institutions. This method is also carried out through a large number of couriers, which makes this activity less visible to the judiciary and police authorities. It is a technique that is also referred to as „smurfing" in criminal jargon;

– by taking loans. It is a method that is reflected in the fact that „dirty money" is mainly in the so-called „ a financial paradise is deposited in a bank, then goes to another country in which a loan is sought from a bank, offering as a guarantee of money deposited with a bank in another country. The loan obtained is then used for investing in various jobs, and the origin of the money is justified by the loan, or by the debt to the bank on the basis of the borrowed loan;

– By purchasing capital with a bunch of cash is a method of depositing money that is reflected in the purchase of objects (cars, ships, artwork, gold and precious stones, etc.) and real estate of higher value, mainly in countries that do not raise the issue of the origin of money, the so-called offshore centers. Buying capital is used as a mortgage to borrow from banks and other financial institutions. The money so obtained is then used as in the previous case;

– through other commercial activities, such as gambling. This method of placing „dirty money" is reflected in the fact that the money launderer comes to the cash casino, which comes from criminal activity, for cash at the casino cash box, he buys chips, then plays several games, after which the rest of the tokens are returned to the cashier and requires payment by on the basis of the tokens that have been awarded, and the resulting money or check is shown as a gain that is generated from gambling.

In countries where the process of privatization of social property is in progress, there is also a practice of buying socially owned enterprises that are in serious financial problems, and then the accounts of these companies are used as so-called. „water heater" accounts, on which merging all the money deposited at the accounts with different financial institutions.

The phase of concealment (transformation, ie layering, laundering) is an activity that is reflected in the separation of the assets obtained by crime from their illegal source by creating layers of transactions designed to conceal and give the appearance of legitimacy (Šikman, 2003). Namely, when cash („dirty money") has entered into legal financial flows, or converted into a bank deposit, the stage in which the illicit origin of funds is changed (disguising the illegal revenue from their illegal sources) is followed. The layering is done in such a way that a series of financial transactions are carried out, which, according to their scope, content and complexity, resemble legal financial transactions. The phase of concealment is reflected in a series of transactions that involve moving it from one account to the accounts of various banks, business entities and other financial institutions in one or more countries. Such transactions are aimed at making it difficult or impossible for anybody who tries to investigate the true origin of money and succeed in doing so. The transformation of money or goods is done in many ways. Therefore, this phase represents a continuation of the previous deposit phase, ie, laying down, and it is sometimes difficult to make a distinction between these two phases, since it is about applying more or less similar methods. Namely, when the dirty money is converted into a bank deposit, or it is found on an account, everything is done according to the applicable legal regulations, in order to conceal its criminal origin. It purchases insurance policies, givin lends, buying expensive goods, real estate, shares, foreign exchange and other financial instruments. For the realization of these activities, usualy using banks and savings banks, investment funds, payment service organizations, privatization organizations, insurance institutions, stock exchanges, gambling organizations, securities trading organizations, exchange offices, organizations for employment, various legal or natural persons performing activities related to the sale and collection of receivables by issuing cash and credit cards, organizing travel, real estate transactions, precious metals, etc. (Šaković, 2002).

The integration phase represents the final stage in the money laundering process, which is reflected in the further placement of funds acquired through crime, whose illegal origin was previously concealed or hidened. At this stage, illegal and unlawfully acquired assets are transformed into forms that are difficult to detect and monitor because they are mixing with legally acquired and lawful means. The integration of money is most often seen in the purchase of movable and immovable property and securities by lending, the involvement of several foreign banks, the issuance of false import-export invoices, spending on luxury goods, and in recent times by investing a large amount of money into the revitalized enterprises that are located in big financial problems. It is noteworthy that the methods underlying this phase are identical to the methods by which the phase of concealment or transformation is realized. A logical

question arises, what is the difference between these two phases? The difference is reflected in the goal for which they are being undertaken. In the phase of transformation, the goal is to hide the traces of its true origin, that is, to conceal the links between dirty money and the criminal activity it originates from, while the goal of integration is to insert money that has been illegally originally concealed in legal affairs, for the purpose of its uninterrupted using as legally acquired property.

Further investing „dirty money" into legal financial flows in the third phase of money laundering represents tending to continue with the realization of criminal activity by making money that is acquired through criminal activity legally investing in legally permitted activities. The essence of the integration phase, and in general of the entire money laundering process, is best be shown by one of the famous sentence relating money laundering: „That the dream of every money launderer is to pay taxes". Namely, unlike rest of economic criminals who want to realize unlawful property gain by avoiding paying taxes for the activity they legally perform, money launderers are just trying to pay income tax that has been earned by illegal activity. The question arises as to why the payment of taxes by money launderers is so important when it is actually a loss for them. Namely, the payment of the tax on money acquired through criminal activity means a confirmation to the money launderers that the procedure has been successfully implemented, that is, in the financial system of a country, that money is treated as a legitimate (Ivanović & Ivanović, 2014).

IV. Instead of conclusion

The disclosure of money laundering is primarily related to the specificities of methods of money laundering, which indirectly affect the possibility of coming to the knowledge that in concrete situations there are elements of beings of this criminal offense. These particularities are first of all reflected in the following facts:

- the disposal of „dirty money" is conditioned by prior criminal activity;
- to achieve their goals criminals approach the realization of money laundering using different methods for money laundering and a combination of them;
- that the basic and usual money laundering scheme can be definitely defined in three phases known under the names: placement, concealment and integration;
- that the process of acquiring unlawful profits, its legalization can be divided into two phases: the first one that represents the essence of criminal activity, which acquires unlawful material gain and the other that illegally legalizes against legally acquired property.

These specificities must be taken into account primarily by the memebers of state autorities which dealing with fight against money laundering, or the investigating entities of the disclosure, if they want to achieve higher degree of efficiency in detecting the criminal offense of money laundering is desired. Successful detection of the criminal offense of money laundering implies continuous monitoring of the manner of committing the crime as well as an adequate analysis of the already discovered crimes. It is precisely in this way that an initial indicative basis for the detection of certain money laundering methods is opened, which should serve as a real basis for the adequate planning of operational criminal activity that is conducted through operational criminal control and processing. In any case, the detection of this crime should not only involve members of the internal affairs bodies, but it should be the work of all bodies involved in the prevention of illegal money flows. Considering the significance of the

issue, ie the problem, the same is also dealt with by the Administration for the Prevention of Money Laundering, as a body at the state administration level that studies the methods of execution and the possibility of money laundering and proposes, or informs the disclosure authorities about them. To the information about the criminal offense of money laundering has been most often provide by the operational activities of the interior ministry employees, however, the is possibility of finding information about the committed criminal offense through legal entities (banks, financial institutions, etc.), individuals, anonymous and pseudonymous applications and public discussions, and through media. Money laundering as a form of criminal manifestation is quite specific and difficult to detect because its conspiracy methodology of committing the crime, and money launderers tend to remain undetected, or tend to perform the so-called „jump into the dark". This is reflected in the conspiratorial preparation, execution and enjoyment of success, so that the police and the criminal justice authorities are often asked to disclose, clarify and sometimes adjudicate for criminal offenses solely on the basis of indications and / or indicative chains. Given that the first phase of money laundering is mainly reflected in the conversion of „dirty money" into bank deposits, we can conclude that bank employees are in a position to spot indications that indicate that the money laundering process is ongoing. Namely, employees of the bank, based on an internal procedure, notice indications that indicate the involvement of certain persons in money laundering and transactions that are suspected of being related to money laundering. In the observation of these indications, the employees in the bank should rely on the principles of knowing the client and his business, to take into account the economic and legal logic of transactions, to price the facts concerning the status and income of the client, and in particular the economic and political sensitivity of the region in which client operates. For the practical work of the bank employees in order to timely detect the criminal offense of money laundering, the most interesting are the indications that appear more often and on the basis of which real versions can be set, ie the assumptions about money laundering and persons who are possible money launderers. These are the following indications: attempts by clients to prove their identity in a different way, not by showing out a prescribed personal identification document, nervousness, impatience and rush during the transaction, opening an account in several branches of one and the same bank, opening an account outside their place of residence where a bank it already has a branch office, motives indications, ungrounded wealth, disproportionate spending of money, frequent travel abroad for no apparent reason and other indications that indicate the money laundering and the perpetrator of these criminal activities. Consequently, special attention should be paid to establishing close cooperation with banks and other financial institutions in the field of obtaining the basis for suspicion that criminal offense of Money Laundering is committed.

Also, in operative work, with the application of appropriate operational tactical measures and actions, there may be evidence that is related to the commission of the criminal offense of money laundering, but often also occurs in a special way during the criminal investigation for other criminal offenses that is most often conditioned and conditioning execution of this other criminal offense.

In proces of detecting and investigating criminal offense of money laundering all essential elements related to the criminal offense of money laundering are clarifying and determining, which is a condition for the successful completion of the criminal investigation. Within the framework of the indication of the method of clarifying and proving the criminal offense, an operational activity should be developed which should enable the collection of facts and data to clarify the following issues:

– whether in the specific case it is a criminal offense of money laundering, i.e. whether money or other property has been previously acquired by criminal activity;

– what kind of criminal activity is committed in the concrete case, ie. which criminal offense is committed for acquiring money or assets that are the subject of money laundering;

– the way of committing the crime, and fact whether the perpetrator was aware of the fact that money and other assets originate from criminal activity;

– whether the money so obtained has been deposited into accounts or included in legal financial flows;

– whether it is ilegal money or property and what is the value;

– place, time and method of money laundering;

– whether is money laundering committed by single perpetrator or is a crime committed by several persons who are doing that as an co-perpetrators or accomplices;

– whether it is a group of criminals that is organized in purpose of money laundering;

– whether it is a person who has previously committed a criminal offense, and later deals with money laundering or whether it is a matter ofanother person, and what kind of the guiltiness is in question.

For all this, it is necessary to provide valid both material and personal evidence. In addition to unlawful property gain that may be in different forms of material evidence, it is important to find documentation related to certain transactions that allows us to track financial flows. In order to monitor the financial flows and money traces, it is necessary to restore operational activity backwards and to use various documents, such as currency exchange receipts, postal orders for payment, certificates of possession of safes, brokerage certificates, various correspondence, and the like. The bank documents including electronic documents relating to invoices on accounts, credit cards about loans, suspicious transactions, and the like, should be finded and seized. Records relating to vehicle ownership, cadastral data, enterprise privatization, etc. These records may in many cases contain both indicative and evidence-based evidence of exceptional significance for directing both operational control and operational processing, and in that sense, and evidence of a criminal offense. Therefore, in the plan of operational activities, measures aimed at finding the mentioned documentation should also be planned. Namely, the money laundering procedure is followed by appropriate documentation, so it is necessary to take measures to find the same and to temporarily seize it with the issued certificate, which will most often be achieved by carrying out criminal investigation actions, insight into certain business documentation and searches. The extracted documentation is subject to adequate forensic expertise, thus creating the possibility for providing material evidence in relation to the criminal offense of money laundering and its perpetrator.

During the application of the indicative method in clarifying and proving the criminal offense of money laundering, it is proper to focus attention on persons who can be known facts relevant to both the work and the perpetrator. From these persons, information should be collected by conducting a conversation and creating conditions for them to be heard as witnesses during the conduct of criminal proceedings. In each individual case, both material and personal evidence should be sought to ensure that the combination of material and personal evidence is a formula for success. The necessary condition for the successful completion of criminal processing is certainly cooperation with financial and other institutions with strong team work.

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