Place of the crime of money laundering within the criminal law of Serbia

PROFESSOR DR ZORAN PAVLOVIC
University Business Academy, Faculty of Law Novi Sad

DR. ALEKSANDAR BOŠKOVIĆ,
Police Academy, Belgrade

Abstract:

Determining the place of the criminal offense of money laundering within the criminal legislation of Serbia, bearing in mind all the specifics of country's legal system, is not yet completely fulfilled. Specifics of economic transition, political reconstruction and European integration processes that characterize the beginning of XXI century in Serbia brought new kinds of legal incriminations and different visions of traditional values (that determine the roots of criminal code context within its boundaries), where government reaction to the prohibited behavior is not at all simple. Protection of property, businesses, financial stability, official duties (State given employment within the official institutions), are just some of the values protected by the criminal offense of money laundering, either in criminal law code or a separate specific one. By refining the object of protection and its factical place in the law, with the amendment of incrimination it would come up with further possibilities for better results in legal protection.

Key words: *Money laundering (as a felony offense), legal security (of the system and within the system), determining object of protection, place in the criminal law code.*

1. Preliminaries

Determining the place of money laundering as a criminal offense within the Serbian legal system or in the criminal law of Serbia is a topic that is certainly not complete even after we take into consideration that more than 10 years have passed since it has been introduced in Serbian laws, first in a special law, and since the year of 2006 during which it has been officially implemented into the Criminal Code of Serbia.[1]

As a textbook example that shows how difficult it is to determine the place of money laundering offences in a special part of criminal law we can observe a trial before the Special Department for Organized Crime of the Higher Court in Belgrade against Darko Šarić and others (his associates), which is the first in a series of indictments for money laundering where in this particular case first defendant was indicted over 5 years ago. To date, we haven't come to greet a final court verdict on them in the ordinary course of the trial, except for decisions based on the plea bargain agreements between the prosecutor's office (the District Attorney for Organized crime) and some of the defendants.

[1] "Official Gazette of the Republic of Serbia", no. 85/2005, 88 / 2005- corr., 107 / 2005- corr., 72/2009, 111/2009, 121/2012, 104/2013 and 108/2014. The Criminal Code came into force and began with the implementation on 1 January 2006.

The unauthorized drug trafficking of narcotics with the main focus being in trafficking cocaine in large amounts by the organized criminal group (OCG) led by Darko Šarić has reached over 20 million euros of cash in clean profit which has set itself with the question of its ability to be laundered or as we could also view it as facilitating money's entry into the legal cash flows. This amount of money has not been exhausted with the mere purchases of houses, apartments or luxury motor vehicles. There was a task to figure out a way to disguise the origin of large sums of illegally accumulated funds and to pinpoint it into other routes of trade and legal businesses. The task of money laundering was being handled in a way that mainly OCG itself has hired highly educated professionals, with many years of experience in economics and legal professions. Economic experts (among them were two PhD level experts) had a task at hand which essentially was to find a way that would allow the insertion of dirty money (illegally acquired) into the economic system of Serbia and some other countries. Experts in law, hired by the OCG, had the assignment which consisted of using economic transactions to provide the legal framework and thus successfully complete the entry of dirty (illegally acquired) money into the economy.

This was to be done largely by creating a large number of offshore companies and other enterprises that have taken the action of putting part of the money directly into the fiscal system of Serbia, and the second part of the illegal funds are invested in the lease of agricultural land (large portions of it), the assets of companies that were acquired during the process and in the financing of their operations, as well as purchasing companies that were in the privatization process (for low amounts of their actual market value) and financing large purchases on numbers of various other real estate, concealing its (money's/funds) origin in this way. After the purchase and/or lease the OCG members continued their dirty money use as a way to finance the activities of companies that are acquired and so the money is still placed on the market thus projected as legal in terms of those companies usual business ventures. Managers of the two banks have repeatedly abused their authority and have used the money OCG provided for them in order to achieve its conversion and transmission (transaction). *Off-shore* companies are used to make the money transferred from one account to another, in order to get this money in the end, after numerous transactions to be perceived as legal. The legal basis was the conclusion of fictitious contracts for which the money was transmitted without any factual realization of the tasks which are denoted as *causa* contracts. When depositing cash in the bank, despite the existence of compliance to those actual deposits, the management of those banks did not alarm mechanisms which would file complaints and charges to FIU. This is particularly important because the depositions of money sums was carried out by private individuals whose role did not exceed 15,000 euros (the limit under which deposition is not required to provide additional paperwork and insurance of money's origin), and that the money was portrayed as his (depositors)!

These well thought out ways of money laundering would not be possible to be realized by the OCG itself without some thorough help provided by their well sponsored (with the incriminated funds provided to them by the OCG members in return for personal and professional help) helpers which consisted anywhere from consultant bankers, lawyers and other specialists with great knowledge in factical state of economics and law at hand during the time of those illegal ventures. In this way of concealing the illegal funds and projecting them as legal the irreversible damage had been caused to the long-term character of Serbia's economic system, which will feel the

consequences of those felonies for a long time. Multimillion input into the economic system of the Republic of illegally obtained money, for which there is evidence obtained from the crime of illicit drug trafficking, undermine one of the fundamental (basic) pedestals functioning of the economy: the principle of free competition which bases itself on fair competition by those market participants which create the field of fiscal trade in the whole Country and region. The fact is that members of the OCG (where there are still no verdicts against all members of the organization) possessed exceptionally high amounts of cash which they did not have to use in accordance with elements of economic logic. Their primary goal was to dirty money they put into the legal economic flows, not assessing the profitability of investments in which the funds invest, which led to the start that they must have procedures in purchasing companies, privatization and lease of agricultural land is not the same level as other participants in the market. As Nero once burned Rome they have burned principles of fair competition of other undertakings, which are disposed of legally acquired capital and who evaluated the cost-effectiveness of investments that are members of OCG uncritically invested dirty money covering its real origin. In this way the other participants in the market who are on their capital paying taxes and other duties, they had to give up their investment and lending their money, because they are not able to follow the offers that had OCG.

Assets, the economy, the financial system, official duty, legal system are just some of the legally protected terms that are affected by long-term effects of actions related to the crime of money laundering in this case for which a finale consisted of court verdicts is expected soon. The assets acquired through crime in specific cases is suspended in any case. But first things first in explaining the phenomenon in question.

2. Locating the Problem

One of the main problems that arises when setting up an analysis of the criminal offense of money laundering is the choice of the context in which to do this. One possible model is static, which speaks of a certain criminal act isolated from the temporal dimension, with the classic view that one crime remains where we are normally accustomed to find such types of offenses. Another, less common approach is seeing this crime in the context of non-legal, external influences, which ultimately can lead to doubt the traditional division of offenses on their heads and Systematics to which we are used to. This, structural or dynamic model, says that the criminal/penal law should be accompanied by social change, with a dynamic view of the real consequences of these changes in the legal system as a whole. Values as setting up this crime in any of the heads of the Criminal Code can lead to very different approaches in not only his repression but also his prevention. The development and changes in economic relations, with changes of ownership forms in the economy are certainly the reason where to look for grounds to propose changes to the penal legislation and the possible change of the criminal offense of money laundering in the legislative systematics. The offense of money laundering is a criminal offense of specifically complex nature. The different legal systems protect different legal values provided for peremptory norms of international and national criminal law, but regardless of Serbia's acceptance of the solution and generally accepted principles of the European Union has been a convergence of legislation and criminal law regarding this matter at hand.

The very criminalization of money laundering has not yet found an adequate place in the Criminal Code, which continues to cause problems in practice and everyday

implementation of law. Although all of offenses contained in the Criminal Code are seen as unique ones, it seems that the optimal solution would be that the offense of money laundering rests in a special law, with a clear separation which has not been carried out. Starting from the fact that in Article 231 of the Criminal Code the code itself continues to speak separately on assets and cash and order. Supporting the creation of a special law to regulate the prevention of money laundering in the spotlight would be means for cutting off channels that provide transmission of illegally acquired assets, proceeding that attempt in an apparently legal forms. The specificity of the nature and connection with constantly new modes of money laundering are facts that speak in a favor of a special law to be applied in order to better protect monetary (fiscal), financial and economical system. This particular fact can be explained with the almost undivided opinion of the law experts (in Serbia and region with similar legal systems) that despite the constant changes of social, economic and political conditions and opportunities in society, it is not necessary to make the permanent changes in criminal legislation as these are not, or are not sufficiently corrected inaccuracies and justified objections in favor of the crime of money laundering. It all speaks in favor of a different approach with this (and not only this) as a criminal offense.

3. Legal values protected by the criminal offense of money laundering

In Switzerland[2] criminalization of the offense of money laundering protects the judiciary branch of the legal system (Chapter 17 of the Criminal Code). The perpetrator of the offense of money laundering wants to cover up illegal benefit (assets acquired from the traffic in narcotics and other forms of crime that bring profit and could be controlled by a criminal organization) from the judicial organs and courts of law and therefore stop the court form fulfilling its lawful duty to put the perpetrator on trail and repossess[3] the unlawfully acquired assets.

And in the Federal Republic of Germany through the criminalization of money laundering protects the judicial[4] branch of the legal system. The suspect, or suspects in case of OCG, prevents access and control of police and other organs (with manipulating facts about origins of assets and funds that the perpetrator used in his illegal ventures) that are used in usual criminal detection[5] and at the same time we have occurrence of acquiring illegal material benefit by the perpetrators. The Kingdom of Belgium[6] uses criminalization of the offense of money laundering to protect the economy (or more explicitly the monetary system), explicitly defining that the perpetrator of previous criminal acts is at the same time offender of money laundering. It is interesting that in the criminal law of Colombia uses criminal charges and offenses of money laundering to primarily protecting the economy and judicial system, and on the other hand the Republic of Italy and the Kingdom of Spain uses those offenses determined by the criminal law to protect primarily assets.

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[2] Article 305.bis and 305.ter StGB Switzerland (Strafgesetzbuch).

[3] Claessens, R., *Prevention of Money Laundering,* Association of Banks of Serbia, Belgrade, 2006, p. 84th.

[4] StGB, §261 (Strafgesetzbuch).

[5] http://dejure.org.gesetze/StGB/261.html.

[6] Law on Prevention of Money Laundering of 11.01.1993. year.

In Serbia, the criminal offense of money laundering was amended in Chapter XXII of the Criminal Code – crimes against the economy[7], which ''per se'' does not mean that the only intention is to keep the economy safe. The essence of the offense is to (various forms described in the Criminal Code and the Law on Prevention of Money Laundering and Terrorist Financing[8]) disguise the source of money or assets arising from previous criminal acts of money laundering. Council of Europe Recommendation 12/81 is a general guideline (since it has a leverage on our Serbias internal legal system and thus it further protects itself from felony acts being perpetrated from regional countries), because an economic crime includes the occurrence of mergers and the formation of cartels, avoiding legislation related to taxation and financial transactions, fictitious (phantom) companies etc. According to the recommendation of the Council of Europe[9] and its conceptual framework, economic crime affects a large number of individuals, society and the country as a whole, harming the functioning of the national or international economy[10] and caused a loss of trust and confidence in the economic system, putting the crime as a center of activity as a function of making a profit as such.

Also of great importance is to mention the UN Convention against Transnational Organized Crime[11], which in Article 7 obliges State Parties to establish adequate measures to combat money laundering, but that it will endeavor to develop and promote global, regional, sub regional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money laundering.

Freedom in the economic relations is based on the hypothesis that certain relationships in the economy must be subordinated to the rule of law, regulated and protected by the legal rules. If we want to preserve stability and security in the country, it is necessary to respect at least the basic legal norms and regulations, some of which are generally the most important ones, which allow smooth functioning of free markets, respect for autonomy, but also the norms necessary implementation and protection of property. All those who do not respect the rules of law in the economy consequently threaten. Thus, the contact point of the economy and criminal justice are talking about an economic crime that has always been a side effect of the development of civilization.

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[7] In accordance with the recommendations of the Committee of Ministers of CEI No. R (81) 12 of 1981 our legislator in this chapter of the Criminal Code has included crimes of counterfeiting money (Art. 223), forgery of securities (Art. 224), forgery and abuse of credit cards (čl.225), counterfeiting characters to value (Art. 226), making, procuring or providing other means of falsification (art. 227), the issue of waiting and use of credit cards without coverage (Art. 228), tax evasion (Art. 229), smuggling (230) money laundering (231), abuse of monopolistic position (232), unauthorized use of someone else's company (Art. 233), dereliction of business operations (čl.234), causing Bankruptcy (Art. 235), causing false bankruptcy (236), damage Creditor (Art. 237), abuse of authority in economy (Art. 238), violation of business reputation and credit standing (art. 239), revealing business secrets (art. 240), prevention of exercising control (Art. 241), Illicit Manufacturing (Art. 242), trafficking (čl.243) deceiving buyers (art. 244), falsification of marks of labeling, measures and weights (Art. 245).

[8] "Official Gazette of the Republic of Serbia", no. 20/2009, 72/2009, 91/2010 and 139/2014.

[9] Quote from the report of the report on the situation of organized crime in 2005.

[10] According to the Economic Crime Survey 2003, which examined the 89 on the list of 1000 companies, and for two years, 24% were victims of economic crime: 15% of money laundering, 60% of fraud, 20% of cybercrime, 18% corruption. V. http://pwcglobal.com/gx/eng/cfr/gecs//PwC_GECS03_switz_eng.pdf

[11] The Convention was adopted in 2000 in Palermo - the so-called. "Palermo Convention", and the Republic of Serbia had ratified in 2001 (Official Gazette of the FRY - International Treaties ", no. 6/01, p. 20-39).

Using the term for this kind of economic criminal offenses can lead us astray, so that we ignore what are its consequences in all (other) forms of life and work. At the highest level of government are those who illegally divert resources from those who are dedicated and who will have the benefit of tax collected. International terrorists, who use the same techniques as other criminals to collect and transfer money around the world, pose a threat to all communities equally. At the state level, many lose their jobs, of which suffer and their families. If, therefore, money laundering call economic crime, it does not mean that it is less dangerous than other forms of crime. In all countries, it is equally necessary that the state as a whole, judges, prosecutors, police and others, give appropriate weight to economic crime, and to allocate sufficient resources to be responsible were punished.

Economic crime threatens the credibility and security, economic activities and the functioning of financial and legal order in its entirety, causing damage and consequences in different socio-economic levels[12]. And as much as the State legislation has done so far in order to eliminate these consequences, the practice is still enforcing the Prevention of Money Laundering limited by insufficient training of staff directed to prevent the crimes of occurring, experience and funding bodies in the past and criminal proceedings[13]. Money laundering in the context of economic crime, where only the original criminal act related to the acquisition of tangible benefits should be distinguished from those offenses relating to some form of physical misappropriation. For more complex element of money laundering, the harder it is to recognize the illegal action behind the crime committed, and accordingly prepare enough evidence for the successful conduct of criminal proceedings[14]. It should be noted that money laundering is more pronounced in developed countries, especially those where a significant actions of transnational mafia-like organization. Mafia organized illegal production, but also through money laundering through certain banks to participate in legal production and achieved some control over legal production and conduct of business by the banks[15].

Economic crime is a dark side of cultural and technological development of mankind and connectivity in the world. The scope of economic crime is a reflection of the instability of certain states or communities and the affirmation of their legal system. During the implementation of an independent survey on economic crimes for the year 2003 in the UK, it is noted that their national economy in 12 months suffered losses totalling £ 32 billion, of the crimes of fraud, embezzlement and money laundering, and that an additional 8 £ billion spent on combating these phenomena. In the international context of the scale of the problem of money laundering is still evident. The development of professional ethics[16] and customary manner of supervision or control, as well as

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[12] V. Augsburger-Bucheli, I., *Institute for combating economic crime, measures taken to combat economic crime and organized crime in Switzerland,* Proceedings of the Institute ILCE 2005, cited as an example the crimes of money laundering, violations of insurance law, the rules on competition , stock exchange, false bankruptcy, fiscal fraud, insurance fraud, customs and others.

[13] This also applies to a method for general criminal prevention.

[14] V. Clark, R., *Money laundering and international financial crimes, intriguing crime and skilled laundering techniques from the perspective of lawyers, economic crime and money laundering - serious business,* Book, investigation and prosecution of money laundering and terrorist financing, Belgrade, Documents 2005th , p. 2.

[15] Bošković, M, Bošković, A., *Corruption - money laundering - the financing of terrorism,* Faculty of Security and Protection, Banja Luka, 2011, p. 165th.

[16] V. RSM Robson Rhodes Economic Crime Survey 2004, confirmed by the British Ministry of iternal affairs.

ignorance of the actual impact on the economy of a particular criminal offense within the economic (fiscal) crime has undoubtedly contributed deficient and slow decision-making in individual cases before the courts. The phenomenon that the courts successfully handle minor and classical crimes (those not influencing the society as a whole rather than specific events), but crimes that threaten the economy are present in many countries in the world for example and along these lines we can see that in the Netherlands, Germany or Italy they indeed are. Feel free to be mentioned here that Serbia, without any exceptions in any part of the country, where the courts largest backlog of unsolved cases rest just from Chapter XXII - crimes against the economy[17]. Analysis of these phenomena, a broader view of the failure to solve the problems of criminal justice in this particular matter and the desire for confiscation of illegally acquired property gain have finally resulted in the criminalization conceptually of new criminal offenses – money laundering.

The offense of money laundering in a separate part of the Criminal Code is classified in the group of criminal offenses against the economy, meaning that the legislator considers the economy of the Republic of Serbia for a special object of criminal protection. The Criminal Code does not define the concept of economy or economic system, or define the notion of business entity[18]. Illegal activities, although formally performed in the same manner as permitted, are not included in business operations. In the criminal protection of the economy to the forefront to put the freedom and equality of economic activity, not the protection of economic relations and of themselves (subjects in those relations and the working sector carrying most of the burden). Criminal law provides additional protection ensuring equal economic conditions for all operators, and a free space in which to operate economically and market mechanisms for all members of society should have positive effects[19]. Concepts such as the economy, trade relations and the likes of it all represent a certain kind of generalization in criminal law which points to increased caution in applying the law. Because, for the full application of the principle of legality in criminal law, in addition to legislative planning is obvious that a great contribution to have a science of criminal law and jurisprudence, but also the standards of the entire corpus of law.

If we look at things like this we can conclude that in the Criminal Code in Chapter XXII – crimes against the economy, it is a offense that threats the economy as a whole. It would be a crime counterfeiting money, counterfeiting securities, counterfeiting and abuse of credit cards, etc. Through which dirty money (Art. 231) directly affect the monetary and economic system as a whole. Some of them[20] contain notions about protecting buildings and assets.

However, money laundering as a criminal offense in Serbia appears as one of the most common forms of organized crime,[21] along with drug trafficking, extortion,

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[17] Here we do not lag behind in the slow resolution of no criminal offenses against official duties.

[18] In Chapter XIV of the Criminal Code, Article 112. Definitions: Count 21, the business entity is an enterprise, other legal entity that performs an economic activity and an entrepreneur (who is newly introduced category compared to the situation before the entry into force of the Criminal Code of 2006). Legal person who in addition to their core activities perform economic activity is considered to be business entity only when it violates this activity.

[19] Taken from Stojanović, Z., *Commentary on the Criminal Code,* Belgrade, 2012, p. 536th.

[20] The offenses referred to in Article 223 to Article 245 of the Criminal Code of the Republic.

[21] About organized crime in Hungary see: Tóth, D., István Gál, L., Kőhalmi, L**:** *Organized Crime in Hungary* Journal of Eastern European Criminal Law, no. 1 (2015), p. 22-27.

kidnapping, human trafficking, corruption. With this in mind, it is important to emphasize that in this case, may order special investigative actions to detect and prove this crime was facilitated. Given the nature of the offense of money laundering there are steps of particular importance to be made, likes of secret surveillances of communications, secret surveillances and recordings of suspects and simulated transactions[22].

The issues raised here are: that the legal validity of the legislator protects the criminal offense of money laundering, as well as whether it is relevant self laundering or money laundering from criminal activity own (and a specificity relating to the time limits of the law)[23]! In comparative law, based on the interpretation of the regulations[24] to target them give different answers from the protection of the economy and monetary system, property, and to justice.

In jurisdictions where criminalization of the offense of money laundering protects the economy, the provisions on liability of the perpetrator of previous criminal offenses for money laundering are more often exposed than in the countries in which the legislator through criminalization of money laundering protects the judiciary branch or private property and assets. Newer FATF recommendations (Recommendation no. 1) and the methodology of the IMF / FATF / WB for assessing compliance with legal and other regulations, as well as their execution, points to revalue and edit the responsibility of the perpetrator of previous criminal acts of money laundering, if such a regulation is in accordance with national law.

Among the various reasons why they are in the fight against crime legislative bodies in the world decided to criminalize money laundering, we will present attitude of the American author Nadelmann-and that's one of the solutions for the identification and prosecution of white-collar crime, because it is generally difficult to prove that they participated in the execution of previous criminal acts, and even harder to take away their illegal benefit[25]. Obviously, the leaders, the purchaser or instigators in the commission of offenses are most closely connected with material gain from these parts. The final beneficiaries of laundered money they wanted the unlawfully appropriated money to be use for themselves, that part of the revenue used alone, and that the remaining part reinvested in crimes that will bring them new benefits, or in the legitimate activities that could accumulate more wealth that they themselves already have. Money often not fully discharged from their hand and often even themselves take steps to go trough the money laundering process themselves. The impact of these perpetrators and leaders of organized criminal syndicates threatens values on which the modern market economy and creates favorable conditions for corruption or unfair competition. One of the additional reasons for the criminalization of money laundering originates from the common notion that the new offense punishing enables professional money launderers who are active perpetrators of past crimes to keep unlawful material

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[22] Details about the special evidentiary actions in criminal procedural legislation of the Republic of Serbia see: Bošković, A. Pavlovic, Z .: *Special evidentiary Actions in the Function of Combating Organized Crime in Serbia,* Journal of Eastern European Criminal Law, no. 1 (2015), p. 40-57.

[23] About applicability of the RS Law, in conjunction criminal offense of money laundering, as a kind of rarity in criminal law, v. longer with the Pavlović, Z., *Criminal Law characteristics of money laundering in domestic and international law,* PhD, Law School, University Business Academy in Novi Sad, 2008, unpublished.

[24] Example: Germany, Belgium, Spain, Italy, Switzerland, Colombia.

[25] Nadelmann, E. Cops Across Borders: The Internationalization of US Criminal Law Enforcement, University Park, Pennsylvania, 1994, str. 388.

benefit and judicial authorities prevented the withdrawal of such funds. In other words, such a measure was passed two things: first, measures to prevent and detect the level of financial institutions that the state ensured that the main carriers of the legitimate economy (financial institutions, agents and others) do not allow the entry of dirty money into the economy, and second, the seizure illegal material used the money launderers. In this way protects the judiciary, economy and property, and enabled the confiscation of property acquired through crime.

The offense of money laundering is not only a criminal offense that is relevant to punish third parties who are perpetrators of past crimes and at the same time they are helping themselves and their counterparts to keep and use illegal benefits acquired through illegally acquired funds. Before the criminal offense of money laundering, there is criminalization of the offense of concealment. Of course, the crime of money laundering and the criminal offense of concealment are two independent and autonomous offenses, but they do have some similarities.

4. The offense of money laundering and the criminal offense of concealment

The first concepts related to criminal offenses of money laundering were made by simply using certain provisions of the existing criminal law norms. In Germany, Austria and Switzerland we have examples where they have used certain parts of the text that already introduced the offense of hiding – handling of stolen goods, ''die Hehlerei'', as a criminal offense that is relevant in order to protect the property, and the text itself had some new content added to it. In the Scandinavian countries (Finland and Sweden) The offense of money laundering are not incriminated, but the issue of seizing illegally acquired funds and assets were solved using the provisions of the criminal offense of concealment (money receiving offense).

Although at first glance very similar, the offense of concealing the crime of money laundering and the criminal offense of money laundering itself are at a more detailed analysis of individual legal codes practically two different offenses. The offense of money laundering is the general, special and autonomous action. The reason for this is in the legal values to be protected: the crime of concealment is motivated by the circumstance that it is carried out, usually in relation to matters that are acquired by committing a crime against property, usually in the form of movable assets, which can be determined by property (Property) Law, and the crime of money laundering is a particular object of criminal protection of legal regulations in the economy. The legislator uses criminalization of money laundering in order for the legislation to keep its function in protecting the judiciary branch, and legal values on which the modern economy (fair competition, financial system, free market, equality of all forms of ownership). The placement of dirty money into the financial system, for example, represents unfair competition, because such money is not burdened by taxes and contributions. Equality operators in the market is therefore impaired, which consequently affect the stability of the market that will respond to the changed circumstances and cause negative consequences for operators acting under the principle of ''Treu und Glauben in Verkehr'' *(bona fidae).*

For the offense of hiding/concealing illegally acquired funds, this is the same property that is the object of criminal protection as with previous crimes. The sense of determination to conceal as an independent criminal offense in the Criminal Code that

prohibits the extension of unauthorized use of items owned by other persons, companies, business and include persons where a fact is that they know that they are perpetrators of crime or what is to them an desirable asset through sale or exchange masks, push through, buying, receiving pledged or otherwise obtain illegal funds. Concealment is in the group of criminal offenses against property and provides legal certainty in bilateral legal affairs (civil legal relations).

In case of concealment, therefore, it is primarily about the available objects (especially mobile) derived from one or more offenses, it does not thereby follow specifically defined purpose. Disposing therefore arises crime. Suppress protects the legal regulation of civil relationships and damaged.

When money laundering is at the forefront of property which the perpetrator wants to convert or transfer with knowledge that such property is illegally acquired, proceeds along with the crime with intent to conceal or disguise illegal origin of the property, or conceal or misrepresent facts about the property with the knowledge that the property originates from a criminal offense, or acquires, holds or uses property with knowledge at the time of receipt, that such property is proceeds of crime. Concealing the real origin of material used is a special intent of the perpetrator when money laundering. The perpetrator of this crime does not conceal the movable property, but its source.

In doing so, they could conclude that concealment in money laundering means a special form intent – 'dolus directus praemeditatus'' (The most severe form of direct intent). Consequence of – laundered money – is exactly determined, the precise form that the perpetrator intended. Also, the perpetrator of the offense of money laundering based planning, prepared and carried out only a crime. Concealing contaminated sources of money or property is planned.

The crime of concealment is different, in which the concealment of fact, for whom the perpetrator knew or had and could have known that it was the proceeding of the crime itself (or making grounds that make such actions possible), or that, what was for it through sale or exchange, only one of the procedures who, like other acts, is a special form of assistance after committing the crime and who is also the target of the crime. It is about covering up the subject of the offense. It should be noted that this is not about you in terms of participation, but about the help concealer or distributor, without first offering the promise of an offender after the commission of the basic criminal offense and that relates to items that are part of those obtained.

Accessoriness legal nature of the offense of concealment presupposes the existence of another crime that is needed, similar to that of money laundering, objectively prove. The association of the offense of concealing the previous criminal offense comes to the fore when the offender both parts of the same. Concealment, in fact, compared to the previous criminal offense, is impunity subsequent offense, the essence of which is the realization of intent by the offender had in the execution, because, regardless of whether it is a case of real or concurrence of circumstances, in such cases the concurrence circumstances always apparent. The offense of concealment, then, can make the perpetrator of previous criminal acts, in other words, the perpetrator of previous criminal acts can not be held liable for the criminal offense of concealment. In the same way are not introducing criminalization of self laundering justified in the Czech Republic, Hungary[26]

[26] Gál István László , Igor Vuletič: *Main characteristics of Hungarian and Coratian anti-money laundering systems* In: Drinóczi Tímea , Takács Tamara (szerk.) Cross-border and EU legal issues: Hungary-Croatia . 647 p. Pécs; Osijek: PTE Állam- és Jogtudományi Kar, 2011. pp. 185-202.

and Poland in 1996. But these countries have introduced as punishable the act of money laundering in their own criminal law as early as 2001 and 2002, and thus sanctions can be imposed for this punishable act.

5. Instead of conclusion

In the fight against money laundering, there is an obvious intention of Serbia (or it's judiciary branch and its legislation) for the modernization and development of all the leverages in this fight against these crimes. All the above characteristics of this struggle should be seen in light of the newly upcoming threats of money laundering in our country, such as off-shore financial centers, new technique of payments and its implementations in the fiscal system. The rapid expansion of Internet technology, the emergence of newer and newer techniques of payments, as well as the development of new ways of doing business (e.g., Internet banking, internet business with securities and other e-banking services) open up a wide space for concealing the origin of illegally gained profits. National and international experience shows that there is no successful fight against money laundering without the development of pre-defined strategy, team building of professional well trained staff, specialization and professionalization of the compounds of this security sector.

In terms of money laundering[27] we could speak in favor of the current system, and also in favor of regulation in a special criminal law. The current system has been established on the basis of the examination of cases that are in operation and therefore does not cause a lot of difficulties in practice. The use of all legal measures that are related to money laundering, special evidentiary actions and investigative techniques for money laundering, that judicial authorities no longer find strange, but certain positive practice is still developing slowly[28]. Of course, the regulations related to the crime of money laundering is probably not complete and will change more often than is the case with other crimes, because of its specific nature and connection with the new modalities. While Serbia is joining regional and international integration processes, we can expect more such interventions. It still speaks in favor of a special law that would comprehensively and transparently edit money laundering issues in terms of it as a legal offence. Thus interventions through the Criminal Code were perhaps less numerous, and criminal law (financial) regulations would be clearly regulated in a legal document. In doing so they could reopen the question of the legal value of the money laundering actually threatens or protects, although as to argue that that is manned good monetary and financial system, as well as the value in the economy. Sure, if you would support the creation of a special law to regulate the field of fight against money laundering had to take care not to repeat the mistakes of the previous system, and use all these changes for us to bring the new legislation concerning this issue to utmost perfection.

The pressures of the international community have led to a raised level of protection of democracy from the real threats we face today as the growing trend of criminalization of society, which includes also the crime of money laundering and all its

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[27] Gál István László: *Some thoughts about money laundering* In: Fenyvesi Csaba, Herke Csongor, Mészáros Bence (szerk.) Bizonyítékok: tiszteletkötet Tremmel Flórián Egyetemi Tanár 65. Születésnapjára. 681 p. Pécs: PTE Állam- és Jogtudományi Kar, 2006. pp. 167-173. (Studia iuridica auctoritate Universitatis Pécs publicata, ISSN 0324-5934; 139.)

[28] The first final verdict in Serbia was brought out 10 years ago, but the increasing number of indictments for the crime of money laundering, which entered into force in favor of it.

harmful effects it produces. Therefore it is necessary to make every effort necessary to already adopted international conventions that are beginning to be applied and implemented, and international standards and rules to involve in our judicial practice along with those efforts. The focus of the fight against money laundering and terrorist financing have made the cut for channels that provide transmission crime acquired proceeds in an apparently legal forms. Difficulties that we encounter in this struggle are neither small nor simple. Unnatural circulation of dirty money is unclear and because OCG's way of doing illegal activities in the field by resorting to bank accounts of shell companies in tax havens, making circulation across multiple jurisdictions and legal systems very possible.

The basis of the fight against money laundering is to seize the proceedings of crimes it generates. Thus preventing the penetration of dirty money into the economy. On the other hand, the confiscation of illegal proceedings represent extraordinary budgetary income. Just because the state authorities and other participants in the chain of combating money laundering will have even more to improve the understanding of the measures that are available and act more effectively. The courts will have to start to use the powers they already have in the management of seized assets and act in accordance with the rules of conduct of a prudent businessman in terms of temporarily seized material gain. Costs of States because of poor asset management defendants are still too high. Economic considerations are just struggling with prosecutors and judges, and if you are not started to use in their work, these costs and damages will continue to exist.

The conclusion of the type that could be better if there were more staff in this area, more cooperation, better legislation and more information technology is incomplete because it lacks the most important thing, that good will for a coordinated operation. The human factor which would enable the full implementation of existing regulations would mean a different organizational pattern of work, and took over the leadership role of one of the participants in the proceedings that the state bodies of water ranging from prevention to sanctions criminal offense of money laundering. According to the current state of affairs, it seems that the leading role should belong to the public prosecutor, as the head of the preliminary investigation, but the prosecuting authority, legitimized by the State.

More advanced equipment in the institutions will reach their full effect only if her role and place of which should be realized in one of the state institutions that have specific obligations and relationship with money laundering. More training in the field of financial and economic crime, with a detailed analysis of time intervals in the interaction with short-term operations of law enforcement. The suspect for money laundering offenses have to be followed by the identification of the verdict, and all institutions must have the same definitions and data processing.

As to the question, whether under the current legislation, punish and self laundering, and whether he should be punished for this behavior, if the same person committed the previous criminal offense and the criminal offense of money laundering, or whether there is a subsequent, exculpatory actions, it is our opinion that in the first part of the question is also the answer. In fact, under the current legislation does not provide exculpation of criminal liability that the person who executed the previous criminal offense and then make any of the actions of the offense of money laundering. Our argument, we analyzed the relevant provisions of Article 231 of the Criminal Code, but also through other regulations, which we pointed out the simple application of the

second (other) legislation. And it's adopted international conventions, where we put the reserves on the basis of which it would be clear that we put a limit regarding non-application of the provisions on the punishment for self laundering.

In any case, in order to reach a proper implementation of prevention but also repressive measures by all relevant authorities and the relevant activity of the government in making the legal, economic, financial and other measures, and the existence of expressed political will of the state to counter money laundering, necessary is an analytic approach, through harmonization of the statistical analysis and a common approach to resolving this problem. In this battle doctrine has its place, where to offer analyzes and proposals for the adoption of regulations that will allow the competent authorities to cope effectively within their jurisdiction against these international and national phenomenon. More practices achieved through the adoption of final court decisions that will certainly contribute, as well as permanent education of all the factors involved in this fight, giving contribution in the timely detection of money laundering in all its forms, discovering the same when you acquire the essential elements of the crime of money laundering, security evidence and trial for the same offense based on international law, the constitution and the laws.

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