

aktuelna tema

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MONEY LAUNDERING – THE OFFENSE AGAINST THE ECONOMY AND A CONTEMPORARY GLOBAL PHENOMENON

Abstract: Money laundering as a form of economic crime is present in both national and international conditions. Despite a large number of definitions, we can say that money laundering refers to a circulation of illegally gained profits, during a shorter or longer period of time, in order to, in a cycle of transformation, at last gain ostensibly legitimate profits. The subject of analysis in this paper were the results of the judicial authorities in Serbia in criminal proceedings against adult perpetrators of crimes against economy. The representation of money laundering in Serbia is analyzed through its relationship with the number of adults and issued convictions for the group of criminal offenses against economy during the period from 2012 to 2015, and then, for all crimes on the territory of Republic of Serbia in that period of time. The given results indicate a very modest participation of this crime in the total crime in the country. This points out primarily two things. Namely, money laundering belongs to the group of transnational crime, and it is difficult to be detected and proved in subsequent proceedings. Furthermore, money laundering is among the crimes where there is a great „dark number“, and there are many activities in this sphere beyond the reach of the justice system and official statistics.

Key words: *Money Laundering, Crimes against the Economy, the Criminal Code*

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Introduction

Generally speaking, crimes against the economy represent those activities that means an attack or threat to the economy as the basis of social relations and permanent building a society.¹

One of the most common areas of contemporary crime certainly is an economic crime. Economic crime in Serbia is characterized by a complex crimes, especially in finance, accounting, banking, foreign trade, as well as in the privatization process.

In Europe today there is probably no country in which tendencies of development of crime are so interesting to criminologists, such as is the case with Serbia.²

Typical criminal acts of economic crime, which belong to the group of criminal offenses against the economy of the Republic of Serbia are: counterfeiting money and securities, forgery and abuse of credit cards, tax evasion, smuggling, money laundering, abuse related to public procurement, causing bankruptcy, causing false bankruptcy, abuse of authority in economy, etc.

Money laundering as a form of economic crime is present in the national and international level, and for this reason all countries are interested in its suppression, because it undermines the vital values of each society. In any case it is not a problem with which only Serbia faces. This is a global problem for all democracies and economies, especially those in transition.³

Money laundering is a form of crime that affects all countries of the world,⁴ because the desire to gain profit is the main motive for the largest number of criminal offenses committed in the field of organized crime.⁵

Money laundering in its basic definition represents the legalization of capital obtained from crime. It consists of financial transactions to disguise the origins of money and other forms of capital on the market. It consists in the falsification of financial documents and manipulation in the system of interbank transactions. In recent years, significantly expressed in tax evasion, illegal

¹ Čeđović, B., Kulić, M., (2014). Krivično pravo, Novi Sad, Univerzitet Privredna akademija, Pravni fakultet za privredu i pravosuđe, p. 463.

² Ignjatović, Đ., (2007). Stanje kriminaliteta u Srbiji: analiza statističkih podataka U: Đorđe Ignjatović (ur) Stanje kriminaliteta u Srbiji i pravna sredstva reagovanja, Beograd, Pravni fakultet Univerziteta u Beogradu, p. 11.

³ Kučević, S., (2014). Krivičnopravni aspekt pranja novca. *Pravne teme* 1(2), p. 134.

⁴ Zirojević, A., (2017). Specifičnosti pranja novca u bankarskom sektoru, *Pravo – teorija i praksa* 34 (7-9), p. 16.

⁵ Matijašević, J., (2010). Pranje novca, aktuelni oblik organizovanog kriminala – manifestacije, metodi i posledice, *Pravo – teorija i praksa* 27 (5-6), str. 119.

trafficking in drugs and arms, in an organized gambling, prostitution and racketeering, as well as in the process of privatization in the former socialist countries of Eastern Europe, and in organized criminal channels in the West.⁶

The aim of this paper is that, in addition to the theoretical definition of economic crime and money laundering, and analysis of relevant international documents, closer analysis criminal offense - Money laundering, and with the research part, which will be based primarily on quantitative data analysis, present its relationship with overall crime in Serbia, as well as quantitative data of the group of criminal offenses against the economy.

Economic crime and Money laundering in the legal theory

In theory there is no unique opinion on the concept of economic crime. What particularly characterizes contemporary forms of economic crime are its organized forms, and close links of organized crime and modern forms of economic crime.

Forms of crime against the economy and economic system include offenses which are directed against the business activity and economic system. The forms of crime in this area are known for their ability to be adapted to the specific socio-economic and political conditions, so that they experience certain transformation, but there are also new forms of crime. Economic Crime include those acts that appear in the field of industries and manufacturing, construction and urban planning, trade (buy or sell) of the foreign transport (import and export), as well as the criminal acts that have been linked to the process of restructuring.⁷

Money laundering is certainly a very significant criminal offense in the sphere of economic crime and the very famous criminal offense against the economy. The term 'money laundering' originated in the United States, at the time of the prohibition, in the twenties of the last century. Earned money of illegal production and smuggling of alcohol, criminals are portrayed as earnings that were achieved in the laundry and car wash. However, the term - Money laundering originates from an English word (money laundering), which means legalization of profit which is gained with criminal activities.

In legal theory there are different definitions of money laundering.

⁶ Bošković, M., (1999). Kriminološki leksikon, Novi Sad, Matica srpska, Univerzitet u Novom Sadu.

⁷ Šikman, M., Domuzin, R., (2013). Fenomenološka dimenzija privrednog kriminaliteta. *Bezbjednost, policija, građani* 9(3-4), pp. 6-7.

According to a broader definition, money laundering is the process in which the income, for which there is reasonable suspicion that they acquired through criminal activity, transmit, transfer, transform, share, or modify by legal means, for the purpose of concealing or disguising the true nature, origin, purpose, movement or ownership of these revenues. The aim of the process of money laundering is to make that the funds obtained from illegal activities or associated with them, are shown as legitimate.⁸

According to other conceptions in legal theory, which favored immediate conceptual definition, money laundering means any act or attempted act that hides or disguises the illegal origin of funds, so that it appears to originate from legitimate sources.

According to Vuković money laundering means the set of operations (mostly banking and financial) which conceals the origin of illegally acquired money, and that money appears as a legal, and financial transactions aimed at creating the illusion that money has been legally earned.⁹

Kulić states that money laundering means activities aimed at the legalization of money earned from criminal activities. Participants in money laundering use many different types of financial transactions in order to conceal the true origin of the money, and also in order that such money becomes legal tender in traffic on the money market, which ensures they normally use in business relationships where they place their capital.¹⁰

Mićo Bošković states that the content of the concept of money laundering includes subjects activity, usually those in the informal economy and organized crime, which creates conditions for the legalization of illegally acquired profits, which conceals its criminal origin and creates a notion of lawful activities. Money laundering is used as camouflage for illegally earned profit, and to conceal criminal activity of individuals that in everyday life portrayed selves as honest, respectable and economically powerful citizens.¹¹

Mašnjak and Kaselj reported that money laundering involves any concealing the origin illegally acquired money, so it was used to carry out the permitted activity or acquisition of property. The essence of money laundering is the conversion of illegal money obtained by illegal means in legal money with cover in the legal work or activity. In order to achieve this, it is necessary to

⁸ Skakavac, Z. (2003). Pojam i pojavni oblici organizovanog kriminaliteta - magistarski rad, Novi Sad, Pravni fakultet.

⁹ Vuković, M., (1993). Siva ekonomija – tamna brojka kriminaliteta, *Bezbednost* 35 (1).

¹⁰ Kulić, M., (2001). Pranje novca, privredni kriminal i korupcija, Beograd, Institut za kriminološka i sociološka istraživanja.

¹¹ Bošković, M., (1998). Organizovani kriminalitet, Beograd, Policijska akademija.

achieve the legality of money in the financial, banking or other business operations, through a single, usually a few, at first sight, unrelated transactions.¹²

Mršević points out that money laundering is illegal, often sanctioned criminal activity, which includes counterfeiting business and financial documents, or performing other actions, with the aim that money obtained in illegal business activities, appears as the profit from the legally permissible economic activities.¹³

Last definition expresses the essence of the process of money laundering. However, it mentioned only falsifying business documentation, as well as act to conceal illegally earned money, while other operations does not specify, but only uses the term “other actions” and reduces its value.

Money laundering could be most generally defined as the process of concealing the existence, the illegality of sources and the use of revenues that is the result from criminal activity, and their legalization. In the center of the process of money laundering is an deception: a false representation to the competent authorities ways of acquiring property as lawful, and its use as legally earned income.¹⁴

Convention on laundering, search, seizure, and confiscation of the proceeds from crime¹⁵ in Article 6 (Laundering offences) provides that money laundering exists if the perpetrator knows that it was illegal profits, and do one of the following: the acquisition, possession or use of such property; conversion or transfer of these assets, as well as assistance to any person who is involved in the commission of a specific criminal offense to avoid the legal consequences; concealment or disguise of the legal nature and origin of these assets; participation in, association or conspiracy to commit, attempts to commit, aiding, abetting, facilitating or counseling to commit any offense which is determined in accordance with this Article.

Analysis of these definitions indicates the essential characteristics of this type of crime: disposal to ‘dirty’ money is conditioned by the previous criminal activity; this is the process of concealing the existence, nature and origin of illegally acquired funds; laundering process includes incorporating an illegal gained profit by transforming, switching, by exchanging, by concealing

¹² Mašnjak, B., Kaselj, Ž., (1998). *Sprečavanje pranja novca*, Zagreb, MUP Republike Hrvatske.

¹³ Mršević, Ž., (1992). *Sprečavanje pranja novca* među nacionalnog zakonodavstva, *Jugoslovenska revija za kriminologiju i krivično pravo* 4.

¹⁴ Banović, B. (2002). *Obezbedenje dokaza u kriminalističkoj obradi krivičnih dela privrednog kriminaliteta*, Beograd – Zemun, Viša škola unutrašnjih poslova.

¹⁵ Convention on laundering, search, seizure, and confiscation of the proceeds from crime, Council of Europe, Treaties and reports, Strasbourg, 1991.

the origin and purpose, by mixing with the legal means or otherwise, into legal finances; money laundering in addition origin of illegally acquired funds, concealing also the criminal activities of individuals and criminal organizations; the ultimate aim of money laundering is uninterrupted use of revenues from criminal activities and avoid penalties for committed crimes.¹⁶

Money laundering in international legal acts and Serbian criminal legislation

Crime, especially the organized crime, has been completely overcome national frontiers and became an international problem. Consequently, money laundering is present in a large number of countries. In order to combat with illegal activities in this sphere, the international community has joined the standardization of the legal obligations of individual countries in order to take adequate measures, resources and procedures to eliminate such illegal activities. So, based on certain international legal acts, a number of countries in their national criminal legislation introduced provisions for sanctioning money laundering.

The United Nations in Vienna in 1988 enacted the Convention against illegal Traffic in Narcotic Drugs and Psychotropic Substances (known as the Vienna Convention, adopted on December, 19 1988). This Convention provides measures on combating illegal drug trafficking, but also the obligations of States that in their criminal laws introduce the crime of money laundering. Then mainly linked money laundering and money obtained from the illegal trade in drugs and psychotropic substances.

At the Convention the President of State and Government of the Group's seven most developed countries in 1989, discussed the issue of money laundering, and for more effective combating of this phenomenon at international level was established by a group of financial actions which in 1990 adopted the document: Forty Recommendations to combat money laundering, which includes strategic elements and refers to the basic directions in combating money laundering.

In this regard, it is also significant the Convention of the Council of Europe adopted in Strasbourg in 1990 (known as the European Convention on Money Laundering) on money laundering, conduct investigations, execution of seizure and confiscation of proceeds gained by the crime. This Convention stipulates the obligation to introduce the offense of money

¹⁶ Skakavac, Z., op. cit.

laundering in the national criminal laws, but in this sense much wider than the Vienna Convention, which money laundering linked to trafficking in drugs and psychotropic substances.

UN General Assembly in 2000 adopted the Convention against Transnational Organized Crime, which also includes money laundering. The Convention requires that States in their national laws prescribe the following four offenses: participation in a group that deals with organized crime, money laundering, corruption and obstruction of justice.

In the context of the criminal legislation of the Republic of Serbia, money laundering is a crime that belongs to specific crimes against the economy, and to the group of criminal offenses against public finances, and is regulated by Article 231 of the Criminal Code.¹⁷

According to the definition of the Criminal Code, money laundering makes anyone who carries out a conversion or transfer of property, knowing that such property is proceeds of crime, in order to conceal or disguise the illegal origin of the assets, or conceals or falsely presents the facts about the property with the knowledge that this property is derived from criminal acts, or acquires, keeps or uses property knowing, at the time of receipt, that such property is proceeds of crime. For the basic form of the offense, is planned cumulative prison sentence of six months to five years and a fine. If the amount of money or property exceeding one million five hundred thousand dinars, the offender shall be punished with imprisonment of one to ten years and fined. Who did the offense with the property that obtained from a criminal offense, shall be punished with penalties previously laid down, while the execution of the offense in a group, shall be punished cumulatively by imprisonment of two to twelve years and a fine. Then, who commits this crime, and could or should have known that money or assets are the proceeds of crime, shall be punished with imprisonment up to three years. In this case it is the unconscious negligence. Criminal Code provides also the punishment of the responsible person in the legal entity (if the responsible person knew, or could have been obliged to know that the money or assets are the proceeds of crime, shall be punished as prescribed for the offense), but also provides the confiscation of cash and property arising from the commission of the offense (security measure).

The basic form of the crime - Money laundering is defined alternatively (conversion or transfer of property; misrepresentation of assets, acquisition,

¹⁷ Krivični zakonik, *Službeni glasnik RS*, br. 85/05, 88/05 - ispr., 107/05 - ispr., 72/09, 111/09, 121/12, 104/13, 108/14.

possession or use of property derived from criminal activity), whereby the perpetrator may be any person. The offense can be made only with intent.

Unlike conversion, which represents the changing of one currency to another and which is mainly carried out through banks, exchange or otherwise, transfer the property is transfer of property rights or objects that have a property value, to another person or legal entity. The transfer can be done in various ways: by selling, giving as a gift, returning the debt, etc. Concealment or misrepresentation of the property is done by omission, in a way that does not mention the important circumstances known to the offender, which refer to the property, while the misrepresentation is giving false information about the circumstances, which are in most cases related to the origin of the property, its value, the method of acquiring, etc. Finally, the crime can be done by acquisition, possession or using of property. The acquisition is to obtain possession of the property with the possibility to dispose it. Holding an asset is the actual its disposal - its possession, while the use is each mode of disposal of property through the use, sale, giving a gift or loan.¹⁸

In terms of contents, money laundering is a kind of concealment. This concealment is directly related to the money that comes from a previous illegal activities - those that are illegal because of the performance, failure to comply with certain regulations, non-payment of fiscal obligations and the like, as well as those who have a criminal character which refers to criminal activity.

Money laundering is conceived as a process of one or more criminal activity, which is the ultimate purpose and objectives, conceal or cover traces the origin of illegally gained money or profit. It can be briefly defined as the transformation of illegally acquired profit into seemingly legitimate profit.¹⁹

Money laundering is a present phenomenon in national economy. The cause of this situation is a disorder of the supply and demand of goods and services and means of payments, economic conditions, unemployment, that leading to smuggling of goods and illegal trade by means of payments. „Shadow economy“ in national economies is an important segment that influences on the volume of money laundering. It is estimated that the „shadow economy“ accounts for rates ranging from 1 to 40% of the national GDP. Our country at the rate of „shadow economy“ is one of the world top.²⁰ Money laundering is very high at the global level, too.

¹⁸ Kučević, S., op. cit., p. 138.

¹⁹ Iljkić, D. (2015). Pranje novca u domaćem i stranom zakonodavstvu, *Finansije i pravo* 3 (1), p. 37.

²⁰ Fijat, Lj. (2008). Pranje novca, *Bankarstvo* 3-4, p. 28.

The International Monetary Fund has expressed the fact that in the world every year, is „washed” between 500 billion and 1.5 trillion dollars. According to the UN, 80% of that money was obtained by drug trafficking, which is the largest source of dirty money. Owners of „dirty” money - obtained by drug trafficking, smuggling of the weapons, then by robbery, kidnapping, piracy, and blackmail of the politicians, want to introduce it into the legal costs, in order to invest that money in legitimate business, to magnify it. Integration of that money in legal business means that the largest part should be washed, and it is estimated that the expected „costs of money laundering” is around 25% of the total amount of the „dirty” money.²¹

Methodology, legal and data sources used

The aim of this paper is that, in addition to theoretical concepts and provisions of international treaties and national legislation, closer analysis of the crime - Money laundering, primarily through its relationship with overall crime in Serbia, followed by the quantitative data of the group of criminal offenses against the economy.

The paper is preferably applied normative method, supplemented by analytical method, in the theoretical analysis of the content, and deductive methodological approach, to draw conclusions. The primary national legislative source who was consulted in the paper is the Criminal Code of the Republic of Serbia. In the chapter devoted to the results of the work of judicial authorities regarding the initiated and conducted prosecutions for the crime of money laundering, will be made the basic quantitative data analysis.

The results of the work of judicial authorities in Serbia in criminal proceedings against adult perpetrators of crimes against the economy, for the period 2012-2015

In this part of the paper will analyze the relationship between the number of reported adults and issued convictions for the crime of money laundering, the number of reported adults and issued convictions for the group of criminal offenses against the economy during the period 2012-2015., and then for all crimes on the territory of the Republic of Serbia in this period.

²¹ Kuljača, R., (2007). Pranje novca kao oblik prikrivanja nezakonito stečenih prihoda, *NBP – nauka, bezbednost, policija* 11(3), pp. 118-119.

Table 1. Number of reported adult persons for crimes against the economy and the total for all crimes on the territory of the Republic of Serbia in the period 2012-2015.

Criminal offenses	2012.	2013.	2014.	2015.
TOTAL – All crimes on the territory of the Republic of Serbia	92.879	91.411	92.600	108.759
Criminal offenses against the economy	3221	3397	3347	3526
Money laundering	21	3	9	14

Source: The Republic Bureau of Statistics (2013), p. 5; The Republic Bureau of Statistics (2014), p. 5; The Republic Bureau of Statistics (2015), p. 5; The Republic Bureau of Statistics (2016), p. 5.

Table 2. Number of convicted adults for crimes against the economy and the total for all crimes on the territory of the Republic of Serbia in the period 2012-2015.

Criminal offenses	2012.	2013.	2014.	2015.
TOTAL – All crimes on the territory of the Republic of Serbia	31.322	32.241	35.376	33.189
Criminal offenses against the economy	932	1169	1543	1609
Money laundering	1	3	2	2

Source: The Republic Bureau of Statistics, 2013, p. 9; The Republic Bureau of Statistics, 2014, p. 9; The Republic Bureau of Statistics, 2015, p. 9; The Republic Bureau of Statistics, 2016, pp. 9-10.

Discussion of research results

As we can see in previous subheading, in the paper is presented the number of reported adults and issued convictions for all crimes in Serbia, then for all crimes in Chapter XXII of the Criminal Code, and finally, for individual criminal offense - Money laundering, for the period 2012-2015. The aim was to look at the representation of the criminal offense - Money laundering in relation to the total crime in Serbia, and in relation to data for the whole group of criminal offenses against the economy.

From Table 1. it can be seen that for the crime of money laundering by year was filed following number of criminal charges: 2012- 21; 2013.- 3; 2014- 9; 2015.- 14, and we can see that during the four-year study period there does not exist a constant in the number of crimes and the number of reported adults. It is noted that, according to available data, the crime of money

laundering is very poorly represented in overall crime in Serbia, pointing to a „dark number“ in the detection and prosecution of this crime.

Money laundering is, in relation to the number of reported adults for the entire group of criminal offenses against the economy, carried out in the following proportions: 2012- 1: 153; 2013.- 1: 1,132; 2014- 1: 372; 2015.- 1: 253, and we can see that even in this case there also does not exist a continuous progression of the number of reported adults, in comparison to the group of crimes against the economy, but the obtained values vary.

From Table 2. it can be seen that for the crime of money laundering by year was enacted the following number of convictions: 2012- 1; 2013.- 3; 2014.- 2; 2015.- 2, and we can see that also in this case, the number of condemnatory judgments for the crime of money laundering in relation to the total number of convictions for crimes in Serbia, during the four-year period, varies. Number of issued convictions confirms previous statement regarding the „dark number“ of crime in the area of money laundering.

Number of issued convictions for money laundering in relation to the whole group of criminal offenses against the economy, ranging in scale: 2012- 1: 932; 2013.- 1: 390; 2014- 1: 772; 2015.- 1: 805, and we can see that also in this case the results according to their values, vary according to age, and that, according to available data, a convictions for the crime of money laundering is very little represented in relation to the number of convictions for the whole group of criminal offenses.

Such a small number of convictions could be caused by a large number of factors. Some of them are: the weight of proving of this crime (in particular the perpetrator's intention), insufficient training of judges, the length of the trial because of the difficulty in presenting evidence, difficulty in obtaining the list of assets resulting from criminal offense, because it is often property located abroad, etc.

Conclusion

As noted above, money laundering refers to circulation illegally gained profits, in a shorter or longer period of time, in order to, in the cycle of transformation at last gained ostensibly legitimate profit. The forms of money laundering are more complex and technical and/or technological development and internationalization of the financial market system caused the transnational character of these criminal activities. In this activities often used to quickly transfer money across borders, weaknesses in national legislation, as well as the differences between the various national legislations, etc.

The subject of analysis in this paper were the results of the judicial authorities in Serbia in criminal proceedings against adult perpetrators of crimes against the economy, in terms of the number of reported adults and issued convictions for the crime of money laundering. Representation of money laundering in Serbia, as well as individual criminal act, was analyzed through the relationship with the number of reported adults and issued convictions for the group of criminal offenses against the economy during the period 2012–2015., and then for all crimes on the territory of the Republic of Serbia in this period.

Based on the data presented, it can be concluded that the offense of money laundering almost did not occur on the territory of the Republic of Serbia. At this point, on the occasion of that, it is necessary to make two observations. The money laundering is a form of transnational crime. This is the first place indicates that the activities in the process of money laundering carried out on the territory of two or more countries, or continents, and as such, this offense is often very difficult to detect and prove in subsequent proceedings. In addition, as has been already said above, money laundering falls into the group of criminal offenses where there is a statistical difference between the reported and the actual number of committed crimes. In other words, money laundering as a single criminal offense, characterized by a large „dark number“. Bearing in mind the rule that can not be conduct criminal proceedings for criminal offenses whose existence is not known, a high percentage of undetected criminal activity in the sphere of money laundering remains beyond the reach of the justice system and official statistics.

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PRANJE NOVCA – KRIVIČNO DELO PROTIV PRIVREDE I SAVREMENI GLOBALNI FENOMEN

REZIME: Pranje novca kao oblik privrednog kriminaliteta prisutan je u nacionalnim i međunarodnim razmerama. Bez obzira na veliki broj definicija, može se reći da se pranje novca sastoji u kretanju ilegalno stečenih sredstava, koje traje duže ili kraće, da bi se kroz ciklus transformacije na kraju dobila prividno legalna stečena sredstva. Predmet analize u radu bili su rezultati rada pravosudnih organa u Srbiji u krivičnim postupcima prema punoletnim učiniocima za krivična dela protiv privrede. Zastupljenost pranja novca u Srbiji analizirana je kroz odnos sa brojem prijavljenih punoletnih lica i donetih osuđujućih presuda za celu grupu krivičnih dela protiv privrede u periodu od 2012 do 2015. godine, a potom i za sva krivična dela na prostoru Republike Srbije u pomenutom periodu. Dobijeni rezultati ukazuju na veoma skromno učešće ovog krivičnog dela u ukupnom kriminalitetu na nivou cele zemlje. Ovo ukazuje na prevashodno dve stvari. Naime, pranje novca spada u grupu transnacionalnog kriminaliteta, te se vrlo teško otkriva i dokazuje u kasnijem postupku. Dalje, pranje novca spada u grupu krivičnih dela kod kojih je izražena velika tamna brojka, te su mnoge aktivnosti iz ove sfere van domašaja pravosudnog sistema i zvaničnih statističkih podataka.

Ključne reči: *pranje novca, krivična dela protiv privrede, Krivični zakonik*

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