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THE MONEY LAUNDERING IS A FORM OF ECONOMIC CRIME: THE CASE OF ALBANIA

Besiana Muka

University "Ismael Qemal", Faculty of Humanities, Department of Justice, Albania

Abstract

One of the forms of economic crime is money laundering, which is an act of true crime, which poses a global threat is evident consequences for the economy of all countries. For criminal organizations or even to specific individuals, the only valid system for cleaning illegal profits and for their investment in legal activities is entering the banking system. Investments in legal economy by criminal organizations serve to camouflage activity and revenue raising criminal, as well as to re-enter circulation without risk laundered money or assets. This scheme of camouflaging the in depend as the product of offenses, it is vital for criminal organizations because of a defense function with legal norms and rules of financial as well as rigorous controls exerted world economies to avoid risks arising from the operation of money laundering. But as seen this phenomena in the Balkan countries, namely Albania? Do not dance money laundering is seen as a positive factor for economic development financial crises and their resolution, or poses a challenge in itself facing the Albanian economy every day. As combat this phenomena of the Albanian state, which are national and international instruments used for the prevention of money laundering? What are the guarantees offered by the Albanian state for foreign investors?

Keywords: money laundering, economic crime, the banking system, offense, etc.

1. Introduction

The groups and criminal organizations have the only one purpose realization of material benefits or any other benefit. The criminal activities such as; drug trafficking, arms, people, etc., generate the huge amounts of money and criminals must find a way to use these funds away suspicions of their illegal origin. Property derived in the so should be legalized in order to be used within the legal financial flows in the country, or even abroad. These people take various measures aimed "cleaning up" the money earned illegally and other products offenses with the help of financial institutions, investment banking, stock exchange, etc. During the second half of the twentieth century-the constant threats of modern and sophisticated forms of international criminal activity, increased concern about the lack of laws for fight organized crime and money laundering. The harmful the consequences of money laundering are enormous proportions. Those in a summarized way can be described as pollution and instability of financial markets, undermining the foundations of economic, political and social democracy, so legislation to fight this problem

is necessary. Group of arguments related to the consequences of cleaning, mainly economic, constitute sufficient grounds to justify calling the criminal law criminalizing the act of cleaning and to consider cleaning as a separate offense and quite serious. But let's stop concretely how the problem of money laundering in the Albanian state, which are actions which are considered criminal actions, measures taken the Albanian Government and instruments being taken to protect the banking system from money laundering as one of forms of economic crime.

2. MONEY LAUNDERING AND ITS STAGES OF DEVELOPMENT ACCORDING TO ALBANIAN LEGISLATION.

2.1 The legal concept of money laundering

Money laundering is the process of concealing the criminal origin and investment activities or illegal nature of financial transactions. Correct legal terminology defining money laundering is "concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to real property, being aware that such property derived from a crime ...".¹ It is a criminal activity, through which of proceeds integrated into legitimate activity, making it easier to use them further." Money laundering is the return of income derived by illegal means in the whose wealth is difficult to find the origin of the crime".² Some of the criminal actions associated with money laundering are drug trafficking, terrorism financing and embezzlement of public funds. Paul Byron, representatives of the Department of Justice United States America, says, "money laundering has to do with gaining wealth from illegal activities and efforts that these benefits be placed in the banking systems in a way to hide the origin of money or continue criminal activity, using the system financial "

As to the case of Albania in the early 2000s, Albania, provided some tools to fight against money laundering through two different approaches: the adoption of the law on prevention of money laundering and cleaning products forecast the offense as crime. With the adoption of the Law on Prevention The legal concept of Money Laundering in 2000 Albania joined a considerable number of countries in the their joint efforts to criminalize, prevent and suppress the forms and the most dangerous types of organized crime. Complete the legal framework in the field of criminalization and prevention of money laundering is a dynamic and continuous process that requires periodic evaluation at every step of its implementation in relation to problems encountered by reporting entities and inspections in practice. Albania is in full harmony with international obligations as stated in the Convention "Against Transnational Organized Crime" ratified by Law nr.8920 dated 11.04.2002 has made changes to Article 287 of the Criminal Code. The first major change was made in the title of Article 287, which provided cleaning products crime or criminal activity. The reason for the change is that "money laundering is an activity which is carried out with specific forms of cooperation with criminal organizations, terrorist, etc ..".Under the law on prevention of money laundering³, is circulating and recycling of money

¹ Edited by Ernesto U.Savona University of Trento, Italy. "Responding to Money Laundering International Perspectives ". This edition Published in the Taylor & Francis e-Library, 2005 page 66

² Peter Reuter and Edwin Truman, co-authored the study of the Institute of International Economics, based in Washington, 15 December 2004

³ Law No. 9084, dated 19.06.2003 "On some amendments to Law No. 8610, dated 17.05.2000" On the prevention of money laundering "

derived from criminal acts, as well as conversion, transformation or alienation of products and assets derived from criminal acts in order to conceal the source of origin their illegally.

2.2 The stages of the money laundering

Three material elements necessary for money laundering operations are:

- the conversion of illegal money in the another asset,
- concealment of the true ownership or source of illegally acquired property,
- the creation of perceived legitimacy of the source and property

Traditionally, money laundering process involves three stages⁴, setting, cleaning and integration. It depends on cleaning facilities, the requirements of criminals, and related legal rules-effective manner monitoring financial control systems. Stages of money laundering are often complex and processed, can be separated and distinct or may happen to be simultaneously superimposed, can pass through the banking and financial system, as well as through non-banking institutions and non-financial.

The phase of Deployment

In this phase transformation is performed amounts of cash with criminal origin, in the another form, for example, in the money in the account, checks, electronic money, using in the retail trade or transferred abroad. The first stage of money laundering is the physical receipt of money from illegal activities, physical contact with the money proceeds of crime and their introduction into a legitimate financial institution, usually in the form of bank deposits. This is the stage the risk of money laundering process, due to the large amounts of money, which are highly visible and banks are required of report transactions of high value.

The stage of cleaning

After the first phase, the initial setting of most of the money, the next step is cleaning. This stage involves the allocation of criminal proceeds from their source, using complex layers of financial transactions to hide the trail and provide anonymity. This phase involves the movement of money through various financial transactions to change their shape, so that it becomes difficult to follow. Cleaning stage of may consist of several bank transferred. Transfers between different accounts in different names and in the different countries, making deposits and withdrawals constantly changing amount of money in bank accounts, money changing currency, changing the form of money by buying items worth high, as yachts, luxury homes, cars, diamonds, etc .. This is the most complex step in the any purification scheme, and after this step to find the origin of dirty money is very difficult. At this stage the aim loss of traces, coverage and disguise their criminal origin. This is accomplished through the introduction of money in the financial system, the performance of other investments, the conversion of the original dirty money in the other funds and through the conduct of commercial transactions. Cleaning stage of aims fragmentation of criminal capital in order deletion of every opportunity to climb in the illicit origin of funds.

⁴ See Figure no. 2. Stages of money laundering (placement, cleaning and integration). Dt.20.05.2012, received at the address <http://www.money.hoestuffeorks.com/money-laundering.htm>. Figure No. 3 The process of money laundering

The stage of integration

The third phase is the integration, the introduction of criminal proceeds in the course of legal economy without any doubt and with an apparently legitimate source. Once it is performed "cleaning", funds need to be embedded in the legitimate economy through investment or consumption will and intentions "owner" of their own. Integration schemes criminal earnings appear as normal investments, loans or new investments profits. In the integration phase, money enters the economy as a "legitimate", it seems to come from a legal transaction, in which new investment funds performed suspicious origin in the a legal economic activity, so their legitimacy. This may include a final transfer to the bank account of a business in which "cleaner" is invested in the exchange for a percentage of the profits, for example, the sale of a yacht that was acquired during the cleaning. It is very difficult to catch a "scavenger" in the stage of integration if it is not documented its activities during the previous phases. Integration consists in the use of dirty money, as they have emerged from the banking system. So going to use this cash of "cleanse " legitimate investment operations. At this stage almost cannot be identified person who commits money laundering

2.3. The schemes of money laundering of Albanian criminal organizations. The banking sector

Methods of money laundering by Albanian criminal groups did not differ significantly from the methods used by international criminal organizations. "In Albania there are no specialized criminal group that deals with money laundering derived from criminal activity. Money laundering is done by the people who develop this criminal activity. "Albanian criminal groups "... routinely invest illicit proceeds into the legal economy and money laundering is greatly facilitated by the widespread practice of tax evasion." ⁵Investigations of a number of cases of Albanian organized crime have shown that their criminal profits are invested ... "in activities such as the construction industry and other sectors ". Schemes of used vary from the simplest to the most complex, which are as follows:

investment income on moveable illegal (mostly luxury vehicles) and property (home and abroad) in the substantial value; the statement fictitious of income and investment amounts obtained illegally in economic activities; signing statements / borrowing fictitious contracts, to justify the illegal income; obtaining bank loans in order discourse of funds and assets derived directly from illegal activity; the investments in new businesses or existing ones through deposits in cash or in-kind contributions of the partner; transfers significant amounts without explanation on the source and why or physical transportation of cash in the border crossing points; the creation of companies abroad (including "fiscal paradises") with the purpose of hiding the ownership structure and the beneficial owner; the registration of businesses or real estate on behalf of other persons or fictitious donation of funds to conceal their source; circulation dubious source funds in the banking system, created from deposits in cash and in the significant amounts; the alienation of shares of companies in the fictitious value, etc.

⁵ Vasilika Hysi. "Organized Crime in Albania: The Ugly Side of Capitalism and Democracy". Organized Crime in Europe. Concepts, Patterns and Control Policies in the European Union and Beyond. Edited by Cyrille Fijnaut Professor of Criminal Law and Criminology, Tilburg University, The Netherlands and Letizia Paoli Senior Research Fellow, Department of Criminology, Max Planck Institute for Foreign and International Criminal Law, Freiburg, Germany. Published by Springer, P.O. Box 17, 3300 AA Dordrecht, The Netherlands - 2004, page 557

The banking sector is seen as one of the main sectors of money laundering. Banks could serve as an important instrument for money laundering. "Money laundering dirty, in the most cases carried out by the banks. The process of money laundering through the banking system, implemented in the main form:

- switching or transfer of money from the bank of a country in a bank of another country in order masking and investing in various businesses;
- entrance to spare the transfer relationship with the bank, known as "banking paradise" or in the countries' fiscal paradise ";
- cooperation with the employees of these banks, which is not carried out individually, but the message and encourage top executives of these banks.

Money laundering is realized through the bank, making deposits and transfers from one bank to another, from one place to another. Authority origin is another person and author of cleaning is another person (the bank). According to specialists in the fight against money laundering, illegal clearing capital in banking has great potential action, and mainly uses these forms

- depositing in the name of another person, not the current account, but the fixed book, where does the name of person, but he presents, he gets the money. When withdrawing money has indicated that attracted the person "X", who can be anyone, not he who has the name, but anyone else.
- from an current account to another account current
- taking part in social capital, purchase of state titles;
- realization of financial operations, not through the bank, but by participating in the exchange.
- purchase of government securities, bonds, loans, guarantees the state government for its citizens, are anonymous;
- the treasury in the branch, buying treasury bills and securities. These titles can return ALL of the state;
- shared receipt of state certificates, mutual funds companies that invest in different areas;
- societies acting on behalf of another, society mediation, mediation societies.

3. THE MONEY LAUNDERING AND ITS CONSEQUENCES IN THE ECONOMIC SECTOR.

Money laundering as a form of organized crime brings negative effects on the economy of a country. The Money laundering makes national tax collection and law enforcement more difficult. Money laundering can distort the allocation of resources and distribution of wealth. "It distorts statistics and misleads the authorities to take appropriate measures. Economic damages may arise not only directly from money laundering, but also the charges that affect the reputation of a country. Such charges will affect economic agents, especially those abroad, to conduct business in a particular country as domestic investment. A recent example includes the impact of the lists published by the FATF and OECD.

Entering the money in the legal economy , leading to procuring financial and legal economy by criminal groups. Recycling of illegal capital market produces artificial mechanisms that alternate and change the rules, not the rules. So give credit system shock and destroy the rules of fair competition. Money laundering is linked to other financial crimes such as corruption, fraud or organized crime that controls a financial institution. Upon receipt of criminal proceeds, criminals

can require clearing them through the financial system. This, in turn, may require a series of fraudulent activities as falsification of invoices, etc. So, a whole chain of criminal or illegal activities can result in criminal money flow through the financial system.

Banks, serving as an important instrument for money laundering, as well as other institutions, financial companies and non-financial. Casinos, restaurants, sports events, which represent an easy opportunity for money laundering as a result of quantity of cash will be used in them. Particular sector, is the orientation of organized crime for investment, acquisition of shares, loans and government bonds, in the agricultural sector, where organized food market. Ensure recycling sector where the money is and legal mail. Interventions in import-export and distribution of goods, investment in construction of hypermarkets, are typical aspects of this activity.

Actions in cash constitute a negative realities facing the Albanian finances, the economy and having an impact not only on the Albanian state budget revenues, but also on regular business people operating in conformity with the laws. Actions in cash hinder the creation of a clear image of the full economic developments within the country. The lack of detailed information on the amount of money in circulation of action, difficult at the same time maintaining fiscal macro parameters within the norms of the objectives set out in the government program and has become one of the main obstacles to predict accurately programmed developments economic. Businesses with suspicious money laundering and find fertile ground in the countries where the cash economy is at a high level.

In a summary, the negative effects of money laundering in the economic sector, are distorting the economic data, instability in interest rates and exchange rate, discourage foreign investment, prevents the collection of taxes and increases the potential of reduction of GDP etc.

4. The Albanian preventive and objectives facing money laundering

Money laundering is a global phenomenon that affects all countries and consequently the need to coordinate national and international institutional cooperation is necessary. The harmonization of the Albanian legal framework with international standards in the field of prevention of money laundering and financing of terrorism is regarded as a necessity by the state institutions. Albania's integration within into the European family, has undertaken a number of legislative reforms ratified European and international conventions in the field of money laundering, the Vienna Convention 1988; European Convention "On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime"; United Nations Convention "Against Transnational Organized Crime" and the Convention of the Council of Europe "On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of terrorism". Following the recommendations of international and European institutions highlighted the need of radical changes in the Albanian legislation in the field of prevention of money laundering and terrorist financing, which was realized through the adoption of Law no. 9917 dated 19.05.2008 "On the prevention of money laundering and financing of terrorism" and bylaws in its implementation. In 2009, MONEYVAL⁶ Committee of the Council of Europe made a horizontal evaluation of the third round of all member states under which highlighted the need for the fulfillment of Albania Recommendations

⁶ Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

5⁷ and 6⁸ of the FATF. On this basis were drafted and approved the necessary amendments to the Law no. 10391 dated 03.03.2011 "On Amendments to the Law no. 9917 dated 19.05.2008 "On the prevention of money laundering and financing of terrorism". This law is the result of work carried out with the assistance of the IMF, it expands the type and number of subjects that are supervised in order to prevent of money laundering, and institutionalize the fight against of money laundering.

The law focuses on two main areas:

Preventive direction , through the obligation to identify the client. The law requires financial institutions "to ensure the identity of the client for each cash transaction value of over 200 thousand million. Registration of operations and maintaining appropriate documentation for a period of not less than 5 years after termination of the relationship with customers. Subjects should maintain documentation for identification, accounts and correspondence with the client for 5 years from the date the account or termination of the business relationship between the customer and the subject. Subjects were asked to report to the competent authority under the terms defined in the regulations, the implementation of this law, all transactions in cash, in an amount equal to or greater than 1,500,000 (one million five hundred thousand ALL) or its equivalent in foreign currencies, performed as a single transaction or transactions connected with each other. Lifting professional banking secrecy when there are doubts and when bank employees acting in good faith. Prevention component, centered around FIU and network entities reporting obligation is intended to prevent criminals the use of financial institutions, businesses and other professions to clean their products crimes.

Direction repressive law, accomplished by setting of money laundering derived from criminal activity as a criminal offense; expansion of the type of criminal activities that generate products; determination of administrative measures if there is a criminal offense, when seen disrespect of the law, for employees of law subjects. The law aims to punish those criminals who are caught attempting cleaning or cleaning products reach their crimes.

The law of the PPP and FT⁹ contains 5 main elements which are:

Reporting suspicious activities may include attempts to clean the products of the offense or criminal activity, which constitutes one of the main pillars of the fight against money laundering and terrorist financing. Within this pillar entities must report "responsible authority" (FIU) all transactions where there is doubt that the transaction may involve money laundering or financing of terrorism and seek guidance whether or not to perform the transaction. The responsible authority is obliged to respond within 48 hours. Likewise, the entity is required to report under this law all transactions in cash, in an amount equal to or greater than 1,500,000 (one million five hundred thousand) or its equivalent in foreign currencies, performed as a single transaction or related transactions with each other, and all non cash transactions, in an amount equal to or greater value than 6,000,000 (six million) or its equivalent in foreign currencies committed as a single transaction or transactions related to each other.

⁷ FATF Recommendation 5 provides measures by financial institutions to prevent of money laundering and financing of terrorism

⁸ Recommendation 6 provides for strengthening the control of cross-border banking operations

⁹ Law no. 9917 dated 19.05.2008 "On the prevention of money laundering and financing of terrorism", as amended

Identify the client, which has as main purpose to prevent the introduction of criminal proceeds in the banking system, as the law on the prevention of money laundering and terrorist financing excludes anonymity of clients and bank accounts in which the identity of the account holder is unknown. Obviously this legal requirement prohibits anonymous account holder it accounts which were not identified, but the accounts with fictitious names. This law making it mandatory identification of customers, money launderers warns that they must give up their anonymity, as it will be very difficult to misuse a financial institution for money laundering purposes. Knowing the client is not only an obligation deriving from the law, but the first step towards being cautious and alert. Within this banks, exchange bureaus and other entities defined by law, must continuously recognize their customers by enabling the identification of suspicious financial transactions.

Self regulation by regulatory bodies licensing entities obliged to implement legislation against money laundering and to specify in detail the measures and reporting obligations.

Supervision by the responsible authority within this element General Directorate of Prevention of *Money Laundering (FIU) exercises supervisory authority* functions under the Ministry of Finance. As a Financial Intelligence Unit (FIU), the Department has access to the database and any information administered by state institutions, as well as public records, oversees implementation of obligations for reporting entities, conducts inspections, exchange information with each agency foreign law enforcement counterparts and other competent authorities. Likewise, it can block or temporarily freeze transactions or financial operations for a period of not more than 72 hours. Under the law on prevention of money laundering and financing of terrorism, other surveillance authority are; Bank of Albania, Financial Supervisory Authority, ministries, the National Bar Association for lawyers and notaries Ministry of Justice

Sanctions to punish individuals and institutions that do not implement the rule of prevention, particularly identification procedures, monitoring, and customer care and transaction and reporting obligations.

The main objectives of the Albanian state in the fight against prevention of money laundering and terrorist financing are:

- Further consolidation of inter institutional, with agencies and institutions involved in preventing and combating money laundering and terrorist financing.
- Further approximation of legislation to prevent money laundering and financing of terrorism with international standards Action Task financial and acquires communitarians.
- Implementation of tasks resulting from the strategic documents in the battle against organized crime , corruption and financial crime investigation.
- Analysis of the information reported by the subjects of the law in the context of operational analysis, strategic and tactical information.
- Consolidation of human capacity through staff treatment activities in collaboration with national and international institutions.

The literature used:

1. Edited by Ernesto U. Savona University of Trento, Italy. "Responding to Money Laundering International Perspectives". This edition Published in the Taylor & Francis e-Library, 2005 page 66
2. Peter Reuter and Edwin Truman, co-authored the study of the Institute of International Economics, based in Washington, 15 December 2004.
3. Law No. 9084, dated 19.06.2003 "On some amendments to Law No. 8610, dated 17.05.2000" On the prevention of money laundering "
4. See Figure no. 2. Stages of money laundering (placement, cleaning and integration). Dt.20.05.2012, received at the address <http://www.money.hoestuffeorks.com/money-laundering.htm>. Figure No. 3 The process of money laundering
5. Vasilika Hysi. "Organized Crime in Albania: The Ugly Side of Capitalism and Democracy". Organized Crime in Europe. Concepts, Patterns and Control Policies in the European Union and Beyond. Edited by Cyrille Fijnaut Professor of Criminal Law and Criminology, Tilburg University, The Netherlands and Letizia Paoli Senior Research Felloë, Department of Criminology, Max Planck Institute for Foreign and International Criminal Lac, Freiburg, Germany. Published by Springer, P.O. Box 17, 3300 AA Dordrecht, The Netherlands - 2004, page 557
6. Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)
7. FATF Recommendation 5 provides measures by financial institutions to prevent of money laundering and financing of terrorism
8. Recommendation 6 provides for strengthening the control of cross-border banking operations
9. Law no. 9917 dated 19.05.2008 "On the prevention of money laundering and financing of terrorism", as amended