Original article

Corruption and Money Laundering as Legal and Social Phenomena: Causes, Phenomenology, Consequences

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Abstract. New tendency in social, political and economic relationships for the purpose of incorporating a domestic economy into international economic and financial transactions brings about a new and yet old forms of economic criminal offences which are believed to be much more profitable and less risky and it is even assumed that there are no adequate mechanisms of opposition. In this paper we have tried to point out that corruption and money laundering represent one of the leading challenges of modern social changes along with a harmful consequences of the impact of "laundered" money in regular social developments. Detrimental effect of accumulating financial and capital assets by criminal circles was, during the last decades of the last century and in the beginning of a new millennium, followed by the appropriate activities both of domestic legislation and of OUN, the European Council and European Union reaching a high level of consensus about crucial principles and the necessity of recognizing a financial side of corruption and money laundering and their use in fight against this invisible and hidden activity. Corruption and money laundering are the biggest sociological obstacles in the long run for successful work and progress. The most important conditions for their suppression are: the establishment of comprehensive preventive and repressive systemic control as well as political will to combat and prevent these socially undesirable behaviors.
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Коррупция и отмывание денег как правовые и социальные явления: причины, феноменология, последствия

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Аннотация. Новая тенденция в социальных, политических и экономических отношениях с целью включения отечественной экономики в международные экономические и финансовые операции порождает новые и одновременно старые формы экономических уголовных преступлений, которые считаются гораздо более прибыльными и менее рискованными, и даже предполагается, что не существует адекватных механизмов противодействия. В данной статье мы попытались указать на то, что коррупция и отмывание денег представляют собой один из ведущих вызовов современных социальных изменений наряду с пагубными последствиями влияния «отмытых» денег на регулярные социальные события. Пагубное влияние накопления финансовых и капитальных активов преступными кругами было, в течение последних десятилетий прошлого века и в начале нового тысячелетия, сопровождено соответствующей деятельностью как отечественного законодательства, так и ОУН, Европейского Совета и Европейского Союза, достигших высокого уровня консенсуса относительно важнейших принципов и необходимости признания финансовой стороны коррупции и отмывания денег и их использования в борьбе с этой невидимой и скрытой деятельностью. Коррупция и отмывание денег являются самыми большими социологическими препятствиями в долгосрочной перспективе для успешной работы и прогресса. Важнейшими условиями для их подавления являются: создание всеобъемлющего превентивного и репрессивного системного контроля, а также политическая воля для борьбы и предотвращения этих социально нежелательных форм поведения.
Ключевые слова: криминологические аспекты; коррупция; взяточничество; отмывание денег; уголовное право
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The concept and definition of corruption and money laundering

There is no universal definition of the term corruption in the scientific and professional literature, because it is a multidisciplinary legal and social phenomenon that exists in all countries. There is no area that is immune to corrupt behavior by individuals. In theory, we find a lot of partial definitions that focus on some aspects of this phenomenon. This phenomenon is in center of interest of many sciences that are trying to find adequate answers and solutions of a preventive and repressive nature. However, we must

emphasize that prevention is the key to success.

From the etymological aspect the word corruption comes from Latin word *corrumpo*-meaningthe corruption, perversion, bribery, depending on a specific occasion. Corruption is generally defined descriptively what clearly indicates a possible vagueness of this term [11, p. 21]. Corruption has been associated with humans since their creation so that two thousand years ago the then prime minister of the Kingdom of India wrote about ethical and political problems of corruption [18, p. 4]. The most meaningful definition of corruption was given by Tanzi according to which the corruption exists if there is a deliberate violation of a principle of impartiality when taking decisions with a view of usurping some privilege [19, p. 15–18].

Early feudalism recognizes abuse of power and of position of which we find the evidence in *Soliski Law* (particularly in articles 50 and 51) coming upon tendency to return to the values of the Roman Law such as is for example the attempt of Frenchlégistes — law students to find definitions of criminal offences, offence regulations and the institutes of criminal law in the Digest and Codex. The most significant source on criminal offence which testify about the abuse of that epoch is Tsar Dušan`s Law Codex as well as the German Saxon Mirror from the 13th century. Since embezzlements, extortions, excessive collections and various frauds were so widely spread that they acquired a status of custom a general amnesty was enacted by a special edict in 1717 by which a special court was abolished. It was for the first time in history that the state admitted openly its weakness to cope with these problems.

The first written documents about the history of Serbian law and criminal offences regarding official responsibilities can be traced back to Nemanjić Dynasty. In our national opinion not every reward is a bribe so that in everyday practice there was an accurate difference among honour, gift, reward and treat.At the end of an early period of Serbian state there is a Law Codex of Tsar Stefan Dušan-Dušan`s Law. By the article 110 the judges who travelled throughout the state were forbidden to take "by force certain benefits or anything alike except in case whena person would present them with something out of his own free will". By the article 188 the abuse of paying a fine was sanctioned. Persons who collected fines were allowed to collect only the fines defined by a judge`s order. During the First Serbian Uprising there was a Karađorđe`s Criminal Code (found in 1903) containing 38 articles among which there are the regulations regarding the misuse of an official post and of taking bribes. The article 32 forbids the chiefs and captains or corporals to discharge from the army the soldier who took a bribe. The penaly consisted of reimbursement to the soldiers and dismissing from the service. In 1829, on 3rd March the Duke Miloš passed an instruction which was in fact a Decree on political power in Serbia. By the article 12 of this Decree it was forbidden either to take a bribe or to be fined. A 1860 Criminal Law which was based on the Prussian Criminal Code contains 29 articles which regulate criminal offences in regard to the misuse of official position or authority and of taking bribes. In the case of taking bribes the punishment was eight years for office workers and from 2 to 10 years for the judges. The 1929 Criminal Law was the first code in the Kingdom of Yugoslavia.

In Yugoslavia until 1977 criminal legislation was an integral one. The 1955 Criminal Law in the chapter 24 titled "Criminal offences against official duty" was together with criminal offences specified in the law as the actof abuse of office while in the article 325 the act of taking bribes was specified as well. A New Criminal Law due to a more efficient fight against corruption contains a separate chapter — chapter twenty-two — titled "Specific corruption crimes" containing eleven new articles. It is quite probable that this Criminal Law will be amended in near future by new articles included in a basic document of the European Council for fight against corruption titled Criminal Law Convention On Corruption[1], from 27th January 1999 taking into consideration that our country has recently become a full member of the European Council. Those offences are: taking and giving bribes in domestic (internal) relationships, bribing

[1] Crininal Law Convention on Corruption, ETS 173, 1999, Explanatory report.

foreign persons, trading in influence, corruption criminal offences in relation to international or supernational institutions, criminal offences of money laundering and other criminal offences in relation to corruption. The convention allows signatory countries a possibility to put a reserve on prescribed formulations which they are obliged to codify and sanction if they find them to be in opposition with their national legislation.

The origin of the term money laundering has been explained by Schneider and Windischbauer [16] in a similar way as Lilley [10] saying that it originated in the USA and explains the attempt of mafia to inject illegaly generated money into legal flows through "money laundering salons" which were characteristical in intensive ready money financial transactions and controlled by company acquisitions or as business formations adequate to that time. The characteristic of money laundering from an economic aspect as observed by the authors is an illegal economic activity which involves all kinds of criminal activities which are in opposition with law while the profit generated via this economic, illegal acitivity is the subject of the process of money laundering. Lilley [10] says that this concept most probably originated in the United States of America during 1920s. Solving the problem of infusing illegally generated money into legal money transactions the criminal organisations solved by taking over the enterprises with great ready money financial transactions such as laundry rooms or car wash business. The money earned by a criminal activity was mixed with the money earned by legal operation of laundries so that a dirty money came out as a legally made profit. In time, money laundering techniques improved along with the development of the conditions in which this kind of fraud is possible. Cuéllar says [2, p. 311–465] that the term money laundering appeared in 1980s during the discussion about the law on drugs and organised crime and the report of the administration of Regan, the then president of the United States, who placed a strong emphasis on the influence of money laundering as a form of crime and he defines money laundering as a process by which the existence of illegal sources or illegal use of income are covered up so that in this way acquired profit appears as legal.

1. The relationship between money laundering and corruption with criminal

Money laundering is a process in which the criminal profits are being transformed into seemingly legitimate money or other property[1]. However, in numerous legal systems, the term money laundering sometimes does not differ from other forms of financial criminal activities and sometimes it is more generally used in order to mark or to misuse a financial system (including the things like securities, digital currencies, credit cards and traditional currencies, tax evasion, terrorist financing, etc.) and to avoid international sanctions.

Money obtained by crime, such as extortion, drug trade, illegal gambling and tax evasion is "dirty". It should be "laundered" to appear as if it was generated by non-criminal activities so it is without doubt that the banks and other financial institutions will come across this money. Money can be "laundered" by a number of methods depending on complexity and sophistication. Certain legislations define money laundering as blurring the source of money either completely or partially using financial systems or services which do not reveal the sources or monitor the sources or destination. The states can but need not treat tax evasion or payments in the branches of international sanctions as an instance of money laundering. Some legislations make difference of these for the purpose of definition and some do not.

Facing this economic problem is not only in the range of theory but also in a range of practice on a global level. Domestic legislature and international organisations also deal with defining the term of money laundering. One of the most active organisations in fight against money laundering is Financial Action Task Force[2] which defines money laundering as

[1] What is Money Laundering? // Duhaime's Anti-Money Laundering & Financial Crime News. URL: https://www.antimoneylaunderinglaw.com/aml-law-in-canada/what-is-money-laundering visited 02.12.2020. at 18.45h.

[2] FATF. (2016). What is Money Laundering. Visited02.12.2020.at 20.45, http://www.fatf-gaf.org/faq/moneylaundering/#d. en.

a process of handling the means obtained by criminal activities in order to hide their origin. This process of cover-up is of a key importance since it enables the criminals to use such an obtained profit without endangering the source.

The relationship between corruption and money laundering negatively affects economy, social morals, the rule of law and legal system thus the consequences are expressed by a high degree of violating the trust in an overall legal order. Typology and methodology of performing such criminal offences have become extremely sophisticated and elusive particularly with a development of electronic transfer. Crime has no limits and its nature is extremely adaptable and unpredictable (mafia no longer kills, it buys and represents a kind of criminal enterprise which by its production seriously endangers freedom and democracy both of an individual and of an entire society). Today, crime structure is directed towards both national and international activity with prevailing direction towards profit led by an intention of obtaining illegal property benefit with a view of legalizing the obtained and infusing it into a fiscal system. Efficient combating the corruption and money laundering means in the first place to know the conditions and to discover crime factors which contribute to such origin and development and on such basis to plan preventive and repressive activities which would prevent the occurrence of new forms and enable a certain control of these manifestations. Consequences of this criminal activity are huge and represent "dark figure" which is a fruit of invisibility and cover-up due to a great help and support given by a bureaucracy, technocracy and plutocracy of a given society. In that way the respect and power are bought while the profit increases with a view of controlling an overall financial and economic system. In such a state there are no crime "problems" since criminals and their organizations possess and control the state [6, p. 109–222][1].

Fight against corruption, money laundering and terrorism cannot be led without legal mechanisms which ask for a stronger control of suspicious money transactions, easier controlling of the origin of property as well as considerable depriving of illegally acquired property in favor of the state. One of the central issues of adequacy and proper application of the law incorporates the legality of evidence, which the correct court decision directly depends on. [9, p. 191].

Corruption and money laundering are closely connected. Corruption transgressions such as bribe or theft of public property generate significant amounts of income which should be laundered — or "cleaned" in order to get into a financial system without the stigma of illegitimacy. A part of the profit made by crime will be kept for financing the future criminal activities but also for something else. Money made by crime must be "laundered" to obtain a status of money of irreproachable origin [7, p. 261]. At the same time, corruption can facilitate money laundering: corrupted officials can affect the process by which the assets are being "laundered" (regardless the crime by which it was generated) and can make possible for laundries to escape any control and sanctions. Penalties for these offenders represent only a "business risk" not criminal sanction by which the goal of individual prevention is being achieved and does not dissuade them from further doing criminal offences as long as their illegally obtained property is far from reach of government bodies.

The research of the personnel of IMF showed that the countries with a low level of control over corruption have a tendency to possess lower level of conformity to corruption and money laundering. Corruption and money laundering emerge in the form of concentric circles so they overlap from higher to lower levels of political decision making encompassing entire social levels. There are many causes of corruption in economy but their manifest forms can be differently

[1] See: Jordan, D. (2000) "Politics and drugs–dirty money and democratic states", AGM, Zagreb, pp. 109-222 (Sicilian Mafia, mostly represented by brothers Cuntrera in 80s, who bought a Caribbean island Aruba, and along with it the hotels, land, banks, police, customs officials and state bureacracy. In that period Sicilian mafia, i. e. brothers Cuntrera have deeply rooted into Venezuela and joined with Colombina cartels which operated on a global scale. The record from 1992 show that power of Sicilian mafia was so great that it exported more than 200 tons of drugs into Europe and earned $10 billion).

demonstrated. Illegally obtained money the criminals spend and invest in different ways but most commonly they are grouped into following four principal sets:

1. Spending the illegally generated profit by purchasing the goods and investing the funds into catering and hotel industry;

2. Investments of "dirty" money in a service industry (especially taxi service) and in order that such money transaction be expertly done the criminals engage lawyers and bribe bank personnel;

3. By investing the illegally generated income the criminals ensure for them and their families a high level of social status acquiring in that way a possibility to unite with politicians and to have the influence on legislative activity which they adopt to their interests;

4. Criminals have "their" politicians whom they pay and in that way participate in a political life of a country ensuring their interests at the highest social level.

Many corruption crimes are hidden in some other criminal offences or various forms of business operations which at first sight may seem completely legal. Main types of corruption are in direct relationship with functioning of a legal state, i. e. as it is realized it breaks and enacts a law. Accordingly three main types of corruption are:

1. Extra payment of the public official to effectuate the right, i. e. to achieve the right (property or service) or to expedite obtaining the right which according to the law belong to an individual or economic entity;

2. Bribing along with breaking the law, i. e. the law or sublegal act to acquire the law (property or service) which does not belong to the corrupt person according to the law or sublegal act that can have a wide range of varieties;

3. Bribing for the purpose of amending the law, i. e. adapting the legal or sublegal regulations (various regulations, orders and provisions) to the interests of a criminal in order to obtain the property or a service.

The first and second type of corruption commonly belong to a classic corruption while the third is connected with crime. However, not only in the second but also in the first and third type, according to more strict classification there is no clear limit between corruption and crime, and that is why they are sanctioned in a criminal law. At the same time, due to overlapping of these two types of corruption sometimes the difference between obtaining the law and breaking the law is not clear: in both cases official position is misused or the law is broken and that among other things impedes the analysis and identification. Subordination of judiciary system to executive authority has influenced that various forms of bribe and corruption passed outside the law, i. e. remained unpunished. That is why the corruption spread and became a component part of business operations, actually got into all pores of society and became almost a public matter. Simultaneously there is no essential difference in regard to a political option in power at that moment. Moral crisis and poverty, on one hand and occupation of majority of inhabitants by a mere survival over a long period who therefore became accustomed to corruption on the other hand has prevented a wider condemnation of this extremely destructive phenomenon by the populace. In fact, condemnation of this phenomenon on one hand is of a principled nature and on the other there is a considerable readiness of citizens to participate in corruption in the attempt to solve their problems.

Without understanding the forms of manifestation which change quickly and are difficult to be noticed the competent government bodies would not be able to prevent and control corruption. Therefore, understanding the manifestation forms of economic criminal, particularly corruption and money laundering is necessary in order to understand conditions, causes and other relevant circumstances which favour the occurrence of these activities in a given period and time, i. e. to undertake effective measures by the state and other social factors with a view of preventing and combating the corruption. By removing such circumstances and by conscious and organized activity of a wide spectrum of social forces it is certain that the danger of a destructive consequences of corruption would be reduced. Control, as one of the powerful ways of prevention should include all fields of economic and non-economic

activities endangered by corruption and money laundering. It makes possible that new forms of economic crime be perceived and criminal offences of corruption and money laundering be identified in due time. It should particularly be born in mind that with the development of international economic connections and other connections new manifest forms of corruption and money laundering are developed and they constantly improve along with the use of new and various methods and means increasingly applied in practice.

On the other hand, the phenomenon of money laundering should not be treated as an ancillary phenomenon of organized crime because, according to the degree of social danger, money laundering falls into its most dangerous aspect since it affects the most sensitive foundations of national economy as well as other forms of criminal operations. In this way, by unlawful activities the actors of this criminal activity gain an enormous ownership benefits and there is a possibility, after "legalization" of dirty money to put it into operation in the process of production, trade hotel industry, traffic, etc. The criminal offenders in many cases appear as the organizers i. e. the persons with social prestige and on a high scale of social status and behind the screen, far from the eyes of public they develop this kind of crime, manipulations and transactions [20, p. 17a]. Numerous experts claim that the American CIA is the largest "money laundering" organization of all times using a variety of mechanisms therein.

Professional criminals very often cooperate with a view of performing these activities and in this way the money is being laundered in over five hundred different organizations out of which not one is immediately connected with the USA Governments that they make a considerable influence on events in the government and politics creating [14, p. 23a] powerful groups, gangs with strongholds in police, justice and among politicians. We bear witness to the fact that the countries, regardless their political regime, economic or geographical situation, in a previous period were shaken by great corruption scandals and in this not one region in the world was and is exempted because on one hand corruption profit requires laundering while on the other corruption may facilitate the very process of laundering[1]. In addition, it is confirmed by a report[2] that all stages of the process of money laundering — placement, cover-up and integration — are present in money laundering generated by corruption regardless the way in which the corruption develops as well as the failure to apply valid measures to prevent money laundering and terrorist financing what enables corrupted officials to have free access to a global financial system.

It is beyond doubt that Serbia was not bypassed by this world trend of groundless, illegal accumulation of wealth. The laws are utterly selectively applied so that in such circumstances there appears the decline in business morale. According to their presence in social life and media various "businessmen", criminals, represent themselves as businessmen and as socially favored models of behavior. In Serbia one of the most efficient ways of "money laundering" is the setting up of so-called phantom firms, using the means of primary mission, cheap loans which soon become underestimated due to inflation[3], then on the basis of import and export licenses an exclusive distribution right was obtained for certain goods so that many became monopolists by means of fictitious and fabricated contracts or "inflated" invoices between a private and state/social enterprises and alike. To illustrate this, over recent years Serbia was shaken by numerous affairs of money laundering which got ironic titles after the actors of those affairs such as: "sugar", "armour", "suitcase", "Ericson", "Mobtel", "satellite", "Knjaz Miloš", "trade court" and alike. It must be observed that without an independent and autonomous judicature, efficient police and strong parliamentary opposition a suitable ground is created for different possibilities of misusing the official position and committing the criminal offences of corruption and money laundering. The citizens of Serbia besides (non)functioning

[1] FATF, (2011), Money laundering obtained by corruption, Ontypologies of money laundering, Working group for financial action/

[2] Source: http://www.oecd.org/fatf, visited 03.12.2020. at 22.30h.

[3] Politika, Belgrade, 23. 12. 2004.

of judiciary system and ethical crisis, see major causes of corruption in general poverty [12, p. 25–41]. This can be proved by a following survey: the most important causes of spreading of corruption [3, p. 259–260] are judiciary system of the country 35,6 % — lawlessness, non-existence of legal state 23,3 % — lack of laws 6,4 % — inefficiency of courts 5,9 % — moral crisis 19,7 % — general poverty 16,5 %. Another research on the corruption among customs officers[1], showed that the causes of corruption are: moral crisis, small wages, inefficient judiciary system, inefficient prosecuting authorities, inefficient prosecutor`s office. Tailoring the citizens` right to vote and reducing the parliament to a ballot box for remaining in power, infringement of the Constitution, controlling the regulations, passing the laws with retroactive action, only strengthened political component in Serbia since the infringement of the law has become a common practice. Today, business people unwillingly speak about it although it is an open secret that every well-to-do businessman in Serbia is a donor of more than one political party.

Representatives of a political "elite" are pillars of plutocracy, bureaucracy and technocracy. Characteristic of these social layers are certain psychic traits such as: imposture, unscrupulousness, inconsideration, greed, middle-class mentality and similar. Psychological component of money laundering indicates to a high degree a political aspects since those who decide to do such activities are typical representatives of that part of the authorities and people who indulgently flatter the leaders of their political parties and representatives of a political and economic elite. By political manipulations, intrigues, in a sly and secret way they create for themselves conditions for undisturbed operating in money laundering in tenuous relationship with organized crime and criminal underground. Criminal "elite"[2] with help of financial oligarchy and organized criminal organizations, in order to hide their criminal activity, constantly look for ethical and other aspects of lustration only for the others but not for themselves as well. They hypocritically hide their own political ambitions toremain in power or to come into power if and when they temporarily lose it.

2. Consequences of corruption and money laundering

The corruption and money laundering paradox is the regulatory function of the social and economic system, in conditions of non-functioning of the state system. This type of criminal activity is appearing especially in countries in transition, and where legislation is not respected and not enforced. This means that the non-functioning is a consequence of the lack of political will and interest of government officials, on the one hand, and on the other hand the bureaucratized apparatus of public services (law enforcement), which leads to delays in exercising rights or, with its additional interpretation, it prevents an individual or a business entity from reaching it. This is just one of the indicators of non-compliance with legal regulations, as it is a basic condition for the efficient functioning of the modern state. Corruption and money laundering, creates a situation where the legal system due to non-compliance with the law does not function even in the part where it is legally regulated. In deviant practice, when the judiciary and public security become corrupt, the state is only a step ahead of what is called a "captive state", ie it is a state in which, not only individual services and agencies, but also the top of the state, therefore the entire state, is in the jaws of corruption [14, p. 45b].

In order to gain personal benefit, there are small illegalities that citizens face in their daily communication with public officials and lower-ranking officials. Major corruption is far more dangerous for the general state interest because it is often realized at the top of the government of a state. In that sense, economic freedoms depend on: security of property rights, economic policy, freedom of contract, scope of state intervention in the economy, customs and tax burdens, quality and degree of regulation, state spending, freedom to enter business, all the way to the general state of

[1] Corruption in customs, CLDS, Belgrade, 2002:45.
[2] Those are, at the first sight, certain esteemed politicians, leaders of political parties, ministers, senators, congressmen, assembly representatives, representatives of esteemed international and national governmental and non-governmental organizations, so-called permanent fighters for democracy, rule of law and civil rights and freedom.

society, consequently, the economic and social climate. Economists also call such freedoms economic freedoms or market freedoms. The development of the market, ie short-term and long-term growth of the national economy, largely depends on the degree of economic freedoms [20, p. 242b].

The problems posed by these criminal activities have become global, and their impact on the country's financial integrity and stability is increasingly recognized. The complexity of the financial system, as well as the differences between different national legislations and anti-corruption and anti-money laundering systems, are being exploited by criminals. They are particularly interested in jurisdictions with weak or ineffective controls, where they can more easily transfer their assets without control and disclosure. In any society, insiders and oligarchs profit the most in an undeveloped institutional framework, and their power decreases only when, or better said, if liberalization and privatization are accompanied by strengthening of discipline (i. e. the judiciary and the rule of law) and creating a favourable investment climate [14, p. 3c]. The most important reasons that lead to corruption and money laundering are: 1) the government, which through its policy, through contracts, privatization and granting concessions, provides great financial benefits to individuals and companies, and entities closer to, or "selected" by the government; 2) tax evasion, especially when the tax system discourages economic activities; 3) low salaries of civil and public servants; 4) bribing politicians for good election results; 5) when the judiciary does not respect the laws, but selectively applies them depending on the affiliation to the ruling state and political structure; 6. money laundering with the all-round help of the state.

3. Law regulation

In an effort to find the most appropriate response to the challenges of transnational crime, there has been a fundamental change in the orientation of the criminal justice system, both nationally and internationally [5, p. 299–317]. Since the mid-1990s, the international community has responded to these phenomena with a multitude of international legal instruments and policy initiatives, both regionally and globally. In order to fight corruption and money laundering, an international body has been formed by the G7, FATF[1] in 1998, and later, the powers extended to the fight against terrorist financing. The FATF is a policy-making body that brings together legally, financially and legally applied experts to achieve national AML legislation and CFT[2] reforms. Since 2014, its membership consists of 36 countries and territories, as well as two regional organizations. The FATF works in collaboration with a large number of international bodies and organizations, and these entities have observer status with the FATF, which does not allow them to vote, but allows them to participate fully in plenary sessions and working groups. The FATF has developed 40 recommendations regarding money laundering and 9 special recommendations regarding terrorist financing. The FATF evaluates each member country against these recommendations in published reports, through: Monitoring members' success in implementing anti-money laundering measures, Reviewing and reporting money laundering trends, techniques and countermeasures, Promoting the adoption and implementation of FATF anti-money laundering standards globally.

The European Union also pays significant attention to money laundering as a negative and harmful phenomenon. In its Directive (91/308/EEC)[3], money laundering is defined in detail in the procedures and actions that are characteristic of this criminal offense. The United Nations and the International Monetary Fund define money laundering thoroughly, as do the United Nations Office

[1] FATF. (2016). What is Money Laundering. Preuzeto 02.12.2020.u 20.45, http://www.fatf-gaf.org/faq/money-laundering/#d. en.

[2] Anti-Money Laundering & Counter Terrorism Financing Act 2006 (Australia), the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 (New Zealand), and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap 615) (Hong Kong. See also (for example) guidance on IMF and FATF websites similarly conflating the concepts.

[3] COUNCIL DIRECTIVE of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering.

on Drugs and Crime (UNODC) and the International Monetary Fund (IMF), which define money laundering in the same way as defined by the European Council Directive[1]. The International Monetary Fund defines money laundering as a process that hides the link between illicit sources and funds generated from those sources or criminal activities[2].

Although adopted through documents at both the international and national levels, there are difficulties in measuring, and the amount of money laundered each year is in the billions (US dollars) and represents a significant concern for government policy[3]. As a result, governments and international bodies have made efforts to deter, prevent, and arrest money launderers. Financial institutions are also making efforts to prevent and detect transactions involving dirty money, and as a result governments are required to avoid reputational risk. Issues related to money laundering existed as long as there were large-scale criminal enterprises. Modern anti-money laundering laws have evolved along with the modern war on drugs. In recent times, anti-money laundering legislation has been seen as an adjunct to the financial crime of terrorist financing in which both crimes usually involve the transfer of funds through the financial system (where money laundering refers to where the money came from and terrorist financing refers to where the money goes).

The interest of the international community has increased due to the financial crisis in 2008, due to the fact that the financial crisis has increased money laundering and corruption, and greater efforts have been made to reduce these criminal activities. Research conducted by the FATF, Egmont and Wolf's berg Group[4] indicates an increase in certain types of predicate offenses and that emphasis is placed on the mechanisms used in the process of money laundering and corruption, as well as the increase in fraud offenses. The study indicates that money laundering risks that were rarely seen before this financial crisis have been identified, such as: fear, panic and greed caused by loss of capital and difficult financial position of companies become endemic in the economy or within certain institutions, which increases the occurrence of the criminal offense of fraud or other criminal conduct within financial institutions and corporations.

The problem of corruption is recognized by the Council of Europe and establishes a special Multidisciplinary Group (GRECO) which provides a definition of corruption: "Corruption is bribery like any other act by a person entrusted with a responsible function in the public or private sector or as an independent agent which has the status of that kind, which was performed in order to gain illegitimate benefit for oneself or others". The Multidisciplinary Group (GRECO) prepared two concepts of the anti-corruption convention. The first of them is the "Classical Convention", which covers criminal law aspects, while the second is the so-called "Framework Convention", which should ensure the effective application of the adopted rules. Over time, the Council of Europe abandoned these two concepts and decided to adopt a single Criminal Law Convention on Corruption, on 27 January 1999. With the creation of the European Union, the need was expressed for the harmonization of legal regulations in all areas, including those that will protect member states from criminal acts of corruption. The solutions we have now are based on the harmonization of regulations in the field of criminal law of the member states, but over time the issue of real and local jurisdiction must be resolved, precisely because the perpetrators of this crime operate throughout the European Union. Given the large number of acts committed through corruption and money laundering, as well as the negative effect on the fiscal balance, the IMF has a mandate to monitor, explore ways to strengthen money laundering and terrorist financing, including the ability to conduct targeted risk-based assessments money laundering and terrorist financing regimes in countries.

[1] UNODC & IMF. (2005). Model legislation on money laundering and financing of terrorism.

[2] IMF. (2016). Finding Solutions Together.

[3] https://en.wikipedia.org/wiki/File:The_Economist_(Cover-_June_14,_2012).jpg, accessed on 03.12.2020 in 22.50h.

[4] FATF. The impact of the financial crisis on money laundering.

A significant part of criminal activities, especially organized crime, was committed with the aim of generating profit, and that profit is significant: A study conducted by the Transcrime Joint Research Center on Transnational Crime[1] found that income from organized crime within the European Union (EU) amounted to up to 110 billion euros per year[2]. The United Nations Office on Drugs and Crime (UNODC) estimates that crime revenue worldwide reaches up to 3,6 % of global GDP[3]. In addition to the damage done to EU citizens, this profit from organized crime also poses a threat to the European economy, as they often invest in legitimate businesses or launder through them. The 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the so-called «Warsaw Convention»)[4] calls on the parties to assist other parties in enforcing non-criminal freezing and confiscation orders. the provisions are included in the Financial Action Task Force (FATF)[5].

In 1990, the Council of Europe[6] in Strasbourg adopted the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in order to clarify terms that may have different meanings in national legislation, as they appear as a bottleneck in international cooperation [4]. The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and the Financing of Terrorism was adopted in May 2005 as a result of the revision of previous positions, and with respect to the phenomenon of terrorism in Warsaw [5, p. 299–317]. It should be noted that this Convention, in Article 12, provides for the establishment of financial intelligence units at the national level (Financial Intelligence Unit — FIU). Legal regulations, in their content, purpose, justification and other characteristics, must be compatible with the real needs of modern society/man in terms of efficient and lawful fight and achievement of expected results, primarily in the field of prevention and then of criminal suppression [8, p. 256].

In Serbia, the Criminal Code as well as the Law on Prevention of Money Laundering[7] prescribe actions and measures taken to detect and prevent money laundering and corruption. With the aim of detecting and preventing money laundering, appropriate actions and measures are taken, during and after receiving, exchanging, storing and using property, depositing and withdrawing cash and effective foreign money from accounts, transferring property across the state border, concluding transactions for obtaining the property or other treatment of that property.

Conclusion

Corruption and money laundering are taking on newer forms, so the international community, and all states individually, will have to make many more efforts in the future to alleviate this problem if there is already a suspicion that it is impossible to eradicate it. There are numerous measures and activities for preventive action that companies, organizations, institutions and other organizations and bodies have. These measures can be: organizational, economic, legal, personnel and technical in nature. In order to prevent corruption and money

[1] https://unicatt.academia.edu/.

[2] EUROPOL citation, is the crime still being paid for? Recovery of criminal assets in the EU, Statistical Survey 2010-2014, 2016, p. 4.

[3] EUROPOL citation, is the crime still being paid for? Recovery of criminal assets in the EU, Statistical Survey 2010-2014, 2016, p. 4.

[4] Article 24.5 of the Warsaw Convention: “The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions, in so far as such measures are ordered by a judicial authority of the requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention”.

[5] The FATF is an inter-governmental body with the objective to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.

[6] Eg. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the 2000 UN Convention against Transnational Organized Crime, the 2003 UN Convention against Corruption (UNCAC) and the 2005 Warsaw Convention.

[7] Official Gazetta of the Republic Serbia, No. 107/2005.

laundering, the media also have an important place, such as public opinion, because they act on the consciousness of citizens and influence by shaping the public opinion in relation to specific cases of corruption. In addition, among the activities on prevention and suppression of corruption, the activity of local self-government bodies must not be neglected. Very complicated procedure for proving the origin of property, seizure and confiscation of illegally acquired property, as well as the absence of regulations on the manner of keeping and managing confiscated property, from the moment of seizure to the final decision of the court, ie another competent body, knowingly neglect the confiscation of property derived from the crime, because, proving, determining and especially keeping the property, is a specific problem that requires additional engagement, so they would delay the procedure or delay the verdict.

On 21 December 2016, the European Commission presented a proposal on mutual recognition of freezing and confiscation orders following this proposal, and on 14 November 2018, the European Parliament and the Council of Europe adopted Regulation (EU) 2018/1805[1], which will apply from 19 December 2020, which gives us hope that the internationalization of important issues related to corruption, money laundering and confiscation of criminal proceeds will enable national legislations to find a firm and secure foothold in international documents.

[1] Official Journal of the European Union. 2018 Nov; (L 303/1). http://data.europa.eu/eli/reg/2018/1805/oj, accessed on 04.12.2020 in 22.00h.

References

1. Cvjetičanin D. *Kríza zahraničného dlhu* [External debt crisis]. Prizma, Belgrade; 2003. (in Serbian).

2. Cuéllar M.F. The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance. *Journal of Criminal Law and Criminology*. 2003;93:311, Stanford Public Law Working Paper No. 64. Available at: http://dx.doi.org/10.2139/ssrn.354740

3. Dokic Z., Scekic A. Corruption as a severe form of crime. Proceedings of the XVI seminar of law "Serious forms of crime", Budva; 2004 June 8-12; Institute for Criminological and Sociological Research and Higher School of Internal Affairs, Belgrade, 2004, p. 259-278.

4. Golobinek R., Vujicic A., and others. Financial Investigations and Confiscation of Criminal Assets.— A Handbook for Police and Justice. Strasbourg: Council of Europe; 2006.

5. Ilic G.P., Banovic B. International standards confiscation of criminally acquired property and domestic legislation. *Pravna rijec.* 2007;IV(12):299-317.

6. Jordan D. *Drug politics: dirty money and democracies*. 1999. 296 p.

7. McClean D.J. *International Co-operation in Civil and Criminal Matters*. Oxford: Oxford University Press; 2002.

8. Karovic S., Simović M.M. Complexity of detection, investigation and proving of criminal offenses in the field of drug abuse. International scientific conference. *Drugs and Drug Addiction: Legal, Criminological, Sociological and Medical issues*. Belgrade (Serbia): Institute of Criminological and Sociological Research; 2020.

9. Karovic S., Simovic M.M. *Universal warranties of the suspect or accusedin criminal proceedings in Bosnia and Herzegovina*. Archibald Reiss Days 2020. Belgrade (Serbia): University of Criminal Investigation and Police Studies; 2020.

10. Lilley P. *Dirty dealing: The untold truth about global money laundering, international crime and terrorism*. London: Kogan Page Publishers; 2006.

11. Mrvic-Petrovic N. *Korupcija i strategija njenog suzbijanja* [Corruption and strategy for counteracting corruption]. Ĉasopis Temida; 2001 br. 4. (in Hrvatski).

12. Madzar, Lj. *Political and economic roots of corruption. Proceedings System and Corruption*. Belgrade: Center for Economic Research of the Institute of Social Sciences; 2000.

13. Mesko G., Dobovsek B. Police prevention of corruption-analysis of manifestations of corruption and changes in the philosophy of the police organization. Proceedings *Place and role of the police in crime prevention*. Police Academy, Belgrade; 2000.

14. Popović D. Winners and losers in transition. *Politika, Ekonometar*. 2003;(16).

15. Popovic M. Ekonomska analiza korupcije [Economic analysis of corruption]. *Bezbednost*. 2003;45(3):353-374. (in Hrvatski).

16. Schneider F., Windischbauer U. Money Laundering: Some Facts. *Economics of Security Working Paper 25*. Berlin: Economics of Security; 2010.

17. Stojanovic, Z. *Politika suzbijanja kriminaliteta* [Crime prevention policy]. Novi Sad; 1991. (in Hrvatski).

18. Tanzi V. Corruption Around the World: Causes, Consequences, Scope, and Cures. *IMF Staff Papers*. 1988;45(4): 559-594. https://www.imf.org/external/Pubs/FT/staffp/1998/12-98/pdf/tanzi.pdf

19. Tanzi V., Schuknecht L. *Public Spending in the 20th Century: A Global Perspective*. Cambridge University Press; 2000. https://doi.org/10.5860/choice.38-1677

20. Teofilovic, N., Jelačić, M. *Sprečavanje, otkrivanje i dokazivanje krivičnih dela korupcije i pranja novca* [Prevention, detection and proof of criminal acts of corruption and money laundering]. Belgrade: Police Academy; 2006. (in Hrvatski).

21. Teofilovic N., Jelačić M. Some foreign policy aspects of corruption and money laundering. *NBP*. No. 1/2004, Belgrade: Police Academy; 2004. (in Hrvatski).

22. Vesic D. Privatization process and level of corruption. *Ekonomski vidici*. 2004;9(3):469-475.

23. Vukovic, S. *Korupcija I vladavina prava* [Corruption and the rule of law]. Belgrade: IDN—Draganic; 2003. (in Hrvatski).

Список литературы

1. Cvjeticanin D. Kríza zahraničného dlhu. Prizma. Belgrade, 2003. (in Serbian).

2. Cuellar M. F. The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance // Journal of Criminal Law and Criminology. 2003. no. 93. P. 311, Stanford Public Law Working Paper no. 64. http://dx.doi.org/10.2139/ssrn.354740

3. Dokic Z., Scekic A. Corruption as a severe form of crime // Proceedings of the XVI seminar of law «Serious forms of crime» (Budva, 8–12 June 2004). Belgrade : Institute for Criminological and Sociological Research and Higher School of Internal Affairs, 2004. P. 259–278.

4. Golobinek R., Vujicic A., and others. Financial Investigations and Confiscation of Criminal Assets—A Handbook for Police and Justice. Strasbourg : Council of Europe, 2006.

5. Ilic G. P., Banović B. International standards confiscation of criminally acquired property and domestic legislation // Pravna rijec. 2007. Vol. IV, no. 12. P. 299–317.

6. Jordan D. Drug politics: dirty money and democracies. 1999. 296 p.

7. McClean D. J. International Co-operation in Civil and Criminal Matters. Oxford : Oxford University Press, 2002.

8. Karovic S., Simović M. M. Complexity of detection, investigation and proving of criminal offenses in the field of drug abuse. International scientific conference // Drugs and Drug Addiction: Legal, Criminological, Sociological and Medical issues. Belgrade : Institute of Criminological and Sociological Research Serbia, 2020.

9. Karovic S., Simovic M. M. Universal warranties of the suspect or accused in criminal proceedings in Bosnia and Herzegovina // Archibald Reiss Days 2020. Belgrade (Serbia) : University of Criminal Investigation and Police Studies, 2020.

10. Lilley P. Dirty dealing: The untold truth about global money laundering, international crime and terrorism. London : Kogan Page Publishers, 2006.

11. Mrvic-Petrovic N. Korupcija i strategija njenog suzbijanja. Casopis Temida, 2001. br. 4.

12. Madzar, Lj. Political and economic roots of corruption. Proceedings System and Corruption. Belgrade : Center for Economic Research of the Institute of Social Sciences, 2000.

13. Mesko G., Dobovsek B. Police prevention of corruption-analysis of manifestations of corruption and changes in the philosophy of the police organization // Proceedings-Place and role of the police in crime prevention. Belgrade : Police Academy, 2000.

14. Popovic D. Winners and losers in transition // Politika, Ekonometar 2003. br. 16.

15. Popovic M. Ekonomska analiza korupcije // Bezbednost. 2003. Vol. 45, no. 3. P. 353-374.

16. Schneider F., Windischbauer U. Money Laundering: Some Facts // Economics of Security Working Paper 25. Berlin : Economics of Security, 2010.

17. Stojanovic, Z. Politika suzbijanja kriminaliteta. Novi Sad, 1991.

18. Tanzi V. Corruption Around the World: Causes, Consequences, Scope, and Cures // IMF Staff Papers. 1988. Vol. 45, no. 4. P. 559–594. URL: https://www.imf.org/external/Pubs/FT/staffp/1998/12-98/pdf/tanzi.pdf

19. Tanzi V., Schuknecht L. Public Spending in the 20th Century: A Global Perspective. Cambridge University Press, 2000. https://doi.org/10.5860/choice.38-1677

20. Teofilovic, N., Jelacic, M. Sprečavanje, otkrivanje i dokazivanje krivičnih dela korupcije i pranja novca. Belgrade : Police Academy, 2006.

21. Teofilovic N., Jelačić M. Some foreign policy aspects of corruption and money laundering // NBP. 2004. no. 1. Belgrade : Police Academy, 2004.

22. Vesić D. Privatization process and level of corruption // Ekonomski vidici. 2004. Vol. 9, no. 3. pp. 469-475.

23. Vukovic, S. Korupcija I vladavina prava. Belgrade : IDN—Draganic, 2003.

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