

THE PROBLEM OF LAUNDERING MONEY OBTAINED BY CRIMINAL OFFENCES ON THE BALKAN ROUTE

CASE STUDY

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Balkan Criminology course

Dubrovnik, October 2015

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RELEVANT INTERNATIONAL LEGAL DOCUMENTS

1. The International Convention against Transnational Organized Crime (the Palermo Convention, 2000, came into force September 29th 2003)
 - criminalisation money laundering
 - all serious crimes
 - Article 6 paragraph 1 subparagraph a
 - subjective element - objective element
 - banks involved in the process of prevention

2. United Nations Convention against corruption (signed on October 31st 2003)

3. United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances - Vienna Convention (came into force November 11th 1990)

4. International Convention for the Suppression of the Financing of Terrorism (signed on December 9th 1999)

5. Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention, November 8th 1990)

- incorporates principles in the regulation system
 - material and immaterial property, movables and immovables, legal documents
 - catalogue of predicate offences – Balkan states
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- geographical position
- social aspect
- brain drain during the 90's
- illegal transport of people across the state border
- trafficking in narcotic drugs and weapons



LEGISLATION OF THE REPUBLIC OF CROATIA

MONEY LAUNDERING (Article 265 of the Criminal Code)

- investing, taking over, transforming, transferring or exchanging of pecuniary benefit acquired by a criminal offense
- goal of concealing its illegal source
- concealing real nature of pecuniary benefit acquired by a criminal offense obtained by other
- obtaining, possessing or using pecuniary benefit acquired by other
- qualificatory in financial or other operations, dealing with money laundering, great value of pecuniary benefit
- negligence
- pecuniary benefit acquired by a criminal offense committed in a foreign state
- voluntary withdrawal

***STATISTICS FOR THE PROSECUTION OF CRIMINAL OFFENCE OF MONEY
LAUNDERING IN THE REPUBLIC OF CROATIA ACCORDING TO THE OFFICIAL
REPORTS OF THE CROATIAN STATES ATTORNEY OFFICE***

YEAR	REPORTED	DISMISSED	CHARGED	CONVICTED
2011	17			
2012	11			
2013	1			
2014	25	1	11	2

MEASURES FOR PREVENTION OF MONEY LAUNDERING AND TERRORIST FINANCING IN THE REPUBLIC OF CROATIA

- ❑ analysis and risk assessments
- ❑ Anti-Money Laundering Office, Financial inspectorate, Tax administration, Customs Administration, Croatian national bank and Croatian financial services supervisory agency
- ❑ international exchange of the data and the cooperation with the foreign financial intelligence units
- ❑ lawyers and notaries are the obligors of the law enforcement
- ❑ cash transactions limitations HRK 105.000,00/ EUR 15.000,00
- ❑ attorney-client privilege

COMPARATIVE REVIEW OF THE ANTI-MONEY LAUNDERING IN THE STATES OF BALKAN REGION

REPUBLIC OF MACEDONIA

- ❑ Act on prevention of money laundering and other proceeds acquired by criminal acts (2004)
- ❑ obligators not decisively determined
- ❑ terrorism financing is not standardized

MONTENEGRO

- ❑ Act on prevention of money laundering and terrorism financing (2007)
- ❑ Foreigners tax
- ❑ Lawyers and notaries not defined as obligators

BOSNIA AND HERZEGOVINA

- ❑ Act on prevention of money laundering (2004)
- ❑ Deviation from the standards on prevention of terrorism financing
- ❑ „rule based system”

REPUBLIC OF SERBIA

- ❑ Act on prevention of money laundering and terrorism financing
- ❑ Standardization with EU
- ❑ lawyers nominally not the obligators
- ❑ extremely high penalties
- ❑ professional money launders

MAIN FEATURES OF ORGANIZED CRIME

- Criminal entrepreneurship
- Rational criminal
- Domination and control
- Pluralism of authority
- Substitution the current system
- Transnationality
- Professionalization
- Sophisticated methods – corruption
- Integration and synergy

THE MOST KNOWN CRIMINAL GROUPS IN THE FIELD OF MONEY LAUNDERING

- a) BRANCH OF COSA NOSTRA - GERMANY – income of 40.000.000 \$ per year
- b) YAKUZA – AUSTRALIA
- c) FUK CHING – SAD
- d) PAVIGLIANTI CLAN – ITALY – income of 150.000.000,00 \$ per year, cooperation with Balkan region

PREDICATE OFFENCES ON THE BALKAN ROUTE – CASE STUDY

1st CASE

- Article 328, 329 and 326 of the Criminal Code
- EUR 1.400,00 – 1.700,00 per person
- all members of organization pleaded guilty
- 1 – 3 years of imprisonment

2nd CASE

- Article 328, 329 and 190 of the Criminal Code
- From the Republic of Kosovo to Swiss Confederation
- all members of organization pleaded guilty
- 1 – 8 years of imprisonment

SEIZING OF THE PROCEEDS OF CRIME

- ❑ the basic institute
- ❑ Criminal Code, Law on the office for the suppression of corruption and organized crime and the Act on Seizing Criminal Proceeds accomplished by the Criminal offence and misdemeanour
- ❑ legal presumption
- ❑ ECHR/ ECtHR

CASE STUDY – PROBLEM OF PROVING

- 126.230 euro banknotes
- EUR 4.740.530,00



FACTS AND THE PROCEDURE

- tow vehicle on the road border crossing Tovarnik
 - a considerable quantity of cash
 - 3 remedies on the drivers rights in first 48 hours
 - 4 counterfeited banknotes out of 126.230
 - Pre-trial prision - Constitutional complaint
 - the expertise of 4 disputable banknotes conducted by Croatian National bank
 - presentation of evidence
 - infringement procedure in front of the Financial Inspectorate of the Ministry of the finance of the Republic of Croatia
 - legally impossible situation
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**IMPORTANT QUESTIONS STILL REMAINED OPEN:
WHO IS THE OWNER OF THE MONEY, HOW MONEY
WAS OBTAINED AND FROM WHERE MONEY DERIVES
AND WHAT WAS THE AIM OF THE MONEY IN THE END,
AND IS IT, AT ALL, MONEY LAUNDERING ????????**

1) 3 PAPIRNATE NOUČANICE EUR-2 u APOČINU 50
50 EUR-2 SERIJSKOG BROJA: S20175422632

2) 1 PAPIRNATA NOUČANICA u APOČINU 50 50 EUR-2
SERIJSKOG BROJA: S 90090030341

ZAKUPČINSKI I KONTNI BROJEVI 2.

CONCLUSION OF CONSIDERATION

- ❖ Not uniformed list of predicate offences in Balkan states
- ❖ Obligor's inconsistent treatment of suspicious transactions, in the first place bankers, lawyers and notaries
- ❖ High costs of anti-money laundering system and the question of effectiveness
- ❖ The problem of corruption in the all fields – banking, police, administration, jurisdiction and secret service
- ❖ The question of the control of Anti-money laundering office in the potential abuse of mechanisms which encroach on privacy and business interest of the controlled subjects
- ❖ The problem of proving in the judicial proceeding, as opposed to all other previous phases, certitude or high probability of determining facts is required for the conviction because instead of it the principle in favorem of defendant will be applied
- ❖ The problem of defining beneficial owner
- ❖ The problem of freezing and seizing proceeds of crime

**THE BIGGEST PROBLEM IS DEFINING THE LIMIT BETWEEN
THE PUBLIC INTEREST OF ANTI-MONEY LAUNDERING AND
PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL
FREEDOMS, SINCE IN THE PRACTISE PRESUMPTION OF
INNOCENCE IS ALMOST ALWAYS NEGLECTED**



THANK YOU FOR YOUR ATTENTION!!

**THE LAW AN EYE
FOR AN EYE MAKES
THE WHOLE
WORLD BLIND.**



QuoteHD.com

Mahatma Gandhi
Indian Political Leader
(1869-1948)