



## Money Laundering

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**Abstract:** “Money laundering” is a widespread phenomenon of organized crime in contemporary society, especially in countries that are in transition. This phenomenon includes various criminal transactions and activities from which such money has been earned. In order to lose track of how initial financial capital was created, they invest different fields, such as: construction, real estate turnover, financial, banking, business, etc. In other words, with depositing and investing these funds in these areas, this money are used as “laundered”, reflected as money allegedly earned by lawful activities. In this way, companies are formed which use the “dirty” money as a cover for their business activities.

**Keywords:** money; circulation; “money laundering”; crime; criminality; real estate; bank; law etc.

### 1. Understanding the Term “Money Laundering”

Regarding the notion of “money laundering”, there are different definitions of the academic level by criminologists and so on.

The term “money laundering” is derived from the English word “Money Laundering” and was used for the first time in the USA between the 1970s and 1980s of the last century (Proda, 1998, p. 53).

“Money laundering” means the legalization of capital earned by criminal activities, namely financial transactions in order to conceal the true origin of money and other types of capital in the market (Teofilovic & Jelacic, 2006, p. 13).

“Money laundering” is a form of organized crime, widespread in contemporary society, especially in countries that are still in the transition phase.

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“Money laundering” represents the process of transforming unlawful benefits from criminal activities to conceal their origins and make them look like benefits that are provided through legitimate methods (Demolli, 2005, pp. 2-4).

“Money laundering” as a kind of economic crime represents the entirety of unlawful actions mainly in the financial, banking, economic area, where the circulation of money earned by criminal activities is hidden and “generating the general opinion “ that such money is earned by legitimate economic and financial activities.

## **2. Investing “Laundered” Money**

Today, there is a tendency to use different businesses from criminal groups. Business commitment is a good way to realize “money laundering”, proceeds from criminal activity whose benefits are colossal (Hysi, 2005, p. 28). The United Nations has concluded that “money laundering” is most often done through financial institutions, insurance companies and real estate corporate.

As it can be seen, criminal groups, their assets created by criminal activities have invested in the field of real estate, construction, financial sector, banking, trade of goods and services. This is clearly evident from the large number of transactions carried out in the abovementioned fields.<sup>1</sup> The purpose of such actions is to lose the origin of the way of making unclean money and using different financial and economic systems to sell them to “clean” money obtained through legal channels.

“Money laundering” in the business field is also done by establishing different business companies, as is the case with Kosovar A.G. from Prizren, which in Italy, Hungary, Germany and Norway had opened such offices in order to get the money earned from drug trafficking to “launder” through various transactions. In the action called “A ...” of Italian carabinieri “ROS”, undertaken in 1999, 124 people were arrested. At the head of the criminal network stood A.G., who since the 90's has led such a network. He lived in a luxury house in Milan, Italy and was married to an Italian. He had purchased assets and had made constructions in Kosovo and had invested in the business field, opening among other things a large local in Prizren in 1995, with beauty salon activity and in the suburb of Prizren he had built several large houses (Raufer & Quere, 2003, p. 71).

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<sup>1</sup> According to official data of the Kosovo Agency Statistics, over 1,000 pumps have been built in this country, gas stations, major shopping centers, hotels and motels, etc.

The above investment areas are favoured by various criminal groups, because these are more popular among them for the purpose of “money laundering”.

“Money laundering” through the real estate circulation in Kosovo and Albania is more difficult to detect and prevent due to the fact that cash transactions are still present, not always through the banking system. In these cases, formal contracts drafted and notarized by notaries are also fictitious (false, declared by the contracting parties), just to avoid payment through the bank account (Law no. 03/L-196, 2010).

This is evident especially in Kosovo as a result of the fact that some notaries do not require the evaluation of the value of the real estate (which is the subject of the contract) by the licensed real estate appraisers and notaries to avoid their professional and legal responsibilities for the value of the subject of the contract – they transfer the real estate to the contracting parties, by specifying in the notarial act that it is based on their declarations.<sup>1</sup>

For this reason, this situation complicates the process of investigating “money laundering” in the field of real estate turnover, financial and banking and business turnover.

This kind of crime is the easiest, shorter and safer way of criminal groups to carry out their criminal activities, because the money thus earned by investing in the field of real estate, the financial and banking sector and business sector, will seem to have been acquired legally and honestly (Beka, 2015, pp. 15-151).

Similar ways of “money laundering” in the period 1994 to 1997 were also in Albania through “pyramid” firms such as: “Vefa”, “Silva”, “Cenaj”, “Gjallica”, “Kamperi”, etc. in which about \$ 1.5 billion were deposited (Malaj, 1997).

It should be noted that in Serbia and Montenegro, in the period 1991-1993, such a form of “money laundering” was present, opening private banks in Belgrade, such as “Dafiment Bank” administered by Dafina Milanovic, a former bank clerk, sometimes convicted of financial crimes and forgery of bank documents, which was a close associate of Serbian governors or another bank of this kind “Jugoskandik” managed by Jezdimir Vasiljevic, nicknamed “Gazda Jezda”, etc. Such banks offered enormous interest to their clients. In March 1993, these banks closed, leaving behind a debt of \$ 1 milliard to their customers. Despite this, none of them were arrested. Similarly, in this period millions of people were also deceived in Russia, Romania,

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<sup>1</sup> In most cases notaries in the notarial act - a real-estate-purchase contract state that “according to the contracting parties the value of the object of this contract is ... .euro”.

Macedonia, Bulgaria, and in some countries that were in the process of political, legal, economic and social transition (Miletitch, 2000, pp. 70 -75). So the emergence of these financial institutions in that period was a phenomenon of former socialist (communist) Balkan and Eastern European states, a phenomenon that accompanied the transition from the planned economy system to that of the market economy (Miletitch, 2000, pp. 70 -75).

The “money laundering” process involves three main stages (Bejaković, 1997, pp. 461-466):

1. The first phase involves the installation, respectively physical transfer of money earned by carrying out various criminal activities;
2. The second phase involves coverage, respectively stratification by engaging in various financial transactions in order to trace the ways and means of generating money from criminal activity;
3. The third phase involves the effort and commitment that these “laundered” money to be presented as a form of wealth and newly created capital, to invest and to deposit them in legal economic activity (Singer, 1994, pp. 610- 611; Halili, 2008, p. 150; Gashi, 2011, p. 87).

The ways used by such criminal groups are that the money in some phases is deposited in the bank and from time to time they “emerge” from the banking institution, investing in construction, real estate turnover, establishment of different companies etc., with the sole purpose of shaving these “dirty money” into legally acquired money.

### **3. Preventing and Combating “Money Laundering” in Kosovo**

Institutions of the Republic of Kosovo in an effort to prevent and combat “money laundering” have created an institutional and legal framework to deal with this problem, and therefore several laws have been adopted such as:

- Law No. 03/L-196 on the Prevention of Money Laundering and Terrorist Financing, published in the Official Gazette of the Republic of Kosovo, No. 85, Pristina, 2010;
- Penal Code of the Republic of Kosovo;
- Criminal Procedure Code of the Republic of Kosovo;

- Law on the Responsibility of Legal Persons for Criminal Offenses (Law no. 04 / L-30, 2011).
- Law no. 03/L-001 on the Benefit to Former High Officials;
- Law no. 03/L-063 for the Kosovo Intelligence Agency;
- Law no. 04/-L-015 on witness protection;
- Law no. 04/L-043 on the protection of informants;
- Law no. 04/L-051 on prevention of conflict of interest in the exercising public function;
- Law no. 03/l-151 “On the Declaration, Origin and Control of Property and Gifts of Higher Public Officials”, Official Gazette of the Republic of Kosovo, No.66, Pristina, 2010;
- Law no. 2004/34 against corruption. Official Gazette of the Republic of Kosovo;
- Law on Declaration, Origin and Control of Property and Gifts of Higher Public Officials;
- Law on Extended Competencies for Confiscation of Wealth Benefits obtained through criminal offenses, etc.

The Republic of Kosovo, like some other countries in the region, is faced with the phenomenon of “money laundering”. This has come as a result of the large extent of an unstable economy where informality and other forms of criminality are at a high level.

	2012	2013	2014	2015
Number of criminal convictions	3	4	2	4
Number of arrested persons	7	0	0	2
Number of suspects for criminal convictions	14	6	6	27

(Statistics of criminal offence “Money Laundering” 2012 – 2015) (Kosovo Police, 2012 -2015).

Based on the cases reported and investigated by the Kosovo Police for the period 2014 - 2015 regarding “money laundering” and criminal convictions sent to the competent prosecutor, there are some ways of committing this criminal offense, where the money earned from the activity criminal offenses are transferred through bank accounts of natural or legal persons in some countries using offshore locations (countries where no claim is made for money origin, places that allow tax evasion)

and opening fictitious businesses in these countries without carrying out any economic activity.

Results of SPRK in resolving the cases of "Money Laundering" (Period 2014 – 2015) (Special Prosecutor of the Republic of Kosovo, 2014 – 2015)				
Special Prosecutor of the Republic of Kosovo	Number of resolved cases	% e of resolved cases	Number of unsolved cases	% of unsolved cases
Year 2014	14	33%	28	67%
Year 2015	6	17%	30	83%

From the above table there can be find out that: The Special Prosecutor of the Republic of Kosovo for solving cases related to "money laundering" has been more efficient during 2014 than in the following year 2015. The reflected result shows us a degree the Special Prosecutor Office in combating the perpetrators of crime: "Laundering" the money.

In order to prevent and combat "money laundering", the Republic of Kosovo has established the Financial Intelligence Unit (within the Ministry of Finance) which monitors, analyzes and distributes suspicious bank transactions for "money laundering". Also, Kosovo Police within the Directorate of Investigation against Economic Crimes has established the Unit against "money laundering", which deals mainly with the investigation of the potential perpetrators of this criminal offense. Also, Kosovo Customs has an obligation to register each individual with more than 10 thousand Euros entering the Republic of Kosovo, while other institutions report as foreseen by the Law on Prevention of Money Laundering and Terrorist Financing.

Court decisions for convicted persons in connection with the criminal offense of "money laundering"(2013, 2014 and 2015) (Kosovar Courts, 2015)		
Year	Number of persons against whom the court has issued a decision	The number of persons announced guilty
2013	-	-
2014	-	-
2015	1	1

From the above table it can be find out that: The number of persons against whom the Kosovo courts have issued a "money laundering" decision is only 1 for the period of 2015, while for years 2013 and 2014 has not issued any such decision. The same is the number of persons announced guilty for criminal offense of money laundering. This situation best indicates the degree of inefficiency of the justice institutions in the Republic of Kosovo.

The “dark number” of these criminal offenses is at a high level in Kosovo, which in order to prevent and combat these criminal phenomena in the post-war period (after 1999) has adopted:

Regulation for the prevention of “money laundering” and similar criminal offenses (UNMIK Regulation, no. 2004/2), which was in accordance with the Convention on Money Laundering, Confiscation and Seizure of Property Acquired by Criminal Activities;

- Regulation on Hidden Measures and Technical Measures of Surveillance and Investigation (UNMIK Regulation, no. 2002/6);

- Regulation on measures against organized crime (UNMIK Regulation no. 2001/22, 20.09.2001), where Article 2 stipulates that any person who commits a crime in an organized manner is sentenced to 5-15 years in prison and a fine of 175,000 €, respectively 20 to 40 years in prison and a fine of up to 500.000 €. At the same time, it is foreseen the possibility of confiscation of the assets benefit created by carrying out criminal activity.

- In 2010, the Law on Prevention of Money Laundering and Terrorist Financing was adopted in Kosovo (Law no. 03/L-196, 2010), which presented a legal act of particular importance in the field of prevention and combating “money laundering” as a form of organized crime. Through this law, all the measures, competent institutions and procedures that were to be developed for the prevention of money laundering and terrorist financing were determined.

- That is why our institutions have a duty to adopt special laws against “money laundering” in the field of real estate turnover and construction, which will be in accordance with the United Nations Convention against International Organized Crime. In this respect, I think the English model would be very effective. This is illustrated by the fact that in 1995 England approved the “Act on benefits derived from Criminal Activity” and according to this law, if a criminal subject were to be tried and found guilty of two counts, of which either one it was a grave economic crime, the court was given the right and the obligation to verify the defendant's property in the last 6 years, charging the defendant to explain when and how he did that asset (Bejko, 2002, p. 147). Thus, without taking such measures from justice system institutions, any state that is in the transition phase will more closely resemble a “criminal recidivist society”, as it is time to take action and create conditions in the way that the rule of law should work, and no one should stand over the law (Halili, 2002, p. 17).

From the above, it can be concluded that prosecution bodies are not sufficiently engaged in preventing and combating this form of criminality.

- Money laundering” can only be prevented and combated through:
  - Full independence of legislative, judicial and executive power;
  - Full transparency of the work of state and public institutions;
  - Raising the legal culture of citizens and employees in state and public institutions;
  - Publication of official information on immovable and movable property of individuals who have been elected and appointed to state, political and public institutions;
  - Uninterrupted training of staff of competent institutions in the fight against organized crime in general, and in particular in the field of “money laundering”;
  - Mutual cooperation of competent state institutions, with international specialized organizations in the field of legal aid, security and the fight against organized crime, etc. (Beka, 2015, pp. 147-156).
- Meanwhile, when it comes to the prevention of “money laundering” in financial-banking institutions (Nikolovski, 2011), it is more than necessary to apply some important rules, such as:
  - The bank must work in accordance with legal provisions <sup>1</sup>;
  - The Bank and its employees should cooperate with important state and public institutions in order to prevent “money laundering”;
  - Bank staff should constantly be trained and informed about banking policy in the area of money “laundering” prevention;
  - Bank staff should develop close cooperation with their clients;
  - The staff of the bank, on the occasion of granting loans to citizens for the construction of various facilities and the circulation of real estate, should be very careful. Such care means increasing the mortgage portfolio for the benefit of the bank and the necessary verification of the purpose of obtaining the loans;

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<sup>1</sup> A phenomenon of money laundering in banking institutions has also been present in Albania through “pyramid” or fraudulent firms in 1997, causing material damage to Albania, as well as financial and political problems, whereby about 2,000 people died.



- Close cooperation of commercial banks with the Central Bank and the Financial Intelligence Service, etc.
- The basic parameters of the fight against “money laundering” are:
  - The determination of the country’s political structures as well as competent state bodies to prevent and combat “money laundering”;
  - Organizing and institutional cooperation at local, regional and international level in the fight against “money laundering”;
  - Issuance of justice to all persons of state administration, government and political parties implicated in “money laundering” and the manner of creating their immovable and movable property;
  - Reforming the institutions of the justice system, in particular the police, the prosecution and the judiciary, in reviewing the training of specialized bodies for combating “money laundering”;
  - Conducting ongoing scientific and professional research on “money laundering” and other forms of organized crime (Latifi, 2002, p. 86).

In the Action Plan related to the implementation of the European Partnership, the fight against “money laundering” is foreseen, so for its realization, institutional capacities should be strengthened and cooperation intensified among all important state sectors, including drafting and the adoption of advanced laws in this area.

As it can be seen, the successful fight against money laundering requires a comprehensive approach, uninterrupted action and determination in the consistent implementation of legal provisions, including the high level of accountability.

#### **4. Conclusion**

The circulation of money from illegal origin is a present phenomenon in Kosovo and beyond. The progress achieved so far is not satisfactory as official records of the justice institutions testify to us that there are few cases of criminal charges, indictments and convicts for the criminal offense “money laundering”.

In order to advance the prevention and fight against this criminal phenomenon, it is necessary political support that the justice institutions should have, as this work also affords persons of “white collar” who are systematized in high political positions, state, judicial, prosecutorial, etc.

Also, numerous political interventions in the justice system undermine the fight against this criminal phenomenon. This is negatively affected by the lack of staff and the low professional level of staff in the justice system as well as the insufficient technical infrastructure to prevent and combat this kind of criminality.

Kosovar society expects justice institutions to increase the level of responsibility for preventing and combating the “laundered” circulation of money earned by criminal activities. This can only be achieved when the police, prosecution and judiciary are ready to legally attack the particular political and state structures that are “behind” the main players of “money laundering” gained from illegal activities.

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