

CERTAIN MANIFESTATION FORMS AND PROVING MONEY LAUNDERING IN THE EMERGING MARKET

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ABSTRACT

Money laundering, in its almost 90-year-long history, has attracted the attention of the scientific, professional, but also the general public. Throughout the entire period, the manifestations of this criminal phenomenon, its typology, etiological factors, etc., have changed, but the essence has remained the same: the transformation of illegally acquired money into legal financial flows. Emerging markets are particularly burdened, which is the subject of this paper: identifying, monitoring and proving the process of money laundering with the aim to reduce it in developing countries. In addition, what can be observed in these markets is that money laundering operations are mainly related to those activities where most of the payments are made in cash. Their specificity, that is, the basic motive for execution, is not just a profit, but the aspiration to introduce “dirty” money into legal flows. The aim of this paper is to use the method of description to explain and describe scientifically the money laundering process and to combat this phenomenon with a focus on the characteristics of the money laundering process. In addition, the paper describes the models and weaknesses of this process, while at the same time it respects the standards and specifics of business operations in emerging markets. The result of the paper is that it provides an overview of money laundering in the 21st century in small and open economies, including proposals to prevent and combat this negative phenomenon.

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1. INTRODUCTION

The phenomenon of “money laundering” is interesting to the general public due to its complexity, difficult detection of perpetrators and proof of guilt, but also the history of this criminal phenomenon.¹ On the other hand, the scientific public mentions this phenomenon when it talks about organized crime, severe forms of corruption (e.g. some “bankruptcy”, “privatization” or some other famous “mafia” group), i.e. financing of terrorism (see more: Ridley, 2008; Rose-Ackerman, Palifka, 2018; Kyriakos-Saad, Esposito, Schwarz, 2012; Chaikin, Sharman, 2009; Irwin, Raymond Choo, Liu, 2011; Teichmann, 2020). In the professional community, an increase in expenditures with the aim of extracting money from a certain project is often wrongly described as “money laundering” (Gordon, 2011, p. 507). Money laundering is, as Unger (2007) puts it: “a growth industry involving a large number of countries and law enforcement agencies together with non-governmental, intergovernmental, multilateral and supranational organizations” (p. 6). Despite attempts to express the amounts of “laundered money” (Walker, 1999), it all comes down to estimates of the amount and number of “launderers” because it is a “mysterious phenomenon and its scope is difficult to measure, especially because the most successful methods are still unknown” (Pedić, 2010, p. 618; Walker, 1999; Levi & Reuter, 2006; Jullum, Løland, Huseby, Ånonsen, & Lorentzen, 2020). According to estimates by the International Monetary Fund two to five percent of the world economy is made up of laundered money² (International Monetary Fund, 1998), while the United

¹ It is widely believed that the method of “money laundering” was developed by the famous American criminal Al Capone. He legalized the money earned from gambling, prostitution, racketeering and the sale of alcoholic beverages during the Prohibition in America in the 1920s, presenting it as an income from the chain of his automatic laundries. Namely, one of his business ventures was a company in which citizens washed and dried their clothes in machines, paying with coins. He presented the illegally acquired money as income received from coins inserted into washing machines in which citizens washed clothes. He paid taxes on that income properly and the money flowed into legal flows - it was “laundered” (Katušić-Jergović, 2007: 619-620).

² Mr. Michel Camdessus said in his speech (“Money Laundering: the Importance of International Countermeasures”) at the Plenary Meeting of the Financial Action Task Force on Money Laundering on February 10, 1998: “I hardly need to say that the IMF regards the anti-money laundering

Nations estimates that the amount of money laundered is about 3.6% of global GDP (2.3% -5.5%), which is equivalent to about \$ 2.1 billion (UNODC, 2011, p. 7). On the other hand, a well-known body for combating money laundering and financing of terrorism, the Financial Action Task Force (FATF), claims that the exact amounts of “laundered” money are impossible to determine (FATF, 2020).

In essence, money laundering is a process by which criminals try to hide the true origin and ownership of property gained through criminal activities (Mei, Ye & Gao, 2014). In this paper, we observe money laundering from another point of view, as an increase in the income of a company with the aim of paying taxes on the realized “profit” from business and introducing money gained from activities into legal flows.

The report of the Organization for Economic Co-operation and Development (2019) lists the jobs as ideal money laundering activities performed by real estate and insurance agencies, casinos, goldsmiths, catering establishments, restaurants and jewellery shops (p. 17). So, the most desirable money laundering jobs are those where there is a lot of cash payment. In short, the motive for “laundering” money is to show illegally obtained money, which was earned through tax evasion or illegal activities, so that it seems to be legally earned. In both cases, these are non-market and unethical moves. Most importantly, the source of money laundering are cash transactions that do not have official documents. Owners of companies registered for the mentioned activities can simply show higher than actual turnover with little or no increase in expenses. The most important thing is to pay the tax in the end and the money will enter legal flows. A more subtle way involves depositing money in banks from exotic countries that guarantee

actions advocated by the FATF as crucial for the smooth functioning of the financial markets. While we cannot guarantee the accuracy of our figures - and you have certainly a better evaluation than we have - the estimates of the present scale of money laundering transactions are almost beyond imagination - 2 to 5 percent of global GDP would probably be a consensus range....” (International Monetary Fund, 2018, quoted in: UNODC, 2011, 19).

discreet business operations. These forms essentially coexist with money laundering as an integral part of illegal trade outside the illegal market and without the participation of professional perpetrators (Malm&Bichler, 2013, p. 380).

Despite the usual public opinion, money can be rather easily transferred from legal flows to illegal ones. It is enough “just” not to issue a fiscal invoice to the buyer. However, unlike “money laundering”, this phenomenon – “taking out the money” is much easier to identify and sanction. By distinguishing money “laundering” and getting money “dirty”, it is easy to conclude that a false increase in the actual cost of a job with the aim of gaining property is a covert robbery. In the modern financial systems, that our society strives for, the circumstances under which transfers of a larger amount of money are made, are checked. There are usually limits on the amount for which the origin of money does not need to be proven.³

Advocates of a political philosophy that supports personal freedoms believe that the hunt for money launderers is successful only if all countries make the same moves. Similar to the paradox of the “prisoner’s dilemma”, a country that does not participate in it profits, while others are unnecessarily exhausted. If countries did everything in a harmonized way, the benefit would be greater than the sum of the current amounts. However, even with full coordination, there will still be countries that will, for various reasons, lag behind. Therefore, as the easiest and most effective of all known ways to fight dirty money, they suggest the legalization of “brighter” activities which “dirty” money, such as soft drugs or gambling, comes from. They assume that adults are sufficiently aware and responsible towards themselves and their family. In this regard, one should not spend the money of all taxpayers to repair, restrain or constrain another’s vice. Moreover, these activities may even be taxed additionally. In this regard, the moves of the authorities in Uruguay and the Netherlands to allow the trade in cannabis and its cultivation are interesting. Certain benefits of “decriminalization” are possible.

³ The amount in Bosnia and Herzegovina is 30,000 BAM and more (Article 6, Paragraph 1, Item b) of the Law on Prevention of Money Laundering and Financing of Terrorist Activities).

“Forbidden fruit” will be more easily accessible, which will increase tax revenues and free space for more efficient engagement of the police, judiciary, health care and prisons.

2. MATERIALS AND METHODS

The phenomenon of money laundering is conditioned, as [Michael Levi and Melvin Soudijn \(2020\)](#) explain, by the type of approach: economic or legal (p. 4-6). This phenomenon is also defined as a series of activities used to conceal income from criminal activity and present them as originating from legal activities ([April & Grasso, 2001, p. 1054](#)). The content of the term money laundering implies the activity of subjects, most often those in the field of grey economy and organized crime, who create conditions for legalization of illegally obtained profit which covers its criminal origin and creates a show of legal activity ([Meštrović, 2002, p. 147](#)). The phenomenon of money laundering encompasses all types of post-criminal activities directed at concealing property gain or value obtained in illegal way, by investing in a financial and non-financial system with the ultimate goal of “cleansing” money ([Tiwari, Gepp & Kumar, 2020](#)).

The criminal offense of concealing illegally obtained money is necessarily related to the phenomenon of “dirty” money, i.e. the phrase “money laundering” ([Milovanović, 2008, p. 32](#)). However, legal systems vary from country to country.⁴In order to overcome certain legal concepts in practice, and to enable standardization, it is recommended to introduce standardized terminology in order to reduce the risk of error to a minimum. According to the definition of the [FATF \(2020\)](#): “money laundering is the processing of criminal proceeds to disguise their illegal origin” (FATF, 2020). United Nations Convention against Transnational Organized Crime (2000) in Article 6 defines money laundering as: “(i)

⁴ For example: in our criminal justice system, money laundering is stipulated in Article 280 of the Criminal Code of the Republika Srpska (2017). This criminal offense is committed by a person who receives, exchanges, keeps, disposes of or uses in corporate or other business or conceals or tries to conceal money or property he knows was obtained as a commission of criminal offense. The prescribed sentence is imprisonment for a term between six months and five years.

The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action; (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.”

In our criminal justice system⁵ money laundering is stipulated in Article 280 of the [Criminal Code of the Republika Srpska \(2017\)](#). The essence of the behaviour stipulated as a criminal offense of money laundering is in undertaking certain actions by the perpetrator, in order to integrate into the legal financial flows the property which was acquired by some previously committed crime⁶, when the perpetrator knows the criminal origin of that property ([Đorđević, 2016, p. 152](#)). This criminal offense is committed by a person who receives, exchanges, keeps, disposes of or uses in corporate or other business or conceals or tries to conceal money or property. The prescribed sentence is imprisonment from six months to five years. There are also two more difficult forms, that is, if the perpetrator of the basic form is at the same time the perpetrator or accomplice in the criminal offense by which the money or property was obtained, i.e. if the value of the

⁵ Also, the Law on Prevention of Money Laundering and Financing of Terrorist Activities (2014), stipulates that money laundering implies (Article 2): conversion or transfer of property, when such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in such activity to evade the legal consequences of his or her action (Paragraph 1); the concealment or disguise of the true nature, source location, disposition, movement, rights with respect to, or ownership of property, when such property is derived from criminal activity or from an act of participation in such activity (Paragraph 2); the acquisition, possession or use of property derived from criminal activity or from an act of participation in such activity (Paragraph 3); participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the actions mentioned above (Paragraph 4); the purpose, knowledge of or intent required as elements of the money laundering action may be concluded on the basis of objective and factual circumstances (Paragraph 5).

⁶ Previously committed criminal offense or predicate criminal offense may be any criminal offense whose commission resulted in obtaining property which is a subject of the criminal activity of money laundering ([Stojanović, 2018, p. 806](#)).

money or property exceeds the amount of 200,000 BAM. In the first case, the imprisonment of one to eight years and a fine are prescribed, while in the second case, a heavier sentence is threatened (imprisonment from two to ten years and a fine). The most severe form exists if the said acts were committed by several persons who joined together to perform money laundering or money laundering was performed for the purpose of financing terrorism, for which a prison sentence of three to fifteen years and a fine are prescribed. Finally, a privileged form is prescribed, if during the commission of the criminal offense the perpetrator acted negligently in relation to the circumstance when the money or property gain was obtained by a criminal offense, as well as the obligation to confiscate money, property gain, income, profit or other gain benefits obtained by the crime. What we can see from the essence of the criminal offense of money laundering is that it is fully harmonized with the stated international legal standards that regulate this area. By its nature, the criminal offense of money laundering is a special form of the criminal offense of concealment (Stojanović, 2018, p. 805), due to which the acquisition of these criminal offenses is not possible, i.e. money laundering is in apparent concurrence with the criminal offense of concealment by specialty (Delić, 2006, p. 350). However, the protection of the object of this crime should be taken into account, and considering that it is the economy and payment operations, then it is clear that money laundering is significantly more than concealing criminal property and has greater criminal significance.

The nature of the money laundering process reflects a process that seeks to portray money coming from one source as coming from another. Money laundering is a process that requires some planning, organizing and coordinating multiple activities, so it often involves more people. The characteristics of the process of organized crime in money laundering are: large scale, group activities, i.e. it is most often carried out by more than one person and is a long-term continuous criminal activity that is carried out despite the borders of countries. Money laundering can typically be divided into three stages: the placement phase, the layering phase, and the integration phase, (Schneider & Windischbauer, 2008, p. 6; Beare & Schneider, 2007, p. 141).

The placement phase presents the first part of the process in which funds, most often cash, are invested in the financial system or used as a means of payment for the acquisition of various values (Schneider & Windischbauer, 2008, p. 6).

The essence is that the money gained through crime is inserted into legal business flows. This phase is the most important part of the process for detecting dirty money because at that moment it is easiest to discover the nature and origin of the funds. It is common to use cash in criminal activities, in order to avoid identifying the entities involved in such work. Thus, such money cannot be used without discovering the perpetrators of the illicit activity by which the funds were created. At the same time, high amounts of cash arouse attention and suspicion, so there is an attempt to convert it from that form to another, which is adequate for further - clean use, as soon as possible. Given that, according to the regulations of most countries, banks and other financial institutions are obliged to report every major transaction, from the position of the perpetrator, this is the most risky phase.

In the layering phase, an attempt is made to conceal the true origin of the owner of the money through (usually numerous) transactions in order to hide the trace of the source. This phase is characterized by a series of often individually legitimate transactions, which have the illegal goal of “separating funds from an illegal source” (Schneider & Windischbauer, 2008, p. 8). The most commonly used techniques in this phase are: “smuggling currencies, currency exchange, remittances, using fictitious companies, using insurance companies, using box office and resident mail, using import-export companies, account manipulation, guarantee manipulation, securities manipulation, using casino, business operations through *offshore* zones and certain cash purchases” (Katušić-Jergović, 2007, p. 622). This phase is characterized by frequent transfers between banks and remittances between different accounts opened under different names in different countries.

In the integration phase, actors integrate their assets into the financial system by merging them with legally earned funds. This process makes it difficult to detect the real source of money because it is invested in activities that take place in accordance with the law (Beare & Schneider, 2007, p. 169). At this stage of the process, the most popular methods of the launderers are (Katušić-Jergović, 2007, 622-623):

- establishment of anonymous companies in countries where secrecy is guaranteed;

- sending fake export-import invoices from one country to another where they overestimate the goods and
- money transfer to a bank in a tax haven.

These three basic stages (placement, layering, integration) appear separately and/or at different levels, but they can take place simultaneously, and they can even overlap. Therefore, the individual phases often cannot be differentiated (Šikman, 2011, 203).

Instead of the names of individual stages, the [Financial Action Task Force on Money Laundering - FATF and Asia/Pacific Group on Money Laundering \(2015\)](#) recommend the terms *hide*, *move*, and *invest*. Hiding would reflect the fact that cash is often introduced into the system through companies that may, consciously or unconsciously, be part of a money laundering mechanism. The relocation clearly indicates that the money launderer uses transfers, sales and purchases of property and changes the type and size of money in order to hide the trace between money and the crime, i.e. between money and the perpetrator. The investment technique implies that the perpetrator spends money and can invest in property or lifestyle (p. 5).

Undoubtedly, these stages in practice are not clearly separate and clearly recognizable. Namely, they often overlap so that in each of them “dirty” money is mixed with the legally acquired money. Unfortunately, it is not uncommon for large respectable financial systems or respectable individuals, but also individual countries, to accept and provide “services” to the criminal milieu. ([Katušić-Jergović, 2007, p. 623](#)). The result of such concessions is increased corruption that regenerates again the whole process.

The appearance of money laundering is characterized by several types. The most common include *offshore* bank methods, smurfing (known as structuring), underground/alternative banking, fictitious firms, currency exchanges, and double invoicing ([Salinger, 2005, p. 78](#)).

Money launderers often send money through various *offshore* accounts to countries that allow anonymous use of accounts for any purpose and amount. Business operations through these accounts often involve a large number of bank transfers to and from *offshore* accounts. The most famous offshore centres are

exotic countries: the Bahamas, Bahrain, the Cayman Islands, the Antilles, Panama, but also developed countries such as Hong Kong, Ireland, Luxembourg and Singapore (Masciandaro, 2017).

Building a deposit (English *smurfing*) implies separation of large amount of money into smaller amounts because they are less suspicious. In principle, these are amounts that do not exceed the limits of the amounts over which banks are obliged to report the transaction to the regulators. Dirty money, divided into smaller amounts, is deposited in more accounts with the help of more people (*smurf*) over a longer period.

Underground or alternative banking implies established legal alternative banking systems that enable undocumented deposits and transfers. Such deals are based on trust, leave no traces, and operate outside the control of the regulator. For example, a “launderer” deposits money in an underground bank, and something unobservable such as a half of postcard, ticket or card, is usually used as an identification confirmation for a transaction, “one half of which is retained by the client and the other sent to an overseas banker (Katušić-Jergović, 2007, p. 624). The money launderer in the target country shows his confirmation to withdraw his/her money, while avoiding taking cash out of the country and reducing the risk of detection.

One of the most common models of money laundering is through fictitious companies. These are companies that exist only for the purpose of money laundering - following the example of automatic laundries owned by Al Capone. The difference from the described example is the fact that they charge invoices for goods or services that do not exist in reality, although they do not deliver goods nor services, but give the appearance of legal transactions through false invoices and balance sheets.

Given that the point is to “launder” money through legal business, legal activities that are often chosen involve a large flow of cash, such as brokerage activities, betting houses, bars, car washes or casinos. In the mentioned activities, in the manner already described, dirty money is shown in the balance sheets, i.e. it is mixed with legal income from jobs that come from performing legal activities.

The money laundering process has several weak points or phases where it can be detected in the easiest way:

- entry of cash into the financial system - given that it is difficult to legally deposit large amounts in financial institutions, this is the most vulnerable phase for money launderers;
- transferring - most countries have regulated the reporting of suspicious or unusual transactions to regulators and
- cross-border movement of cash - the money launderer is exposed to the risk when crossing the border that customs officers will discover him/her or as the person transferring cash.

An informal money transfer system that functions outside the formal financial systems has been known as *hawala* for centuries. *Hawala* transactions are characterized by their anonymity and poor record keeping, which, combined with a lack of legal regulation and transparency, makes it suitable for money laundering (Keene, 2007, p. 6). *Hawala* in the Middle East and Asia has been an elaborated system of financial transactions for centuries. This system was introduced by Arab traders and caravan owners to insure themselves from looting. The essence of this system is a network of intermediaries - *hawaladars*. Namely, *hawaladars* transfer money quickly, in the greatest confidence, and transactions are performed in inaccessible villages without any trace. This system is therefore based solely on mutual trust. So, *hawala* is the transfer of money without a physical change of the owner of the initial shipment, i.e. without physical movement of money (Radivojac&Grujić, 2018, p. 95).

The described process of underground or alternative banking is also *hawala* money transfer. For example, let the sender of dirty money be a B&H citizen residing in Germany but his residence visa has expired, which makes his stay in Germany illegal. Suppose he wants to send money to someone in B&H. For this purpose, he cannot use a formal way of transferring money because he could be discovered as a foreigner with illegal residence. He will get in touch with *hawala* intermediary X. He will hand him the amount of money he wants to send to an associate in B&H. They can agree on a password to receive the money and the intermediary will charge the sender a certain commission for his service. Intermediary X takes a certain commission and contacts another intermediary Y in

B&H and informs him of the agreed password. Intermediary Y agrees to pay the person in B&H the money he already has with him. Intermediary Y contacts a person from B&H. After hearing the agreed password from him, he hands him the money and receives a certain commission for it. The result of the transfer is that intermediary X owes intermediary Y the money that intermediary Y paid to the person in B&H.

According to FATF (2012), the described transaction mode is considered a basic model involving a minimum of four participants (FATF, 2012; Keene, 2007). In addition to this basic model, there are variations of the model that include different numbers of participants, methods of paying commissions and arranging delivery and passwords. However, the most important characteristics of the system is trust. Namely, “without mutual trust between the participants, there could be no transfer of money” (de Bunt, 2008, p. 116). As a password, a word, several words, combinations of numbers of according dates, words from the Quran or some people’s proverbs can be used for a transaction. In recent times, anonymity in the absence of a written trace has been merely a myth (Passas, 2005, p. 17). Namely, given that communication between intermediaries and users takes place over the telephone and on the Internet, a trace still remains (de Bunt, 2008, p. 116). In addition, an important characteristics of the system is that the fees by transfer charged by intermediaries are lower than those charged by banks or other financial institutions (Passas, 2005, p. 7). Also, cryptocurrencies can be an ideal way for *hawala* transfer and money laundering. Almost every cryptocurrency owner can use them to pay what he wants and to whom he wants, while maintaining anonymity. According to the described process, the future of cryptocurrencies can be an improved version of the described process (Chart 1) without intermediaries. Moreover, the sender can take advantage of the fact that both he and the associate have simultaneous Internet access. Through *Team Viewer* software, which allows remote control using a password, it is possible to have access to a friend’s computer, transfer your cryptocurrencies to his wallet and exchange them for real money (Radivojac&Grujić, 2018, p. 95).

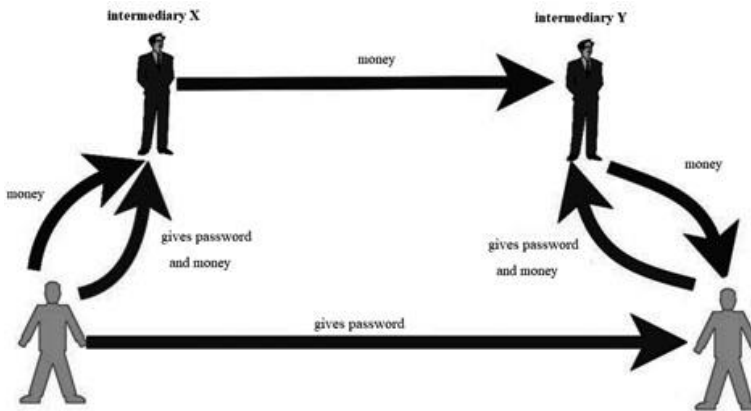


Chart 1. Hawala Process

Source: Illustration of the author

The term “emerging market” encompasses countries characterized by “institutional turbulence and low levels of economic development in relation to developed countries” (Welsh et al., 2006, pp. 130-149). Accordingly, an emerging market can represent a country or a market where the transition of a political or economic system and economic development is higher than a single-digit percentage per year (Fan, 2008, p. 353-358). Hoskisson et al. (2000, pp. 249-267) classify all Western Balkan countries as emerging markets. An emerging market is a market that has some characteristics of a developed market, but does not fully meet its standards.

Julien Vercueil (2012) recently proposed a pragmatic definition of an “emerging economy,” which differs from an “emerging market” created by the approach heavily influenced by financial criteria. According to his definition, an emerging economy shows the following characteristics (p. 232):

- Transitional income: Its PPP per capita ranges between 10% and 75% of the average per capita income in the EU.
- Renewing growth: Over the last decade or so, it has experienced strong economic growth that has narrowed the gap between incomes and advanced economies.

- Institutional transformations and opening of the economy: In the same period it undertook deep institutional transformations that contributed to its integration into the world economy.

3. RESULTS

Today, more than 50 countries, representing 60% of the world’s population and 45% of its GDP, meet the criteria of “emerging markets”. In the last few years, new acronyms have emerged to describe the largest developing countries, such as the BRIC, representing Brazil, Russia, India, and China, (Farah, 2006), along with BRICET (BRIC + Eastern Europe and Turkey), BRICS (BRIC + South Africa), BRICM (BRIC + Mexico), MINT (Mexico, Indonesia, Nigeria and Turkey), NEXT 11 (Bangladesh, Egypt, Indonesia, Iran, Mexico, Nigeria, Pakistan, Philippines, South Korea, Turkey and Vietnam) and CIVETI (Colombia, Indonesia, Vietnam, Egypt, Turkey and South Africa) (Table 1). These countries do not have a lot of common characteristics, but many authors believe that they enjoy an “increasing role in the world economy and on political platforms” (Guegan, Hassani, & Zhao, 2013).

Table 1. Overview of developing countries by different sources and classifications

Country	MMF	BRICS+Next		EM bond in-dex	Columbia University EMGP
		Eleven	S&P		
Argentina	+			+	+
Bangladesh	+	+		+	
Brazil	+		+	+	+
Bulgaria	+				
Chile	+		+	+	+
China	+		+	+	+
Columbia	+		+	+	+
Czech Republic			+	+	
Egypt		+	+	+	+
Greece			+		
Hungary	+		+	+	+
India	+		+	+	+
Indonesia	+	+	+	+	
Iran		+			
Israel				+	+
Malesia	+		+		+

Country	BRICS+Next			EM bond in- dex	Columbia University EMGP
	MMF	Eleven	S&P		
Mauritius					+
Mexico	+	+	+	+	+
Morocco	+	+	+	+	+
Nigeria				+	
Oman				+	
Pakistan	+	+	+	+	
Peru	+		+	+	
Philippines	+	+	+	+	+
Poland	+			+	
Qatar			+	+	
Rumania	+			+	
Russia	+	+	+	+	+
SouthAfrica	+	+	+	+	+
SouthKorea		+			+
Taiwan			+	+	+
Thailand	+		+	+	+
Turkey	+	+	+	+	+
Ukraine	+			+	
UAE			+	+	+
Venezuela	+			+	
Vietnam		+		+	

Source: [International Monetary Fund. \(2020\). World Economic Outlook Reports](#). Washington: International Monetary Fund, <https://www.imf.org/en/Publications/WEO/Issues/2020/04/14/weo-april-2020>; Columbia Center on Sustainable Investment - CCSI. (2020). Emerging Market Global Players (EMGP), <http://ccsi.columbia.edu/publications/emgp/>. [J.P. Morgan \(2016\). Emerging Markets Bond Index Monitor](#).

It can be said that these countries are characterized by common characteristics such as institutional turbulence and a lower level of corporate governance and economic development compared to developed countries ([Grujić, 2019, p. 54-55](#)).

In comparison to highly developed countries (USA, Australia, UK, Italy, Germany, France and Canada), developing markets are characterized by a high level of corruption as a consequence of the (post) socialist system ([Transparency International, 2016](#)), but also poor financial market development compared to other countries.

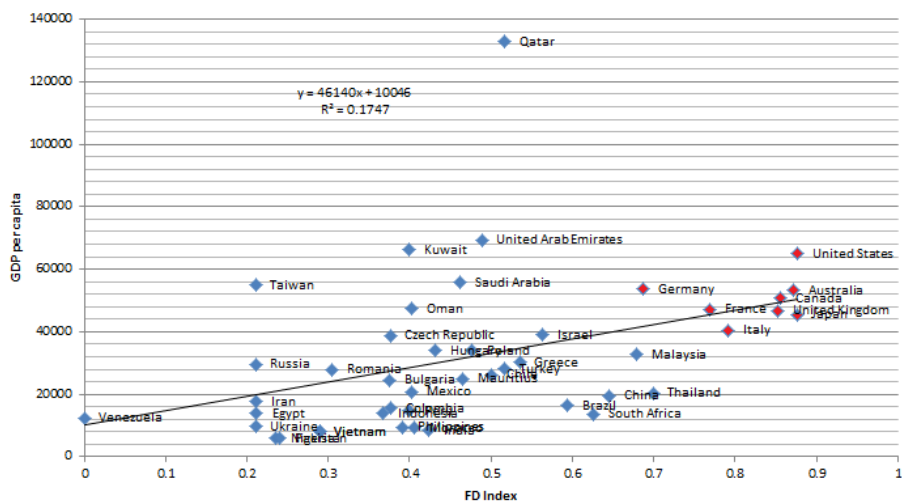


Chart 2. Development of financial market and GDP per capita in countries

Source: Overview of the author. Data are listed according to: International Monetary Fund (n.d.). *Financial Development Index Database*.

<https://data.imf.org/?sk=F8032E80-B36C-43B1-AC26-493C5B1CD33B>

4. DISCUSSION

In the criminal law terms, proving is a part of criminal proceedings in which legally relevant facts are established, those that are important for deciding on the matter (Simović, Simović, 2016, p. 338). The means of evidence are important as sources from which the evidence bases and proving actions are obtained, as procedures which the facts collected in criminal proceedings are in line with. It is understood that: “presentation of evidence implies the use of, in the manner prescribed by law, evidence, in order to find out the facts that are the subject of proving” (Simović, Simović, 2016, p. 338).

In that aspect, the provisions of the Criminal Procedure Code of the Republika Srpska (2012) also refer to proving of money laundering in criminal cases. Thus, the basic right and duties of the Prosecutor is to detect and prosecute perpetrators of criminal offenses (Article 43, Paragraph 1 of the Criminal Procedure Code of the Republika Srpska), whereby he bears the legal duty to prove the truth of his claims (Simović, Simović, 2016, p. 336). However, due to the social danger and

harmful consequences of serious crimes, over the last few years there has been a clear trend according to which the development of criminal law for crimes within activities of the organized crime in many countries leads to the reverse burden of proving. Truth be told, this creates a problem of violating some of the basic principles of criminal procedure, such as the right to a fair trial and the presumption of innocence (Katušić-Jergović, 2007, p. 637) and the principle *in dubio pro reo* (in case of doubt, in favour of a suspect, i.e. accused) (Article 3 of the Criminal Procedure Code of the Republika Srpska).

In order to improve the effectiveness of criminal legislation and competent authorities in domestic law to combat money laundering and organized crime, the United Nations Convention against Transnational Organized Crime (2000) and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988) in Articles 6 and 7 and 4 and 5, respectively, recommended that States Parties, in accordance with domestic principles and procedures, foresee the possibility of requiring the perpetrator to prove that the income or property alleged to have been acquired by proceeds of crime, which the perpetrator possesses, was acquired in a lawful manner.

The practical implementation of this measure could certainly increase the efficiency of the judiciary in the fight against money laundering, but the problem is imposed with the opposite side of the principles with the outlined principles of criminal procedure. However, the European Court of Human Rights - ECHR has incorporated in its practice standards according to which such a possibility is allowed to a certain extent (cited in: Katušić-Jergović, 2007, 638).⁷The conclu-

⁷ Conclusions from the ECHR court practice are the following:

- Presumption of innocence applies to the criminal proceedings as a whole, including the confiscation order as a part of the proceedings, and compliance with that presumption must be assessed for the entire proceedings and not for each stage individually.
- The use of material or legal presumptions is permissible within reasonable limits and should be proportionate with the importance of the case (principle of proportionality), and the right of defense (principle of equal representation) should be maintained. Assumptions must not be irrefutable in any way and the court must have the possibility of free assessment, which is why full transfer of the burden of proof or general confiscation is not permitted.

sion is particularly interesting that the silence of the accused in criminal proceedings can be taken as an additional sign of guilt, if on the other hand the prosecutor has provided clear accusations and evidence. This has opened the way for many countries to apply the principle of the reverse burden of proof, especially in situations of combating serious crime with a cross-border element.

Given that the principle of the reverse burden of proof has become the practice of the European Court of Human Rights and that B&H partially applies it, its full introduction into domestic legislation should be carefully considered, with all the difficulties and dangers that one could face. Therefore, the principle of the reverse burden of proof could be extremely important in all subsequent proceedings related to the fight against money laundering in B&H.

It is clear that financial investigation and expert evaluation are perhaps the most important activities in detecting and proving money laundering. The financial investigation is primarily related to the confiscation of property resulting from the commission of a criminal offense⁸, while expert evaluation plays a key role in proving money laundering. The financial investigation determines the proceeds of crime, as well as the property that can be confiscated (Lukić, 2009, p. 387, 389). On the other hand, expert evaluation is done when, in order to establish or assess an important fact, the findings and opinion of persons who have

- The right to remain silent that could incriminate that same person during the proceedings, as a part of the right to a fair trial, is subject to a strict interpretation of the ECHR, but not absolutely: when sufficient and clear allegations and evidence are made, it can be considered an additional sign of guilt if the accused does not want to reply to any question. Statements obtained in administrative proceedings in which the accused is obliged to tell the truth are not admissible in further criminal proceedings.

- The ECHR provides an independent definition of the terms “punishment” and “measure” and the applicability of the European Convention on Human Rights depends on these qualifications. The relevant criteria are whether the measure was imposed after the conviction of the accused for the criminal activity, what type and the purpose of the measure are, its characteristics according to the rules of domestic law, the procedures regarding the adoption and implementation of the measure and its gravity (stated in line with: Katušić-Jergović, 2007: 638).

⁸ In this sense, it is necessary to make a difference between confiscation of proceeds, as a specific criminal law measure (no one can get it in the proceeds of crime, Article 8 of the Criminal Code of Republika Srpska) and confiscation of proceeds of crime, as a form of state response to serious forms of crime (compare: Lukić, 2009).

the necessary professional knowledge need to be obtained (Article 160 of the Criminal Procedure Code of Republika Srpska). The purpose of the expert evaluation is to provide the prosecutor and the court with explanations and information that require the expert knowledge. The most common expert evaluations used by the prosecutor in these cases include: economic and financial expert evaluation of business books, forensic expert evaluation of computers, mobile phones - smartphones and other devices for storing and processing electronic data, graphological expert evaluation of disputed documents, etc. The practice is that the expert evaluator prepares and submits a report to the prosecutor on the conducted expert evaluation, which contains: finding and opinion; expert evaluation methodology; the evidence he examined; tests performed; working material, sketches and notes; all other relevant data for fair and objective analysis. It is not uncommon for expert evaluator to be asked for a list of professional literature used by the expert for the purpose of expert evaluation to explain how the expert came to a particular opinion (USAID, 2019, p. 220).

When it comes to a person and/or a group suspected of money laundering, conducting a high quality and efficient financial investigation presents a complex task for the prosecutor and the investigation team. The prosecutor should direct the conduct of the financial investigation to determine the assets, expenses, banking and other financial transactions and the manner in which the criminal offense was committed, and the connection between the income of the suspect or suspects. At the same time, it is obvious that it is not enough to establish that the legal entity operated illegally or that the legal origin of the income and property of the suspects cannot be determined. It is necessary to determine whether the amounts of money and the time frame of the inflow into the bank accounts of legal entities and suspects correspond to the amount of material gain that was determined to have been acquired by committing a criminal offense. Investigators and expert evaluators should pay special attention to data on the use of cash and the correlation of financial statements of legal entities with the income and assets of natural persons - suspects and banking transactions.

Also, special attention should be paid to the use of legal entities, the so-called fictitious or phantom companies, for the crime of money laundering, which further complicates the task of the investigation team. In these cases, the prosecutor should assess whether to conduct a single investigation against legal entities for

all actions or possibly to form other cases and identify actions that can be proven in order to conduct the investigation effectively. In these cases, the prosecutor may order the implementation of the necessary expert evaluation, which may be: forensic expert evaluation of computers and mobile phones, graphological expert evaluation of disputed documents and financial expert evaluation. Forensic expert evaluation should be aimed at collecting data on the roles and work of group members and organizers, as well as the manner in which predicate offenses are committed.

In the case of fictitious companies, it is necessary to determine many details that include everything from the entry in the court register, the identity of the company and related parties, the transfer of ownership shares, business operations through accounts, balance sheet analysis and the similar.

5. CONCLUSION

Money laundering as a criminal phenomenon, although present for decades, is still not sufficiently researched. Moreover, its simplified understanding seems to lead to the trivialization of this problem. Money laundering is a derivative form of crime and is organically linked to the organized crime. As a separate act, money laundering can not exist in the legal system, but there are many forms and types of laundering, and the attention was given to one of them in this paper.

Ideal money laundering activities are activities where many things are paid in cash. The main motive, therefore, is not just earnings. That money has already been earned. Profits gained through illegal activities will be even reduced through taxation. However, the money will be introduced into legal flows.

As the easiest and most effective of all known approaches in the fight against dirty money, it is proposed to legalize “brighter” activities which “dirty” money comes from, such as soft drugs or gambling. One of the measures to combat money laundering may be to encourage card payments. Such measures will certainly not completely stop money launderers, but they will slow them down by leading them to be more imaginative. However, online payment also gives a lot of space for illegal activities.

The very phenomenon of “money laundering” is a consequence of criminogenic activities. By money laundering, the perpetrators hide the real origin and ownership of “dirty money”, and other property or rights acquired through criminal acts. Therefore, money laundering results from the commission of other criminal offenses so that property acquired through such proceedings will never be legal under the law and the money laundering proceedings can only be successful when its true source or ownership can be concealed.

The task of the professional community (court experts, accountants, auditors, tax advisors, lawyers, notaries) but also of the academic community in the prevention of money laundering and terrorist financing should be focused on the application of the Law on Prevention of Money Laundering and Financing of Terrorist Activities and all by-laws (rulebooks) adopted on the basis of that law. Also, cooperation with international institutions is desirable. The most famous are the Anti-Money Laundering Global Task Force, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism and Group of States against Corruption of the Council of Europe. This also includes adhering to professional guidelines and recognizing indicators of suspicious transactions. Therefore, it is necessary to insist on further education of all sectors and intensive campaigns that will point out all the potential dangers lurking in case of any connection with money laundering activities.

The direction of further research should include the problem of the grey economy, but also the process of inverse money laundering. It is a process that masks a legitimate source of funds used for illegal purposes.

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ПОЈЕДИНИ ОБЛИЦИ ИСПОЉАВАЊА И ДОКАЗИВАЊЕ ПРАЊА НОВЦА НА НОВОМ ТРЖИШТУ

1 Милош Грујић, Друштво за управљање Пензијским резервним фондом Републике Српске а.д. Бања Лука,

2 Миле Шикман, Правни факултет Универзитета у Бањој Луци

САЖЕТАК

Прање новца, у својој скоро 90 година дугој историји, изазива пажњу научне, стручне, али и опште јавности. Кроз комплетан период мијењали су се појавни облици овог криминалног феномена, његова типологија, етиолошки фактори, и др., али је суштина остала иста: превођење нелегално стеченог новца у легалне финансијске токове. Посебно су оптерећена тржишта у развоју, што је и предмет овог рада: идентификовање, прањење и доказивање процеса прања новца с циљем његовог смањивања у земљама у развоју. Поред тога, оно што се уочава на овим тржиштима јесте да су послови прања новца углавном повезани са оним дјелатностима у којима се највећи дио плаћања обавља у готовини. Њихова специфичност, односно основни мотив извршења, није тек зарада већ тежња да се „прљави” новац уведе у легалне токове. Циљ рада јесте да се методом дескрипције понуди научно објашњење и опис процеса прања новца, сузбијање, те појаве са фокусом на процес прања новца. Осим тога, у раду се описују модели и слабе тачке тог процеса, истовремено уважавајући стандарде и специфичности пословања на тржиштима у развоју. Такође, у раду даје осврт на прање

новца у ХХИ вијеку у малим и отвореним економијама, укључујући и приједлоге за спречавање и сузбијање ове негативне појаве.

Кључне ријечи: прање новца, тржишта у развоју, незаконито понашање, спровођење закона.