



Money Laundering in the Republic of Kosovo during the Years 2013-2015

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Abstract: This paper presents a study of the criminal law on money laundering from comparative perspective with the combination of legal, historical, and sociological and criminology treatment. The benefit of income from criminal activities is considered very worrying problem but also a challenge, threat and danger to the security mechanisms (law enforcement agencies) in the Republic of Kosovo. To prevent, investigate and combat money laundering, there should be certainly set priorities for law enforcement agencies in the Republic of Kosovo. This approach allows for a more efficient fight against organized crime, in particular drug trafficking, human trafficking, cybercrime, terrorism and its financing, although partly these phenomena can be considered to relate to international pressure. At the same time, it is imposed on legislators to draft and adopt laws and regulations for implementation, to prevent and combat the phenomenon of money laundering, but without neglecting the drafting of the strategy for preventing and combating this phenomenon and other phenomena that heavily damage state and society in aspects of political, economic and rule of law, with special emphasis on the aspect of European integration.

Keywords: Money laundering; organized crime; law enforcement agencies

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1. General Overview of the Money Laundering in World

The term money laundering derived from the United States. While “gangsters” benefited large sums of money from the robberies, prostitution, gambling games and the sale of alcoholic beverages, they had to “argue those sources as legitimate” for the money earned illegally.

One of the ways by which they used to do this has been buying illegal or suspicious businesses and mixed by their illegal income with legitimate income they receive

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from these businesses. “Launderers” were selected from these “gangsters”, because they already had their businesses and this was an undoubted advantage for people like Al Capone who had achieved to buy them.¹

However, Al Capone was criminally prosecuted and convicted in October 1931 for tax evasion.² In the reasoning of the judgment pronounced against him he said that money laundering had been able to accomplish so perfectly and it is described as something illegal and money from suspicious transactions are cleaned by merging illegal and legal money into legitimate funds.³

In other words, the source of illegally obtained money is hidden through a succession of transfers and the money from the fund can be made to look like legitimate income.

Sentencing of Al Capone for tax evasion might have been the trigger for the conclusions of money laundering business by criminal underground.

Meyer Lansky (so-called Mob's accountant) has been particularly influenced by the punishment of Capone for something as obvious as tax evasion. Trying to avoid the same fate, he decided to find new ways to hide money. A year ago he had discovered the benefits of accounts in Swiss banks. It seems that from here started money laundering and according to Lacey Act, Lansky was one of the suspects for money laundering and one of the most influential people ever.

Using facilities of Swiss banks gave Lansky opportunity to perfect the techniques of money laundering through the concept of loan-back.⁴ Original reporting after the 1931-1939 global crises was left in shadow by reports on Watergate scandal in the US in 1973. While the first phenomenon is presented in the context of legal entity in court in 1982 in America in case *US vs. \$4,255,625.39* (1982) 551F Supp.314 and since that time the term is used and accepted and has found its application worldwide.

¹ For more information see: Money laundering best practices, lessons to be learnt and steps to be taken in the Balkan Region. By a Thesis presented in partial completion of the requirements of “The certificate of Training in United Nation Peace Support Operations”, p. 8.

² He was sent to prison for presumed crimes that have generated illegal income, according to Robinson this story (lie) that originates from this time is a myth in itself.

³ This definition dates back to 1931.

Loan-back means that illegal money so far can be masked by insured loans from foreign banks, which if necessary may be claimed as income and get a tax-deduction on bank incomes.

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Money laundering as a criminal phenomenon has attracted attention since the 1980s, mainly on the issue of its connectivity with drug trafficking. This has been an attraction of attention to criminal gangs and mafia related with the great benefits of financial income from this criminal activity and concern in the massive use of drugs in Western society that has created impetus for governments and agencies of law enforcement to fight against drug dealers of narco-cartels, creating the legal basis that will apply to combat it through the detection of persons or criminal groups as well as illegal confiscation of large financial benefits.

Also, from the analysis and assessment of the risks and threats done by the agencies of law enforcement has become known that criminal groups/criminal organizations through the great benefits achieved through criminal activities, such as drugs trafficking, have achieved to infect and corrupt the structures of government at all levels.

Money laundering was understood as a global phenomenon aided from the international financial community and is estimated as a 24-hour business. Thus, money laundering analysts say bluntly that while a daily business closes, another will already be open and active. As noted in the report of the United Nations in 1993, basic characteristics of crime derived money laundering, as well as the operations of transnational organized crime are of a global nature. They relate to the flexibility and adaptability of operations, the use of the latest technological and professional assistance, intelligence of its operators as well as extensive resources that are available to them.

The international dimension of money laundering has been evident in the study of police files of money laundering in Canada. They found that more than 80% of all money laundering schemes have international dimension.

1.1. Money Laundering in European Union

The escalation of the phenomenon of money laundering in the world and in the era of globalization has forced the EU institutions to develop policies to prevent and raise attention about the potential effects of money laundering. This situation has prompted the EU to issue its first directive to combat money laundering in 1991 and later many other acts. EU Directives against money laundering are designed to protect the financial system and other sensitive professions. Also, the creation of

one market helped to legitimize not only businesses, but also created increased opportunities for money laundering.¹

Based on estimates by the German law enforcement during one year circulate around \$57 billion a year. (Brett, 1998, p. 93)

The following shall present a case investigated in Germany and modus operandi of action: similar case as the Madoff case, but in Germany.

In 2013, German police disrupted a major fraud in Germany, which media compare with the case of the US financial fraudsters, Bernard Madoff. It is reported being defrauded thousands of investors and that the value of such fraud goes in the hundreds of millions of euro.²

Participation in the police action speaks best about the level of deception which traced.³ The wider police action was necessary because long time ago German media doubted something suspicious was occurring with the largest investment house from Frankfurt. There is a possibility that the founders of the company - by whom the company took name, Stephan Schafer and Jonas Koller, have gathered large amounts of money and were preparing to leave the country. But, according to German media, they are already caught and together with them some of their aids, while against several dozen other suspects already was held an investigation because of potential abuse and fraud.

Piles of money were ready to be taken. The only oddity in this scandal is how easy, Schafer (31) and Koller (33), achieved to persuade “customers” to “entrust” their wealth. In fact, the entire think went open only after the crisis began, and when the “rain” of money stopped, as a consequence of which was quite normal to expect benefits to ten percent a year. Accordingly many people were left with money in the pocket, looking for any opportunity in which they are to invest, and where interest rates would be higher than one or two percent, as were usually offered.

¹ Money laundering best practices lessons to be learnt and steps to be taken in the Balkan region. By a Thesis presented in partial completion of the requirements of “The certificate – of Training in United Nation Peace Support Operations”, pg. 12, 2007.

² February 22, 2013, www.gazetaexpress.com.

³ 1,200 police officers began a simultaneous raid of the offices of investment house S&K Holding, in Frankfurt, in the apartments and homes of its main leaders, as well as the offices of the company United Investors, in Hamburg. It can easily happen that it is a similar case, because the company from Hamburg was also involved in “ranking” of investment funds that were related to real estate - the main activities of S&K Holding.

On the other hand, S&K Holding claimed that owns real estate worth over a billion Euros and in its catalogs investors were promised a 12% interest on the money invested in their “closed” funds of real estate. This offer cannot be bad for the investor, since it meant the preliminary definition of investment volume in real estate and above all create a psychological impression that it was something exclusive, with a profit mark where you are part of.

According to the case study there were “enough costumers”, among them were not only individuals, but also companies, which hoped in this way to glean some profit. On the other hand, the fond was actually buying real estate, such as a villa in Mallorca, “with giant property”, as described on the website of S&K Holding, but also a range of other exclusive immobility.

These luxury villas and buildings mainly used by Stephan Schafer and Jonas Koller, but also from their relatives and friends. This is because the money came en masse and then spent for a luxurious lifestyle of “investors”, in the car park, car such as Porsche, Lamborghini, etc., has already been seized by the police.¹

The two companies which police raided had established hundreds of other companies, which usually implies the existence of only one mailing address, while the location of the bank account is in a tax oasis.

Even in this case financial experts brought only disbelief. For months in internet could be found online photos of young “investor”, in expensive cars, on yachts and in luxury hotels and restaurants. But as it seems from the concept of thinking, the illusion that one can get rich overnight will always work. Particularly in times when one can barely make affordable interest. Although today everyone knows that without risking to lose everything in this financial environment could barely reach up to 8% interest, people still cling to such unserious offers. It seems to some as if all the lights are turned off.

Switzerland is a major international financial center, with over 420 banks and office for storage and sale of securities. In addition, about 6500 entities operate as non-banking financial institutions. Switzerland's long tradition in private banking, the wide range of financial services available and their sophistication, and its monetary stability has attracted large numbers of financial business. These factors

¹ Police managed to seize a fortune of around 100 million Euros, either through bank accounts in the form of real estate, or in other forms of wealth. In fact, it is not known how much money was given to them in a total commitment from investors - who naively expected that would realize enormous benefits or how much money has already been wasted. This is because S&K Holding used the old trick “to obliterate traces” of money.

make Switzerland a potential target for money laundering. Switzerland attaches great importance to maintaining its healthy financial center and is committed to ensure not to be used for criminal purposes, in particular for money laundering and terrorist financing. It strongly supports international efforts to combat financial crime and actively cooperates with the most important international bodies dealing with such issues. Swiss system AML/CFT is a complex organ consisting of preventive regulations under administrative law, with repressive components under the Criminal Code, as well as with the provisions on law enforcement and international cooperation. Switzerland has ratified the UN Convention on drugs, Vienna 1988; Council of Europe Convention on Money Laundering, 1990, as well as a number of other conventions.

2. The Meaning of Crime Prevention

For crime prevention in general and of money laundering in particular, different tools and methods that will contribute to the protection of society from crime, should be used. With crime prevention it is understood the actions taken by a wide circle of social subjects and their overall goal is to prevent the occurrence of crime by avoiding the causes and conditions that determine such criminal behavior.

Appropriate prevention plans should be instituted at both levels of government, and it should include:

- a) depth analysis of the problem of criminality, professional services, conditions and resources that are available;
- b) well-defined responsibilities for independent agencies, institutions and law enforcement officials involved in preventive measures;
- c) coordination of activities and institutional mechanisms between governmental and non-governmental organizations for crime prevention;
- d) Development of policies, programs and strategies based on the analysis studies, which are monitored and evaluated during their implementation;
- e) Application of methods for reducing opportunities for committing of criminal acts;
- f) Community involvement in a wide range of services and programs;

- g) inter-disciplinary coordination between the state at central and local levels, private sector, community representatives, health education, legal support and crime prevention agencies;
- h) Inclusion in delinquency prevention policies and processes, including victim compensation and assistance programs; and
- i) The commitment of law enforcement officers qualified and adhere to the code of professional ethics.

Special emphasis should be put on preventive policies facilitating the process of improving social relationships, especially family, community, school, professional preparation, work, and volunteer organizations. Respect should be given to adequate and personal development of the youth, especially given that Kosovo youth age groups up to 18 years are 30% of the population who should be accepted as worthy partners in the process of improving social relations.

2.1. Types of Measures to Prevent the Phenomenon of Money Laundering

Law enforcement authorities must identify, assess and understand the risks of money laundering and terrorist financing and should take measures, including setting up an authority or mechanism to coordinate actions for risk assessment, and use resources, aimed at reducing the risks effectively. Based on this assessment, countries should apply a risk-based approach to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified.

As measures to prevent money laundering are mainly considered:

1. Development and implementation of administrative regulations and guidelines for the prevention of money laundering and financing of terrorism which include procedures for assessing and managing risk in business relationships, and the implementation of measures for increased and enhanced due diligence towards customer in accordance with the level of risk, including record-keeping and reporting of suspicious activities and transactions over the reporting threshold, and training of law enforcement officials;
2. Identification of the client (permanent or casual, natural or legal person) and verification of his identity;
3. Determination to all customers before establishing business relations or in the process of monitoring this relationship, if they are acting on behalf of another

person and to take reasonable measures to provide sufficient data for identification and verification of data;

4. Measures following for clients who are legal persons or legal arrangements;

a) To verify if any person acting on behalf of his client is authorized and to identify and verify his identity;

b) To verify the legal status through their founding documents and registration or similar facts of their existence and provide information about customer's name, the names of shareholders and beneficiaries (for legal arrangements), legal form, address, directors (for legal persons), and provisions regulating legal relations;

c) To verify the ownership and control structure of the customer;

d) To verify the beneficial owner and take reasonable measures to verify his identity through relevant information or data obtained from reliable sources, based on which is understood who are the beneficial owners;

e) To determine the individuals who own and have ultimate control over the client. This includes those individuals who exercise ultimate control over the legal person or legal arrangements. For legal persons and this shall include the identification of individuals who make up the decision-making and management of the legal person. In the case of legal arrangements that includes the identification of the founder, beneficiary, guardian or person with effective control over them;

5. Provide information for the designated purpose and nature of the business relationship on the basis of which you can build the client's risk profile. Risk profile subjects should serve to define and implement expanded due diligence measures towards customer;

6. Determination of procedures and risk management tools for cases when entering a business relationship with the client before or during his identification. These procedures, among the others, should include measures to limit the number, type and/or amount of transactions that can be performed, as well as monitoring of high-value or complex transactions, performed out of expected profile for features of this relationship. Business relationship can be inserted before or during the verification of customer identity only when:

a) Verification is performed as soon as it's practically possible;

b) It is necessary not to interrupt the normal continuation of business activity of the subject; and

c) Money laundering risk is managed effectively by the subject.

7. To apply due diligence measures also for existing customers, regardless of the level of risk of exposure to money laundering and terrorist financing. These measures customer due diligence at least applies when:

- a) The transaction may be out of the business profile of the customer;
- b) Customer documentation standards vary considerably;
- c) There is a substantial change in the use of the account; and
- d) It was found that there is no sufficient information for the client.

However, businesses do not have to take the above list as comprehensive and restrictive to apply due diligence to existing customers.

8. Internal control should take preventive measures to detect and correct found deficiencies, and improving internal systems for the detection of transactions and persons suspected of money laundering or terrorist financing. In this context, law enforcement agencies must carry out checks and analysis on preventive system operation. Internal control of the entity must, among other things, assess the ongoing monitoring of the business relationship and to ensure that this relationship continues to be in line with changing customer profile. Finally, it should be noted that enhanced due diligence should include additional measures than those provided for due diligence, business relations, clients or high-risk transactions. Also special attention to all complex transactions, unusual and with high values, which have no apparent economic or legal purpose and simultaneously analyze the reasons and the purpose of conducting such transactions.

Money laundering during the years 2013, 2014 and 2015 under the new Criminal Code of Kosovo in KPIS¹

I have also analyzed the official statistics from the police information system under the tables and graphs below.

¹ Kosovo Police Information System.

Table 1. Cases reported by Article 308 Money laundering, during the last three years, 2013, 2014 and 2015

CASES FROM ARTICLE: 308 "MONEY LAUNDERING" UNDER THE NEW CRIMINAL CODE OF KOSOVO IN KPIS									
Year	Mitrovica South	Mitrovica North	Prizren	Peja	Gjakova	Prishtina	Gjilan	Ferizaj	Total
2013	0	0	2	0	0	2	0	0	4
2014	0	0	1	1	0	8	0	0	10
2015	0	0	1	1	0	4	0	0	6

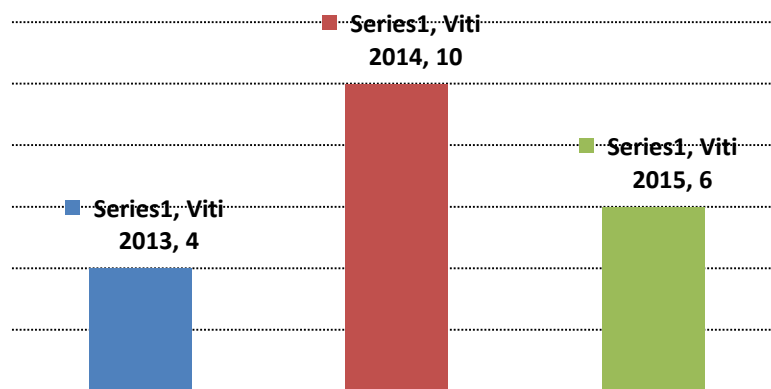


Figure 1. Cases reported by Article 308 Money laundering for years 2013-2015

Figure 2 presents criminal charges for characteristic offenses, suspects whose cases were extended investigations, number of cases in total and the number of persons for the years 2013, 2014 and 2015 from the state prosecutor office.

Ratio between criminal charges ongoing and proceeded cases

Money laundering, 2013, in process 56, processed 25, or 44.64% of cases processed, while in 2014 number of cases in process is 43, out of them 14 are processed, or 32.56% of cases processed. In year 2015, according to the evaluation and statistical analysis, we see that in process are 39 cases, only 7 cases processed, or 17.95% efficiency.¹

¹ See the analytical report (2013-2014-2015) - performance of prosecutions for characteristic offenses of the tracking mechanism, p. 7.

Table 2. Ratio between criminal charges ongoing and proceeded cases

	2013			2014			2015		
	Ongoing cases	Proceeded		Ongoing cases	Proceeded		Ongoing cases	Proceeded	
		Number	%		Number	%		Number	%
Money laundering	56	25	44.64%	43	14	32.56%	39	7	17.95%

Analysis of Cases with Number of Persons Involved – Ongoing and Proceeded Cases in Court

Cases of money laundering, by analyzing the ratio between cases and persons and the ratio between ongoing cases and those proceeded in court during the years 2013, 2014 and 2015.

During 2013, 207 people were being treated in ongoing cases, 116 persons in cases proceeded in court, or 56.04%, but in 2014 we have decrease in number of cases and persons as well as the number of cases proceeded in court, in ongoing cases, 119 persons were being treated, proceeded cases in the court were made 37 persons or 31.09%. While the analysis is even more aggravated in 2015, according to statistics we notice that there were ongoing cases against 110 persons, and were proceeded to court cases against 15 persons or 13.64%.¹

The Manner of Proceeding of Cases per Persons

During the research we also found that the number of prosecutions is very small. Analyzing cases proceeded through the years of 2013-2015 we see that out of 116 persons against who investigations were conducting, indictment was filed only against 2 persons or less than 2%. Something better is the situation in 2014 where in investigated cases were 37 people, while charges were filed against 18 persons or 49%. But in 2015 there is a decline to advance the investigation of money laundering phenomenon, where we notice that in ongoing cases were 15 persons under the investigation, while the indictment was filed against 6 persons themselves or 40%.²

¹ See the analytical report (2013-2014-2015) - performance of prosecutions for characteristic offenses of the tracking mechanism, p. 8.

² See the analytical report (2013-2014-2015) - performance of prosecutions for characteristic offenses of the tracking mechanism, p. 8.

3. Conclusion

During the preparation of this paper I have come to the following conclusions:

1. The law against money laundering in the Republic of Kosovo is approved, but the same is not harmonized with European and international standards and therefore should be a priority because harmonization of national legislation with international standards presents a precondition for being in the group of Financial Intelligence Units (FIU).
2. Money laundering poses a threat and potential risk to law enforcement agencies but at the same time also for Kosovo national security.
3. The Government of Kosovo should stop transferring money to countries that are considered “tax havens”, determining that there are a series of measures the country must take.
4. Prevention and detection of money laundering phenomenon is the assessment criteria for the accession process of the Republic of Kosovo in the European Union mechanisms.
5. The judiciary must exploit and practice legal provisions about the confiscation of criminal assets and not just focus on sentencing because in this point we can exactly assess the situation in the prevention and detection of money laundering phenomenon.

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