

## A Criminological Perspective of the Economic Crimes in Particular Cases of Money Laundering and Tax Evasion

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**Abstract:** *Analysing from the point of view of criminology, the theoretical framework of economic crimes is currently implemented to highlight the investigative activity of those who are interested in approaching the phenomenon in a multidisciplinary context. They primarily involve the criminologists and are secondly organized around their efforts provided both at the European and international levels in finding adequate solutions to combat and to control the phenomenon of these crimes. The main activity in the field of criminological research is then related to maintaining high level of suppressive measures adopted by the domestic authorities, in accordance with the European and international ones, in purpose to gather such a result. The current paper is focused on the most relevant issues in the field of approaching serious crimes from a criminological point of view. The special focus of the research activity is that of analysing the crimes of money laundering and tax evasion, knowing that, in the area of economic crimes, they are the most dangerous phenomenon that existed in practice.*

**Key Words:** *Criminal Law; Criminology; Money Laundering; Tax Evasion; Economic Field; Combating Crimes; Preventing Crimes; Controlling Crimes; Serious Crimes; Romania.*

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### Introduction

In the field of criminology, the serious crimes are, on the one hand, of high interest for theorists in their activity of finding appropriate solutions in order to prevent and to combat the phenomenon as much as possible. On the other hand, it is unanimously admitted that for practitioners involved in the activities of combating and preventing the phenomenon of criminality, the practical considerations of the economic crimes have, usually, influence in the other areas they are linked with. A particular attention is thus paid to the cases of financial, banking, or even accounting criminality also so widespread within the economic field.

Analysing the phenomenon of criminality in the economic field, it should be emphasized that the criminological research provides the specialists with a comprehensive framework of analysis and research. This means that the three issues which develop the research are those referring to the control, prevention and combating the phenomenon of serious crimes, which also comprises the money laundering and tax evasion. In the matter of practical analysis, each of them is structured and shaped around one or many characteristics expressed by the science of criminology.

The current paper has been designed to provide some pertinent solutions for the economic field and to advance certain conclusive practical ideas which could be taken into account by the domestic authorities in purpose to organize the activity of controlling the phenomenon of serious crimes in such a manner to avoid the failure in the action to commit any kind of crimes. This is because in the field of controlling serious crimes, one of the most important principles is that of analysing the phenomenon from the point of view of the research conduct and the implementation of the theoretical results gathered in the end of this activity. Thus, these principles are connected to the general activity of controlling criminal phenomenon on the serious crimes by means of criminological issues, resulting either from the theoretical research activity or from the law. The substantive law in criminal matters is one of the most important sources of information and, therefore, delivers several basic legal instruments used in the field of controlling criminality.

The practice has stated that in the field of economic crimes, both the theory of criminological research based on the principles of criminology and the provisions of penal law are useful in the matter of controlling serious crimes. For this consideration, it could be advanced the opinion that the science of criminology is concordant to the issues of analysing the forms of serious crimes through the means of criminological research.

## **1 The phenomenon of money laundering**

First of all, in the matter of analysing the serious crimes of money laundering, it is very important to delimit the structure configuration of these crimes and then to express the specific features of these issues from the criminological perspective. No critical configuration of both approaches is enough to state conclusive remarks. The doctrine at the European level has been interested in creating a legal configuration for those instru-

ments adopted by the European institutions in purpose to highlight how powerful the activity of fighting criminality of serious crimes is.

Thus, in this matter, the Resolution 2021/2922(RSP) on the Pandora Papers,<sup>1</sup> adopted by the European Parliament, is a significant instrument in the area of combating money laundering, tax evasion and tax avoidance. It has been analysed as one of the most important legal tools of combating serious crimes, with a special focus on the money laundering when associated with financing terrorism.

In fact, the criminological involvement in the field of serious crimes – money laundering and the other connected crimes, such as the financing of terrorism – is no longer defined as a limited issue. No limitation is imposed while analysing the items subordinated to the money laundering, knowing the fact that the serious crimes prove a spread area of the criminological research.

The literature is also deepened in providing quantitative research results in the field of criminological approach on serious crimes. The money laundering is prevalently in the criminologists' attention, who have made significant contributions to the field of criminology.<sup>2</sup> For this reason, it could be stated that the new generation of criminologists has the main orientation to the issues which characterize the quantitative research and advance the methodology of research in such a manner "to allow cases of money laundering and terrorism financing to be detected at the right moment in the transaction, preventing illegal resources from being further integrated into the financial system."<sup>3</sup> The research design is then concordant to the international standards of achieving substantial results.

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<sup>1</sup> See *European Parliament Resolution of 21 October 2021 on the Pandora Papers: Implications for the Efforts to Combat Money Laundering, Tax Evasion and Tax Avoidance (2021/2922(RSP))*. OJ EU C 184, 2022-05-05, pp. 141-153.

<sup>2</sup> See ROCHA-SALAZAR, J.-de-J., M.-J. SEGOVIA-VARGAS and M.-del-M. CAMACHO-MIÑANO. Money Laundering and Terrorism Financing Detection Using Neural Networks and an Abnormality Indicator. *Expert Systems with Applications* [online]. 2021, vol. 169, pp. 1-15 [cit. 2023-01-18]. ISSN 1873-6793. Available at: <https://doi.org/10.1016/j.eswa.2020.114470>.

<sup>3</sup> See ROCHA-SALAZAR, J.-de-J., M.-J. SEGOVIA-VARGAS and M.-del-M. CAMACHO-MIÑANO. Money Laundering and Terrorism Financing Detection Using Neural Networks and an Abnormality Indicator. *Expert Systems with Applications* [online]. 2021, vol. 169, p. 11 [cit. 2023-01-18]. ISSN 1873-6793. Available at: <https://doi.org/10.1016/j.eswa.2020.114470>.

In this regard, it is emphasized that “Identifying the concrete methods of laundering money and financing terrorism should provide both compliance officers and legislators with valuable insights into criminal activity. By better understanding the specific steps taken by criminals, compliance officers should be able to more effectively combat both money laundering and terrorism financing.”<sup>4</sup> Moreover, assessing the risk of money laundering is usually viewed under the umbrella of dialogue coordinated among scientists with the concurrent involvement of the practitioners. In this matter, it has been emphasized that “The lack of dialogue between practitioners and academic researchers has opened a wide space now occupied by [...] companies, which, over the years, have imposed their risk assessment ‘standards’ on obliged entities.”<sup>5</sup>

An empirical analysis of the crime of money laundering has also been made by criminologists who expressed the results of their studies published and appreciated that the work “delivers a new perspective, by analysing data gathered with the first empirical study on the implementation of the AML<sup>6</sup> obligations in practice [...]”<sup>7</sup> They have also emphasized that “Drawing upon semi-structured interviews with estate agents and compliance officials, this study identifies critical aspects of the AML compliance that are particularly problematic for those involved in it.”<sup>8</sup>

Consequently, there could be appreciated a better result in the fight of money laundering, the phenomenon being at the moment more and more aggressive, especially during the pandemic crisis, when the business companies are looking for increasing their incomes by using illegal means of operations.

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<sup>4</sup> See TEICHMANN, F. M. Recent Trends in Money Laundering and Terrorism Financing. *Journal of Financial Regulation and Compliance* [online]. 2019, vol. 27, no. 1, pp. 2-12 [cit. 2023-01-18]. ISSN 1740-0279. Available at: <https://doi.org/10.1108/jfrc-03-2018-0042>.

<sup>5</sup> See SAVONA, E. U. and M. RICCARDI. Assessing the Risk of Money Laundering: Research Challenges and Implications for Practitioners. *European Journal on Criminal Policy and Research* [online]. 2019, vol. 25, no. 1, pp. 1-4 [cit. 2023-01-18]. ISSN 1572-9869. Available at: <https://doi.org/10.1007/s10610-019-09409-3>.

<sup>6</sup> In the presented paper, “AML” means the abbreviation for “anti-money laundering”.

<sup>7</sup> See ZAVOLI, I. and C. KING. The Challenges of Implementing Anti-money Laundering Regulation: An Empirical Analysis. *The Modern Law Review* [online]. 2021, vol. 84, no. 4, pp. 740-771 [cit. 2023-01-18]. ISSN 1468-2230. Available at: <https://doi.org/10.1111/1468-2230.12628>.

<sup>8</sup> See ZAVOLI, I. and C. KING. The Challenges of Implementing Anti-money Laundering Regulation: An Empirical Analysis. *The Modern Law Review* [online]. 2021, vol. 84, no. 4, pp. 740-771 [cit. 2023-01-18]. ISSN 1468-2230. Available at: <https://doi.org/10.1111/1468-2230.12628>.

### 1.1 The approach of substantive law

From the point of view of the substantive penal law, the structure configuration of the crimes of money laundering provides a complex feature the crimes are invested with.<sup>9</sup> As a rule, there are several criminal operations incriminated by the penal law in the field of money laundering. Each of them presents a special *modus operandi*, which the criminals use in their criminal conduct.

By definition, the crime concept imposes several legal substantive elements and, for this remark, the issue involved exceeds the area of criminology.<sup>10</sup> Moreover, in the field of economy, it is well-known that the economic crimes are very abundant and incriminated by the legislator in criminal matters as so dangerous deeds for the entire national economy of the country. By doing so, the legislator was primarily looking for assuring a basic stability of the criminal incriminations covered by the criminal law provisions. It is also so predictable that, in the economic field, there are several legislative changes occurred rapidly for the same purpose.

Although the concept of social danger does no longer exist in the domestic criminal law, the money laundering is still viewed as a dangerous phenomenon all over the world because of its affiliation to the serious crimes. From the beginning, the legislator has taken into account the social danger through incriminating the crimes of money laundering till the moment while the concept of dangerous results and serious consequences prevails in the judiciary.

Analysing by their legal object, the crimes of money laundering present their own particularities. By definition in a substantive context, the crime of money laundering means the action of transferring or changing goods, knowing that they proceed from committing crimes, in purpose to hide or to dissemble their illegal origin. It also refers to the action of helping persons who committed the basic crimes from which goods are proceeded to embezzle from the investigating criminal procedure, judgment or execution of penalty.

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<sup>9</sup> See Law No. 129 of July 11, 2019, on Preventing and Combating the Money Laundering and Financing of Terrorism, as well as on Modification and Completion of Certain Normative Acts [2019]. Official Journal of Romania, 2019, No. 589.

<sup>10</sup> See MAGHERESCU, D. *Criminologie*. 1-a ed. București: Pro Universitaria, 2021, p. 57. ISBN 978-606-26-1303-7.

As it could be observed, the above-stated definition does not cover the entire area of the crime of money laundering. In this regard, the legislator has reacted and supplemented it by adopting other incriminating elements in this matter. Thus, the crime of money laundering was defined as the action of hiding and dissembling the real nature, source, disposition circulation, or even the property of goods or their rights, knowing that these goods proceed from committing other crimes.

And, finally, the crime of money laundering is characterized as being the action of gaining or using the goods by another person than the perpetrator of the crime committed to proceed these goods. In this regard, the perpetrators infringe social relations, which refers to a particular economic activity, even if it involves more than one criminal action and implies many incriminations as well.

Analysing these criminal actions and illegal operations, it could be stated that approaching the issue of money laundering from a substantive criminal law, the conclusive remarks converge to the presence of legal special object of the crime as well as its constitutive elements.

## **1.2 Criminological approach**

Analysing the issue of money laundering from a criminological perspective, it has been inserted within the larger context of the serious crimes under the general typology of organized crime. In fact, there are circumstances which particularly create for this kind of crimes an overview described by the legal doctrine as a generic term “preferred by the doctrine in order to delimit the categories of petty offences, as ordinary ones, from the serious crimes.”<sup>11</sup>

One of the main features of the serious crimes reveals that the phenomenon is not an independent one, but subordinated to the other links containing similar or different criminological phenomena.<sup>12</sup> Moreover, as an economic crime, the money laundering is a serious crime because of its social danger, on the one hand, and the serious consequences it produces in practice, on the other hand. Actually, the consequences are part of the organized crime phenomenon, also developed from the inefficient

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<sup>11</sup> See MAGHERESCU, D. *Criminologie*. 1-a ed. București: Pro Universitaria, 2021. 234 p. ISBN 978-606-26-1303-7.

<sup>12</sup> See MAGHERESCU, D. *Criminologie*. 1-a ed. București: Pro Universitaria, 2021. 234 p. ISBN 978-606-26-1303-7.

legislative instruments adopted in this matter as well as the other causes both extrinsic and intrinsic ones which produce the phenomenon.

The practice has stated that, on the one hand, the extrinsic factors occur in the economic crises themselves, or even associated to the other kinds of crises, such as the war crisis or immigration crisis. They refer to the complex circumstances which the jurisprudence has stated as well. On the other hand, the intrinsic factors are those related to the own organization of the legal entities involved in the activities of illegal business.

The improper legislation belongs to the first category expressed earlier. Nevertheless, the legislative drawback is not the only one issue which occurs in the field of developing money laundering, even if it is recognized that it is a serious factor which contributes to the highest share.

## **2 The phenomenon of tax evasion**

The organized crime is currently increased, the phenomenon being analysed from the point of view of its diversity and propensity to various forms of serious crimes committed especially in the field of business. One of them is the tax evasion, as a form of economic crime also committed in a multidisciplinary context. Because of its spread range over the economy of the countries, the issue of tax evasion is object of several criminal cases.

At the same time, the doctrine has made delimitations between the illegal tax evasion and tax avoidance,<sup>13</sup> as presented in many other countries around the world,<sup>14</sup> when the criminality meets the business and the businessmen would like to gain a huge amount of money by committing illegal economic operations, including the tax evasion.

The legal doctrine in criminal matters has pointed out the manner in which the persons involved in the illegal operations of business succeed

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<sup>13</sup> See ALSTADSÆTER, A., N. JOHANNESSEN, S. Le GUERN HERRY and G. ZUCMAN. Tax Evasion and Tax Avoidance. *Journal of Public Economics* [online]. 2022, vol. 206, pp. 1-17 [cit. 2023-01-18]. ISSN 1879-2316. Available at: <https://doi.org/10.1016/j.jpubeco.2021.104587>.

<sup>14</sup> See ERMASOVA, N., Ch. HAUMANN and L. BURKE. The Relationship between Culture and Tax Evasion across Countries: Cases of the USA and Germany. *International Journal of Public Administration* [online]. 2021, vol. 44, no. 2, pp. 115-131 [cit. 2023-01-18]. ISSN 1532-4265. Available at: <https://doi.org/10.1080/01900692.2019.1672181>.

in maintaining an influential position over the entire process of committing crimes at the level of criminal network structure.<sup>15</sup> Their results are usually based on the inefficient action taken by the administrative bodies in the process of implementing the legal provisions on combating tax evasion. The first practice is to detect the tax evasion through using legal instruments provided by the legislation adopted in the matter of controlling serious forms of economic crimes, including those related to the tax evasion.<sup>16</sup> For this reason, it has been emphasized that “Tax evasion continues to be a serious problem in society and rising media coverage of evasion scandals heightens the urgency to act.”<sup>17</sup>

## 2.1 The European context

At the European level, the issue of tax evasion still creates discussion on how to prevent the phenomenon in such a manner to avoid the risk of re-insertion of the phenomenon into the transnational criminal market area. It is appreciated that, although the judicial authorities have made significant efforts in purpose to control the tax evasion, there are causes which conduct to the transnational side of the phenomenon.

A pertinent remark has been highlighted according to the European involvement in the activity of prevention and control. Indeed, the action plan of the European institutions is not enough to achieve useful results in the matter of controlling the phenomenon of tax evasion as well as the other ones associated to money laundering and tax avoidance.<sup>18</sup> Actually, it needs an efficient and firm program implemented by the European Union Member States, which can find solutions for the issue of tax evasion.

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<sup>15</sup> See BELLOTTI, E., J. SPENCER, N. LORD and K. BENSON. Counterfeit Alcohol Distribution: A Criminological Script Network Analysis. *European Journal of Criminology* [online]. 2020, vol. 17, no. 4, pp. 373-398 [cit. 2023-01-18]. ISSN 1741-2609. Available at: <https://doi.org/10.1177/1477370818794870>.

<sup>16</sup> See FOCHMANN, M., F. HECHTNER, T. KÖLLE and M. OVERESCH. Combating Overreporting of Deductions in Tax Returns: Prefilling and Restricting the Deductibility of Expenditures. *Journal of Business Economics* [online]. 2021, vol. 91, no. 7, pp. 935-964 [cit. 2023-01-18]. ISSN 1861-8928. Available at: <https://doi.org/10.1007/s11573-020-01024-7>.

<sup>17</sup> See FOCHMANN, M., F. HECHTNER, T. KÖLLE and M. OVERESCH. Combating Overreporting of Deductions in Tax Returns: Prefilling and Restricting the Deductibility of Expenditures. *Journal of Business Economics* [online]. 2021, vol. 91, no. 7, pp. 935-964 [cit. 2023-01-18]. ISSN 1861-8928. Available at: <https://doi.org/10.1007/s11573-020-01024-7>.

<sup>18</sup> See SCARFONE, J. and M. KERR. Paved Paradise: Analysis of the Common Reporting Standard to Combat Tax Avoidance. *Liberated Arts*. 2018, vol. 4, no. 1, pp. 1-12. ISSN 2369-1573.



In order to increase the procedure of combating tax evasion, at the European level a possible solution is still expected to be adopted. It should be connected to the Resolution 2021/2922(RSP) on the Pandora Papers,<sup>19</sup> which has created a facile framework in the matter.

Following the international pattern of measures on preventing and combating the tax evasion, the European authorities have reacted to any form of serious crimes. Discussing about the case of Romania, as a Member State of the European Union, despite the efforts made by the domestic authorities, there are inadvertences in the process of combating the tax evasion. The national law on preventing and combating the tax evasion<sup>20</sup> incriminates some illegal actions on financial and accounting operations.

## ***2.2 Tax evasion in a multidisciplinary approach***

Approaching the issue of tax evasion in a multidisciplinary context is basically the main topic of the criminal sciences, linked to the study of criminology and to the directions coordinated under the criminal law, both substantive and procedural. This involves the other areas of science the criminology is connected with and means, among other things, the study of legal sociology.

One direction in criminology focuses on the theory of causality, regarding the tax evasion as well as the rate of criminality in the field of economic crimes. The criminological research is thus accustomed to the high level of criminality in the economic area, the phenomenon being more and more present in the criminal cases investigated and judged by the judicial bodies.

From a procedural criminal law point of view, the crimes of tax evasion are very abundant nowadays and seem to be expanded in the last period of time.

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<sup>19</sup> See *European Parliament Resolution of 21 October 2021 on the Pandora Papers: Implications for the Efforts to Combat Money Laundering, Tax Evasion and Tax Avoidance (2021/2922(RSP))*. OJ EU C 184, 2022-05-05, pp. 141-153.

<sup>20</sup> See *Law No. 241 of July 15, 2005, on Preventing and Combating the Tax Evasion* [2005]. Official Journal of Romania, 2005, No. 672, amended by *Law No. 55 of March 31, 2021, on Modification and Completion of Law No. 241 of July 15, 2005, on Preventing and Combating the Tax Evasion* [2021]. Official Journal of Romania, 2021, No. 332.

## Conclusions

The current paper on the topic of the criminological approach of the serious crimes, with a special focus on the money laundering and tax evasion, has revealed that the issue of criminality in the field of business is influenced by several risk factors, either extrinsic or intrinsic ones. Each of them contributes to the development of serious crimes also associated with the phenomenon of organized crime.

The legal framework adopted both at the European and national levels proves to be an important instrument of combating, preventing and controlling the serious crimes committed in the economic area. It is particularly about the money laundering and tax evasion. Some concurrent factors and conditions compete each other in order to fight against these phenomena.

In this context, it is remarkable the authorities' efforts in purpose to make sure that their work is the only one way of supporting the legislative provisions in the matter of reducing the rate of criminality.

Consequently, it is obvious that there is no restrictive measure to impose to the judicial bodies in their activity of achieving the main goal of diminishing the criminality in the cases of money laundering and tax evasion as much as possible.

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