2012 2nd International Conference on Social Science and Humanity
IPEDR vol.31 (2012) © (2012) IACSIT Press, Singapore

The Judicial Regime of the Crime Product Laundering from the Illicit Drug Traffic in the Roman Law and Comparative Law

Georgeta Valeria Sabău[1], Narcisa Mihaela Stoicu[2], Sorin Fildan[3]

Faculty of Law „Vasile Goldis", Western University, Arad, Romania

Abstract: This article intends to make clear some important aspects related with the laundry of the crime product, with special consideration towards the crime product from drug dealings and forerunners. The authors, in a comparative way, insists on the concepts of money laundering versus the laundering the product of the crime indicating the area of including both notions. At the same time, it is analysed both the judicial conditions of laundering the product of the crime and aspects of comparative law, followed by an in extenso analyse of the crime. This research opened a larger way for considering those problems. The development of this subject is a must for the bibliography of the domain.
In conclusion, we can say that the crime of laundering the product of the crime is considered to be a European offence, due to its trans-national implications, both regarding the source of law and the alternative ways of committing it.

Keywords: money laundering, crime product laundering, crime product from drug dealings and forerunners

1. General Aspects

Criminal groups, that are organized, motivated and focussed on obtaining illegal financial and material gains will later be interested in camouflaging, investing, concealing, transforming or recycling the profits thus obtained, providing them with an appearance of lawfulness. In a day-to-day language, the concept of money laundering designates a complex amount of fraudulent economic and financial operations, having the main purpose of creating the conditions for the usage and multiplication, by means that are legal, of the profits obtained from illicit activities of the large cross-national organized groups [1], thus being circumscribed to business criminality.

From this context, a crime of danger takes shape, characterized by a certain discretion which, most of the times, makes it more difficult for investigators to carry out their activity. In truth, money laundering is a practice entailing two relational processes. On the one hand, anyone who conceals the existence of the money will also become involved in their laundering. For example, the drug trafficker who places an illicit benefit in a bank account, while the funds are subsequently exchanged into legal investments with the state, does nothing but recycle the money obtained by trafficking. On the other hand, the money is subject to *cleaning* or *recycling* operations, in the conditions when their source or use is masked, concealed, made a secret, and the legitimacy of its sources of origin paves the road for turning the money to account, without the fear of answering before someone. Criminal organizations multiply their profits, and their justification to

[1] s_fildan@yahoo.com
[2] stoicu_narcisa@yahoo.com
[3] georgetasabau@yahoo.com

investigators, through the possession of resources, goods, properties, represents the essence of money laundering. In this way, a legitimate character is attributed to the profits, or the identification of the illegal sources they originate in is avoided.

There are also cases when the money is concealed from the public, competitors, social or religious institutions etc., in order to ensure confidentiality, competitive advantage, reputation or the discouragement of requests for charity actions. Likewise, another purpose is represented by preventing or hindering the operations of accounting documents tracking, by practicing international transfers of cash funds, without paying the corresponding taxes. The money laundering process is always determined by illegal activities, and it can have different motivations. Regarded as a whole, this phenomenon causes a great risk to the economy, on the one hand, due to the penetration of criminal groups in the field of business, and on the other hand, by practicing and unfair competition on fairly competing companies.

2. Money Laudering *Versus* Crime Product Laudering

Reflection is particularly imposed on the two concepts. In the case of money laundering, there is no knowledge of any clear definitions regarding the concept, these being formulates according to priorities and perspectives.

The scope of the collocation *money laundering* is not identical to that of *crime product laundering*, which includes, apart from money, any other goods or values; in this respect, it is observed that between the stipulations of the Law no.656/2002 [2] and those of the European Convention regarding crime product laundering, detection, seizure and expropriation, and further those of the U.N. Convention against cross-border organized criminality of 1990 [3], there is a regrettable discrepancy. While the national organic law uses the syntagma of money laundering, the Conventions employ that of *crime product* logically including money. Likewise, the provisions of the convention are not consistent in their content either, sometimes using the term of money laundering [4], even if it refers to crime product laundering.

It must be pointed out that the first law in this domain (no.21/1999) was punishing exclusively the laundering of money obtained from certain crimes [5], provided for *expressis verbis* in the incrimination norm. This law being currently abrogated and extending its material object to other goods, a potential amendment of the national legislation, by replacing the collocation *money laundering* with the syntagma *crime product laundering*, with respect to the requirements of the European Convention regarding crime product laundering, detection, seizure and expropriation, and of the United Nations Convention against cross-border organized criminality, would be welcome [6]. According to the Conventions, by crime *product* is meant any economic advantage obtained from crimes, any good, corporeal or incorporeal, mobile or immobile, tangible or intangible, that is directly or indirectly originated in committing a crime or which is directly or indirectly obtained from committing it, as well as judicial acts or documents attesting ownership of the good or any rights on the latter.

Corpus Juris also uses the term of *income or profit laundering,* resulting from fraudulent crimes which affect the financial interests of the European Communities (fraud in terms of establishing transactions and associating with criminals, and misapplication of funds) [7].

3. The Judicial Regime of Crime Product Laudering. Aspects of comparative law

In truth, drug trade is the most profitable criminal activity, the degree of social dangerousness being somewhat different, the drugs having direct implications on the health of the individual. The issue of money laundering was regulated for the first time in 1988, in the content of the United Nations Convention against illicit narcotic and psychotropic substance traffic, adopted in Vienna, its signatory parties being aware that

the illicit trading of drugs and precursors represents a large and varied source of financial gain, thus preventing the recycling of funds obtained from drug trafficking. According to the Convention, *money laundering implies conversion or transfer of goods intended to dissimulate or disguise their illicit origin.*

Likewise, due to the U.N. Convention against cross-border organized crime [8] and to the European Convention regarding crime product laundering, detection, seizure and expropriation, crime product laundering is a universally incriminated offence. In the sense of the two Conventions, the crime takes the shape of the material element of the objective side, in three ways: *exchange* or *transfer of goods* that are known to be the crime product, seeking to conceal or disguise the illicit origin of those goods or *help given to a person involved in committing the principal offence to avoid judicial consequences of their actions*, as well *dissimulation* or *disguise of the real nature, origin, placement, disposal, exchange or ownership of goods or other rights* referring to them, *provided that the author is aware that they are the a product of crime.*

The penal codes of the modern states of the world assign increasingly complex definitions to this crime.

1. The legislation of the U.S.A.[9] incriminates, in a first modality, money laundering as *the act of any person knowing that the values in a financial trade are represented by crime products, operating or trying to operate this trade with the intention of facilitating the continuation of a criminal activity or of committing a crime having, on the whole or in part, the purpose of concealing the nature, location, source, ownership of the product of an illegal feat, or of avoiding the trade being reported according to federal or state laws.* According to the same provisions, money laundering is also represented by *the act of transporting, transmitting or transferring, or the attempt to transport, transmit or transfer monetary instruments or funds, with the intention of carrying out an illegal activity or knowing that the monetary instruments or funds are originated in an illegal action or knowing that transporting, transmitting or transferring has, on the whole or in part, the purpose of concealing the nature, location, source, ownership of the product of an illegal feat, or of avoiding the trade being reported according to federal or state laws.*

2. For instance, art.278 of the Argentinean Penal Code [10] incriminates the exchange and laundering of the criminal origin of the monetary funds. The Argentinean Penal law incriminates *the deed of the person who, even without taking part in committing a crime, carries out operations of converting, transforming, selling, engraving, as well as any other mode of alteration of the money or benefits, subrogated so as to appear to have a licit origin, knowing that they originate in a crime, thus producing judicial consequences.*

3. According to the model Australian Penal Code (art.193B) money laundering can be committed by *any person who, knowing the good originates, directly or indirectly, in a drug-related crime, conceals, transforms, moves or transfers the property to another person, with a view to eluding or helping another person elude pursuit, execution or expropriation, commits the act of concealing, transforming, or transporting a good that originates directly or indirectly in a drug crime* [11].

4. In Canada, money laundering is incriminated under the title of *crime product recycling*, in both the provisions of the Penal Code (art.426.31), and in those of the special law regarding drugs [12].

5. At a European level, the most important document in terms of money laundering is represented by the European Convention of Strasbourg on crime product laundering, detection, seizure and expropriation [13], money laundering being incriminated (art.6) in the form of *conversion or transfer of goods which the author knows to represent crime products, with a view to dissimulating or disguising the illicit origin of these goods or to helping a person who is involved in committing the main crime avoid the judicial consequences of their deeds, to dissimulating or disguising the nature, origin, location, or disposition of goods of rights of which the author knows they are crime products, purchasing, possessing or utilizing such goods, to participating in one of the crimes mentioned above or to any association, agreement, attempt or complicity to these acts.*

This document is added other community norms, the most representative of which are: Directive no.91/308 [14], which stipulates that the laundering of money originated from certain activities, such as drug trade, are crimes in the member states, establishing certain ways of preventing, detecting and controlling any suspicious transactions; Common Action no.98/699/JAI [15] adopted by the Council on grounds of article K.3 in the Treaty regarding the European Union regarding money laundering, crime product identification, pursuit, freezing or seizure and confiscation of crime instruments and products; Directive no.2001/97 [16], which clarifies and expands the definition of the financial institutions involved, as well as applying the same rules to some non-financial institutions, such as auditors, real-estate agents or judicial professionals.

Great Britain has incriminated only a few of the categories of acts related to illicit money laundering as crimes. thus, according to the Law regarding offences in the field of drug trade of 1986, section 24, *it is illegal to help a person retain or benefit from profits obtain from drug trade, by concealment, removal out of the jurisdictional zone or transfer by third persons. It is also a crime if a person knows or suspects someone who carries or carried out activities in the field of drug trafficking, or benefited from it, and does not inform the police.*

The Belgian Penal Code incriminates in art.505 the offence of money laundering, giving it an autonomous character, in the sense that authors, co-authors or accomplices to the main offence which the illicit funds originate in, can be made liable for the subsequent offence [17].

Likewise, the Luxembourgian legislation associates the illicit obtainment of financial and material benefits, with the offences of producing, trafficking or distributing drugs [18].

In France, the former Public Health Code only regulated the offence of laundering money originating from drug trade, and the material object of the crime was only money, other goods or values being excluded, which allows us to assert that other operations of laundering money originating in corruption, smuggling, arms trafficking or prostitution were not incriminated. Subsequently, on the occasion of the above-mentioned legislation being amended, by the Law of 13 May 1996, the laundering of the crime product or of the general offence was incriminated among the crimes against patrimony.

Currently, in terms of laundering money originating from illicit drug trafficking, the French Penal Code expressly stipulates, in its „On drug trade" section, the original offences, much more severely sanctioned. The Customs Code incriminates, as well, *the act of the person carrying out or attempting to carry out, by exportation and importation, transfer or compensation, a financial transaction between France and other countries, concerning funds of which this person know they originate, directly or indirectly, from an offence to the customs regime or from an offence to the drug regime* [19].

In the Italian Penal Code, the laundering of money and other goods obtained from criminal activities is considered as a special form of concealment, and the person who participated in committing the main offence is not sanctioned.

The Spanish Penal Code, in art.301 stipulates that *the person who obtains, converts, or transfers goods knowing that they originate from a serious offence or commits any other act for concealing their illegal action, or helps the person who participated in the crime elude the legal consequences of his or her acts, commits the crime of money laundering.* Contrariwise, another opinion was expressed, according to which money laundering has a subsequent character with respect to the main offence, as in the case of favouring; therefore, since self-favouring is not a crime, neither can self-laundering of money be incriminated [20].

In 1992, the crime of laundering money and illegally obtained values was incriminated in Germany, but without including money laundering by the author of the main offence until as late as 1998 [21].

The Swiss legislation (art.305bis Pen.C.) provides that the person who commits an act that can prevents identifying the origin of, detecting or confiscating patrimonial values of which they know or should know to be originated from crime, commits the offence of money laundering [22].

The objective side of the crime product laundering offence, as provided for in *Corpus Juris* [23] is alternative, and it can consist of: - conversion or transfer of goods resulting from any criminal activities of a financial nature with regard to the interests of the Union, or participation to an activity as such with a view to concealing or masking the illicit origin of the product, or help given to any person involved in an activity as such in order to ensure their eluding the judicial consequences of the acts; - concealment or disguise of the nature or origin, location, disposition, movement or concealment of the real owners of the goods or rights resulting from the criminal activities mentioned above, or participation in an activity as such.

6. The Romanian legislator incriminates [24] the money laundering offence, in the provisions of art.23 of the Law no.656 of 7 February 2002 for preventing and sanctioning money laundering, as well as for taking measures of prevention and combat against financing acts of terrorism. This normative act was subsequently amended by the Law no.39/2003 regarding the prevention and combating organized criminality [25], art.34 abrogating par.2 of art.23 of the Law no.656/2002, which incriminated the association or the starting of an association on the purpose of committing a money laundering offence. The stipulations of the Law no.656/2002, applied and adapted the provisions of the Directive no.2005/60 din 26 October 2005 of the Council, regarding the prevention of using the financial system on purposes of laundering money and financing terrorism [26] and of the Directive no.2006/70 of 1 August 2006 of the Council, establishing the measures for applying the Directive no.2005/60 [27]. From the comparative analysis between the text of the organic law and the texts of the international conventions in the field, we observe that the Romanian legislator assumed almost entirely their provisions.

The special judicial object is represented by the assembly of social relations ensuring and protecting an aggregate of financial, banking, commercial transactions of money, values and any other goods with an illicit origin.

With regard to the provisions of the new Penal Code in the field, we express our point of view in the sense that the offence should be incriminated, identically to the French and Italian laws, among the crimes against patrimony, namely title II – chapter 3 where acts against patrimony are incriminated, being committed by breaking the trust, such as, for instance, misapplication of public auctions and patrimonial exploitation of a vulnerable person; if the offence does not have any cross-border implications, it could be incriminated among the crimes against financial interests of the European Community, similarly to the regulation in *Corpus Juris.* Last but not least, the same text requires a change in the denomination of the offence, to that of crime product laundering, the reason for this being the perpetuation of confusion regarding the material object of the offence, as well as the fact that the adoption of the new Penal Code is inscribed along the lines of the new European current of expanding the scope of money laundering.

With regard to the material object of the crime, a few specifications are required.

According to art.2 let.b of the Law no.656/2002, *goods* refers to both *corporeal* and *incorporeal, mobile* and *immobile goods,* as well as to *judicial acts* or *documents attesting a title or a right with regard to the latter*, these being added the *tangible* or *intangible goods*, indicated by the conventions in the field.

Even if the current text no longer contains the term *money*, we consider that *corpus delicti* or *corpus criminis* may be represented by money belonging to the category of mobile, corporeal, tangible goods as well as in the provisions of art.3 pt.6 of the law, where natural and artificial persons are required to report all *operations with cash sums, in national or foreign currency,* whose lower limit is of 15,000 euros, to the National Office For Preventing and Combating Money Laundering. Since the frame law is completed by the

provisions of the conventions in the field [28], ratified by Romania, the material object of the offence is *any economic advantage obtained from crime, which can consist of any good of any nature, corporeal or incorporeal, mobile or immobile, as well as judicial acts or documents attesting a title or a right with regard to a good.*

The active subject can be represented by any natural or artificial person [29], who meets the conditions of penal liability.

Another question submitted to contradictory debate in the literature of the field [30], is whether the author of the crime product laundering can be confused with the author of the main offence, which the product originates from. In this sense, although the European legislation and doctrine, whose opinion do not fully coincide, are rather ambiguous, considering that the same criminal activity can entail two analogous judicial qualifications, thus defying the principle *non bis in idem* [31]. In order to provide an answer to this problem, it is recommendable to first establish the scope of the crimes which the product originates from, that is the main offence. Because of the fact that Law no.656/2002 does not indicate the categories of offences that are considered to principal, we shall resort to the provisions of art.2 let.h of the United Nations Convention against cross-national organized criminality, in the sense that the main offence is *any offence resulting in a product susceptible of becoming the object of an offence provided for by art. 6* (the four types of the crime product laundering offence), as well as those indicated by art.2 – serious crimes [32], art.5 – participation in an organized criminal group, art.8 – corruption offences and art.23 – hindrance of the good functioning of justice.

We believe that the opinion that has imposed itself to the majority is in accordance with reality and jurisprudence [33], in the sense that, the active subject of crime product laundering can be, at the same time, the active subject of the main offence, opinion which we find in the project of the New Penal Code [34]. The argument is represented by the very expression of „knowing that the goods originate from committing the offence", by which the legislator wished to indicate the physiological position of the author of the main offence, in the sense that the latter should not be mistaken as to the penal character of the act he/she committed.

Consequently, the active subject of the two connected offences commits two offences that are in actual concurrence. This issue is submitted exclusively to our attention when the very person who recycled the product participated in committing the principal act; contrariwise, when, for instance, the product laundering is performed by a third person, who is not involved in committing the main offence, with respect to which all alternative variant of committing the crime will be operated, the concurrence of offences will no longer be retained.

With regard to the material element of the objective side, the offence can be committed in various alternative ways:

- *alteration* or *transfer of goods*, knowing that they originate from committing crimes, with a view to concealing or dissimulating their illicit origin or with a view to helping the person who committed the crime from which the goods originate elude pursuit, judgement or execution of sentence.

Alteration of goods implies the process of transforming or replacing them, through which the real features of the object are removed and replaced by other features, which would create the appearance of a licit origin or obtainment; the transfer of goods can be achieved by either moving or displacing them to locations where it might create the impression of lawfulness, or by means of transferring capitals at the level of the banking sector. The condition is that the author recognized that the goods originate from committing offences.

- *concealment* or *dissimulation* of the real nature of the origin, location, a disposition, circulation or ownership of the goods or rights over it, knowing that they originate from committing offences.

Concealment implies hiding or secreting the real origin, address or ownership of the good and even of the right to property or any rights over them; dissimulation implies camouflaging or masking the judicial nature of those goods, provided that the author is aware of the fact that the goods originate from committing offences.

- *obtainment, possession or utilization* of goods, knowing that they originate from committing offences.

Obtainment, possession or utilization imply that the author has exclusive ownership over the goods, or is the possessor or even the precarious holder of the goods in their possession, hold, judicial guardianship or administration, provided that the author knows that the gods originate from committing offences.

With regard to the subjective side we consider that the offence is committed in the way provided for by art.23 par.1 let.a in the form *direct intention, qualified by purpose* (concealment or dissimulation of the illicit origin of the goods or helping the person who committed the offence from which the are originated to elude pursuit, judgement or execution of sentence), and in the other two ways in the form of direct or indirect intention.

4. Conclusion

Although money laundering is currently a phenomenon lesser known by ordinary people, the largest part of the money laundering operations is performed by criminal groups invariably carrying out activities that are compatible with organized crime, money recycling being essential for them, as in this was they can avoid being identified and made responsible before the law for the criminal activities carried out initially.

As a rule, the persons located at the top of criminal organizations are outside the scope of concrete activities that are specific to organized crime, which poses serious problems to investigators, tracking down the money circuit being the link between the leaders of these criminal organizations and the actual crimes. Owing to the fact that the mechanisms of money laundering invariably contain cross-border elements, it is natural that the legislative initiatives combating this phenomenon should also be adopted at a European and international level. In this context, the integrity of banking and financial dealings, fiscal havens, ethical and professional standards, professional secrecy, the influence of criminal organizations, long-distance banking transactions etc. represent the actual parameters determining real risks of global money laundering. Therefore, a veritable and effective international cooperation is indispensable and absolutely necessary in combating this phenomenon.

We can conclude that the crime product laundering offence is rightly considered as a cross-national offence, owing to the international implications that it entails, in respect of its original source, as well as of its alternative ways of being committed.

5. References

[1] The term of money laundering was first used by the American authorities, in the period of 1920-1930, when some known criminal groups opened car and laundry washes for money laundering purposes and for justifying the origin of the money obtained from various criminal activities. For further details, see Cristian Adochiței, Iulian Adochiței, *Spălarea banilor*, Revista de drept penal nr.1/2003, p.94

[2] Published in the Official Gazette no.904 of 12.12.2002, amended no less than thirteen times, the last amendment being carried out by means of the Governmental Emergency Order (G.E.O.) no.53/ 2008 regarding the amendment and completion of the Law no. 656/2002 for combating and sanctioning money laundering, as well as for instituting measures for preventing and combating the financing of terrorist acts, published in the O.G. no.333 of 30.04.2008

[3] Romania ratified this Convention through the Law no.263/2002, published in the O.G. no.353 of 28.05.2002, amended by the O.G. no.275 of 25.04.2007

[4] Art.7 of the Convention has the measures of combating money laundering as an object.

[5] According to art.23 of the Law no.21/1999 money laundering-related offences were: drug trafficking, aggravated failure to comply with the regime of arms and ammunition, of nuclear or other radioactive materials, of explosive materials, the counterfeiting of coins or other values, pandering, smuggling, blackmail, illegal deprivation of freedom, banking, financial or insurance fraud, fraudulent bankruptcy, car robbery and concealment, failure to comply with the regime of protecting some goods, trafficking animals that are under protection in their countries, human tissue and organ trade, cyber-crimes, crimes involving credit cards, crimes committed by persons belonging to criminal associations, failure to comply with the dispositions regarding the importation of wastes and residues, failure to comply with the dispositions regarding gambling.

[6] For other opinions see Horia Diaconescu, *Drept penal. Partea specială*, vol.I, Ed.All Beck, Bucureşti, 2005, p.450

[7] Rosmerlin Estupiñan Silva, *Corpus Juris: reflexiones en torno a la posible armonización del derecho penal en Europa*, Electronic periodical Derecho penal (http://www.derechopenalonline.com/derecho.php.)

[8] Adopted in New York by the General Assembly of the U.N. on 15 November 2000, ratified by the Parliament of Romania on 16 October 2002, by the Law no.565/2002, published in the O.G. no. 813 of 8 November 2002

[9] Art.1956 of Title 18, Part I, Ch.95 of the template Penal Code of the U.S.A.

[10] *Codigo Penal*, Buenos Aires, 21 de Dicembre De 1984, Boletin Oficial, 16 de enero de 1985, actualizado Septiembre 2007. Source: http://www.bcra.gov.ar/pdfs/marco/Ley/encubrimiento

[11] Crimes Act no.40 of 1990, as at 1 July 2008. Source:http://www.austlii.edu.au/au/legis/nsw/consol_act/

[12] A.Dubois, Ph.Shneider, *Code Criminel Annoté et lois connexes*, Les édition Yvon Blais Inc., Québec, 1998, p.507 and p.1417 *apud* Paul Munteanu, quoted works, p.40

[13] http:// conventions.coe.int.

[14] Published in the O.J., L166 series, 28.06.1991, p.77.

[15] Published in the O.J., L series, no.166, 28.06.1991, p.77-83

[16] Published in the O. J., L series, no.344, 28.12.2001, p.76-82

[17] Camelia Bogdan, *Subiectul activ al infracţiunii de spălare a banilor*, Revista de drept penal nr.1/2007, p.71

[18] André Decouriére, *Les drogues dans L'Union Européenne. Le droit en question*, Ed.Bruylant, Bruxelles, 1996, p.222

[19] Art.222-34–art.222-37 the new French Penal Code

[20] Camelia Bogdan, quoted works, p.71

[21] Valerică Dabu, Ana-Maria Guşanu, *Reflecţii asupra legii pentru prevenirea şi sancţionarea spălării banilor*, Revista de drept penal nr.4/2001, p.128

[22] Paul Munteanu, quoted works. p.39

[23] *Implementarea Corpus Juris în statele membre. Prevederi penale pentru protecţie veniturilor europene*, Institutul G.J. Wiarda, Universitatea Utrecht, Olanda

[24] For further details see Valerică Dabu, Sorin Cătinean, *Noua lege pentru prevenirea şi sancţionarea spălării banilor (Legea nr. 656/2002) şi Convenţia Naţiunilor Unite împotriva criminalităţii transnaţionale organizate,* Revista „Dreptul" nr.6/2003, p. 47-65

[25] Published in O.G. no.50 of 29 January 2003

[26] Published in O. J., L series, no.309, 25.11.2005, p.15-36.

[27] Published in O. J., L series, no.214, 4.08. 2006, p.29-34.

[28] Art.1 let.a and b in the European Convention regarding crime product laundering, detection, seizure and expropriation and art.2 let.e in the U.N. Convention against organized cross-border crime.

[29] If the act was committed by an artificial person, apart from the fine, one or more of the complementary sentences, depending on the case, as provided for in art. 53^1 par.3 let. a-c Pen. C., are applied.

[30] Camelia Bogdan, *Infracțiunea de spălare a banilor în legea franceză şi germană,* Revista de drept penal nr.4/2006, p.128, as well as the Editor's Note to this article, formulated by Gheorghe Antoniu, p.129; Dorin Ciuncan, Aurelian Niculiță, *Subiectul activ al infracțiunii de spălare a banilor,* Revista de drept penal nr.2/2006, p.105-108; Camelia Bogdan, *Subiectul activ al infracțiunii de spălare a banilor*, Revista de drept penal nr.1/2007, p.72-73, as well as the Editor's Note to this article, formulated by Gheorghe Antoniu, p.73-74; Paul Munteanu, *Câteva elemente de distincție între spălarea de bani, tăinuire şi favorizare*, Caiete de drept penal nr.1/2008, p.43-44

[31] Reynald Ottenhohof, *Cronique de jurisprudence. Infractions contre le biens,* Revue de science criminelle et de droit penal compare nr.2/2004, p.352 *apud* Camelia Bogdan, *Infracțiunea de spălare a banilor în legea franceză şi germană,* Revista de drept penal nr.4/2006, p.128

[32] In the sense of art.2 let.b. of the convention, by serious crime is meant an act representing an offence susceptible to a freedom-depriving sentence the maximum of which must not be less than four years or a severer sentence.

[33] I.C.C.J., penal section, decision no.1386/2004, published on http://www.scj.ro; for a contrary opinion see I.C.C.J., penal section, decision no.3615/2007, published on http://www.scj.ro

[34] Art.260 par.2 the new Penal Code stipulates: *money laundering also occurs when the offence was committed by an author or participant in the act provided for by the penal law, which the good originates from.*