Practical aspects and difficulties encountered in the implementation of legislation on fighting laundering of proceeds of crime in Albania.

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Introduction

The fight against crime, particularly against the most severe forms of organized and cross-border crime, would be ineffective and incomplete without focusing on the assets that produces this criminal activity. The sole purpose of this type of crime, with rare exception, is to gain wealth illegally[1]. At the same time these assets serve to finance and continue feeding a cycle of crime, which is a real danger for the economy and state itself. It is about quite large financial amounts, which if invested in any economy, would be immediately noticeable. They lead to an imbalance of normal economy, after creating an unfair competition, leading many normal manufacturing, processing or trade activities to bankruptcy, bringing harmful economic and social consequences. Therefore, stripping the perpetrators of organized crime from illegal assets carries three purposes. First, removes their possibility to benefit, to enjoy and use these resources[2]. Secondly, removes the possibility to use these assets for further financing activity of organized crime. Third, protects the economy of a country or wider. And fourth, turns this wealth to the community, from who it was obtained illegally.
That is why tracking, locating, seizureing and confiscateing these assets has been and is one of the main purposes of prosecution. Criminal laws of each country have provided the confiscation of the proceeds of crime and property, and what served to carry out a crime.

[1]BesnikMuçi, Offenses in the field of narcotics, pg. 167
[2]Vllado Kambovski, Criminal legal framework of prevention of organized crime in Macedonia, pg. 51

1.1. A brief look at the international normative framework

After the 1990, seizure of the assets of organized crime has become one of the priority ways for busting organized crime. Leading international institutions, where Albania is also part of, the United Nations (UN) and the Council of Europe (CoE), processed and issued several important acts, where a special attention is given to organized crime, money laundering and Corruption: the UN Convention "Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances", adopted by the UN conferences in Vienna in 1988 (the Vienna Convention), UN Convention "Against Transnational Organized Crime", adopted by the conferences UN in 2000 in Palermo (Palermo Convention), the EC Convention "For cleaning, search, seizure and freezing of proceeds of crime and financing of terrorism" adopted in 2005 in Warsaw (Warsaw Convention). These international instruments set new trends of criminal legislation against organized crime, stride after the fact, the criminal, assets and incomes created from criminal activity.

For the first time the Vienna Convention, as it provides all the illegal behavior associated with drugs that States which are part of, should provide as criminal offenses, forces them to criminalize all behavior associated with that property derived from drug trafficking. Specifically[3]forces defining as illegal activity all activities related to exchange, transfer, harboring or covering of the real nature of source, location, disposition or movement of property or rights with respect to property, knowing that such a property is derived from an illegal activity under this Convention or the act of participation in such activities. Leaving it on the hand of constitutional principles of each country, it may be included as criminal acts also the acquisition, possession or use of property, knowing, at the time of receipt, that such property derived from drug trafficking and possession of equipment or materials which are used or will be used for the manufacture of drugs.

Calculating the grave nature of such illegal activities, for the first time the Convention obliges each party to provide penalties for the perpetrators as except *imprisonment or other forms of deprivation of liberty and financial sanctions specifying* ***confiscation*** *of property*.

Palermo Convention constitutes a very important step to improve the international criminal legal framework to fight organized crime. This Convention pays special attention to this crime through sequestration and confiscation of assets it produces. Specifically it defines the concepts of "property"[4], whether tangible or intangible, movable or immovable, and legal documents or instruments evidencing its title, or for the benefit of such properties, the "incomes of crime", which is any property derived from or obtained, directly or indirectly, through the commission of a crime, the" freezing "or" blocking" means, temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority, and the "confiscation", which means the permanent loss of property by order of a court or other competent authority. The following provisions of the Convention obliges its member states to criminalize all conduct related to the clearing of criminal assets, corruption, liability of legal persons concerning these activities and in particular, to seize and confiscate criminal assets.

What should be noted is that for the first time this Convention recognizes the right of Member States to apply what we consider today as extended confiscation. This implies that

[3]UN Convention "Against illicit traffic in narcotic and psychotropic drugs ", Article 3
[4]UN Convention "Against Transnational Organized Crime", Article 2

states may extend confiscation even further of assets derived directly by criminal activity. Specifically,[5]member states may consider the possibility of the author to prove the lawful origin of alleged proceeds of crime or property liable to confiscation, to the extent that such a requirement is in accordance with the principles of domestic law and nature of judicial proceedings. So states have the right to seize any resourceof the suspected author arising from criminal activity, if he can not prove the lawful source of its creation.This constitutes a fundamental innovation of international criminal law and constituted a legal tool to verify *ante delictum* a person's risk and in to protect society. It was in accordance with the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms. Court of Human Rights in Strasbourg[6] in a series of decisions confirmed that this measure was not contrary to this Convention.

Warsaw Convention, constitutes a further step to improve the international legal framework of member states to search, seizure and freeze proceeds of crime and financing of terrorism. Besides the obligationes this Convention provides for states to provide legislative measures to enable tracing, identification, freezing and confiscation of all types of property derived from criminal activity[7].

This Convention pays special attention to money laundering. It obliges states to provide as an offense all activities related to money laundering[8], even when these actions are carried out in another country. The convention in this regard requires to introduce a new concept of the fact of a criminal offense that produced illegal assets. It states that the punishment for money laundering should be possible if verified that there is a wealth originated from a predicate offense, without having to specify what this offense is. Criminal responsibility of legal persons is another element of this convention, which ultimately decides in criminal laws that criminal liability can not be only for individuals, but for a legal entity too.

Warsaw Convention pays special attention to international cooperation in the investigation of criminal assets and money laundering. This cooperation should be extended to all stages of a financial proceeding. So states are obliged to cooperate and exchange information with each other to the stage of performing verification and identification of products and other assets which are subject to forfeiture, including evidence regarding the existence, location or movement, nature, legal status or value of the above property[9]. For that, states should create the necessary and sufficient legal framework. Later, cooperation should be guaranteed for seizure and confiscation of assets[10].

In the framework of these measures, the European Union has adopted a binding act on the enhanced competences of seizure[11]. Under this act, the Member States, as a minimum, shall adopt the necessary measures to enable either totally or partially confiscation of property belonging to a person convicted for offenses, which are listed and that include organized

[5]UN Convention "Against Transnational Organized Crime", Article 12/7

[6]Decisions of the Strasbourg Court: 18/06/1971 De Wilde case, Guzzardi case 06/01/1980.

[7]EC Convention "On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism", Section 3, 4 and 5.

[8] EC Convention "On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism", Section 9

[9]EC Convention "On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism", Section 16

[10]EC Convention "On Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism", Section 21 dhe 23

[11]Council Decision 2005/212/JHA of 24 February 2005 on Confiscation of Proceeds, Instruments and Property crime related.

crime, financing terrorism and other activities that can produce illegal wealth. This act allows courts of member states to undertake the optimized measures to enable confiscation when, based on specific facts, are fully convinced that the property in question is derived from similar criminal activities of the convicted person for a period prior to conviction, which measure is considered reasonable by the court in the circumstances of the specific case. European Union Commission on 12 March 2012 has proposed a directive that is expected to pass through the Council and the European Parliament, and which divides the property confiscation process from criminal proceedings and provides that its fate should not depend on the criminal process. Under this act, any Member State shall adopt the necessary measures to enable wholly or partly confiscation of property belonging to a person convicted of a criminal offense when, based on specific facts, the court finds that it is basically possible that the property in question is acquired by a person convicted of similar criminal activity or other activities.

The Act provides for two cases where confiscation proceedings can not continue when similar criminal activity as above mentioned, first, can not be subject of criminal proceedings due to limitation under national criminal law and second, has already been subject of criminal proceedings which has resulted in a eventual acquittal of the person, or in other cases where the principle *ne bis in idem* applies. These acts of the European Union are of special importance for our country, because we aspire to join and that our legislation should be fully consistent with these acts.

1.2 National Legal Framework

Under Albanian legislation there are two kinds of seizures of assets arising or resulting from suspected criminal activity.

First, seizure is provided in Chapter V of the Criminal Code, in types of penalty, as additional penalty in Article 36. For the first time in this Code, along with additional penalties, is also provided the confiscation of the means of committing a criminal offense. In previous codes, this kind of penalty was envisaged only as a procedural measure, which was decided by the investigation body, and eventually leave it into force or not was finally a court decision[12]. This type of seizure is associated with criminal proceedings and is given to persons who have committed crimes or criminal offenses, together with the main sentence. It applies only to assets that are directly associated with crime either as evidence or material wealth created by him. This penalty can only be given by the court at the conclusion of the criminal trial.

To preserve the assets subject to confiscation from damage, loss, or alienation until the decision is rendered by the court, albanian law allows its seizure. This measure is provided for and regulated by the Code of Criminal Procedure as an important tool for evidence search during the preliminary investigation in a criminal proceeding, in order to obtain and maintain the items related to the crime. Code explicitly provides types of seizures, the subjects which have the right to seize, time and manner of performance. This is a measure unilaterally taken by the prosecution authorities and also guarantees that the property owner has the right to appeal this decision in court.

Second, seizure by law for preventing and combating organized crime through measures against property (Anti-Mafia Law). The purpose of this law is preventing and combating organized crime and trafficking through the seizure of assets of persons who have

[12]Commentary of the Criminal Code of the Republic of Albania, I. Elezi, S. Kaçupi, M. Haxhia, pg. 222)

an unjustified economic level, as a result of suspected criminal activity[13]. This means, taking and passing to the state through a court proceeding of the property belonging to organized crime authors. Otherwise, it is called civil forfeiture, because during this judgment are applied the rules of civil procedure, and it is not necessary to prove that the property derived directly from crime, applies to all offender`s wealth and a category of persons near his family. This procedure is independent of the criminal process, although key evidence to meet the requirements of this proceeding, as the author's participation in the criminal activity, evidence relating to property etc., are taken from criminal records.

Even in the case of seizure by anti-Mafia Law, in order to save assets subject of confiscation from damage, loss or alienation, until the final decision of the court is taken, seize is provided as a provisional measure. Even in the case of seizing, is necessary to meet the general conditions required for seizure but the urgency in the above circumstances make it necessary to freeze seize this property until the end of the trial for confiscation. This is a precaution taken by the court upon request and only in the presence of the Prosecutor, but in order to avoid abuse from the state, is expected to be a measure limited in time, and by the end of this period, it automatically falls, if in court does not appear a demand which is fully judged in full contradiction

1.3 Confiscation of the means of committing the offense and its products as punishment

Except imprisonment or a fine, as a penalty for the author of a crime, our Criminal Code also provides a range of additional penalties[14]. One of these is confiscation of property and assets of the defendant relating to the offense. Specifically, confiscation of the means of committing the offense and its products[15]. Basic features of this type of seizure is that it relates directly to the criminal process. The request for its application comes from the prosecutor at the end of a criminal trial and is given by the court as one of the types of punishments. It can not be given as an only punishment, without a criminal conviction and is only given together with it.

To determine which concrete assets can be seized, the title of the article of Criminal Code helps "Confiscation of the means of committing the offense and its products". According to the content of the article itself, there are two main categories which may be confiscated:
a) Items that have served or are given as means of committing the offense:
b) Products derived from a criminal offense, including every kind of property, and legal documents or instruments evidencing title to, or other interest in property derived or obtained from, directly or indirectly, from the offense.

There are two other categories of assets that can be seized. These are bonuses that are given or promised to commit a criminal offense and objects, production, use, retention or disposal of which constitutes a criminal offense, even when is not rendered a criminal verdict. Example: As for carrying out a murder a person pays to the author a lot of money which are subject to confiscation, or illegal weapons found.

Regarding the proceeds of crime, they are confiscated even if they are transformed or altered in whole or in part. If these products are joined with other products, confiscation is made till the value of the offense product.

[13]Law no. 10192, 03/12/2009 "On preventing and combating organized crime through preventive measures against property", Article 3.
[14]Criminal Code of Republic of Albania, Article 30
[15]Criminal Code of Republic of Albania, Article 36

It is important to note that the directly link of assets which are subject to confiscation with the offense is also calculated from the fact that they are simultaneously material evidence in a criminal process. Criminal Procedure Code defines the meaning of the exhibitws that have served for committing the offense, on which are found traces of this crime, or have been subject of the defendant's actions[16]. According to this, offense`s products and any type of property permitted to be confiscated under Article 36 of the Criminal Code constitutes a material proof. In this way, they also serve to prove elements of the offense.

1.4 Types of seizure that Code of Criminal Procedure provides

Sequestration, as a very important tool for evidence research in the investigation of a criminal case, is also a way to preserve assets subject to confiscation from damage, loss or alienation until the decision is rendered[17]. As a very important action, that is performed during the preliminary investigation and is regulated in detail by the Code of Criminal Procedure. There are two types of seizure:

a-to serve as proof

b- as security measure, conservative and preventive seizure.

Sequestration to preserve proofs is one of the main tools of evidence research in a criminal case investigation. All exhibits and items are subject of seizure when they are necessary to determine the facts[18]. The authorities who can seizure are the court and the prosecutor. They can perform itself or through judicial police. At the rate of urgency, when there is a risk that material evidence can be changed or lost and the prosecutor can not intervene urgently, sequestration can be made by a judicial police officer who is obliged to submit the act within 48 hours to the prosecutor for validation. Given that subject to seizure may also be items that may have a special status storage, in respect of the fundamental rights of the individual, as it's privacy, property etc.., in these cases the code provides the way for seizuring.

Specifically, provides a special and strict procedure for the seizure of papers, envelopes, parcels, telegrams and other correspondence objects[19] ,sent from the defendant, or has been sent to him. This action is performed only by the court and when performed by a judicial police officer, he must submit these objects to the court unopened. Even seizure at banks, of documents, amounts deposited in an account[20] and everything else have a special regime. This operation is performed by a judge and only in urgent cases the decision may be taken by the prosecutor.

In order to guarantee one of the fundamental rights of the person under investigation, the code specifically regulates seizure at the office of counsel[21]. In these cases, the decision is made and the action is carried out personally by the judge. This action can be undertaken by the prosecutor with a court authorization. It is also prohibited seizure of correspondence between the defendant and defense counsel, except when there are based reasons that from them can be detected "... traces or material evidence of the crime." (Article 52/1, b and 52/6 of Criminal Procedure Code).

[16]Criminal Procedure Code of Republic of Albania, Article 187
[17]Criminal Procedure, H. Islami, A. Hoxha. I. Panda pg. 258
[18]Criminal Procedure Code of Republic of Albania, Article 208
[19]Criminal Procedure Code of Republic of Albania, Article 209
[20]Criminal Procedure Code of Republic of Albania, Article 209
[21]Criminal Procedure Code of Republic of Albania, Article 52

Sequestration as a security measure is provided in the chapter dealing with security measures. Property security measures are an important tool to guarantee the payment of taxes or to prevent the free disposition of an item related to criminal action by taking in control movable and immovable property of the defendant or other persons[22]. First, it is taken a conservative measures, and secondly comes the preventive seizure. Like all security measures, they are given only by the competent court at the request of the prosecutor during the preliminary investigation.

Conservative sequestration[23]is taken where there is no guarantee for the payment of the fine, the costs of the proceedings and any obligation to state. The object of this seizure may be movable or imovable property of the defendant, and items, proceeds of crime, any other property which may be subject to forfeiture under article 36 of the Criminal Code. This security measure may be required by civil plaintiffs in order for him to be compensated for damage suffered by the criminal offense, when the above conditions are fulfilled. This security measure is implemented by the bailiff in respect of the procedcure provided by the Code of Civil Procedure.

Preventive seizure[24]is taken when there is a risk that the free availability of the item relating to the offense may aggravate or extend the consequences of the offense, or to facilitate the commission of further offenses. Even in this case, the decision is given by the court at the request of the prosecutor. The object of this type of seizure can be any type of object or property that can be confiscated.

1.5 Laundering of proceeds of crime

The goal that describes all criminal activity associated with illegal taffic and organized crime is the realization of profits.So, when narcotic plants are planted, drug is produced and its trafficikng is realized, distribution is made and they are sold to users, or have undertaken other criminal activities from which they have earned money, traffickers have achieved their criminal goal, *have realized financial incomes*. But this criminal activity cycle is not yet closed. The amount of money should be put to use to satisfy the desires and interests of traffickers. At this point, criminal activity closely related to drugs shifts from opium, cocaine, to illegal laboratories producing heroin and cocaine, from streets of metropolises where drug is distributed and used, or prostitution is carried out, to luxury offices and corridors of the banks and powerful commercial companies. The main actors are no more common and rude criminals. At this stage, they are capable bankers and powerful, skilled financiers, powerful and respected businessmen. And all this network often operates under a strong political protection[25].

Our criminal code provides as crime laundering of the proceeds of crime[26]. In 1995 this provision was initially titled "**Alienation of property**". This provision, concerning the scope of the concept of alienation, provided the concept of "**proceeding of crime**". During the changes of this provision in the 2003 and 2004, the concept of "**proceeds of crime**" found regulation. In the practical application of this provision, has had numerous difficulties associated with the interpretation of the above concepts. The difficulty consisted in two moments:

[22]Criminal Procedure, H. Islami, A. Hoxha. I. Panda pg. 390
[23]Criminal Procedure Code of Republic of Albania, Article 270
[24]Criminal Procedure Code of Republic of Albania, Article 274
[25]Besnik Muçi, Offenses in the field of narcotics, pg. 169
[26]Criminal Code of Republic of Albania, Article 278

First, if it is necessary to have a committed crime and a specific punishment for this crime?
Second, should be proven during the investigation and trial of this crime, that property, as material proof of the crime, is originated from this offenses.

These two premises are set as two conditions without which it can not proceed with the investigation and trial of a person for cleaning the proceeds of crime. But in practice, are very rare the cases when we can prove that assets derived directly from a crime. This is because we, despite investigations, find it difficult, if not impossible to discover all criminal activity.
This is because it is not always necessary for a criminal conviction which an episode is sufficient. For example, in an activity with several cases of drug trafficking outside the territory of the state, for us to punish a person, is as a single case. But to prove all that he has earned unlawful, must first prove all episodes of trafficking. It is difficult. Although a person can be punished for a trafficking case, he or his relatives may have previously altered, concealed, covered nature, etc., many times more wealth than what was produced from the crime. But according to the way it is estimated and interpreted this provision, it is impossible to investigate for products laundery.

In these conditions, together with the changes of 2011, our Criminal Code has removed the obligation that laundery products must come directly from a crime for which there is a verdict given by the court. These changes associate assets with the fact if it is proven that they derived from a criminal activity. And there might not have had an investigation about it and a real damage. But the obligation of the investigation is to prove the existence of such criminal activity.

1.6 Practical problems that made necessary the adoption of the Anti-Mafia Law in 2004

Seizure and confiscation of assets and means of crime is an essential element in combating criminal activity, including corruption. This deprives criminals of assets, and other profits obtained through their crimes.

There are two types of proceedings for seizure and forfeiture for the return of assets and means of crime: criminal and preventive confiscation. Both types try to achieve common objectives, although they do this by applying different procedural strategies to achieve the ultimate goal.They operate on the premise that the perpetrators of criminal acts should not enjoy the benefits of their crimes. Moreover, they act as a deterrent, removing any financial incentive from criminal activity and ensuring that proceeds of crime are not used to promote further criminal activities.

Traditionally, seizure and confiscation is realized within the main criminal proceedings, or through an independent procedure developed in parallel. In these cases, the seizure is based on a non-appealable sentence imposed by a criminal court. Moreover, as in many civil law jurisdictions, Albania provides *actio civile ex delicto* in Article 61 of its Code of Civil Procedure. This measure dependes on the outcome of the criminal proceedings and retains a degree of autonomy over the first. Through this measure, the injured party may recover the property and ask to be paied for damages, even if the defendant is found innocent of the charges against him. This is due to the fact that, although the defendant is not criminally responsible for an offense, yet he can hold civil responsibility for his actions. Thus, despite the fact that *actio civile ex delicto* retains a certain autonomy in the outcome of the criminal proceedings, it still relies on his results to produce its effects.

However, such an approach contains its own limitations when it comes to combat complex financial crimes, such as corruption and money laundering, or when the crime was committed by criminal organizations. The reason is that criminals and criminal organizations

try to leave the products and tools of their crimes by creating complex layers of their ownership - through shell companies and complex legal structures, between them and these assets. Furthermore, when dealing with organized crime, there is a difficulty, the need to individually identify each member of the criminal organization, the role of each within its own level of participation in the criminal enterprise, and their importance within their organization. All these elements must be proved in one way or another in a criminal proceeding, as it should prove the link between criminal activity and the real criminal defendants. This not only constitutes a complicated task, if not impossible to charge, but may not produce even the necessary elements to identify all the proceeds of crime.

Limitations of seizure and confiscation of assets through criminal proceedings arise when the offender: (i) is dead, (ii) has escaped (or is arrested in another jurisdiction), (iii) enjoys immunity from prosecution; (iv) has been acquitted in a criminal proceeding for lack of evidence. Moreover, the ownership of assets can be sued, may be under the effect of time lapse, which prohibits the investigation of crime, or property is held by a third party who is not charged with a crime, but is aware of the illegal origin of the assets. Moreover, there may not be enough evidence to initiate criminal proceedings, or trials may not be sufficient so as to cross the threshold of criminal rules of evidence.

Because of the limitations encountered in the seizure and forfeiture through criminal proceedings, jurisdictions around the world have enacted legislation to seize and confiscate the proceeds from crime and products through independent civil proceedings. Preventive seizure enables states to recover proceeds of crime through direct proceedings against criminal property without the prosecution rules. This procedure does not try to prove criminal responsibility or culpability of the offender, but rather to identify the real origin and determine their illegality.

As mentioned in the previous paragraph, preventive seizure has not a criminal nature, but civilian. Thus, the standard of proof required to seize and confiscate the proceeds of crime is generally lower than that required for criminal forfeiture. Another feature of preventive confiscation is that the proceedings aims products and tools of crime, and not the person. Because of this, preventive seizure is allowed in some cases where the defendant was acquitted in a criminal proceedings.

However, preventive seizure is not a substitute for criminal prosecution, it is complementary of criminal proceedings. Criminals should not avoid prosecution by using preventive confiscation regime as a mechanism to escape punishment for committed crimes. Preventive seizure may precede criminal proceeding, or may go in parallel with it (maintaining its autonomy, as well as its procedural independence), and should be preserved as an alternative that can be used in case that the prosecution becomes impossible or is unsuccessful.

Criminal Code of 1995 constituted a qualitative step in the development of criminal law in Albania and responded at the same time the need of society for protection from criminal phenomena. After this year, but particularly after 1997, began to emerge criminal phenomenas of drug trafficking, weapons, women for prostitution etc. Later, these types of crimes began to be committed in particular forms, as in cooperation with criminal organizations. In their essence, all these criminal activities had the purpose of profit, setting benefits through crime.

In 2001, in the Criminal Code, were made a number of changes which were intended to criminalize clearly and in a complete way these criminal phenomena and also to punish them more severely.These changes were made in accordance with the provisions of the UN Convention on the fight against organized crime, also called as the Palermo Convention, which was signed and ratified by Albania. Amendments were also made to the Code of Criminal Procedure aiming fulfillment and perfection of means and methods of investigation

of organized crime, providingin filtration of police officers in criminal organizations, simulated purchases etc. In order to concentrate the investigation and trial of offenses connected with organized crime and enhancing quality, changes were also made in the structures of the State Police, Prosecution and Court. As above, was created the Court of Serious Crimes and Prosecution of Serious Crimes, as institutions who had to deal specifically with investigation and prosecution of organized crime.

Implementation of these changes and the commitment of law enforcement structures brought about an improvement in the fight against organized crime. So, a number of groups involved in criminal activities of organized crime were hit and brought before the justice system. But it was found that despite criminal convictions for the perpetrators of this crime, to the prosecution and the court was almost impossible to seize and confiscate property that authors gained from this criminal activity. It was difficult, or almost impossible to prove in a criminal process that proceeds or assets were created by them, because the prosecution and the court in most cases investigated and judged the latest episodes of organized crime, when this activity had beeen carried out and brought incomes for many years.

Also their authors were willing to suffer criminal punishment and to keep their property, which had two main negative effects: was used to lure or pressure local law enforcement bodies, and also as a financial basis for accomplices to continue criminal operations, or authors themselves after release. And of course, the effects that had on the economy of every country.

In these conditions, it was necessary for the coercive power of state to act against wealth created from criminal activities of organized crime. Even for this aspect of the fight against organized crime, western countries had given an example. Countries such as Italy, the U.S. or England had already in effect laws which authorized the state to investigate, identify and seize all assets owned from perpetrators of crime and their families regardless of whether were, or not the direct product of crime. Given that this type of seizure procedure was not applied as a criminal proceedings, and was based on civil process principles, it was also called as Civil Confiscation.

Italy had approved such a law in 1965. The practical application of these laws brought opposition of persons whose property was confiscated not only in national courts, but also in the Court of Human Rights in Strasbourg, with the argument that they were contrary to basic human rights laid down in the European Convention on Human Rights. So these laws were subject of judgment whether or not they were in accordance not only with the domestic legislation of these countries, but at the same time with the Convention.This Court, in certain cases, brought before the court from italian and english citizens, has dealt in detail all the elements of such a law, and concluded that such a law does not come in contradiction with the Convention. So the Strasbourg Court in several decisions analyzes in details the above elements.

For forfeiture, in this case, the ECHR has accepted that confiscation constitutes a deprivation of property. According to her, the seizure is intended to pursue a goal that was in the general interest, that seeked to ensure that the use of the property in question would bring profits to the applicant or criminal organization in which he was suspected to be member of, at the expense of the Community.

ECHR, regarding the extent of sequestration as provided in the Italian Act of 1965, stated that this measure is not intended to deprive the applicant of his property, but only forbids him to use it; seizure is clearly a way to ensure that the property, which appears to be the result of illegal activities committed at the expense of the community, may be forfeited further, if necessary. Such measure is justified by the general interest and, taking in

considerationthe dangerous economic power of criminal organization, can not be said that taking this property at this stage of the proceedings is disproportionate to the aim sought to be achieved[27], by recognizing a wide margin of appreciation to Italy.

It says, among other things, that the seizure, which is designed to block suspicious movements of capital, is a necessary and effective weapon in the fight against organized crime and the Mafia. Therefore it seems proportionate to the aim intended to achieve.

In another case based on the complaint of an italian citizen, the ECHR ruled that even though the measure in question lead to deprivation of property, this was a control of property within the meaning of the second paragraph of Article 1 of Protocol 1 of the ECHR's, which gives states the right to enact laws as they deem necessary to control the use of property in accordance with the general interest[28]. The court also accepted that the challenged action is part of a crime prevention policy.

ECHR has held that the seizure in this case is intended to prevent illegal use, in a dangerousmanner to society, of the possession, the lawful origin of which is not proven. The purpose of this intervention, according to the Court, serves to the public interest and is proportionate to the legitimate aim the state wants to achieve.

Even in one more case based on the complaint of a citizen of United Kingdom, the Strasbourg Court treats such a questions. Specifically, ECHR, among other things, states that paragraph 2 of Article 1, Protocol 1 of the ECHR recognizes the right of states to enact such laws as they deem necessary to control the use of property in accordance with the general interest[29]**.** But there must be a relationship of proportionality between the undertaken measure and the goal to be achieved. In other words, should be considered if there is a fair balance between the demands of the general interest and the interests of the individual or individuals concerned. In determining this balance, the ECHR recognizes that the State enjoys a wide margin of discretion as to the choice of means, and in determining the consequences of the measure**,** which are justified by the public interest for the purpose of achieving the aim of the law in question.

Even in our country in September 2004 was passed by the Parliament such a law like the italian model.This law allowed seizure and confiscation of assets made from criminal activities through a court proceeding separate from the criminal process. This constitutes a powerful tool in the fight against organized crime, because the prosecutor must prove only the author's participation in a criminal activity defined by law, and the suspected person has the obligation to prove that assets are obtained from a lawful activity. After several years, during the implementation of this law, some problems, shortcomings and difficulties were found. It made it necessary to amend it, or make a new law that will inherit positive elements and correct the problems found. So, the Parliament chose to adopt a new law. It was the law no. 10192 dated 03.12.2009 "On prevention and combating organized crime and trafficking through preventive measures against the assets."

Conclusions:

[27] The decision of the Strasbourg Court, Raimondo v. Italy, January 22, 1994.
[28] The decision of the Strasbourg Court, Raimondo vs. Italy, January 22, 1994
[29] The decision of the Strasbourg Court, Arcuri and three others against Italy, July 5, 2001

1- First, in the early 1980s of the last century, especially after 1990, there are some efforts of international institutiones to provide in their legal framework as a crime, laundering proceeds of crime. On these basis, all states had an obligation to provide money laundering as a crime in their national legal framework.

2- At the same time, the states should take all necessary legislative measures and not only, to trace, identify, seize and confiscate the assets. These acts also, for the first time, provide for the possibility of forfeiture of criminal asset without a criminal conviction, which is a new principle of criminal law.

3- For this reason, were prepared and signed a number of international criminal legal acts by the UN and EC, which are signed by Albania and were ratified by the albanian Parliament.

4- Our national legislation connsiders as a crime all forms in which can be committed money laundering, obligation to confiscate assets derived from crime and their value in cases this property is not tangible.

5- Despite these measures, it is very difficult to seize criminal assets within the criminal process and in accordance with the principle which states the obligation of the prosecution to prove that it is derived from crime. The new changes brought the principle of extended confiscation or civil seizure or confiscation, without a criminal verdict.

6- This type of seizure brought an important principle that was passing the burden of proof to the accused, who must prove that the property was created from legitimate sources, and not the prosecutor to prove that it is derived from criminal activity.

This process prevents at its best the free movement of wealth generated by crime.