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CURRENT PROBLEMS OF THE PENAL LAW AND CRIMINOLOGY

AKTUELLE PROBLEME DES STRAFRECHTS UND DER KRIMINOLOGIE



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Věra Kalvodová¹

The measures against legalization of proceeds from crime under Czech law²

ABSTRACT

The chapter deals with selected aspects of legalization of proceeds from crime, which is known as money laundering. While focusing on the existing legal regulation in criminal law and criminal procedure, the paper also discusses the criminal legislation contained in the Act No. 253/2008 Sb. on Measures against the Legalization of Proceeds from Criminal Activities and the Financing of Terrorism and mentions the relevant regulation under EU law. Attention is also paid to sanctions that allow the seizure of the proceeds from crime gained by the offender.

INTRODUCTION

Legalization of proceeds from crime, known as money laundering, is a serious negative phenomenon with many consequences. It is closely connected with organized crime: originally mainly with drug trafficking and lately with almost all forms of organized crime, also contributing to its rise. Since money laundering frequently has an international dimension, counteracting this phenomenon requires an international approach and cooperation.³

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² This article was written as a part of a specific research project entitled "Alternatives in Substantive and Procedural Criminal Law of Natural and Legal Persons" (MUNI/A/0878/2012).

³ Cf. Kalvodová, V.: "Anti-Money Laundering Legislation in the Czech Republic. In

The Czech legal regulation concerning legalization of proceeds from crime has been, logically, influenced by the European regulation. The European Communities have strived to counteract money laundering since the beginning of the 1990s. The main action was the adoption of Directive 91/308/ECC on Prevention of the Use of the Financial System for the Purpose of Money Laundering, which was amended in 2001 by Directive 2001/97/EC. The directives gave rise to Act No. 61/1996 Sb. on Some Measures against Legalization of Proceeds from Crime, amending some other acts, and to the amendment to the Criminal Code No. 140/1961 Sb. The new Directive No. 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the Prevention of the Use of the Financial System for the Purpose of Money Laundering and Terrorist Financing, adopted in 2005, affected the formulation of the new Act No. 253/2008 Sb. on Measures Against Legalization of Proceeds from Crime and Terrorist Financing, and later also the criminal law regulation contained in the new Criminal Code No. 40/2009 Sb. We cannot disregard other European acts, mainly the European Convention on money laundering, the identification, seizing and confiscation of the proceeds of crime (No. 33/1997 Sb.), Joint Action 1998/699/JHA of the Council on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and proceeds from crime, and the Council Framework No. 2001/500/JHA on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.⁴

LEGAL REGULATION BEYOND CRIMINAL LAW

Apart from the regulation under criminal law, the basic currently valid instrument is Act No. 253/2008 Sb. on Measures against Legalization of Proceeds from Crime and Terrorist Financing. The act replaces previous legal regulation contained in the Act No. 61/1996 Sb. on Some Measures against Legalization of Proceeds from Crime, as subsequently amended. The replacement was carried out in connection with the above-mentioned Directive No. 2005/60/EC of the European Parliament and Council and Commission Directive No. 2006/70/EC, which lays the implementing measures for the directive. Not only does it represent an important legal norm with a strong preventive nature, but it also sets some framework for the criminal prosecution of legalization of proceeds from crime. The provision of Section 3, subsection 1 of the act defines "legalization of proceeds from crime as any action aiming to disguise the illicit origin of any economic advantage arising from criminal activities with the aim of causing the impression that it is some property value obtained in harmony

⁴ "Praní peněz v evropské a české právní úpravě. In Nové jevy v hospodářské a finanční kriminalitě: vnitrostátní a evropské aspekty." MU Brno. 2008, p. 414

⁴ For more details, see Kalvodová, V.: "Praní peněz v evropské a české právní úpravě." [in:] "Nové jevy v hospodářské a finanční kriminalitě: vnitrostátní a evropské aspekty." MU Brno.

with law.” The act also enumerates such activities. They include, among other, an action consisting of the transformation or transfer of property with the knowledge that it originates in crime for the purpose of disguising or hiding its origin or for the purpose of aiding a person who is involved in such activities in order to avoid the legal consequences of their actions; the disguising or hiding of the real nature, source, location, movement or disposition of property – or any change of property rights – with the knowledge that such property originates in crime; the acquisition, possession, use or disposition of property with the knowledge that it originates in crime; or the criminal union of people or some other form of cooperation for the purpose of such actions. It is not decisive whether the commission of the criminal act occurred or is to occur entirely or in part within the territory of the Czech Republic or abroad.

The act also delimits the list of persons obligated (Section 2) and imposes a number of duties upon them, important mainly as regards prevention. The duties include: identification (Section 7), control (Section 9), reporting (Section 18), information (Section 24) retention of data (Section 16) and the duty of non-disclosure (Section 38).

The duty of identification of a client applies to any person involved in a deal exceeding the amount of EUR 1,000. The identification needs to be performed prior to the settling of the deal, unless the law provides otherwise. However, in case of suspicious deals, security box and escrow contracts, purchase of used goods or goods without a proof of purchase, cultural monuments and objects of cultural value, and escrow contracts, the person obligated always needs to identify the parties to the agreement regardless of the above-stated financial limit.

The duty of control means that the person obligated will check the client before concluding any individual deal amounting to at least EUR 15,000, any deal subject to the duty of identification under Section 7, subsection 2(a) to (d),⁵ any deal with a politically exposed person and during the term of the business relation. The client must provide information to the person obligated that is necessary for the check, as well as submit all relevant documents. The person obligated may, for the purpose of the act, make copies or transcripts from the documents submitted, and process such information in order to meet the purpose of the act (Section 16, subsection 1). When checking on the client, the person obligated obtains information about the purpose and the intended nature of the business or business relation, information about the real owner where the client is a legal person, information necessary for the performance of the continual monitoring of the business relation including the checking of business done during the term of the business relation, in order to determine whether the business deals are in harmony with what the person obligated knows about the client and the client’s entrepreneurial

and risk profile as well as about the review of the sources of financial means (Section 16, subsection 2).

The duty of reporting applies to suspicious business deals.⁶ Where the person obligated finds out, in connection with its activities, about any suspicious business deal, it must report it to the Ministry of Finance without any delay but no later than 5 calendar days after learning of the suspicious deal. Where the circumstances require, particularly if there is a danger in delay, the person obligated shall report the suspicious business deal immediately after learning of it (Section 18, subsection 1).

Under Section 24, which regulates the duty of informing, the person obligated shall, upon request, inform the ministry within a time limit set by it of any business deals involving the duty of identification or those that are being investigated by the ministry, and shall submit data about such business deals or enable access to authorized employees of the ministry when reviewing the report, as well as provide information about persons involved in such deals in any way.

The duty to retain identification data and documents is regulated in Section 16. Under this duty, persons obligated must retain the data specified under the provision of the law for a specified period of time, which is usually 10 years after the termination of the business deal, even though there is a shorter period of 5 years that applies to some specific cases.

Finally, under the duty of non-disclosure (Section 28), persons obligated and their employees, the employees of the ministry, the employees of other bodies of supervision, and natural persons who perform activities for the person obligated, the ministry or some other body of supervision under a contract other than a contract of employment, are required to keep secret any facts concerning the reporting and investigation of any suspicious business deal, any actions undertaken by the ministry and the performance of the duty of information under Section 24. The breach of any of the above-mentioned duties, or any other duties provided for by the law, may constitute the elements of the criminal offences of legalization of proceeds from crime – see below.

⁵ This includes a suspicious business deal, the formation of a business relation, the conclusion of an agreement on a bank account, deposit in deposit bank account or a deposit certificate, the conclusion of some other form of deposit, or the conclusion of a contract of lease

⁶ A suspicious business deal is, under Section 6 subsection 1, any business deal performed under circumstances that give rise to any suspicion of attempted legalization of proceeds from crime or any suspicion that the means involved in the business deal are meant for the financing of terrorism, or some other fact that could give rise to such suspicions, for instance: a) a client makes withdrawals or transfers to other accounts immediately after cash deposits; b) a client makes noticeably more financial operations during a single day or within several days than is common for their activities; c) the number of accounts opened by a client is clearly disproportionate with respect to the subject matter of the client’s entrepreneurial activities or the clients’ property; d) a client makes transfers of property that clearly lack economic reasons; e) the means handled by a client are clearly disproportionate to the nature or extent of the client’s entrepreneurial activities or the clients’ property; f) an account is used for a different purpose than the purpose for which it was opened; g) a client performs some activities that may help to disguise their identity or the identity of the real owner; h) the client or the true owner is a person from a country that insufficiently applies or fails to apply at all measures against legalization of proceeds from crime and terrorist financing; or i) the person obligated has doubts about the truthfulness of the data obtained from the client for the purpose of the

LEGAL REGULATION UNDER CRIMINAL LAW

The criminal offence of legalization of proceeds from crime was introduced into Czech criminal law in 2002 with the amendment of the then valid Act No. 140/1961 Sb. (the Criminal Code). The introduction resulted from the obligations arising from the European convention on money laundering, the identification, seizure and confiscation of the proceeds from crime. The offence was systematically placed among property crimes and was essentially derived from the elements constituting the crime of sharing (Section 251). The basic elements contained two alternative acts, namely (1) the disguise of the origin or some other action aimed at significantly impeding or disabling the ascertainment of the origin of a thing or some other property value obtained through crime, with the intention of creating the impression that such a thing or property value were obtained through lawful means, and (2) making it possible for another person to commit such an act (Section 252a). As regards fault, the offence was classified as an intentional crime. Any person committing such a criminal offence was liable to a term of imprisonment of up to two years or a monetary punishment. Enabling another person to disguise the origin or the ascertainment of the origin of a thing or some other property value through negligence has remained a part of the criminal offence of sharing out of negligence, as defined in Section 252 subsection 2.

On 1 January 2010, the new Criminal Code No. 40/2009 Sb. came into effect (abbreviated as CC). Chapter V (property crimes) includes the offence of legalization of proceeds from crime (Section 216 of CC) and the offence of legalization of proceeds from crime as a result of negligence (Section 217 of CC). The object, i.e. the protected interest, of the two criminal offences is the property of another person, both in relation to things⁷ and other property values⁸ obtained through the offence or as a reward for it. In that way, protection is provided also to property relations in financial markets, markets for products and services and other markets, because there is the interest to protect the purity of property relations.⁹

The provisions of Section 216 of CC contain two independent fundamental elements that constitute the respective offences.¹⁰ The former are met by any

⁷ A thing is also understood to be a manageable natural force. The provision on things applies to live animals, processed severed parts of the human body, financial means in an account, and securities, unless the individual provisions of the criminal law allow a different construction (Section 134, subsection 1 of CC).

⁸ Some other property value is understood to be a property interest or some other value that, while it can be expressed in money, does not constitute a thing and the provisions on things under Section 134, subsection 1 of CC (Section 134, subsection 2 of CC) do not apply to it.

⁹ Šámal, P. et al.: *Trestní zákoník II. § 140 až 421. Komentář. 2. Vydání.* Praha: C.H.Beck, 2012, p. 2154.

¹⁰ The basic elements of the offences give rise to three qualified offences, i.e. where the circumstances permit the application of stricter penalties. For instance, such circumstances

offender who disguises the origin or acts in some other manner in order to significantly impend or disable the ascertainment of the origin of a thing or some other property value obtained through crime committed within the territory of the Czech Republic or abroad, or obtained as a reward for crime, or some other property value that is obtained for the said things. Any person can become the offender of this crime, including the offender of the basic offence from which the thing or some other property value comes or to whom it is provided as a reward. As regards the subjective point of view, intention is required. The disguise of the origin of a thing or some other property value means that the information about the origin is withheld or obscured, e.g. through the transfer of property, the non-disclosure of ownership information, the non-disclosure of the real nature of the thing, its location and movement, etc.¹¹ Other attempts aimed at significantly impeding or disabling the ascertainment of the origin of a thing or some other property value are constituted, above all, by certain intentional steps taken in preparation of the disguise of the origin of things or other property values.¹²

The elements constituting the second offence are met by any offender who makes it possible for any other person to commit the said offence. This is a special form of sharing that is deemed to constitute an accomplished offence.¹³ The objective aspect of the offence is formulated quite broadly since it includes various forms of assistance. In practice, this will involve, above all, the intentional failure to meet some of the duties imposed by the Act No. 253/2008 Sb., as specified above. However, it may also include any other action (both action and omission to act), whereby the offender contributes towards the disguise of the origin of a thing or some other property value or to some other effort aimed at significantly impeding or disabling the revelation of their origin.¹⁴ Any person can become the offender of this crime, though it will most commonly be a different person than the offender of the basic offence through which the thing or some other property value is obtained. This will include, above all, workers and employees of the legal persons obligated, e.g. credit and financial institutions, persons keeping records of securities, persons authorized to provide leasing, holders of betting licences, but also natural persons who perform independent entrepreneurial activities (auditors, tax advisors, accountants, executors, notaries public, attorneys-at-law, etc.).¹⁵

group or in connection with an organized group active in several states, and the commission of the act involving a thing or some other property value originating from a particularly serious offence.

¹¹ Cf. Šámal, P. et al.: *Trestní zákoník II. Sections 140 to 421. Komentář. 2nd ed.* Praha: C.H.Beck, 2012, p. 2156. See also Kuchta, J. et al.: *Kurs trestního práva. Trestní právo hmotné. Zvláštní část. 1st ed.* Praha: C.H.Beck, 2009, p. 182.

¹² Šámal, P. et al.: *Trestní zákoník II. Sections 140 to 421. Komentář. 2nd ed.* Praha: C.H.Beck, 2012, p. 2156.

¹³ Kuchta, J. et al.: *Kurs trestního práva. Trestní právo hmotné. Zvláštní část. 1st ed.* Praha: C.H.Beck, 2009, p. 181.

¹⁴ Šámal, P. et al.: *Trestní zákoník II. Sections 140 to 421. Komentář. 2nd ed.* Praha: C.H.Beck, 2012, p. 2157.

¹⁵ Šámal, P. et al.: *Trestní zákoník II. Sections 140 to 421. Komentář. 2nd ed.* Praha: C.H.Beck, 2012, p. 2157.

Any offender who commits such acts is liable to a term of imprisonment of up to four years, a monetary punishment, a ban on activity or the forfeiture of a thing or some other property value. However, where an offender commits such an act with respect to a thing or some other property value that originates from a criminal offence to which a more lenient punishment is provided for by the Criminal Code, they will be punished with the more lenient punishment.

The provisions of Section 217 of CC define the specific subtype of legalization of proceeds from crime arising from negligence. The objective part of this offence consists in the enabling to disguise the origin or the determination of the origin of a thing or some other property value in a greater extent (i.e. at least CZK 50,000), obtained as a result of crime committed within the territory of the Czech Republic or abroad, or as a reward for it. The applicable rate of punishment is a term of imprisonment of up to one year, a ban on activity or the forfeiture of a thing or some other property value. As regards the subjective part of the offence, it consists – as mentioned previously – of negligence.¹⁶

A comparison of the existing and previous regulations of legalization of proceeds from crime reveals several changes that reflect current European trends in this area. As far as the intentional criminal offence is concerned (i.e. Section 216 of CC), the most important change is the significant extension of the range of proceeds that are covered by the provisions of the Criminal Code (not only things and other property values arising from crime but also those obtained as a reward for the offence or gained with the proceeds of crime). The basic element of the offence no longer consists of the aim of creating the impression of legality: previously, the offender had to be found to act with the aim of creating the impression that the proceeds from crime (the thing or some other property value) were gained lawfully, or – in the case of sharing – with the knowledge that some person, who was allowed to commit the offence of legalization of the proceeds from crime, acted with such an aim. However, that element turned out quite difficult to prove. Moreover, offenders typically do not merely act to disguise the origin of the proceeds or make the determination of the origin difficult or impossible and may not follow the aim of creating the impression of lawfulness. The extent of the elements of this offence has thus been narrowed down. The applicable rate of punishment has been made stricter – the offence is now punishable with a term of imprisonment of up to four years – and the range of other possible punishments has been extended. Thus, apart from the monetary punishment, there is also the ban on activity and the forfeiture of a thing or some other property value. At the same time, however, the possibility for a more lenient punishment has been retained. As it appears from the explanatory note to this provision, the rate was set in harmony with Article 2 of the Framework Decision of the Council (2001/500/JHA, see above), which provides that serious offences specified in the 1990 Convention

¹⁶ The basic elements of the offence give rise to two qualified offences, i.e. where the circumstances permit the application of stricter penalties. For instance, such circumstances include the breach of an important duty arising from one's employment, occupation, position or

of Council of Europe on money laundering should be punishable with a term of imprisonment with the upper limit of at least four years. At the same time, it is possible to take into consideration that the proceeds may originate in a criminal offence for which the law provides a more lenient punishment.

The subtype of the offence based on negligence was conceptualized into a separate category based on its constitutive elements (Section 217 of CC). The criminal nature of the act is, unlike the previous legal regulation, limited by the value of the thing or some other property value, which must be no less than CZK 50,000.

A new dimension in the punishability of legalization of the proceeds from crime also results from criminal liability of legal persons, introduced into Czech criminal law on 1 January 2012, when Act No. 418/2011 Sb. on Criminal Liability of Legal Persons and Proceedings against Them (abbreviated as TOPOZ) came into effect. The Czech Republic introduced criminal liability as the last member state of the EU, opting for genuine criminal liability.¹⁷ The provisions of Section 7 of TOPOZ contain an enumeration of the offences which can be committed by a legal person. The list includes both of the two offences of legalization of proceeds from crime. A major provision, as regards the effective prosecution of criminal activity, is contained in Section 8, subsection 2 of TOPOZ, under which “it is no obstacle to the criminal liability of legal persons if it cannot be determined what specific natural person acted on behalf of the legal person.” This holds also where the acting legal person is not criminally liable (cf. Section 8, subsection 4(d) of TOPOZ). In addition to the sanctions that can be imposed on natural persons, legal persons may also be punished by means of their dissolution. This punishment applies only to legal persons with their registered office in the Czech Republic whose activities consist entirely, or mostly, of the commission of crime, as long as the nature of the legal person does not exclude the imposition of such a punishment.¹⁸ Dissolution is applicable particularly where the legal person gets involved, for instance, in organized crime. This is typically the case of criminal organizations founded for the purpose of legalization of proceeds from crime. The purpose of the punishment through dissolution is to prevent the legal person from committing further activities consisting of the continuous commission of crime under the guise of legality.

When punishing and sanctioning legalization of proceeds from crime, what matters is not just the penalty for the offenders but also the seizure of the proceeds. One of the punishments that may be imposed on natural and legal persons is the forfeiture of a thing or some other monetary value. That punishment applies to things and other property values that were used or meant

¹⁷ For more details, see Kalvodová, V.: *Principy sankcionování právnických osob* (Evropa a Česká republika). [in:] Fryšták, M. (ed). *Nové jevy v hospodářské a finanční kriminalitě*. Brno: MU, 2011, <http://www.law.muni.cz/content/cs/proceedings>.

¹⁸ For more information on the range of legal persons whose nature does not allow the imposition of the punishment of dissolution of the legal person, see Šámal, P. et al. *Trestní odpovědnost právnických osob. Komentář*. 1st ed. Praha: C.H.Beck. 2012, p. 351 and subsequent pages. This includes, among others, the Czech National Bank, the General Health Insurance

to be used for the commission of crime, gained by the offender through crime or as a reward or obtained by the offender, even in part, from the proceeds of crime (Section 70, subsection 1 of CC). The thing or some other property value must belong to the offender. In addition to the forfeiture of a thing or some other monetary value, the Criminal Code contains the protective measure¹⁹ of confiscation of a thing or some other property value. This protective measure applies to the same range of things and other property values. The court may rule that such a thing or some other property value be seized where the punishment of the forfeiture of a thing or some other property value is not imposed and the said thing or some other property value belongs to an offender who cannot be prosecuted or punished, whose prosecution was stopped by the court, who is a threat to the security of persons, property or society, or where there is a threat that such a thing or some other property value will serve for the commission of crime (Section 101, subsection 1 of CC). The provision of Section 101, subsection 2 of CC applies expressly to proceeds from crime; under that provision – even without meeting the conditions stated in Section 101, subsection 1 of CC – a court may impose the confiscation of a thing even where it does not constitute immediate proceeds from crime, above all where:

- a) the thing or some other property value is gained through crime or as a reward for it and it does not belong to the offender;
- b) the thing or some other property value is acquired, even in part, by someone else than the offender, for a thing or some other property value gained through crime or as a reward for it, as long as the value of the thing or some other property value gained through crime or as a reward for it is not negligible with respect to the value of the thing or some other property value acquired;
- c) the thing or some other property value is acquired, even in part, by someone else than the offender, for a thing or some other property value gained, even in part, by the offender through crime or as a reward for it, as long as the value of the thing or some other property value gained through crime or as a reward for it is not negligible with respect to the value of the thing or some other property value acquired.

The protective measure of confiscation of a thing or some other property value thus complements the protection provided by the same punishment since it extends the possibility to seize the proceeds from crime from the offender or someone else to such cases when the punishment of the seizure of a thing or some other property value cannot be applied.

Another punishment that may be imposed in some cases of legalization of proceeds from crime both on natural and legal persons is the forfeiture of property. In general, a court may impose this penalty in view of the circumstances

¹⁹ The sanctioning system of the Czech criminal law is based on the dualism of sanctions, which means that two types of criminal sanctions are distinguished: punishments and protective

of the offence and the offender's property situation, where the offender is being sentenced to an exceptional punishment or for some particularly serious crime,²⁰ whereby the offender gained or attempted to gain property benefit for himself or someone else (Section 66, subsection 1). In the absence of such preconditions, the court may impose the punishment of forfeiture of property only where "the Criminal Act allows the imposition of such a punishment for the offence committed" (Section 66, subsection 2). That is the case of qualified elements of the offence of legalization of proceeds from crime, as defined in Section 216, subsection 3 of CC²¹ and Section 216, subsection 4 of CC.²² Although they do not meet the criteria of particularly serious crimes, the confiscation of property is provided for explicitly as a possible punishment. The forfeiture of property affects either the entire property of the convicted person or a part determined by the court. However, forfeiture does not apply to those means or things that are required in order to meet the necessities of life of the convicted person or those persons that the convicted person is legally obliged to maintain.

The imposition of the above-mentioned sanctions, aimed at seizing the proceeds from crime, can be efficient as long as any undesirable disposal of such things or other property values that are to be declared as forfeited or confiscated is prevented. Criminal law provides some substantive and procedural means to this end. The Criminal Code contains the ban on alienation and other dispositions of a forfeited or confiscated thing or some other property value that aims at frustrating the punishment before the decision becomes final and conclusive (Section 70, subsection 4 of CC; Section 104, subsection 2 of CC). Where the ban is not respected, the court may impose the confiscation of substitute value (Sections 71 and 102 of CC). The Rules of Criminal Procedure provide for several security institutes that may be applied, among other, when facts found during criminal prosecution that some financial means, real estate or other property values constitute proceeds from crime. The institutes provide for the securing of financial means in bank accounts or accounts of other entities²³ (Sections 79a and 79b), the securing of registered securities (Section 79c), the securing of real estate (Section 79d), the securing of some other property value (Section 79e) and the securing of substitute value

²⁰ Particularly serious crimes involve intentional crimes punishable by the Criminal Code with a term of imprisonment with the upper limit of at least ten years (Section 14, subsection 2).

²¹ Any offender will be punished by a term of imprisonment of two to six years or the confiscation of property, where: a) the offender commits the offence defined in Section 1 as a member of an organized group; b) the offender commits the offence with respect to a thing or some other property value originating from a particularly serious crime; c) the offender commits the offence with respect to a thing or some other property value in a significant amount; d) the offender obtains, for himself or some other person, significant benefit; or e) the offender abuses, for the commission of the offence, his employment position or office.

²² Any offender will be punished by a term of imprisonment of three to eight years or the confiscation of property, where: a) the offender commits the offence defined in Section 1 as a member of an organized group active in several countries; b) the offender commits the offence with respect to a thing or some other property value in a large extent; or c) the offender obtains, for himself or some other person, large benefit.

(Section 79f). The use of such measures is decided by the presiding judge and, during preliminary proceedings, by the state prosecuting attorney or a police investigator, subject to the approval by the state prosecuting attorney. No approval by the state prosecuting attorney is needed in urgent cases where time is of essence. The following institutes apply to tangible property: rendition of a thing (Section 78) and dispossession of a thing (Section 79). The procedure for the performance of the said decisions on securing is regulated by an independent Act No. 279/2003 Sb., on the Performance of Securing Property and Things in Criminal Proceedings, as subsequently amended. That act also regulates the means for the detection of tangible property, real estate, securities, financial means and other property values.

CONCLUSION

The present legal legislation provides sufficient tools in counteracting legalization of proceeds from crime, both as regards prevention and subsequent penalties, including criminal law sanctions. Money laundering can thus be countered efficiently as long as the existing tools are used adequately. As stated above, it is imperative to apply the instrumentalities available on national and international levels through international cooperation.²⁴

As far as the criminal law regulation is concerned, the New Criminal Code has resulted in some – unquestioningly positive – changes to the elements constituting the offences of legalization of proceeds from crime. Not only has it removed the element of *the aim of creating the impression of legality* – which was problematic because it was hard to prove – but it has also extended the range of the proceeds that are considered as illegal if their origin is disguised. It is logical that the negligence subtype of the offence has been separated into an independent element of the offence of sharing because the offence of legalization of proceeds from crime constitutes a special offence with respect to sharing. The criminal law regulation offers an adequate range of sanctions for both natural and legal persons, and, while providing for penalties that make it possible for the proceeds from crime to be affected, also gives tools helping to make the sanctions effective.

The obligations arising from EU legislation are reflected in the Czech legal regulation on the levels of both criminal law and outside of criminal law. It may even be stated that the Czech Republic is among those states that have adopted a stricter regime.²⁵

²⁴ Cf. Čentěš, J.: Poznámky k legislativnej úprave opatrení proti legalizácii príjmov z trestnej činnosti v Slovenskej republike. [in:] Nové jevy v hospodárske a finanční kriminalitě: vnitrostátní a evropské aspekty. MU Brno. 2008, p. 213.

²⁵ Kalvodová, V.: Anti – Money Laundering Legislation in the Czech Republic. In European Law and National Criminal Legislation, UK Praha, 2007, s. 124. Cf. also Tomášek, M.: Nový zákon proti legalizaci výnosů z trestné činnosti a právo ES, Evropské a mezinárodní právo, 1996,

This remarkable contribution offers an informative tour across the increasing diverse landscape of contemporary criminology. Fifty-four essays illuminate the nature of crime and its control within nations globally and across international borders. Broad in scope and deep in content, this expertly edited volume is an invaluable resource that should be part of every criminologist's library.

Francis T. Cullen, Distinguished Research Professor, University of Cincinnati

Der jetzt von seinem Herausgeber *Emil Plywaczewski* herausgegebene 6. Sammelband „Aktuelle Probleme des Strafrechts und der Kriminologie“ etabliert diese jetzt seit 20 Jahren existierende Reihe endgültig als eine Art globaler Fortsetzung dessen, was Franz v. Liszt vorgeschwebt hat, als er vor 135 Jahren die *Zeitschrift für die gesamte Strafrechtswissenschaft* gründete: ein interdisziplinäres und internationales Forum für die Empirie, Philosophie und Dogmatik des abweichenden Verhaltens und der staatlichen Reaktion darauf, also für Kriminologie, Kriminalpolitik und die Dogmatik des Strafrechts und Strafverfahrensrechts. Dadurch, dass die 72 Autoren der 54 Beiträge des jetzt erscheinenden Bandes aus 20 Ländern in 4 Kontinenten kommen, ist die heute in der Kriminologie selbstverständliche Internationalität auf die Dogmatik ausgedehnt worden, durchaus vergleichbar etwa mit dem Auslandsteil der ZStW.

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