

## FIGHT AGAINST FINANCIAL-ECONOMIC CRIME AND ORGANIZED CRIME

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### Abstract

Based on the framework of comprehensive reforms in the judiciary<sup>1</sup> and changes in the constitution recently in Albania, it is aiming at defining and remodelling the judiciary and the prosecution system, in order to put an end to the flourishing of corruption in the justice system and to cut off the links between crime and politics once and for all. It is established the Specialised Structure for Anti-Corruption and Organised Crime (SPAK), comprising the Special Prosecution Office (SPO) and the National Bureau of Investigation (NBI). According to the assessments of international institutions, Albania remains one of the countries with a high risk of money laundering. According to MONEYVAL<sup>2</sup>, Albania has been included in the grey list, which shows a high risk of money laundering in the territory of the Republic of Albania. The institutions of the European Union during integration process have always asked Albania to do more in the fight against organized crime and corruption and especially in the fight against money laundering. In the past, in Albania has shown that politicians have been able to escape from the punishment for corruption by using the details, tactics and techniques of the judicial system, cooperating with corrupted judges, and threatening the independence of the judicial power.

Albanian Government in order to fight organized crime recently has approved a Normative Act<sup>3</sup> which aim at fighting organised crime assets deriving from illegal activity. The article presents legal analysing on the addressing of legal and institutional measures of the government, to fight the assets deriving from organized crime, corruption, and terrorist acts. One of the legal and institutional initiatives has been called Law Enforcement Operation which was established to combat money laundering stemming from the commission of criminal activity in Albania. It is going to review weather this initiative is in line and harmony with the fundamental principles of the Rule of Law, the dominance of law and fundamental human rights and freedoms. Did it achieve the purpose for which the institution was founded? Is it still left to fight money laundering stemming from organized crime, corruption, or terrorist acts? These are the issues that the article is trying to constitutionally respond at.

**Keywords:** crime and corruption; money laundering; law enforcement operation; crime assets; rule of law.

### Short history

In 1989 the G7 Summit established the Financial Action Task Force<sup>4</sup> (FATF). The group's recommendations were signed by 26 countries and 2 international organizations, the Council of Europe, and the Persian Gulf Commission. In 1990 the Strasbourg Convention enters into force. There are established 40 recommendations which constitute international standards and have been subject to revisions in 1996 and 2003 and 9 more recommendations are added. In 1997 the MONEYVAL Committee was established pursuant to the Strasbourg Convention which covers the

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<sup>1</sup> Balla, R., “Constitutional Reform, Criminal Justice Reform in the Prevention of Organized Crime and Corruption”, Publications of the International Scientific Conference at the Faculty of Law, Tirana University, 2017, p. 368.

<sup>2</sup> The Committee of Experts for the Evaluation of Anti-Money Laundering and Terrorist Financing Measures - MONEYVAL is a permanent monitoring body of the Council of Europe, is entrusted with the possible tasks of compliance with the standards of terrorism and its effectiveness is assigned to them with the task of making recommendations for data and requests regarding improvements to their system. Through a dynamic process of reciprocal activities, peer review and regular follow-up of its reports, MONEYVAL aims to enable capacity companies and national authorities to complete money laundering and terrorist financing more effectively. <https://www.coe.int/en/web/moneyval> (visited on 10.03.2022).

<sup>3</sup> Based on the Albanian Constitution article 101 it is stipulated that: “The Council of Ministers, in case of need and urgency, under its responsibility, may issue normative acts that have the force of law, for taking temporary measures. These acts norms are immediately sent to the Assembly, which convenes within 5 days if it is not collected. These acts lose their force from the beginning, if not approved by Assembly within 45 days.”

<https://www.parlament.al/Files/skuvendi/kushtetuta.pdf> (visited on 10.03.2022).

<sup>4</sup> The FATF Recommendations set an international standard that countries must implement through measures tailored to their specific circumstances. The FATF standards contain their own Recommendations and Explanatory Reports. <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html> (visited on 10.03.2022)

implementation of Money Laundering recommendations for Europe. Membership was initially signed by 27 European Union countries. In 2001, the Directorate for the Coordination of the Fight against Money Laundering and Financing of Terrorism was established in Albania. In 2005, the Directorate was named DPPPP (Albanian FIU).

## Introduction

An illicit capital needs to be laundered. Stating in a simple way, the fight against money laundering is intended to prevent the "certification" of illicit capital, or to make it more costly, to impede the illicit capital to be included at civil circulation or legal circulation capital. The lower the "expenditure" of illicit capital, the greater the cost of "laundering" it. And the lower their "cost", the higher the price criminals must pay to laundering the capital. But what is the price paid by criminals for "certifying" illegally accumulated capital? This price can be expressed in currency or at risk. In fact, if money laundering becomes more difficult, the one whom launders the money will demand a greater reward, on the other hand, the criminal will be more at risk of being detected or deceived.

The main objective of the Directorate for the Prevention of Money Laundering is therefore to make money laundering as costly as possible by reducing the creation of illegal capital and increasing the possibility of detecting crimes, as well as reducing to a minimum the money laundering committed through banks and supervised intermediaries, pushing all those who launder more and more money into the financial system.

This role is exercised through a financial intelligence activity. It can be easily understood that the fight against money laundering cannot be fought by monitoring one by one all financial operations. It is needed, as we said, to find an alarm system, which is set in motion by the entities that specifically perform those actions, or banks and financial intermediaries. These entities are in fact required to cooperate with the authorities, assessing the individual and financial actions of the clientele, and sounding the alarm whenever the requested actions raise suspicion because they are "abnormal", or not common to the activity that is expected to have a client in a certain territorial area, or economic.

The findings of the Council of Europe for Albania<sup>5</sup>, in the framework of the project "On strengthening capacities in the fight against organized crime in Southeast Europe", among other things, state: "The main threats to Albania are organized crime related to drugs, trafficking in human beings, economic crime and corruption". Economic crime in general and criminal groups in particular that commit crimes in the financial sphere have been and continue to be a serious threat to our country and national security. The financial capacities of these groups serve not only to consolidate and expand their further operations, but also to penetrate state structures in order to provide protection from these structures and to influence decision-making in the political aspect, legislative, executive, economic or in the field of justice. Even further, the capacity of these criminal groups, financial and technical, in some cases exceeds the capacity of Albanian law enforcement agencies. In these circumstances, the fight against economic crime, especially organized crime, poses a special challenge for law enforcement agencies in the country, especially in terms of tracking, police prosecution, but also much more complex investigations, which dictate the need to use a wider range of special investigative tools, closer co-operation between domestic and international institutions, sequestration and management of seized assets, witness protection and a more efficient judicial process.

In the Republic of Albania, the fight against money laundering has begun to be recognized, but also to be regulated by domestic legislation, only in the years of democracy, ie after the '90s. During the transition period, the rules for the fight against money laundering have been strengthened, and reformulated, but they are not reviewed throughout the way they are used, they are complete, of a general legal framework. Thus, most states have adopted 40 Recommendations of the Task Forces on Financial Action<sup>6</sup> on Money Laundering and Terrorist Financing. These

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<sup>5</sup> Progress Report for Albania 2021 from European commission [https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en) pg.38 (visited on 10.03.2022).

<sup>6</sup> All FATF Recommendations which are 40 and 9 Special Recommendations on Terrorist Financing constitute a comprehensive package of measures for an effective legal and institutional regime against money laundering and terrorist financing. United Nations Security Council Resolution 1617 (2005) and the Action Plan of United Nations General Assembly Resolution 60/288 (20 September 2006), reinforce the importance of implementing these Recommendations. <https://www.unodc.org/unodc/en/money-laundering/Instruments-Standards.html> (visited on August 21<sup>st</sup>, 2017).

recommendations include the criminalization of Money Laundering and Terrorist Financing, the freezing and sequestration of terrorist financing, the prevention measures against Money Laundering and Terrorist Financing for financial institutions, intelligence units and international cooperation. But, according to MONEYVAL reports<sup>7</sup> the targeted financial sanctions were not enforced, the application of the freeze of assets to all natural and legal persons was difficult.

Now, according to the latest legal amendments, reporting entities or institutions, as well as any person in the Republic of Albania, will temporarily freeze the funds or other assets of designated persons or entities, directly, as soon as they become aware of the notification. by the relevant structures of the Security Council, international organizations to which the Republic of Albania is a party, without being subject to the issuance of a temporary blocking order or the relevant decision of the Council of Ministers in accordance with legal provisions.

Prior drafting the Councils of Ministers Decision on the appointment of persons whose assets should be blocked, the Minister of Finance issues a temporary order<sup>8</sup> to freeze assets and other properties for a period not exceeding 45 working days, if this may be the only way to prevent the circumvention of the implementation of the measures defined by law. Legal problems with the Order of the Minister of Finance are numerous therefore, there is now a general obligation of immediate freezing which enters into force immediately, regardless of the time of issuance of the decision by the Council of Ministers. These revised measures ensure the implementation of the freezing of funds or assets without delay.

Regarding the Order of the Minister of Finance are numerous legal issues, despite the fact that it is now a general obligation of immediate freezing which enters into force immediately, regardless of the time of issuance of the respective Decision by the Council of Ministers. These revised measures ensure the implementation of the freezing of funds or assets without delay.

Meantime, according to the above MONEYVAL report results that there is lack of mechanisms in place to identify and describe the processes for obtaining and registering information about the beneficial owner; lack of a comprehensive assessment of the associated ML/TF risks for all types of legal entities established in the country; lack of a requirement for legal entities to keep basic information and a register of shareholders or their members; The National Business Centre and the Tirana Judicial District Court are not responsible for the accuracy of the recorded data; lack of deadlines made at the request of NGOs to provide data on changes to previously submitted information, or to take reasonable steps to obtain and maintain accurate and up-to-date information for the Beneficiary Owner, while the current mechanism does not ensure that the information collected by reporting units implementing due diligence measures for the client ensures coverage of all legal entities in question; legal representatives of legal entities are not required to be residents of the country; NGOs are not required to have a person authorized to act as their representative and to provide information to the competent authorities; there is no requirement to retain the basic information and records of the Beneficiary Owners for at least 5 years after the date on which the company is dissolved or otherwise ceases to exist, the holders of the shares or the share guarantees of the holder are not prohibited and there are not measures in place to ensure that they are not misused for ML/TF; the range of sanctions that can be applied by the NBC and supervisory authorities is disproportionate and there are no sanctions imposed on associations, foundations and civil society centres that do not meet the requirements. The ability of the competent authorities to quickly ensure international co-operation on beneficial ownership information is hampered by the shortcomings identified and there is no mechanism for any formal assessment of the quality of assistance received from other countries by the Albanian authorities, other than the Police and the Anti-Money Laundering Directory.

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<sup>7</sup>Referring to the Progress Report December 2019, MONEVAL Committee On Fight against Money Laundering and Terrorist Financing in Albania <https://www.coe.int/en/web/moneyval> (visited on 10.03.2022).

<sup>8</sup> Balla, R., "Combating Money Laundering and Terrorist Financing, Amendments to the Law on Prevention of Money Laundering, published by the European Institute, SEE I EU Cluster of Excellence in European and International Law, Verlag Alma Mater, Saarbrucken, Germany December 2018 pg.130-135.

Despite these identified deficiencies which facilitate the establishment of mechanisms for Money Laundering and Terrorist Financing, Albania has made efforts to combat money laundering<sup>9</sup> and one of the recent legal and institutional initiatives has been called as Operation Force of Law. The Council of Ministers has approved the Normative<sup>10</sup> Act no. 1, dated 31.01.2020 "On Preventive Measures in the Framework of Strengthening the Fight against Terrorism, Organized Crime, Serious Crimes and Consolidation of Public Order and Security". One of the justifications of the former Minister of Interior<sup>11</sup>, has been that the judicial and legal path for the seizure of assets, or any other suspected property, such as property derived from criminal activity is very long. For this reason, based on the Strategy for the Fight Against Crime, this Normative Act has been drafted. Another initiative that should be welcomed in the fight against money laundering is the Law on Registration of Beneficiary Owners of all companies and non-profit organizations.

As mentioned above the purpose of this article is the analysis of the provisions provided by the above Normative Act, focusing on their compliance with the new amendments of Constitution<sup>12</sup> and international standards. So, the thesis we seek to address is finding the right legal way to fight the assets that result from committing illegal actions. Should it be legal, for example to apply the principles of the rule of law, where the rule of law should prevail.

### **Striking the financing of terrorism**

One of the aspects that would make the fight against terrorism effective is the striking on terrorist financing. In many cases there is State-sponsored international terrorism. The financing of terrorist acts is done in various ways. Thus a state can equip, train, direct and provide facilities for terrorist activity. Terrorist organizations may have sources of funding, armaments, training, and logistics from different countries. In order to strike on and prevent the financing of terrorism, many efforts have been made to raise the fight against the phenomena of terrorism to the level of international acts. One of these acts is the International Convention for the Suppression of the Financing of Terrorism (New York: 1999). This Convention provided for the punishment of securing of unlawful and voluntary accumulation of funds or financial means, directly or indirectly. Whether such acts were committed with intent to use them, or knowing that they would be used, to commit violations foreseen by the Convention, or of an act intentionally causing death or serious bodily harm to a civilian or other person, to intimidate a population, or to coerce a government or international organization.

The obligations of the States Parties members to this Convention are: To take the necessary measures, in accordance with domestic legal principles, to dictate, and to freeze, seize or confiscate funds which are used or intended to be used for the purposes of the offenses set forth in the Convention. Establish jurisdiction over anticipated violations. Punish these violations. Arrest the perpetrators, prosecute or extradite them. Collaborate on preventive and countermeasures to exchange information and evidence necessary for criminal prosecution.

The September 11<sup>th</sup> attacks have sparked a new interest at international treaties to strengthen law and order against terrorism, everywhere in the world, especially in the United States. These international acts, in order to be effective, must define terrorism, specifically, in all cases, and rely on the application of domestic law.

The European Union has also taken numerous measures against the financing of terrorism. Removing barriers across Europe has not only helped legitimate businesses but has also provided increased opportunities for financial crime and money laundering. The enlargement of the European Union and the introduction of the new access of the States means

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<sup>9</sup> Based on some yearly Progress reports of the European Commission for the Efficiency of Justice which was established on 18 September 2002 by Resolution Res (2002) 12 of the Committee of Ministers of the Council of Europe. [https://www.coe.int/t/dghl/cooperation/cepej/presentation/cepej\\_en.asp](https://www.coe.int/t/dghl/cooperation/cepej/presentation/cepej_en.asp). The author has been the representative of the Republic of Albania from the years 2006-2010 at CEPEJ.

<sup>10</sup> The Normative Act was published in the Official Journal no. 127 of 2020. <https://qbz.gov.al/alfresco/api/-default-/public/alfresco/versions/1/nodes/>. (visited on 10.03.2022).

<sup>11</sup> The ministry of interior was the ministry that proposed and exercised the legislative initiative for this Normative Act based on the Press Release of the ministry as per local media.

<sup>12</sup> New Constitutional Amendments approved by law no. 76/2016, dated 22.07.2016, published in the Official Journal no. 138 July 2016, they were consisting on the judicial reform.

that international financial crime is taking on great proportions in the global economy<sup>13</sup>. Stopping money against terrorists is one of the priorities of the European Counter-Terrorism Strategy. Within this context money laundering poses another challenge. The European Money Laundering Directive provided for the extension of the obligation to notify suspicious transactions, in relation to non-financial professions and other sectors, in the money laundering process. The new rules will also cover professions not defined in U.S. anti-money laundering legislation, such as economists, auditors, and lawyers. An international body in the fight against money laundering and terrorist financing is also the Financial Action Task Force (FATF), in which the European Commission also plays an important role. The FATF has set out recommendations that should be considered as international standards in the fight against terrorist financing. One of the things that cannot be imagined when we are thinking about terrorism and terrorist financing is counterfeiting of goods. It should be taken into consideration that a wide range of terrorist organizations are taking advantage of the counterfeit production of goods. Counterfeiting includes compact discs, clothes or cosmetics, certain types of medicines, baby food, car spare parts, and even airplanes. Terrorists are using the internet as a tool to command and control their actions. At the same time, they are using the Internet as a propaganda tool to spread their message and put pressure on governments.

In this light, another Convention that aims to expand the European Community's efforts in the fight against terrorism is the Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and the Financing of Terrorism.

### **Operation Force of Law**

As we pointed out above, in the framework of justice reforms, but also based on international reports and legal acts, the fight against assets stemming from illegal activities is presented to Albanian institutions for immediate solutions. One of the factors that makes the world of organized crime powerful is precisely its economic advantage. The economic empowerment of criminal organizations gives them almighty. This is exactly what the Albanian government has aimed to fight money laundering mechanisms and weaken as much as possible the economic power of criminal organizations, in order to be concluded with the effectiveness of the fight against organized crime and terrorist financing.

According to the Constitution, Article 101 defines the competence of the Council of Ministers to issue Normative Acts that will have the same force as the one of laws. But this competence is conditioned by two factors the necessity and emergency. Also, one of the characteristics of the Normative Act is their temporary<sup>14</sup> character. Are these conditions met to address the issue of Money Laundering in Albania? We can say that after the period of totalitarianism the issue of money laundering has always been part of being addressed by National Strategies<sup>15</sup> in the fight against organized crime. So, the need for the fight against money laundering is true and real, but we cannot qualify it as an emergency issue. Money laundering and terrorist financing are issues that need to be addressed in a consistent and permanent manner through laws that enable the implementation of effective legal or institutional measures against Money Laundering. The Normative Act sets out temporary measures, but this does not strengthen the fight against Money Laundering, as stable structures are needed to be continuously trained to properly address this fight.

The purpose of the Normative Act is the emergency and temporary intervention in the conditions of the need to strengthen and intensify the fight against organized crime with the aim of consolidating security in the country. In fact, security consolidation in the country cannot be achieved with temporary measures, only for one year, as it is foreseen at the Normative Act.

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13 Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering - Commission Declaration.

<https://op.europa.eu/en/publication-detail/-/publication/57ce32a4-2d5b-48f6-adb0-c1c4c7f7a192#:~:text=0-Directive%202001%2F97%2FECE%20of%20the%20European%20Parliament%20and%20of,of%20money%20laundering%20%2D%20Commission%20Declaration> (visited on 10.03.2022).

<sup>14</sup> Omari, L., Anastasi A., Constitutional Law, published by ABC, Tirana 2008, p. 35-200.

<sup>15</sup> Omari, L., Principles and Institutions of State Law, published by "Pegi" Tirana, 2005, p. 45-100.

According to Article 3 of the Normative Act, it is determined that the provisions of this normative act apply to the category of subjects of this Act and only for the time and conditions provided in it. But how can we fight money laundering only for a certain amount of time. Will the fight against money laundering continue afterwards? Also, according to point 2 of article 3, it is determined that preventive measures will not be imposed on assets that before the entry into force of this act are in the process of judicial proceedings or for which it has been disposed by a court decision. So, we find that the scope of application of the Normative Act is unclear. What would be the category of subject by this Normative Act?

Referring to the subjects of the Normative Act, we find that according to this act are defined the category of persons whom until the moment of entry into force have been convicted by a final criminal decision inside or outside Albania. Such definition violates the principles of legal certainty and rule of law<sup>16</sup>. How can an individual whom has been tried by a final court decision and convicted according to that decision be again subject to this Normative Act, so to be subject again to the coercive measures of the property regime, which in themselves constitute a coercive measure of a punitive character. We think that through this provision the constitutional principle "No one can be tried twice for the same criminal offense" is violated. This principle<sup>17</sup> is already sanctioned under the Criminal Procedure Code<sup>18</sup>, as one of the fundamental human rights and freedoms. The government claims that court decisions are inaccurate, as courts have not administered or ruled over the assets of criminal organizations, but still there is a legal way to review or amend that court decisions and that reason do not justify violation of the constitution as the highest act of the hierarchy of legal acts.

Furthermore, according to point 2 of article 5 of the Normative Act, the persons under investigation are defined as the subject of this legal act. How can the assets of the persons under investigation be administered as long as the court has not ruled on the assets whether they are legal or not. So, the institution operation force of law will judge on the assets of persons under investigation. Based on the constitution only the court has the discretion to determine by decision, whether a certain property is illegal property or not. According to the Constitution, "no one can be deprived of his property without a final court decision." Based on this Normative Act the established institution is an administrative body not foreseen by the constitution it has no rights over the property or other human rights.

Regarding point 3 of article 5 of the Normative Act, the category of persons in this point is for persons against whom the procedure of announcement has started or there are suspicions for involvement, in any form of terrorism and its financing, according to the provision of the legislation on measures against terrorism. For foreigners declared by the UN Security Council as designated or suspected persons, there is an international procedure approved and accepted by the Albanian state, through which all financial institutions are required to freeze or sequester the assets of these persons. From the point of view of unification and harmonization<sup>19</sup> of legislation we cannot draft such a provision, aiming to regulate the same thing that has been regulated by a ratified international act that stands higher in the hierarchy of acts than this Normative Act, as this regulation that we intend to draft would be absolutely null. So, it cannot be ruled or judged over the properties of these foreign persons, but as well as to those who are declared according to the national legislation in force, as currently there is a certain procedure in force on how to operate in these cases by Albanian financial institutions. Such provisions of this Normative Act not only confuse the employees of their enforcement institutions, as well as the employees of criminal proceedings but in the same time employees of financial institutions, creating anarchy and disorder in different legal provisions for the same category of persons and their properties.

Regarding the definitions given in article 6 of the Normative Act, we find that the terms "Confiscation", "Property", "Element of fact", etc. are used, which are defined by other legal acts. Referring to the terms "confiscation", and "Element of fact", we have to mention that these terms are already regulated by the Code of Criminal Procedure and even the term "Element fact" makes a very vague definition of the term "fact" made by Code of Criminal Procedure

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<sup>16</sup> See above.

<sup>17</sup> Balla, R., "Improving the Code of Criminal Procedure for the Protection of Witnesses of Justice", published in the European Journal of Interdisciplinary Studies, International Conference at Cambridge University, volume 6, issue 2, p. 88, 2020.

<sup>18</sup> Amendments to the Code of Criminal Procedure published in the Official Journal, May 2017.

<sup>19</sup> Based on the Law Drafting Manual - A guide to law drafting in Albania, published by the European Union, Ministry of Justice and EURALIUS, Tirana 2010, p. 22.

which is legal act adopted by a qualified majority of votes by Parliament and obtained a special rank at the hierarchy of acts. According to Kelzen's pyramid of legal acts, an act that is ranked at a secondary position at the hierarchy of acts cannot regulate otherwise than that provided for in an act that it is ranked at a higher position at the hierarchy of acts, otherwise it will be null and cannot bring any legal consequences. The same analyse applies to the term "property" which is regulated by the Civil Code. Thus, the definitions given by the Normative Act should simply refer to the respective Codes and not try to give different definitions, as they contradict the provisions of the Codes and do not serve the unification and harmonization of Albanian legislation. The seizure of assets in this way as it is stipulated by the Normative Act also violates the provisions of Articles 6 and 8 of the European Convention on Human Rights.

Article 10 of the Normative Act defines the personal preventive measures taken by the authorities of the justice system by defining regulations, procedures and deadlines which are different from those regulated by the Code of Criminal Procedure. The title itself provides for undefined declarative terms to whom they refer by "justice system authorities". Precisely for this reason this article is not in accordance with the Code of Criminal Procedure and the Constitution itself. Legal provisions<sup>20</sup> should represent a normative, regulatory character and not declarative terms that constitute a cause for different interpretations.

Article 11 of the Normative Act defines the preventive measures in cases of emergency or need and urgency, these cases are regulated and clearly defined by Code of Criminal Procedure. The provision of point 1 of this article stipulates that the General Director of the State Police may impose personal preventive measures, which have to do with the restriction of personal freedom. An unforeseen discretion by the Code of Criminal Procedure which determines that in cases of emergency or flagrante delicto it is the prosecutor who orders the taking of the security measure which must then be assessed by the court and by the end to be implemented by police. Because, in accordance with the Constitution, the restriction of fundamental human rights and freedoms can be done by anyone but a final court decision.

Article 16 of the Normative Act defines once again the subjects of this act, as they were initially defined at Article 5 thereof. The provision of this article expands the circle of persons and assets to which the foreseen measures will be applied. Thus, the assets of relatives such as spouses, children, etc up to sisters and brothers for whom the false registration is presumed will be seized. We think that this provision is an excess of competencies and conflicts with the Constitution and then with Code of Criminal Procedure, etc. It even contradicts the Normative Act itself since the circle of persons to whom this act will be applied is defined in its article 5. Article 21 further defines the rights of other persons. So, again we have entities to which this normative act is applied, confusing all the implementers of this normative act.

Article 22 of the Normative Act determines that the sequestration measure provided by this act will prevail above the sequestration measures provided by the criminal legislation, the legislation for prevention of organized crime and trafficking through preventive measures against property, or the legislation for measures against financing of terrorism and in this case these measures will take precedence. Can such a measure prevail over a measure ordered by the Court? The order of prevalence over various acts is regulated by the Constitution. Therefore, the sequestration measures taken pursuant to this act may not prevail over the sequestration measures ordered by the court.

Referring to article 23 of the Normative Act, are determined by merging measures of a procedural nature that are in contrary to the provisions of Code of Criminal Procedures. Also, Article 24 defines the time of the trial, according to Article 27 it is determined that these cases, according to this act will be reviewed with priority by the responsible authorities leaving it undefined which are these authorities. So, in other words in these articles it is intended to determine procedural deadlines that are related to the time of the trial different from those provided by Code of Criminal Procedures. Regarding the above, these provisions contradict the provisions of Code of Criminal Procedures.

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<sup>20</sup> Balla, R., Some recommendations on the drafting of normative acts in order to harmonize and unify legislation, published in the scientific journal "Parliamentary Law and Legal Policies", 2005, no. 25, f. 28-43.

Article 28 determines some exceptions to the participation of the subjects of this act in having licenses or permits or benefits from public funds, while we think that these provisions should have been made in the special laws that are in force for these processes.

Moreover, transparency on the actions of this structure has been lacking. We do not have official information and data on the assets that were seized in order to judge the effectiveness of the creation of this special structure. However, the need for legal regulation should be focused on drafting and adopting appropriate legal provisions that will regulate the fight against money laundering mechanisms in a sustainable and continuous manner in Albania.

According to the yearly Progress Report for Albania for 2021 it is stipulated that: “notable progress was made in the fight against organised crime<sup>21</sup>, including through cooperation with EU Members States, and through the implementation of the action plan to address the FATF recommendations. The implementation of the package of temporary preventive measures to enhance Albania’s capacity to counter criminal organisations (Operation Force of Law continued throughout the year. In 2020, this resulted in 181 police operations involving 802 suspects (of whom 630 were arrested/detained, 82 wanted and 85 investigated at large). 35 criminal groups were dismantled (an increase of 46% compared to 2019), 125 members of criminal groups were arrested and almost 15 million EUR worth of assets and bank accounts were seized. The Special Prosecution Office (SPO) initiated 200 criminal proceedings – 42 for organised crime and 158 for corruption – in 2020. During the same period, 39 criminal procedures for corruption and 16 procedures for organised crime were sent to trial”.

## Conclusion

In these conditions, we can conclude that Albanian institutions should make more efforts to fight against money laundering and terrorist financing, but the fight must be fully in compliance with the Constitution. So, as it is mentioned above it is appreciated the initiative and the good will of the government on fighting the money laundering, but legal measures must be drafted by providing legal provisions in full compliance with the rule of law. Albania aspires to join European structures and should definitely consolidate the rule of law, where everything should be regulated by law and aimed at their implementation. The rule of law in Albania must prevail. The provisions made in the Normative Act are more like declarative definitions of a national strategy, rather than legal provisions of a normative and regulatory character, such as the character of a legal norm. The rule of law means the establishment of appropriate legal and institutional mechanisms, in full compliance with the Constitution, to combat money laundering mechanisms and not only, but against all illegal actions.

These suggestions will improve the measures against money laundering, but this fight must continue even more fiercely and effectively in addressing properly according to the law and the principles of the rule of law. Thus, we can conclude that based on the constitutional changes and the legal package in its implementation, every Albanian citizen is hopeful that justice reform will lead the country forward, towards integration into the European Union.

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<sup>21</sup> Progress Report for Albania 2021 of European Commission [https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021\\_en](https://ec.europa.eu/neighbourhood-enlargement/albania-report-2021_en) pg. 38 (visited on 10.03.2022).



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