

ARTICLE

Money Laundering and Asset Recovery in Paraguay

José Miguel Fernández Zacur*

Paraguayan Representative to the Iberoamerican Association of Economic and Business Criminal Law

*Corresponding Author: José Miguel Fernández Zacur, 14 de Mayo N° 1.552, Asunción, Paraguay. E-mail: jose@fernandezzacur-abogados.com.py

(Submitted 30 April 2021; revised 25 June 2021; accepted 5 August 2021)

Abstract

Money laundering repression and asset recovery are tools that share a very relevant preventive–general role. Both measures in Criminal Law seek to inhibit the monetary stimulus to commit offenses. The former does so by hampering the flow of earnings from illicit sources, and the latter by confiscating the earnings from their beneficiaries. These inter-linked goals prove to be most useful from a criminal policy standpoint in the fight against organized crime since they are oriented to the economic disabling of their agents, blockading their financial movement and depriving them of the profits thus generated. This article explains the status of Paraguayan law and its application on these issues.

Keywords money laundering; asset recovery; organized crime; Paraguay; drug trafficking

INTRODUCTION

Money laundering repression and asset recovery are tools that share a very relevant preventive–general role. Both institutions from Criminal Law seek to inhibit the monetary stimulus to commit offenses. The former does so by hampering the flow of earnings from illicit sources, and the latter by seizing the earnings from their beneficiaries. These interlinked goals prove to be most useful from a criminal policy standpoint in the fight against organized crime since they are oriented to the economic disabling of their agents, blockading their financial movement and depriving them of the profits thus generated. Sarrabayrouse (2013:60) has written:

I say this because the asset laundering process is the fundamental instrument employed by organized crime to legitimize illicit profits earned by them by perpetuating these serious felonies. Thus, a policy aimed to recover these illicit earnings is one of the chief goals, since the biggest blow which can be done to criminal groups is precisely at their economic power.

In attacking the financing of criminal organizations, the aim is to hamper the availability of funds sought as dividends and reinvested into new criminal enterprises and their coverage (logistics, bribes, covering schemes). Funds handled by these groups "... are able to condition the macroeconomic parameters of a nation. Transnational criminal organizations, thus named by their transnational essence, even make earnings higher than the GNP [gross national product] of several developed countries from narcotics trafficking alone." (Abel Souto 2001:42) Now,

... this phenomenological view which might be highly interesting for a sociological or criminal science analysis of the issue, sometimes poses a series of problems to legal operators which must interpret the law in order to ascertain their objective limits, since most legal systems, when regulating and defining a whitewashing criminal type do not consider within the typification these elements (an international or transnational component, organized crime, large sums of money involved), thus allowing cases of various sizes to be punished (small, medium, large) as well as cases which ... are not linked to any organized criminal activity. (Náquira and Rosenblut 2018)

Legal rules preventing and fighting money laundering and those that regulate asset recovery mechanisms in various forms are complementary to each other, even symbiotic. It would be to no avail to put obstacles to the entry of illicit capital into the surface economy if it could not be taken from the regular economic traffic once there. According to Santander Abril (2017:4–5):

Current trends in law enforcement led towards a redefinition of the concept of "impunity" since it is necessary to leave the traditional criminal law view of an "illicit behavior which goes unpunished" to extend the concept to the economic area. It is thus acknowledged that also such actions which entail an illicit product or gain go unpunished when, despite the presence of a criminal law response, illicit goods are left to the full enjoyment of the criminal, his family or organization; or, allocated to the promotion, funding or execution of new criminal activities. This type of impunity entails serious consequences, since ... it gives a harmful message to society: that crime does pay indeed.

OBJECTIVE

This article does not seek to encompass more doctrinal content but rather to state the status of Paraguayan law and its application on these issues. Let us begin by stating that, as is the case with many other developing countries, with high levels of informal economy, the laws regulating money laundering and asset recovery have (still) low practical penetration in Paraguay, especially on jurisdictional matters. Even though the administrative prevention agencies function relatively effectively, the prosecutorial and judiciary agencies for prosecution and enforcement are trailing behind. The country has complied with its international commitments to legislate on both matters, reflecting standards recommended by multilateral organizations and conventions. However, the application of the rules in court convictions is still scarce. This may be because there is still a lack of social and institutional

awareness on the superlative damages done to the national economic dynamics by infiltration of capital from criminal practices. The latter was highlighted by the Grupo de Acción Financiera de Sudamérica (GAFISUD; now Grupo de Acción Financiera de Latinoamérica (GAFILAT)) in the executive summary for the third round of mutual evaluations for Paraguay: "... the awareness level about the LD/FT [money laundering/financing of terrorism] risks is low, in both public and private sectors ... " (GAFISUD 2008:8).

MONEY LAUNDERING IN POSITIVE LAW AND INTERNATIONAL CONVENTIONS

It is known that the origins of money laundering, its construction as a punishable act and even its terminology are closely linked with the fight against criminal organizations and particularly those engaged in drug trafficking. Both heroin and prostitution linked to drugs were among the most profitable businesses (together with liquor smuggling and gambling) exploited by the Italian-American mafia during the first decades of the 20th century. Their copious cash earnings were made to appear as laundromat profits (a scheme devised by the notorious Alphonse Gabriel "Al Capone") (Navias 2019) and other front operations. The first use of "money laundering" within a court case was also related to narcotics. The Southern Florida District Court picked it up in civil seizure proceedings held by the American Government against the amounts of USD 4,255,625.39 and USD 3,686,639 deposited at the Capital Bank in Miami in the name of an entity known as "Sonal" (United States District Courts 1983:325). Concerning the early stages of money laundering in positive law, Article 36 subsection 2(a)(ii) of the United Nations Single Convention on Narcotic Drugs of 1961, modified by Article 14 of the 1971 Convention incorporated by Paraguay through Law N° 378/72, set forth that upon reservation of the legal principles of each Party-state, those "financial operations" linked to drug trafficking (among which are, of course, any monetary legitimization maneuvering) should be considered as punishable acts. A similar provision was set forth by Article 22 subsection 2(a)(ii) of the United Nations Convention on Psychotropic Substances of 1971. It is, therefore, from the realm of drug trafficking that the boundaries of money laundering began to expand as an offense. "When one speaks about expanding penalties against money whitewashing, we make a simile: as the universe is said to be created with the Big Bang and since then is constantly expanding, the criminal types of money whitewashing are unceasingly expanding since their appearance." (Abel Souto 2018:157) Paraguay was no exception. Money laundering entered the Paraguayan legal system with Law N° 16/90, which approved and ratified the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. Article 3 of this instrument sets forth the duty of each Party-state to punish conversion or transfer (subsection 1(b)(i)), concealment or disguise (subsection 1(b)(ii)), and acquisition, possession or use (subsection 1(c)(i)) of property coming from the production, manufacture, extraction, preparation, offering, distribution, sale, delivery, brokerage, importation or exportation of narcotics (subsection 1(a)). Even the National Constitution of the Republic of Paraguay, enacted on June 20, 1992, in its Article 71, refers to money laundering linked to drug trafficking: "The State shall punish the illicit production and traffic of narcotic substances and

other harmful drugs as well as the acts aimed to legitimize the money coming from such activities ...”.

Law N° 1015/97

Law N° 1015/97, which prevents and punishes illicit acts intended to legitimize money or property, picked up the first Paraguayan typification of money laundering in its Article 3. However, besides drug-related violations, it broadened the offense's base before whitewashing (those that could generate earnings suitable for whitewashing):

- (1) To crimes defined in Article 2 subsection (c) as felonies whose imprisonment penalty terms are higher than two years on average;
- (2) To felonies perpetrated by a criminal gang, as defined in Article 2 subsection (d), as an association structured or organized by three or more persons to commit punishable acts or realize their goals by the use of arms, including persons who might provide financing or logistical support;
- (3) To felonies perpetrated by a terrorist group, as defined in Article 2 subsection (e), as an association structured or organized by three or more persons that employ violence and the perpetration of felonies to achieve their political or ideological goals, including their moral mentors.

These definitions were suppressed by Law N° 6497/19.

New Criminal Code

The new Criminal Code enacted on November 26, 1997, as Law N° 1160/97 which became effective after one year, typified money laundering in its Article 196 while keeping as offenses before whitewashing to drug trafficking and similar offenses (subsection 1°.1.c), to offenses perpetrated by a criminal association whose new definition (Article 239) generally encompasses criminal gangs and terrorist groups (subsection 1°.1.b) without prejudice of the specific definition of a terrorist association in Article 2 of Law N° 4024/10, as well as to crimes (subsection 1°.1.a) redefining them as violations whose baseline sanction is a penalty of imprisonment for a term higher than five years (Article 13 subsection 1°).

Law N° 3440/08

Law N° 3440/08, which modifies several provisions of Law N° 1160/97, changed Article 196 of the Criminal Code (among others). Now, to crimes (subsection 1°.2), offenses perpetrated by criminal associations (subsection 1°.3) and those drug-related (subsection 1°.4), are added smuggling (subsection 1°.6), those linked to arms trafficking (subsection 1°.5) and a closed list (*numerus clausus*) of other offense types (subsection 1°.1) which are deemed as precedent for whitewashing even when these are not crimes nor perpetrated in criminal association (pimping, human trafficking, pandering, infringement of copyright or invention rights, infringement on trademark rights, infringement on industrial models and drawings, extortion, aggravated extortion, fraud, fraud by computer systems, breach of trust, usury, illegal waste processing, introduction of toxic substances to the national

territory, passive bribery, aggravated passive bribery, graft, aggravated graft, breach of official duty).

Law N° 6452/19

Law N° 6452/19, which modifies several provisions of Law N° 1160/97 and its modification, Law N° 3440/08, extended the list of offenses before whitewashing in Article 196 of the Criminal Code to those outlined in Law N° 2523/04 – which prevents, typifies and punishes illicit enrichment in public service and trafficking of influence (illicit enrichment, prohibitions after the holding of a public office, influence trafficking, administration to one's benefit), and in Article 227 subsection (e) of Law N° 5810/17 – Stock Market (artificial price-fixing) and other punishable acts not previously considered (fraudulent promotion of investments, production of fake documents, tax evasion, fraudulent acquisition of grants, production of counterfeit money, private bribery, private graft, transnational graft and transnational bribery).

EXPANDING MONEY LAUNDERING AS A CRIMINAL LAW TYPE IN PARAGUAY

As is evident, Paraguay could not escape from the inertia that relentlessly pushes it towards expanding money laundering, all within the framework of a common international drive towards a legislative homogenization on this matter. “National States are incorporating rules designed in a supranational context which today leaves little margin for dissent.” (D’Albora 2016:836)

The fundamental characteristics of money laundering as a criminal law type in Paraguay are the following:

- (1) Not every offense can generate profits susceptible of whitewashing, but only those specified in the typical legal description of money laundering. We do not have, then, an open system, but a closed one, of potential offenses before the whitewashing.
- (2) Typified behaviors are varied (“convert,” “conceal,” “disguise” (the origin), “frustrate or endanger” (knowledge of its origin or location, finding, seizure, specific seizure or impounding), “obtain,” “transfer,” “provide,” “store” and “use”), although all of them can be summarized into the idea of masking the illicit origin of some goods to incorporate them into the market.
- (3) It is a “cut result” felony, consummated by a first achievement (making difficult any identification of its spurious origin upon realizing the prohibited practices), leaving for the exhaustion phase the goal driving it (insertion into the legal, economic system).
- (4) From Law N° 6452/19 onward, it is named as “asset” laundering, thus incurring in a linguistic antithesis, mixing a colloquial term (“laundering”) with an accounting–technical word (“asset”).
- (5) The negligent form is admitted, although only in matters related to the knowledge of the illicit origin of goods. Typical laundering acts must always be malicious.
- (6) We consider it an instantaneous (non-permanent) felony, which is perfected from the first moment where the performance of any typified behavior could

be appreciated (completely), even though its effects might be extended in time. That is, the laundering shall be consummated as soon as it could be said that an illicit object was converted, concealed, disguised, the knowledge of its origin or location was effectively or eventually frustrated, its finding, seizure, special seizure or impoundment, obtained, transferred, provided, stored or used; regardless of how long the typified activity from the standpoint of its successful reinsertion or regularization lasts, which no longer belongs to the consummation phase, but to the exhaustion phase instead.

- (7) We also believe that self-laundering is not punishable. The person who took part in the preceding behavior that generated the earnings intended for recycling cannot be punished as a perpetrator of laundering. In fact, subsection 11°.1 of Article 196 of the Criminal Code as introduced by Law N° 6452/19 carries a specific provision, although it only refers to tax evasion. Any punishable act has (in principle) four phases or stages: inception, execution, consummation and exhaustion. The dispositions used by the perpetrator or accessories in order to ensure or realize the economic benefit secured in the consummation phase fall into the exhaustion phase of the same offense and cannot be independently typified. When the perpetrator or accessory of a punishable act reaches the profitable goals sought when perpetrating it, enjoying its fruits, it does nothing but exhaust it by following the *iter criminis* itself. In other words, subterfuges used by a perpetrator or accessory of an offense to enjoy its economic production are absorbed by the latter, leaving the former unpunished.

ASSET RECOVERY

Regarding asset recovery, Paraguayan laws regulate various forms of seizure. The bills which sought to include the extinction of ownership were rejected by the Legislative Branch (files D-1432632 and D-1432612). However, autonomous seizure shows some traits of extinction of ownership, particularly the independence between action with patrimonial content and the eventual criminal action aimed to punish those responsible for generating the illicit assets.

Let us make clear an issue as a preliminary. Suppose by “asset recovery” (in its restrictive meaning) we understand only the restitution of goods to their legitimate owner, thereby re-establishing the patrimonial situation before the offense’s perpetration. In that case, we should refer to provisions for civil action in compensation for damages caused by the punishable act as provided by the Code for Criminal Procedures of Paraguay. Now, suppose we understand it (broadened meaning) as “. . . the legal mechanism aimed to return or give to their legitimate owners or the State patrimony or those provided by law those goods deemed as illicit” (Bonnely Vega 2008:296). In that case, we can make some progress as we shall do on the rules regulating seizure.

Seizure is an independent Title of the Criminal Code. It is not contemplated under the Titles referring to penalties and measures, thus showing that the legislator gave it a different legal nature. A seizure is an institution through which the title of ownership on objects coming from an offense or used to prepare and execute it is transferred to the State. “With the seizure, avoidance of enrichment derived from

felonies (effects and profits) is sought, as well as preventing the perpetration of further criminal behaviors (instruments).” (González Cussac 2016:14) It is regarded as an “accessory consequence” of offenses (and not from perpetrators’ criminal liability). It is a coercive act with a legal nature of its own whose “... grounds rest neither at the guilt nor the dangerousness of the active subject ...” (Restrepo Medina 2007:62). Its proceeds: “... neither are destined directly to remedy civil damages” (Choclán Montalvo 2000:338).

Regulation of Seizure

The Paraguayan legal system regulates seizure (either direct or traditional), specific seizure or forfeiture of proceeds and profits, specific seizure of substitute value, extended specific seizure, seizure by a subsequent order, and seizure by autonomous order. It is important to mention that seizure shall not be applicable when it exceeds the enforceability limits for the defendant and when the value of the spurious goods is irrelevant (Article 93 of the Criminal Code).

The so-called “direct” or “traditional” seizure is regulated in Article 86 of the Criminal Code, which covers goods produced by the offense and goods with which the offense was executed or prepared, provided they are dangerous to society or might be used to perpetrate other punishable acts. Seizure of derivative goods (or “effects”) refers to those “... created, transformed or handled from the very own criminal behavior ...” (González Cussac 2016:14). Seizure of goods used as means (or “instruments”) has a protective or ensuring goal that tries to hamper the inherent dangerousness of certain things and tools (weapons, explosives) or their usefulness for new criminal enterprises (vehicles where drugs were transported). They do not need to have an illegal origin. It shall be enough that those are “... put in a relationship of a means to an end with the violation, have served for its execution or its preparation” (Gracia Martín, Boldova Pasamar, and Alastuey Dobón 2004:502). This type of seizure may be substituted by rendering the goods unusable if that is enough to protect the community. Ownership of the seized good shall pass to the State once the seizure order becomes final (Article 88 of the Criminal Code). Third parties with the title of ownership or other rights on a seized good shall be compensated if they had no involvement in the generating offense (Article 89 of the Criminal Code). The seizure of publications through which an offense was committed belongs to this category (Article 87 of the Criminal Code).

Specific seizure or forfeiture of proceeds and profits is regulated by Article 90 of the Criminal Code. This mode of seizure deprives the persons involved in an offense and the third-party beneficiaries of it of the proceeds generated by the former (or of rights constituted on it, such as usufruct), regardless of the dangerousness or lack thereof of the profits or dividends derived from the criminal activity. Specific seizure extends to objects originally coming from the offense and objects which could have replaced or substituted them. According to Vizueta Fernández (2007:164–5):

Profit coming from a felony is, in our opinion, any profit which is grounded, which has it the chief reason of being in the felony ... and thus, also the one

showing as valuable consideration of the criminal violation . . . The measure reaches . . . not only to original profits but also to any good into which these were transformed, to any good which may have taken their place or substituted them.

A specific seizure does not apply when it hampers the satisfaction of the victim's right to compensation. Unlike the seizure proper (which can be applied on third-party goods with compensation), a specific seizure cannot affect third-party goods when these are in good faith (Article 2 of Law N° 6431/19). Ownership of the seized profit shall transfer to the State once the specific seizure order becomes final (Article 95 of the Criminal Code).

The specific seizure of substitute value is regulated in Article 91 of the Criminal Code (amended by Law N° 6452/19). If a certain good which is a profit from an offense could not be seized because it was consumed or concealed or acquired by a third party in good faith; if the substitute object is not found or the State waives seizure; if the execution of the former or the latter proves difficult; payment of a sum of money or seizure of different goods for an equivalent value could be ordered. Aguado Correa (2003:04:5–04:6) has noted:

Providing for a seizure of equivalent value offers a series of advantages by allowing to give an adequate response to cases when, for any reason, the proceeds are no longer available to the subject . . . Inclusion of this mode . . . [allows to] save many expenses, since it is not necessary to sell any object, and the amount of money could be fully allocated, first, to satisfying the civil liabilities, while the remaining amount could enlarge the State's coffers.

Extended specific seizure is regulated by Article 94 of the Criminal Code. It is a seizure of additional goods owned by the perpetrator or accessory which do not come specifically from the act which gave rise to the *notitia criminis* when circumstances show that they come from another offense perpetrated before or in parallel. In order for it to be applicable, an express legal reference must exist. "A criminal conviction could entail the seizure (broadened) not only of assets associated with the specific felony but also of additional assets which, according to the jurisdictional agency, could be a product of other similar felonies." (Aguado Correa 2014:17)

Seizures by subsequent order and autonomous order are regulated in Article 96 of the Criminal Code (as amended by Law N° 3440/08). Up to this point, the seizure order in any of their forms had to be issued within the framework of a conviction against persons involved in an offense (Article 402 of the Code of Criminal Procedures). However, the specific seizure is also allowed:

- (1) On its substitute value, when circumstances that enable it happen after a specific seizure order already entered cannot be executed (Article 2 subsection 3(b) of Law N° 6431/19).
- (2) When after a specific seizure order is entered, new profits that could be seized appear (Article 2 subsection 3(a) of Law N° 6431/19).

- (3) When a conviction judgment cannot be issued due to death of the persons involved, due to the impossibility of identifying them or making them subject to the proceeding, due to the State of limitations, due to extinction of the criminal action, due to procedural obstacles, due to a waiver of penalty, application of an alternate outcome such as conditional suspension of proceedings, abbreviated proceedings or conciliation (Article 2 subsections 4 and following ones of Law N° 6431/19).

The special seizure order is subsequent when it is entered after another issued previously, and it is autonomous when it is entered separately from the conviction to perpetrators and accessories to an offense. An autonomous seizure is an institution that allows seizing without punishing; a seizure without conviction. Castellví Monserrat (2019:7) has written:

The so-called seizure without conviction allows subtracting the illicit profits coming from a felony whose trial through a criminal procedure was not possible due to certain circumstances . . . For example, a person investigated for a corruption-related felony dies before the criminal procedure ends with a final conviction judgment. In a case such as this . . . , assessing a fine penalty (nor any other) would be possible. However, via the seizure without conviction, it would be possible to deprive the heirs of the profits coming from a felony which could not be subject to a criminal conviction.

Law N° 6431/19

The law mentioned above, N° 6431/19, which creates the special procedure for applying seizure, specific seizure, forfeiture of proceeds and profits and autonomous seizure sets forth the procedural requirements to get a seizure. Even though the autonomous seizure is assimilated to the extinction of ownership in that neither the former nor the latter need a criminally liable subject to be entered, there is no reversion of the burden of proof in the former as is the case with the latter. The Public Prosecutor's Office (Articles 3 and 11 of Law N° 6431/19) must prove the spurious origin of goods or the causal connection of them with some specific offense (Articles 5 and 8 of Law N° 6431/19) in a public and oral trial of a patrimonial character (Articles 3 and 16 of Law N° 6431/19) where regular procedural rules apply (Article 17 of Law N° 6431/19) and, among them *onus probandi* on the Public Prosecutor (Article 53 of the Code of Criminal Procedures). "The autonomous procedure does not relieve the accuser party of its duty to prove the perpetration of criminal activities." (Vargas González 2012:469).

Law N° 5876/17

Law N° 5876/17 – of administration of seized and impounded goods created the National Secretariat for the Administration of Seized and Impounded Goods (SENABICO) as the agency in charge of administrating goods subjected to seizure. Before any distribution of cash, financial results, and auction proceeds to the various state agencies that are their beneficiaries, SENABICO must seek to make restitution of the relevant values to any duly identified victim of the respective offenses (Article 47).

CONCLUSION

Thus, this article, seeking to provide a general review of money laundering and asset recovery in Paraguay, reaches its conclusion. The Paraguayan legal system has gained, through various updates, the necessary potential to effectively fight the organized crime phenomena through the prosecution of illicit goods. What remains to be done is that any prosecutorial and jurisdictional agencies intensify the use of legal tools available to them, understanding that immobilization and rescue of spurious capitals are no secondary matter, but a fundamental issue in order to reduce the activities of criminal organizations, taking from them resources to operate and stimulus to commit crimes.

References

- Abel Souto, Miguel.** 2001. "Normativa internacional sobre el blanqueo de dinero y su recepción en el ordenamiento penal español." Doctoral dissertation, Universidade de Santiago de Compostela, Santiago de Compostela.
- Abel Souto, Miguel.** 2018. "La expansión operada por la Ley orgánica 1/2015 de los hechos previos del delito de blanqueo a las antiguas faltas." Pp. 157–88 in *V Congreso internacional sobre prevención y represión del blanqueo de dinero*, edited by Miguel Abel Souto and Nielson Sánchez Stewart. Valencia: Tirant Lo Blanch.
- Aguado Correa, Teresa.** 2003. "La regulación del comiso en el proyecto de modificación del Código Penal." *Revista Electrónica de Ciencia Penal y Criminología*, issue 05-04, 04:1–04:24.
- Aguado Correa, Teresa.** 2014. "Comiso: crónica de una reforma anunciada: Análisis de la Propuesta de Directiva sobre embargo y decomiso de 2012 y del Proyecto de reforma del Código Penal de 2013." *InDret: Revista para el Análisis del Derecho*, issue 1, 1–56.
- Bonnelly Vega, Manuel Ulises.** 2008. *Extinción de dominio o confiscación civil de bienes de origen ilícito: una propuesta para combatir los delitos económicos, la corrupción y la delincuencia organizada*. Santo Domingo.
- Castellví Monserrat, Carlos.** 2019. "Decomisar sin castigar. Utilidad y legitimidad del decomiso de ganancias." *InDret: Revista para el Análisis del Derecho*, issue 1, 1–67.
- Choclán Montalvo, José Antonio.** 2000. "El comiso y la confiscación: medidas contra las situaciones patrimoniales ilícitas." *Estudios de Derecho Judicial* 28:329–70.
- D'Albora, Francisco J.** 2016. "Los delitos de blanqueo de capitales y los principios basales del derecho penal liberal." Pp. 833–43 in *Estudios de Derecho Penal. Homenaje al profesor Miguel Bajo*, coordinated by Silvana Bacigalupo Saggese, Juan Ignacio Echano Basaldua, and Bernardo José Feijóo Sánchez. Madrid: Editorial Universitaria Ramón Areces.
- GAFISUD.** 2008. "Informe de Evaluación Mutua: Anti Lavado de Activos y contra el Financiamiento del Terrorismo (3ra Ronda). Paraguay." Retrieved September 3, 2021 (<https://www.gafilat.org/index.php/en/biblioteca-virtual/miembros/paraguay/evaluaciones-mutuas-13/217-paraguay-3era-ronda-2008/file>).
- González Cussac, José Luis.** 2016. "Decomiso y embargo de bienes." Pp. 13–19 in *La armonización del Derecho Penal español: una evaluación legislativa*, edited by Luis Arroyo Zapatero. Madrid: BOE.
- Gracia Martín, Luis, Miguel Ángel Boldova Pasamar, and M^a Carmen Alastuey Dobón.** 2004. *Lecciones de consecuencias jurídicas del Delito*, 3rd ed. Valencia: Tirant Lo Blanch.
- Náquira, Jaime and Verónica Rosenblut.** 2018. *Estudios de Derecho Penal Económico Chileno (2018)*. Santiago: Universidad Católica de Chile.
- Navias, Martin S.** 2019. *Finance and Security: Global Vulnerabilities, Threats and Responses*. London: C. Hurst & Co. Publishers.
- Restrepo Medina, Manuel Alberto.** 2007. *El comiso: análisis sistemático e instrumentación cautelar*. Bogotá: Editorial Universidad del Rosario.
- Santander Abril, Gilmar.** 2017. "La emancipación del comiso del proceso penal: su evolución hacia la extinción de dominio y otras formas de comiso ampliado." In *Combate al Lavado de Activos desde el*

- Sistema Judicial*, 5th ed., edited by Isidoro Blanco Cordero, Eduardo Fabián Caparrós, Víctor Prado Saldarriaga, Gilmar Santander Abril, and Javier Zaragoza Aguado. Washington, DC: Organización de los Estados Americanos. Retrieved September 16, 2021 (http://www.cicad.oas.org/lavado_activos/esp/Documentos/COMISO%20&%20EXTINCION%20DE%20DOMINIO_GGSA_FINAL.pdf).
- Sarrabayrouse, Diego.** 2013. "Recupero de los activos desde una visión vinculada al delito de lavado de activos de origen delictivo." Pp. 59–63 in *Visión integral sobre el Recupero de Activos de Origen Ilícito*, edited by Nicolás F. Barbier. Buenos Aires: Infojus.
- United States District Courts.** 1983. "United States of America v. Four million two hundred and fifty-five thousand, six hundred and twenty-five dollars and thirty-nine cents, etc. United States of America v. Three million six hundred eighty-six thousand, six hundred thirty-nine dollars, etc." *Court Listener*, 551 F. Supp. 314. Retrieved September 6, 2021 (<https://www.courtlistener.com/opinion/2366254/united-states-v-425562539/>).
- Vargas González, Patricia.** 2012. "El comiso del patrimonio criminal." Doctoral dissertation, Universidad de Salamanca, Salamanca.
- Vizueta Fernández, Jorge.** 2007. "El comiso de las ganancias provenientes del delito y el de otros bienes equivalentes a éstas." *Revista Penal*, no. 19, 162–77.

TRANSLATED ABSTRACTS

Abstracto

El blanqueo de capitales y la recuperación de activos son herramientas que comparten una función preventiva-general muy relevante. Ambas medidas en Derecho Penal buscan inhibir el estímulo monetario para cometer delitos. El primero lo hace obstaculizando el flujo de ingresos de fuentes ilícitas y el segundo confiscando los ingresos a sus beneficiarios. Estos objetivos interrelacionados resultan de gran utilidad desde el punto de vista de la política criminal en la lucha contra el crimen organizado, ya que están orientados a la inhabilitación económica de sus agentes, bloqueando su movimiento financiero y privándolos de las ganancias generadas. Este artículo explica el estado de la ley paraguaya y su aplicación en estos temas.

Palabras clave blanqueo de capitales; recuperación de activos; crimen organizado; Paraguay; tráfico de drogas

Abstrait

Le blanchiment d'argent et le recouvrement d'avoirs sont des outils qui partagent un rôle préventif général très pertinent. Les deux mesures du droit pénal visent à inhiber la stimulation monétaire pour commettre des infractions. Les premiers le font en entravant le flux de revenus provenant de sources illicites, et les seconds en confisquant les revenus de leurs bénéficiaires. Ces objectifs interconnectés s'avèrent des plus utiles du point de vue de la politique criminelle dans la lutte contre le crime organisé puisqu'ils sont orientés vers le handicap économique de leurs agents, bloquant leur mouvement financier et les privant des profits ainsi générés. Cet article explique le statut de la loi paraguayenne et son application sur ces questions.

Mots-clés blanchiment d'argent; recouvrement d'avoirs; crime organisé; Paraguay; trafic de drogue

摘要

洗钱和资产追回是具有非常相关的预防一般作用的工具。刑法中的这两项措施都旨在抑制金钱刺激犯罪。前者通过阻止来自非法来源的收入流动,后者通过没收受益人的收入来做到这一点。从犯罪政策的角度来看,这些相互关联的目标在打击有组织犯罪方面被证明是最有用的,因为它们的目的是削弱其代理人的经济能力,阻止他们的金融流动并剥夺他们由此产生的利润。本文解释了巴拉圭法律的地位及其在这些问题上的应用。

关键词: 洗钱; 资产追回; 有组织犯罪; 巴拉圭; 贩毒

المخلص

يعد غسل الأموال واسترداد الأصول من الأدوات التي تشترك في دور وقائي عام وثيق الصلة. يسعى لكلا التدبيرين في القانون الجنائي إلى منع الحافز النقدي لارتكاب الجرائم. الأولى تفعل ذلك من خلال إعاقة تدفق الأرباح من المصادر غير المشروعة، والأخيرة بمصادرة الأرباح من الممتلكات من أجلها. أثبتت هذه الأهداف المتشابكة أنها مفيدة للغاية من وجهة نظر السياسة الجنائية في مكافحة الجريمة المنظمة لأنها موجهة نحو التعطيل الاقتصادي لعملائها، وحصر حركتهم المالية وحرمانهم من الأرباح الناتجة عن ذلك. تشرح هذه المقالة حالة قانون باراغواي وتطبيقيه على هذه القضايا.

الكلمات المفتاحية: غسل الأموال. استرداد الموجودات؛ جريمة منظمة؛ باراغواي. تهريب المخدرات

José Miguel Fernández Zacur is a Doctor of Laws, a Master in International Economic Criminal Law, a Master in Prevention and Repression of Money Laundering, Tax Fraud and Compliance, a specialist in general criminal law, a postgraduate in deepened criminal law, a postgraduate in economic criminal law, a specialist in trial skills, a former professor of forensic linguistics and legal oratory, an author and co-author of several books, papers and articles in specialized publications, a guest professor in postgraduate courses and international conferences, and a Member of the Iberoamerican Association of Economic and Business Criminal Law and other associations of criminal law.

Cite this article: Fernández Zacur, J. M. 2021. Money Laundering and Asset Recovery in Paraguay. *International Annals of Criminology* 59, 167–178. <https://doi.org/10.1017/cri.2021.12>