

EXPANDING THE CRIME OF MONEY LAUNDERING AND COUNTERMEASURES AGAINST GLOBAL TERRORISM¹

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Abstract. *Just as the universe was created with the Big Bang and its ongoing expansion so the crime of money laundering since its creation has been expanding unceasingly. The Spanish legislature added, with organic laws 5/2010, 1/2015 and 2/2015, three additional reforms to the already long list of modifications on money laundering that undermine the legal certainty and the consideration of criminal law as ultima ratio. Organic law 1/2015 of March 30, although says eliminating the petty offenses, using Orwellian Newspeak, it actually transforms most of them into minor offenses in Spain, so that expands the preceding facts of money laundering. Organic law 2/2015, also of March 30, introduces a new form of money laundering in article 576 of the Spanish Criminal Code, with a terrorist purpose, which distorts the legally protected interest by criminalization of money laundering, because it is not required that the goods used for terrorism are of illegal origin. Terrorism financing and money laundering must not be confused to extend onto money laundering the exceptional and reinforced protection of the prevention of terrorism. The fight against terrorism can not become an excuse to control absolutely all citizens and to destroy the guarantees of the rule of law. The expansion in punishment of money laundering is taking place worldwide. China has also punished money laundering from drug crimes, organized criminal syndicate nature or smuggling crimes in 1997, terrorism in 2001, corruption, bribery and disrupting the order of financial administration and financial fraud crimes in 2006. How long will our Criminal Code wait to punish money laundering from mere administrative infractions or civil wrongs? Both human rights and the principles of legal certainty and proportionality prohibit criminalization, by connivance with terrorism, normal behaviour in a democratic society, because the reason of state can not prevail over the reason of law.*

Keywords: money laundering; expansion of the punishment; financing of terrorism.

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THE EXPANSION OF THE PUNISHMENT IN THE 2015 SPANISH PENAL REFORM ON MONEY LAUNDERING

When the “expansion” of the punishment for money laundering is taken into consideration a

simile is being made: just as the universe was created, it is said, with the Big Bang and its ongoing expansion so the crime of money laundering since its creation has been expanding unceasingly².

¹ This work was financially supported by the DER2015-67422-R project of the Spanish Ministry of Economy and Competitiveness.

² *Abel Souto M.* La expansión penal del blanqueo de dinero. Méjico : Centro Mejicano de Estudios en lo Penal Tributario, 2016. P. 1—183.

I made a unattended call to the legislature to moderate its intervention in money laundering³, which has preferred to add, with the organic laws 5/2010, 1/2015 and 2/2015, three additional reforms to the already long list of modifications on money laundering⁴, that undermine the legal certainty and the consideration of criminal law as *ultima ratio*. This criminal policy goes to a “break-neck speed” and continues to accelerate, despite being reported a long time ago⁵. These constant reforms violate the legal security or “the spirit of the mean”, of which He⁶ speaks, citing Cheng Hao and Chen Yi, scholars of Chinese Song dynasty, who believed that the doctrine of the mean includes to be steady, “steadiness means not to be changeable” and “is the law of the world”.

First of all, organic law 5/2010, in the initial clause contained in article 301.1, regarding the requirement for the knowledge that the goods have their origin “in a crime”, changes these words by the formula “in a criminal activity”, “without being clear the objective pursued”⁷ with the replacement, speech which is attributed expansion effort and, in principle, wider than the previous noun “crime”⁸, it seemed to allow the inclusion of the petty offenses made in preceding

facts of money laundering, which would mean “an enormous enlargement of the field of this crime”⁹. But the petty offenses should be excluded from previous facts on the basis of a literal, historical and systematic interpretation.

However, organic law 1/2015 of March 30, although says eliminating, doing away with the petty offenses, using Orwellian Newspeak, it actually transforms most of them into minor offenses in Spain, so that expands the preceding facts of money laundering.

To illustrate this point, a single euro from a previous petty offense of fraud, now a minor offense according to article 249 of the Spanish Criminal Code, becomes a material object capable of money laundering and preparatory acts of such fraud, before unpunished regarding petty offenses, are punished in accordance article 269. However, must be excluded here the punishment of money laundering by the principle of insignificance.

Moreover, the petty offences, now minor offenses, can not be included in the previous facts to the crime of money laundering because it limits the effectiveness of the norm¹⁰, and increases social costs¹¹ so intolerable and contrary to the

³ *Abel Souto M.* Conductas típicas de blanqueo en el Ordenamiento penal español // *Abel Souto M. and Sánchez Stewart N. (coords.) I congreso de prevención y represión del blanqueo de dinero.* Valencia : Tirant lo Blanch, 2009. Pp. 243—244.

⁴ *Abel Souto M.* Década y media de vertiginosa política criminal en la normativa penal española contra el blanqueo. Análisis de los tipos penales contra el blanqueo desde su incorporación al Texto punitivo español en 1988 hasta la última reforma de 2003 // *La Ley Penal. Revista de Derecho Penal, Procesal y Penitenciario.* 2005. No. 20. Pp. 5—26 ; *Zaragoza Aguado J. A. // Gómez Tomillo M. (dir.) Comentarios al Código penal.* 2nd ed. Valladolid : Lex nova, 2011. Pp. 1154—1155.

⁵ *Hassemer W.* Gewinnaufspürung: jetzt mit dem Strafrecht // *Wertpapier Mitteilungen. Zeitschrift für Wirtschafts- und Bankrecht (Gastkommentar).* 1994. P. 1369 (translated to Spanish by M. Abel Souto as “Localización de ganancias: ahora con el Derecho penal” // *Revista de Ciencias Penales.* 1998. Vol. 1. No. 1. P. 217.

⁶ *He B.* Resolution of the International Forum on Crime and Criminal Law in the Global Era on the “Theory of Human Rights Defense”. Beijing. 2010. Pp. 7, 8.

⁷ *Manjón-Cabeza Olmed A.* Receptación y blanqueo de capitales (arts. 301 y 302) // *Álvarez García F. J. and González Cussac J. L. (dirs.) Comentarios a la reforma penal de 2010.* Valencia : Tirant lo Blanch, 2010. P. 340.

⁸ *Fernández Teruelo J. G.* Blanqueo de capitales // *Ortiz De Urbina Gimeno, I. (coord.) Memento experto Francis Lefebvre. Reforma penal. Ley orgánica 5/2010.* Madrid : Ediciones Francis Lefebvre, 2010. Pp. 318, 319 and 324.

⁹ *Muñoz Conde F.* Derecho penal. Parte especial. 18th ed. Valencia : Tirant lo Blanch, 2010. P. 557.

¹⁰ *Flick G. M.* Le risposte nazionali al riciclaggio di capitali. La situazione in Italia // *Rivista Italiana di Diritto e Procedura Penale.* 1992. No. 4. P. 1293 ; *Terradillos Basoco J. M.* El delito de blanqueo de capitales en el Derecho español // *Cervini R. et al. El delito de blanqueo de capitales de origen delictivo. Cuestiones dogmáticas y político-criminales. Un enfoque comparado: Argentina-Uruguay-España.* Córdoba (República Argentina) : Alveroni, 2008. P. 261.

¹¹ *Flick G. M.* La repressione del riciclaggio ed il controllo della intermediazione finanziaria. Problemi attuali e prospettive // *Rivista Italiana di Diritto e Procedura Penale.* 1990. No. 4. P. 1264.

principle of proportionality¹². Thus He¹³ says that to achieve the purpose of defense of human rights “the penalty must adhere to the spirit of mean”, which opposes to “any penalties that are extreme, excessive” and requires “moderateness and appropriateness”¹⁴.

Secondly, organic law 5/2010, after the reference in article 301.1 to the “criminal activity”, which integrates the previous fact, added “committed by him or by any third person”, which punishes expressly money laundering committed by those responsible for the previous fact in the way the majority interpreted the crime¹⁵ and “ditch one of the most controversial issues”¹⁶. In this sense there was already a plenary agreement no jurisdictional of the Supreme Court of 18 July 2006¹⁷ admitting the self-laundering¹⁸.

But the punishment of self-laundering combined with new behaviour of possession or use, to the Criminal Code incorporated by organic law 5/2010, produces “strange consequences”¹⁹, even absurd²⁰, because this would imply that the per-

son who has a painting or a jewel which he has stolen would now commit a new crime and the same applies to the individual using someone else’s car without permission²¹.

Not only that, but since the enlargement of the previous facts to the old petty offenses operated under organic law 1/2015, a new crime is also committed by anyone having or wearing a scarf worth 5 euros acquired through theft, a petty offense converted now into a minor offense according to article 234.2, and who uses an old moped, of very little value, which he subtracted, because the old petty offense has become a minor offense of theft of usage with no predetermined worth of article 244.1.

To avoid jeopardy²² the *typus* should be interpreted as meaning that the possession by the authors or participants in the preceding fact as money laundering is punishable only when this is not possible to sanction them for the previous crime²³. It should exclude from the *typus* both the use and another kind of possessions on the

¹² *Fernández Teruelo J. G.* Blanqueo de capitales // Ortiz De Urbina Gimeno, I. (coord.) Memento experto Francis Lefebvre. Reforma penal. Ley orgánica 5/2010. Madrid : Ediciones Francis Lefebvre, 2010. P. 324 ; Manjón-Cabeza Olmeda A. Receptación y blanqueo de capitales (arts. 301 y 302) // Álvarez García F. J. and González Cussac J.L. (dirs.) Comentarios a la reforma penal de 2010. P. 341.

¹³ *He B.* Resolution of the International Forum on Crime and Criminal Law ... P. 7.

¹⁴ *He B.* Fourth Session of the International Forum on Crime and Criminal Law in the Global Era. Beijing, 2012. Pp. 4—5.

¹⁵ *Fernández Teruelo J. G.* Blanqueo de capitales. P. 319.

¹⁶ *González Cussac J. L.* and Vidales Rodríguez C. El nuevo delito de financiación del terrorismo: consideraciones acerca de su necesidad y conveniencia // González Cussac J. L. (dir.) Financiación del terrorismo, blanqueo de capitales y secreto bancario: un análisis crítico. Valencia : Tirant lo Blanch, 2009. P. 195.

¹⁷ *Gómez Rivero M. C.* Nociones fundamentales de Derecho penal. Parte especial. (Adaptado al EEES). Madrid : Tecnos, 2010. P. 540.

¹⁸ *Abel Souto M.* La expansión penal del blanqueo de dinero operada por la Ley orgánica 5/2010, de 22 de junio // La Ley Penal. Revista de Derecho Penal, Procesal y Penitenciario. 2011. No. 79. Pp. 15—16 ; Idem. La reforma penal, de 22 de junio de 2010, en materia de blanqueo de dinero // Abel Souto M. and Sánchez Stewart N. (coords.) II congreso sobre prevención y represión del blanqueo de dinero. Valencia: Tirant lo Blanch, 2011. Pp. 78—80, with references of various sentences.

¹⁹ *Quintero Olivares G.* Sobre la ampliación del comiso y el blanqueo, y la incidencia en la receptación civil // Revista Electrónica de Ciencia Penal y Criminología. 2010. 8 de marzo. P. 13 ; Idem. La reforma del comiso (art. 129) // Quintero Olivares, G. (dir.) La reforma penal de 2010: análisis y comentarios. Cizur Menor : Aranzadi, 2010. P. 109.

²⁰ *Castro Moreno A.* Reflexiones críticas sobre las nuevas conductas de posesión y utilización en el delito de blanqueo de capitales en la reforma del Anteproyecto de 2008 // Diario La Ley. 2009. No. 7277. 5 de noviembre. Pp. 1, 4.

²¹ *Quintero Olivares G.* Sobre la ampliación del comiso y el blanqueo, y la incidencia en la receptación civil. P. 13 ; Idem. La reforma del comiso (art. 129). P. 109.

²² *Martínez-Buján Pérez C.* Derecho penal económico y de la empresa. Parte especial. 5th ed. Valencia : Tirant lo Blanch, 2015. Pp. 579, 580.

²³ *Quintero Olivares G.* Sobre la ampliación del comiso y el blanqueo, y la incidencia en la receptación civil. P. 20 ; Idem. La reforma del comiso (art. 129). P. 110.

basis of the principle of insignificance and teleological interpretation, taking into consideration the legally protected interest, requiring a significant impairment of the socio-economic order and appropriateness of behaviours to incorporate illegal capital to trade.

Thirdly, the reform of June 22, 2010 incorporated in the initial paragraph of article 301.1 of the Criminal Code the possession and use of criminal property as new forms of money laundering²⁴. The possession and use behaviours were already covered, from the Criminal Code in 1995, through the formula “perform any other act to conceal or disguise the illicit origin, or to help the person who has participated in the infringement or infringements to evade the legal consequences of their actions”. Now, however, they are also explicitly included in the Code²⁵, but regardless of the purpose that guides a money launderer²⁶.

Thus, it seems that since organic law 1/2015 the Spanish offense of money laundering includes the carrier that among the things that moves sees the above-mentioned scarf with a anti-theft device, the person who takes care of this scarf in the cloakroom of an establishment and the garage worker who guards the old moped mentioned, knowledgeable of the subtraction, because article 301.1 punishes simple possession

of property with knowledge that have their origin in an offense.

In addition, from the reform of June 22, 2010 the mere use of goods from a crime is incriminated, so that article 301.1 of Spanish Criminal Code, such as §261 II number 2 of the German StGB, seems covering surprisingly, who write a text with a subtracted computer, but much more astonishing that since organic law 1/2015, which transforms the old petty offense into a minor offense of theft (art. 234.2), if a person writes something with a subtracted pen he is considered a money launderer.

However, the Spanish offense of money laundering, as well as the German, should be “teleologically restricted”²⁷, which excludes of the article 301 of the Criminal Code, by reason of lack of *typus*, all material objects of insignificant quantity, as the “amount of cents”²⁸, under the principle of insignificance²⁹ or of “minimal intervention”³⁰.

The same principle of insignificance applies to basic consumer acts, services or merchandise sales in everyday vital business³¹, given how important it is for individuals to be able to transmit the money received and to use purchased goods³². The previous author who only has money originating from a crime “would prohibit almost the satisfaction of vital needs”³³ and thus, his own

²⁴ *Abel Souto M.* La expansión penal del blanqueo de dinero operada por la Ley orgánica 5/2010, de 22 de junio. Pp. 17—27 ; *Idem.* La reforma penal, de 22 de junio de 2010, en materia de blanqueo de dinero. Pp. 81—98.

²⁵ *Muñoz Conde F.* Derecho penal. P. 554, 556.

²⁶ *Abel Souto M.* El delito de blanqueo en el Código penal español. Barcelona : Bosch, 2005. Pp. 93—102, 290, 291 ; *Idem.* Conductas típicas de blanqueo en el Ordenamiento penal español. Pp. 177—187, 235 ; Blanco Cordero I. El delito fiscal como actividad delictiva previa del blanqueo de capitales // Revista Electrónica de Ciencia Penal y Criminología. 2011. No. 13-01. P. 42 ; *Idem.* El delito de blanqueo de capitales. 3rd ed. Cizur Menor : Aranzadi, 2012. P. 437.

²⁷ *Vogel J.* Geldwäsche — eine europaweit harmonisierter Straftatbestand? // Zeitschrift für die Gesamte Strafrechtswissenschaft. 1997. No. 2. P. 356.

²⁸ *Bottke W.* Mercado, criminalidad organizada y blanqueo de dinero en Alemania / traslated to Spanish by Soledad Arroyo Alfonso and Teresa Aguado Correa // Revista Penal. 1998. No. 2. P. 11.

²⁹ *Aránguez Sánchez C.* El delito de blanqueo de capitales. Madrid/Barcelona : Marcial Pons, 2000. Pp. 184, 185, 248 ; Palma Herrera J. M. Los delitos de blanqueo de capitales. Madrid : Edersa, 2000. Pp. 350, 351 ; Ragués i Vallès R. Lavado de activos y negocios standard. Con especial mención a los abogados como potenciales autores de un delito de lavado // Roxin C. Homenaje. Nuevas formulaciones en las Ciencias penales. Lerner : Universidad Nacional de Córdoba, 2001. Pp. 625; Terradillos Basoco J. M. El delito de blanqueo de capitales en el Derecho español. Pp. 240, 263.

³⁰ *Martínez-Buján Pérez C.* Derecho penal económico y de la empresa. Parte especial. P. 565.

³¹ *Aránguez Sánchez C.* El delito de blanqueo de capitales. Pp. 184, 247, 248.

³² *Lampe E.-J.* Der neue Tatbestand der Geldwäsche (§ 261 StGB) / translated to Spanish by Miguel Abel Souto and José Manuel Pérez Pena as “El nuevo tipo penal del blanqueo de dinero (§ 261 StGB)” // Estudios Penales y Criminológicos. 1997. No. XX. Pp. 131, 132.

³³ *Barton, S.* Sozial übliche Geschäftstätigkeit und Geldwäsche (§ 261 StGB) // Strafverteidiger. 1993. No. 3. P. 161.

survival³⁴, if behaviours directed to sustain life are not excluded from *typus*. Furthermore, it would be forcing any potential provider of goods or services “now to waive the settlement of accounts with uncontrolled money now to refrain traffic”³⁵, which limits so much economic rights of the citizen raising serious questions of constitutionality³⁶. According to He the penalty “to achieve the greatest value of defending human rights” must be “moderate, appropriate, fair, impartial, and free from excess and deficiency”³⁷, and these elements are not satisfied in the current case and also here would criminalize “behaviours which do not violate human rights, such unethical behaviours”. The primary and main adjustments in response to crimes in the era of globalization requires decriminalization of “immoral behaviours or minor offences with petty violation against social orders”³⁸.

Fourthly, regarding the new aggravations laundering of profits from certain crimes against public administration, contained in articles 419-445 of the Penal Code, against land planning and urbanism³⁹, the penalty is aggravated despite such increases

gravity “do not have relevant general preventive effect”⁴⁰. Over this punitive “hardening”⁴¹ must be applied the penalty of imprisonment in the upper half for membership of an organization dedicated to money laundering of article 302.1 Penal Code⁴², so that the penalty can achieve “really high limits”⁴³.

It can not be presumed that the amount of money laundered from these offenses exceeds the amount derived from other crimes. Neither are these aggravations justified by the legally protected interests⁴⁴, because they are the same values protected by the basic *typus*, since the Administration of Justice is interested in punishing any crime and the socio-economic order is not more damaged by the laundering of the proceeds of such crimes. Truly the laundered value determines a higher content of unfairness and it should aggravate the penalty⁴⁵, so the qualified *typus* would focus on the characteristics of the material object, the “magnitude”⁴⁶ or obvious importance of the amount laundered, but not in the irrelevant nature of the predicate offense⁴⁷, since the foundation of the aggravation would

³⁴ Blanco Cordero I. Negocios socialmente adecuados y delito de blanqueo de capitales // Anuario de Derecho Penal y Ciencias Penales. 1997. T. L. Fascículo único, enero-diciembre. P. 272.

³⁵ Bottke W. Teleologie und Effektivität der Normen gegen Geldwäsche. Teil 2 // Wistra. 1995. No. 4. P. 122.

³⁶ Blanco Cordero I. Negocios socialmente adecuados y delito de blanqueo de capitales. P. 290.

³⁷ He B. Resolution of the International Forum on Crime and Criminal Law ... P. 8.

³⁸ He B. Fourth Session of the International Forum on Crime and Criminal Law in the Global Era. P. 4.

³⁹ Abel Souto M. La expansión penal del blanqueo de dinero operada por la Ley orgánica 5/2010, de 22 de junio. Pp. 27—31 ; La reforma penal, de 22 de junio de 2010, en materia de blanqueo de dinero. Pp. 98—103 ; Idem. Anti-corruption strategy in the global era and money laundering // Fifth Session of the International Forum on Crime and Criminal Law in the Global Era. Beijing, 2013. Pp. 1—7 ; Ferré Olivé J. C. El nuevo tipo agravado de blanqueo cuando los bienes tengan su origen en delitos relativos a la corrupción // Abel Souto M. and Sánchez Stewart N. (coords.) III congreso sobre prevención y represión del blanqueo de dinero. Valencia : Tirant lo Blanch, 2013. Pp. 389—391 ; Núñez Paz M. A. Tipologías criminales de blanqueo. Técnicas de comisión // Ibid. Pp. 267—279.

⁴⁰ Silva Sánchez J.-M. La reforma del Código penal: una aproximación desde el contexto // Diario La Ley. 2010. No. 7464. 9 de septiembre. Pp. 5.

⁴¹ Díaz y García Conlledo M. El castigo del autoblanqueo en la reforma penal de 2010. La autoría y la participación en el delito de blanqueo de capitales // Abel Souto M. and Sánchez Stewart N. (coords.) III congreso sobre prevención y represión del blanqueo de dinero. P. 288.

⁴² Lorenzo Salgado J. M. El tipo agravado de blanqueo cuando los bienes tengan su origen en el delito de tráfico de drogas // Abel Souto M. and Sánchez Stewart N. (coords.) III congreso sobre prevención y represión del blanqueo de dinero. Pp. 235—237.

⁴³ Muñoz Conde F. El delito de blanqueo de capitales y el Derecho penal de enemigo // Abel Souto M. and Sánchez Stewart N. (coords.) III congreso sobre prevención y represión del blanqueo de dinero. P. 376.

⁴⁴ Berdugo Gómez De La Torre I. and Fabián Caparrós E. A. La «emancipación» del delito de blanqueo de capitales en el Derecho penal español // Diario La Ley. 2010. No. 7535. 27 de diciembre. P. 13.

⁴⁵ Palma Herrera J. M. Los delitos de blanqueo de capitales. Pp. 787, 788.

⁴⁶ Díaz y García Conlledo M. Blanqueo de bienes // Luzón Peña D.-M. (dir.) Enciclopedia penal básica. Granada : Comares, 2002. P. 209.

⁴⁷ Aránguez Sánchez C. El delito de blanqueo de capitales. P. 316.

reside in the greater flow of illicit goods⁴⁸ put into circulation. From a technical standpoint, it is also unacceptable to increase the penalties for laundering according to the origin of goods, given that the autonomy of this crime would deny to attend the previous offense⁴⁹. The criminalization of money laundering would be deprived of independent material content and would simply be a reinforcement of the legally protected interest through the crime of which capital derives⁵⁰. Finally, the foundation of the aggravation underlies neither greater reproach, since the person who converts property linked to crimes against the public administration and urban planning is not guiltier than money launderers derived from other crimes⁵¹, nor international pressure, since no supranational instrument forces a heavier penalty of money laundering in these cases.

In conclusion, the excessive punishment of new aggravations, like “the abuse of any penalty”, according to He⁵², is a breach of the theory of human rights defense and a “serious violation of the value target”.

Finally, the reform of June 22, 2010 adapted the punishment of money laundering to the innovative criminal liability of legal persons, but this model of responsibility was not required, because international agreements only require sanctions “effective, proportionate and dissuasive”, so that administrative penalties were sufficient.

Recently organic law 1/2015 exempts all legal persons from criminal responsibility, in Article 31 bis.4, if they adopt a system of effective prevention, provision of doubtful usefulness, because in most cases the subsequent money laundering will demonstrate the ineffectiveness of the system.

MONEY LAUNDERING AND COUNTERMEASURES AGAINST GLOBAL TERRORISM

Terrorism is escalating around the world. After the terroristic acts in Paris and Brussels in 2015 there were “about 900 attacks in Iraq and Syria during the first quarter of 2016”⁵³. In accordance with the resolution adopted by the General Assembly of United Nations on 1 July 2016 “any acts of terrorism are criminal and unjustifiable, regardless of their motivation, wherever, whenever and by whomsoever committed”⁵⁴, because as He says “are threatening innocents’ lives, infringing people’s basic freedom and human dignity and threatening international peace and security seriously”⁵⁵, but United Nations also remember that in the fight against terrorism is necessary to ensure the “respect for human rights for all and the rule of law”⁵⁶.

Organic law 2/2015, also of March 30, introduces a new form of money laundering in article 576 of the Spanish Criminal Code, with a terrorist purpose, which distorts the legally protected interest by criminalization of money laundering, because it is not required that the goods used for terrorism are of illegal origin.

However, “in the financing of terrorism, the wrongfulness of the conduct lies not in the source of the goods, but at the destination”⁵⁷.

Terrorism financing and money laundering must not be confused to extend onto money laundering the exceptional and reinforced protection of the prevention of terrorism. In recent years under the pretext of pursuing terrorism has been expanded the prosecution of money laundering, but the fight against terrorism can not become

⁴⁸ *Faraldo Cabana P.* Aspectos básicos del delito de blanqueo de bienes en el Código penal de 1995 // *Estudios Penales y Criminológicos*. 1998. No. XXI. P. 150 ; *Vidales Rodríguez C.* Los delitos de receptación y legitimación de capitales en el Código penal de 1995. Valencia : Tirant lo Blanch, 1997. P. 142.

⁴⁹ *Álvarez Pastor D. and Eguidazu Palacios F.* Manual de prevención del blanqueo de capitales. Madrid/ Barcelona : Marcial Pons, 2007. P. 356.

⁵⁰ *Fabián Caparrós E. A.* El delito de blanqueo de capitales. Madrid : Colex, 1998. P. 194.

⁵¹ *Palma Herrera J. M.* Los delitos de blanqueo de capitales. P. 785.

⁵² *He B.* Resolution of the International Forum on Crime and Criminal Law ... P. 7.

⁵³ *He B.* Eighth Session of the International Forum on Crime and Criminal Law in the Global Era. Beijing, 2016. P. 1.

⁵⁴ Resolution adopted by the General Assembly on 1 July 2016 // *The United Nations Global Counter-Terrorism Strategy Review*. 2016. A/RES/70/291. P. 1.

⁵⁵ *He B.* Eighth Session of the International Forum on Crime and Criminal Law in the Global Era. P. 2.

⁵⁶ Resolution adopted by the General Assembly on 8 September 2006 // *The United Nations Global Counter-Terrorism Strategy*. 2006ю A/RES/60/288. P. 9.

⁵⁷ *González Cussac J. L. and Vidales Rodríguez C.* El nuevo delito de financiación del terrorismo: consideraciones acerca de su necesidad y conveniencia. P. 194.

an excuse to control absolutely all citizens and to destroy the guarantees of the rule of law⁵⁸.

This expansion in punishment of money laundering is taking place worldwide. Thus in Spain the organic law 1/2015 extended the previous facts of money laundering to the ancient petty offenses, now called minor offenses, and in China article 191 of the Criminal Code in 1997 punished money laundering from drug crimes, organized criminal syndicate nature or smuggling crimes, in 2001 terrorism was added to the list of preceding offenses of money laundering and in 2006 the

previous facts were extended to crimes of corruption, bribery and disrupting the order of financial administration and financial fraud crimes⁵⁹.

What will be the next step? How long will our Criminal Code wait to punish money laundering from mere administrative infractions or civil wrongs? Both human rights and the principles of legal certainty and proportionality prohibit criminalization, by connivance with terrorism, normal behaviour in a democratic society, because the reason of state can not prevail over the reason of law⁶⁰.

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РАСШИРЕНИЕ ПОНЯТИЯ ОТМЫВАНИЯ ДЕНЕГ И МЕРОПРИЯТИЯ, НАПРАВЛЕННЫЕ НА БОРЬБУ С МЕЖДУНАРОДНЫМ ТЕРРОРИЗМОМ

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Аннотация. Подобно тому, как Вселенная была создана Большим взрывом и продолжает расширяться, так и отмывание денег с момента появления этого понятия расширяется непрерывно. В Испании были приняты основные законы 5/2010, 1/2015 и 2/2015, где законодатели предусмотрели три дополнительных поправки к уже длинному списку изменений мероприятий по борьбе с отмыванием денег, которые подрывают правовые основы

⁵⁸ *Ferré Olivé J. C.* Política criminal europea en materia de blanqueo de capitales y financiación del terrorismo // *González Cussac J. L. (dir.) Financiación del terrorismo, blanqueo de capitales y secreto bancario: un análisis crítico.* Valencia : Tirant lo Blanch, 2009. Pp. 164, 165.

⁵⁹ *Yu J.-J.* Terrorism financing. China // *Revista Penal.* 2016.Vol. 38. Julio. Pp. 358, 361.

⁶⁰ Grupo de Estudios de Política Criminal. Manifiesto por una política criminal sobre terrorismo adaptada a los nuevos tiempos // *Una propuesta de renovación de la política criminal sobre terrorismo.* Gráficas Luis Mahave. Málaga, 2013. Pp. 9, 11, 15, 20.

и рассмотрение уголовного права как ultima ration. Основной закон 1/30 от марта 2015 года, хотя и направлен на устранение мелких правонарушений, используя оруэлловский новояз, он фактически превращает большинство из них в мелкие правонарушения в Испании и расширяет предыдущие факты отмывания денег. Основной закон 2/2015, также от 30 марта, вводит новую форму отмывания денег в статье 576 испанского Уголовного кодекса, отмывание денег в целях террористической деятельности, искажающего охраняемые законом интересы путем криминализации отмывания денег, так как не требуется, чтобы товары, используемые для терроризма имели незаконное происхождение. Нельзя смешивать финансирование терроризма и отмыванием денег и распространять на отмывание денег мероприятия, направленные на усиление защиты по предотвращению терроризма. Борьба с терроризмом не может быть поводом к абсолютному управлению всеми гражданами и уничтожать гарантии верховенства закона. Расширение наказания за отмывание денег происходит по всему миру. В Китае также предусмотрено наказание за отмывание денег путем наркопреступлений, организованные преступные синдикаты или контрабанду в 1997 году, за терроризм в 2001 году, коррупцию, взяточничество и нарушения порядка финансового управления и финансового мошенничества в 2006 году. Как долго будет наш Уголовный кодекс ждать, чтобы ввести наказание за отмывание денег через простые административные правонарушения или гражданские правонарушения? Как права человека, так и принципы права и пропорциональности "запрещают криминализацию, через потворство терроризму, в нормальном демократическом обществе, так как государство не может превалировать над законом."

Ключевые слова: отмывание денег; расширение наказания; финансирование терроризма