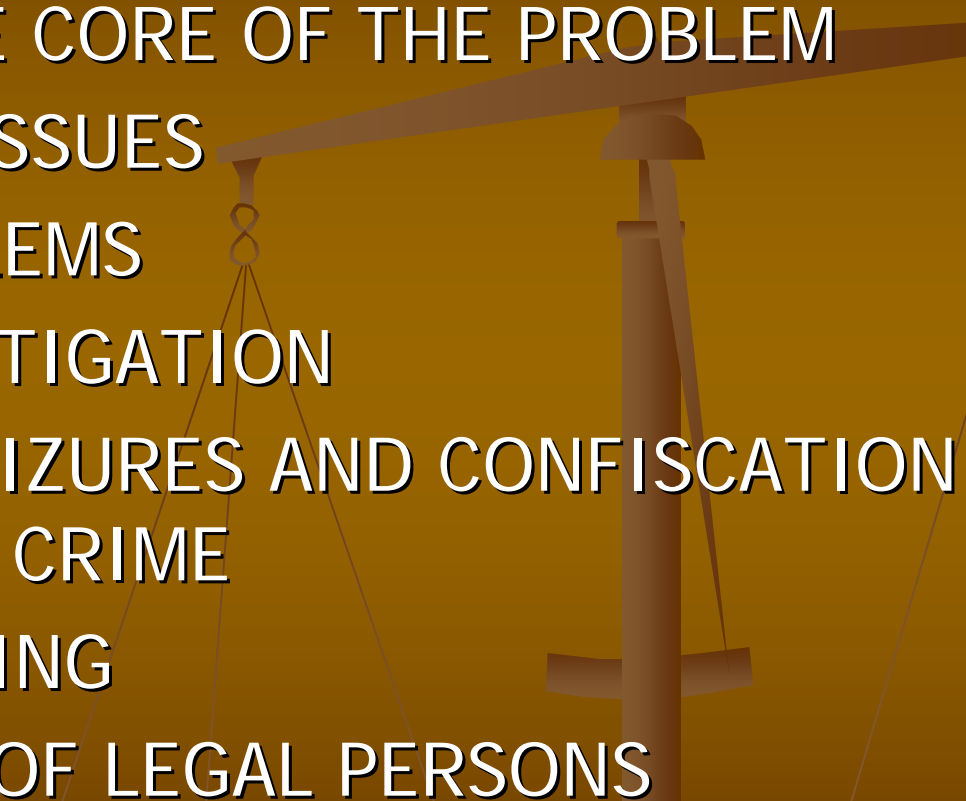


# ISSUES OF CONCERN RELATED TO INVESTIGATING AND PROSECUTING SERIOUS ECONOMIC CRIME AND GRAND CORRUPTION

HAMBURG  
19-20 APRIL 2006

***PRESENTATION BY: BOSTJAN PENKO  
SENIOR PROSECUTOR  
REPUBLIC OF SLOVENIA***

# ISSUES OF GENERAL CONCERN

- IDENTIFYING THE CORE OF THE PROBLEM
  - INSTITUTIONAL ISSUES
  - PROOFING PROBLEMS
  - FINANCIAL INVESTIGATION
  - FORFEITURES, SEIZURES AND CONFISCATION OF PROCEEDS OF CRIME
  - MONEY LAUNDERING
  - RESPONSIBILITY OF LEGAL PERSONS
- 

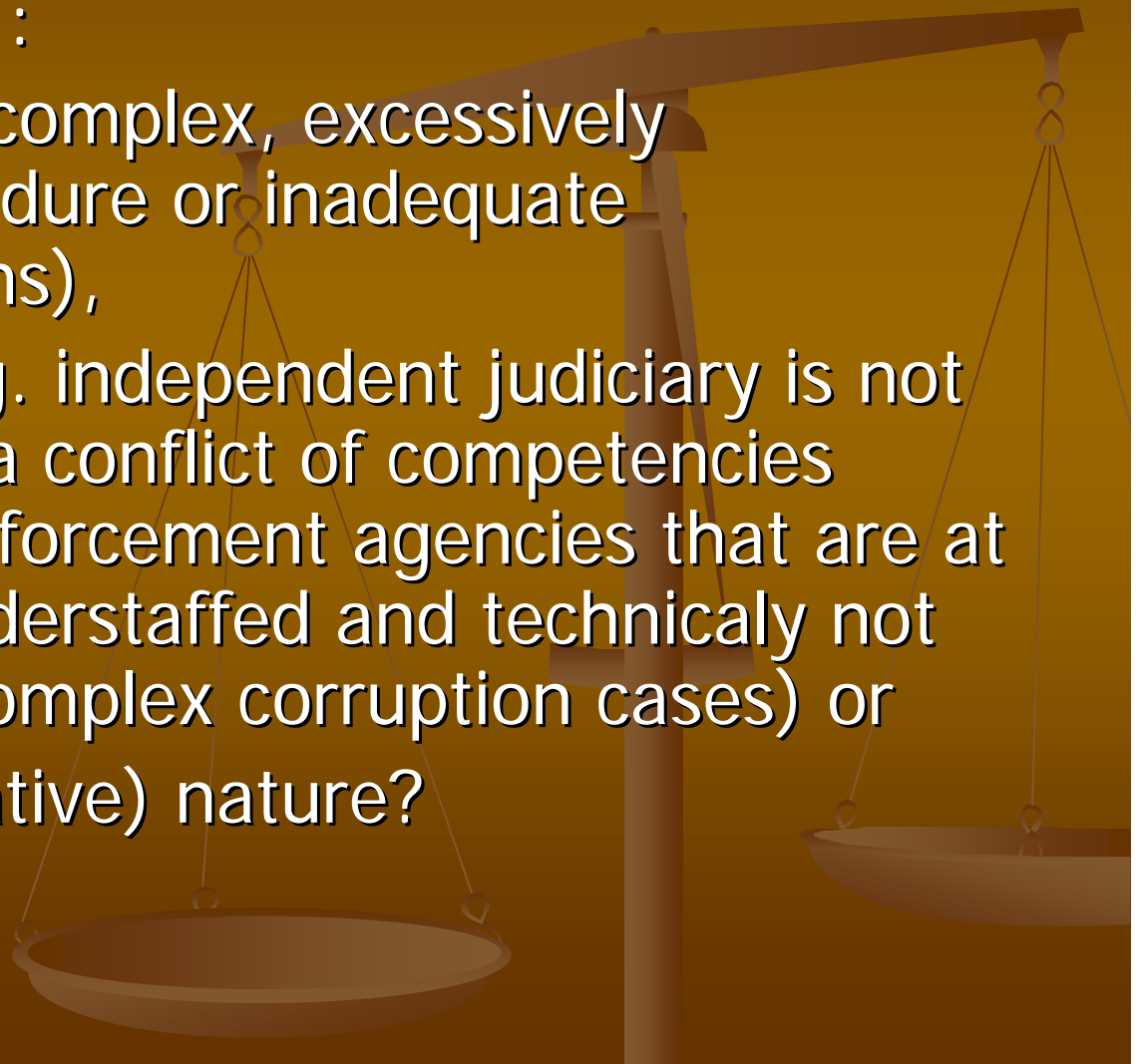
# Identifying the origin of problems

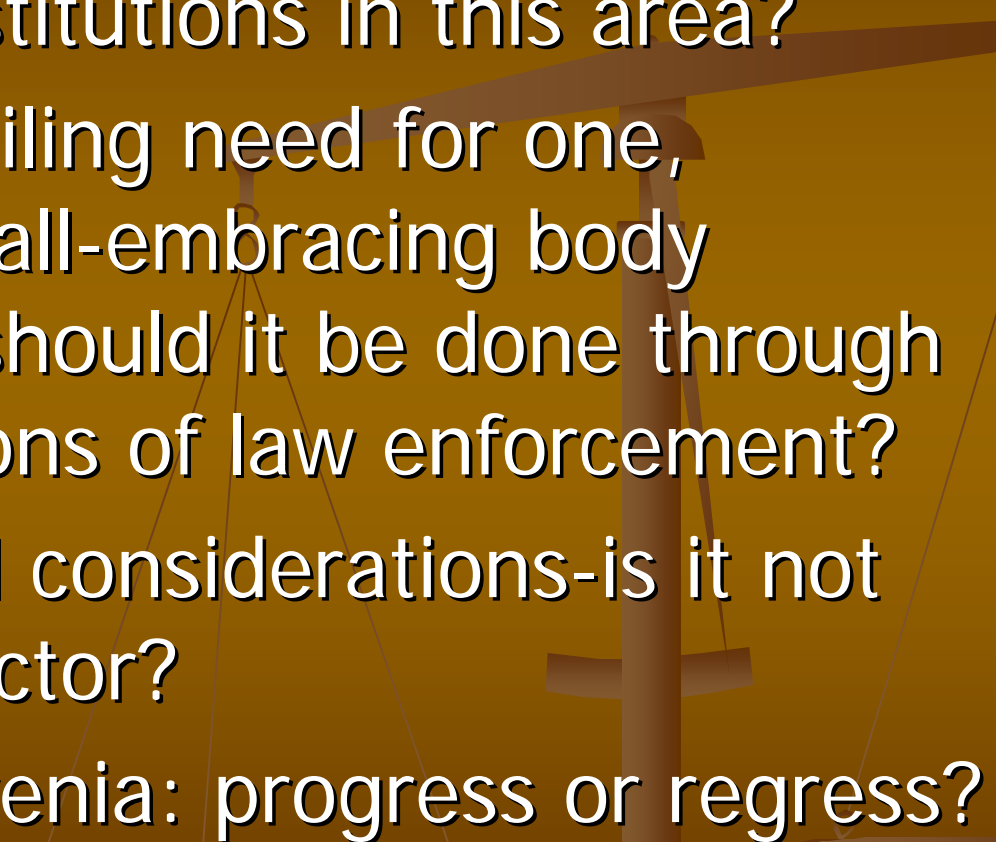
Are the problems of :

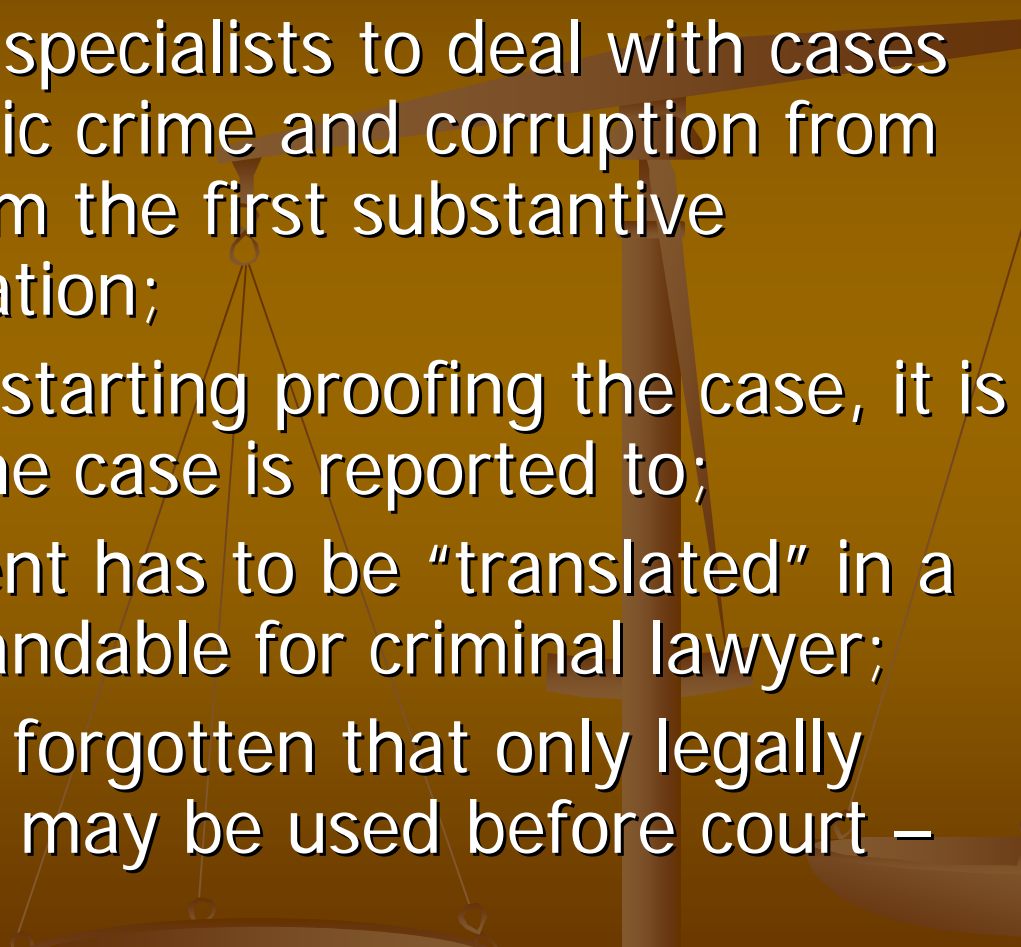
**legislative** (e.g. complex, excessively complicated procedure or inadequate investigative means),

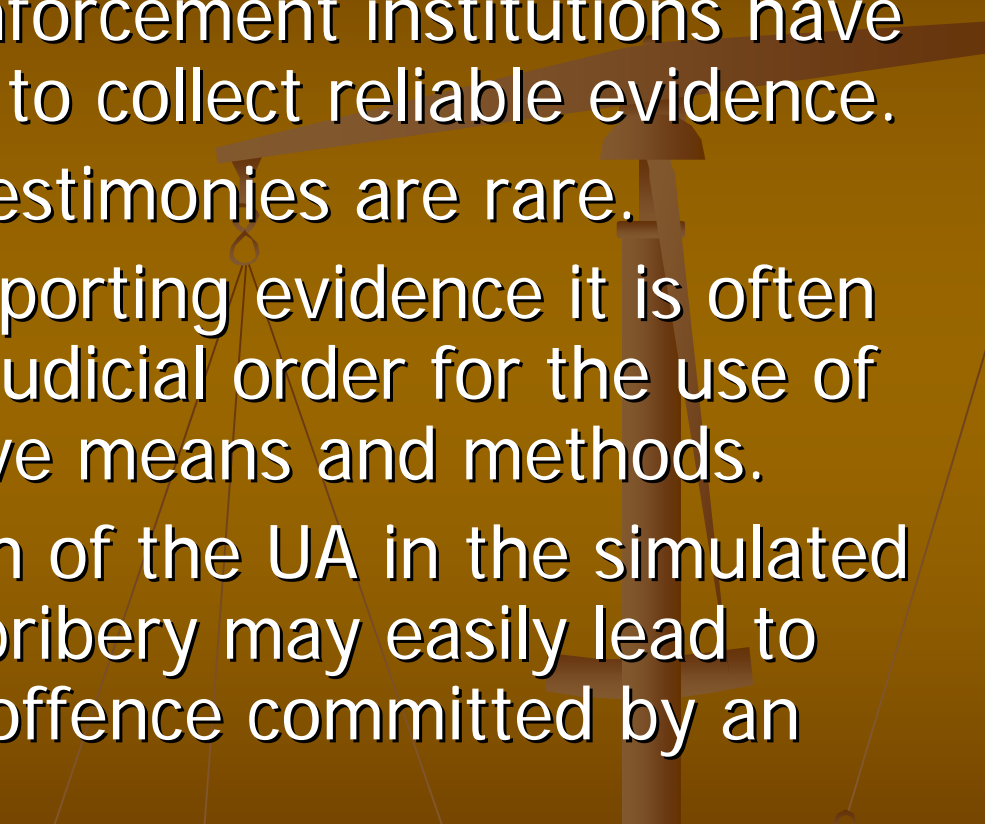
**institutional** (e.g. independent judiciary is not ensured, there is a conflict of competencies among the law enforcement agencies that are at the same time understaffed and technically not apt to deal with complex corruption cases) or

**practical** (applicative) nature?

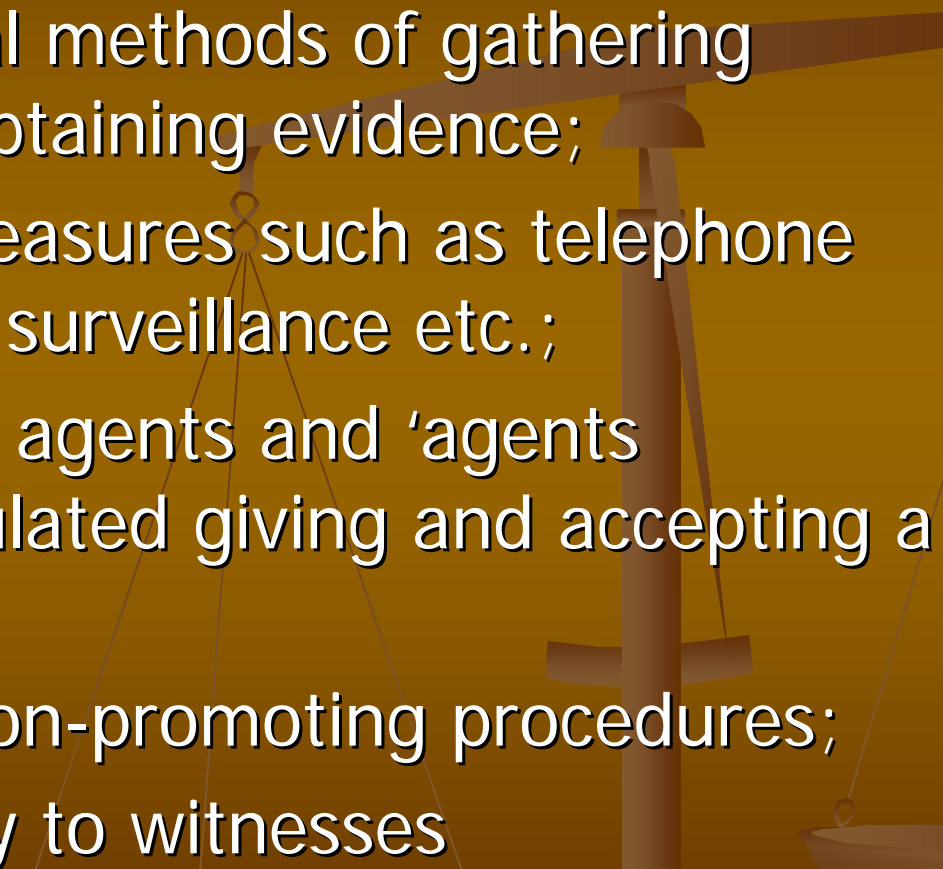


- 
- What are the possible modalities of law enforcement institutions in this area?
  - Is there a prevailing need for one, comprehensive all-embracing body (institution) or should it be done through regular institutions of law enforcement?
  - At the end of all considerations-is it not just a human factor?
  - Example of Slovenia: progress or regress?

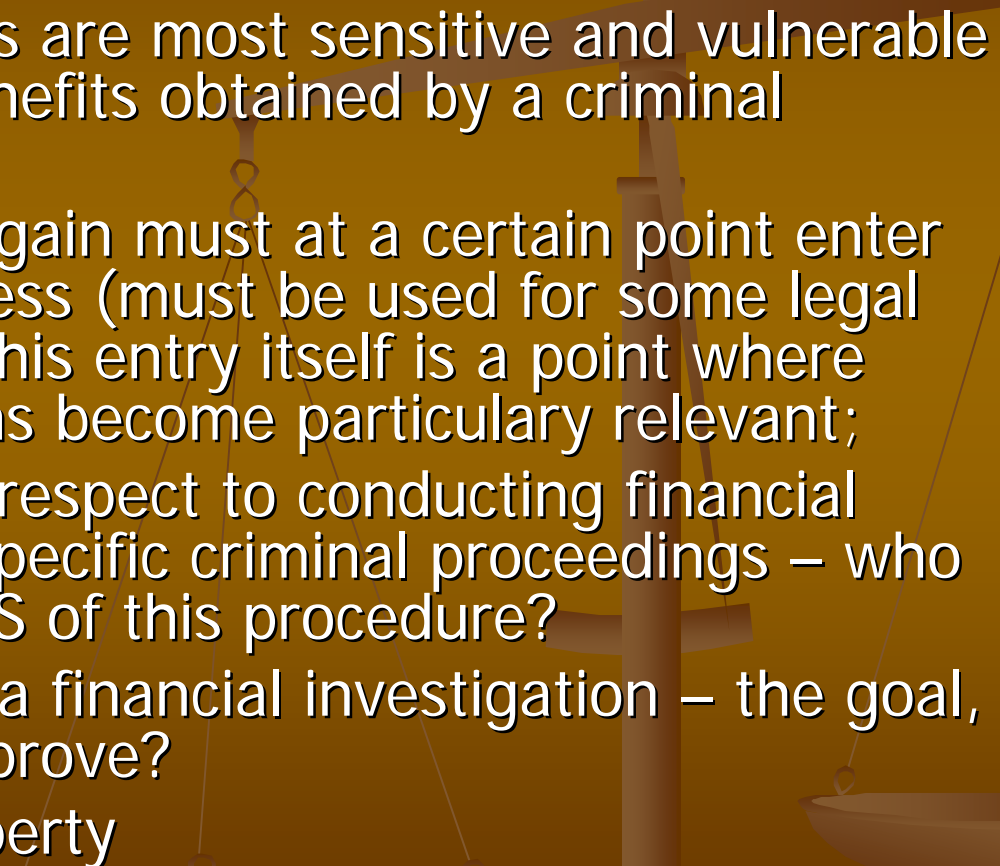
- 
- Problem of identifying and recognizing particular event, situation, misdeed, violation of the law or a regulation as a criminal offence;
  - Absolute need for specialists to deal with cases of serious economic crime and corruption from the beginning, from the first substantive information, allegation;
  - Therefore, before starting proofing the case, it is crucial to whom the case is reported to;
  - Sometimes an event has to be “translated” in a language understandable for criminal lawyer;
  - It never has to be forgotten that only legally obtained evidence may be used before court – exclusionary rule.

- 
- Most corruption offences are consensual by definition and are motivated by mutual interest.
  - As a result, law enforcement institutions have serious difficulties to collect reliable evidence.
  - Confessions and testimonies are rare.
  - Due to lack of supporting evidence it is often difficult to obtain judicial order for the use of special investigative means and methods.
  - Active participation of the UA in the simulated active or passive bribery may easily lead to incitement of the offence committed by an individual.

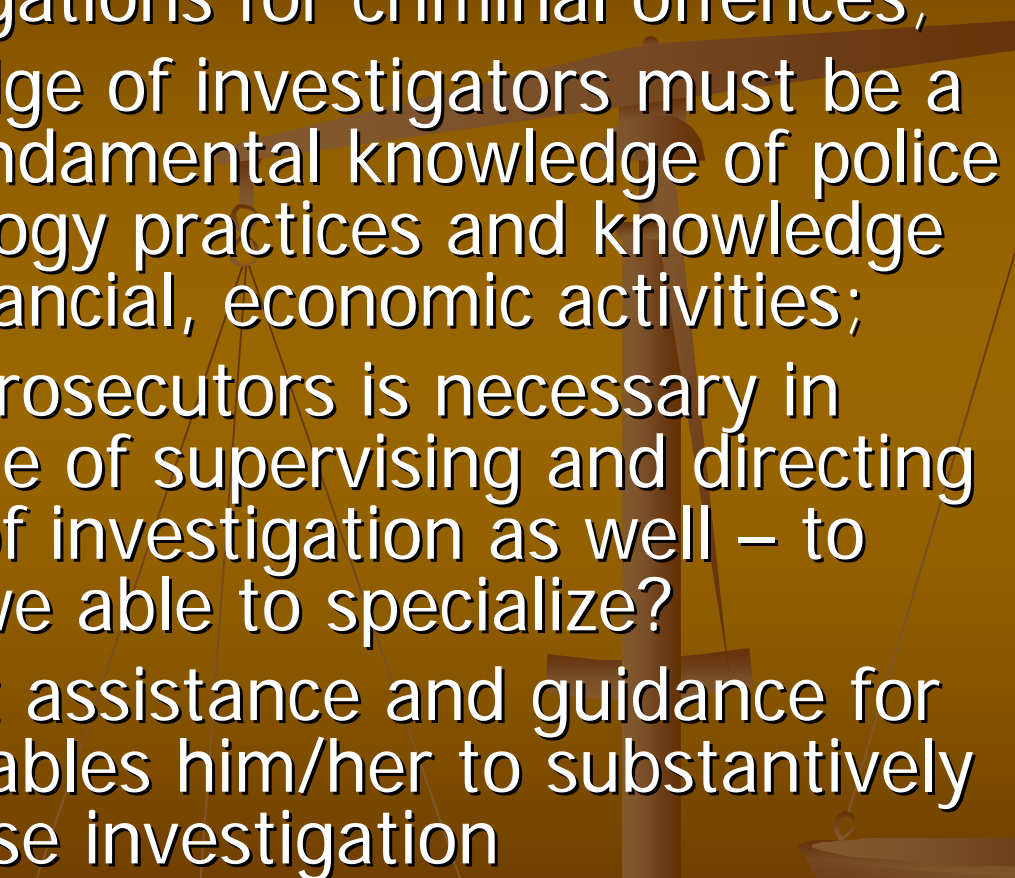
PROOFING OF THESE CRIMES CONSISTS OF SYSTEMATICALLY AND GRADUALLY COMBINING DIFFERENT INVESTIGATIVE MEANS AND METHODS AND PROCEDURAL INSTITUTES, SUCH AS:

- classical/traditional methods of gathering information and obtaining evidence;
  - highly intrusive measures such as telephone tapping, electronic surveillance etc.;
  - use of undercover agents and 'agents provocateur', simulated giving and accepting a bribe;
  - special denunciation-promoting procedures;
  - granting anonymity to witnesses
- 

# FINANCIAL INVESTIGATION IS AN INTEGRAL ELEMENT OF INVESTIGATING THIS TYPE OF CRIMINALITY

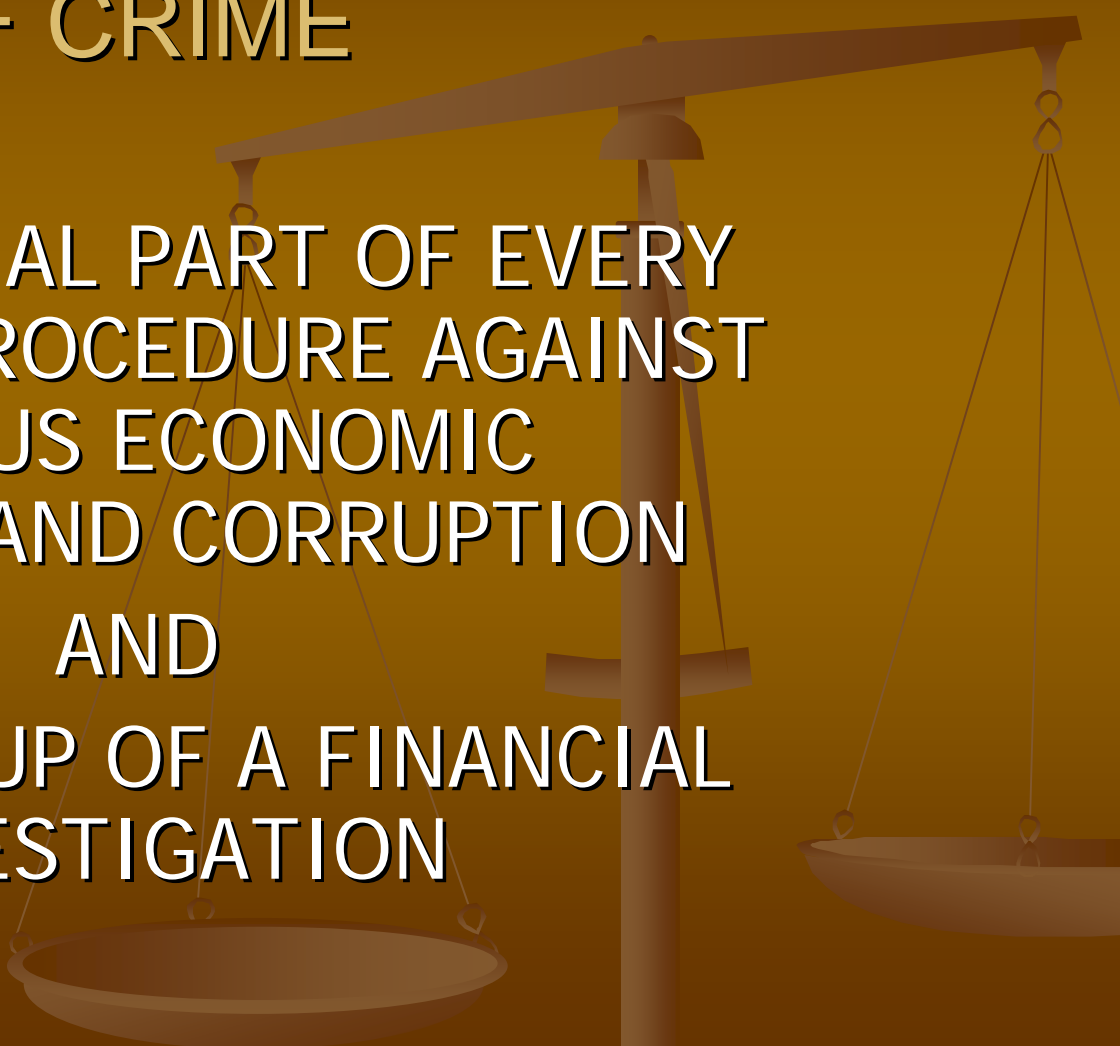
- Criminal organizations are most sensitive and vulnerable in the segment of benefits obtained by a criminal offence;
  - The fact is that such gain must at a certain point enter into legalization process (must be used for some legal purposes), and that this entry itself is a point where financial investigations become particularly relevant;
  - Who does what with respect to conducting financial investigation within specific criminal proceedings – who is the DOMINUS LITIS of this procedure?
  - What is the scope of a financial investigation – the goal, what do we want to prove?
  - Legally obtained property
- 



- 
- Important question in this field is to establish proper co-relation - balance between the conduct of financial investigations and conduct of criminal investigations for criminal offences;
  - Skills and knowledge of investigators must be a combination of fundamental knowledge of police operative-criminology practices and knowledge of commercial, financial, economic activities;
  - Specialization of prosecutors is necessary in order to be capable of supervising and directing financial aspects of investigation as well – to what extent are we able to specialize?
  - Autonomus expert assistance and guidance for the prosecutor enables him/her to substantively direct and supervise investigation

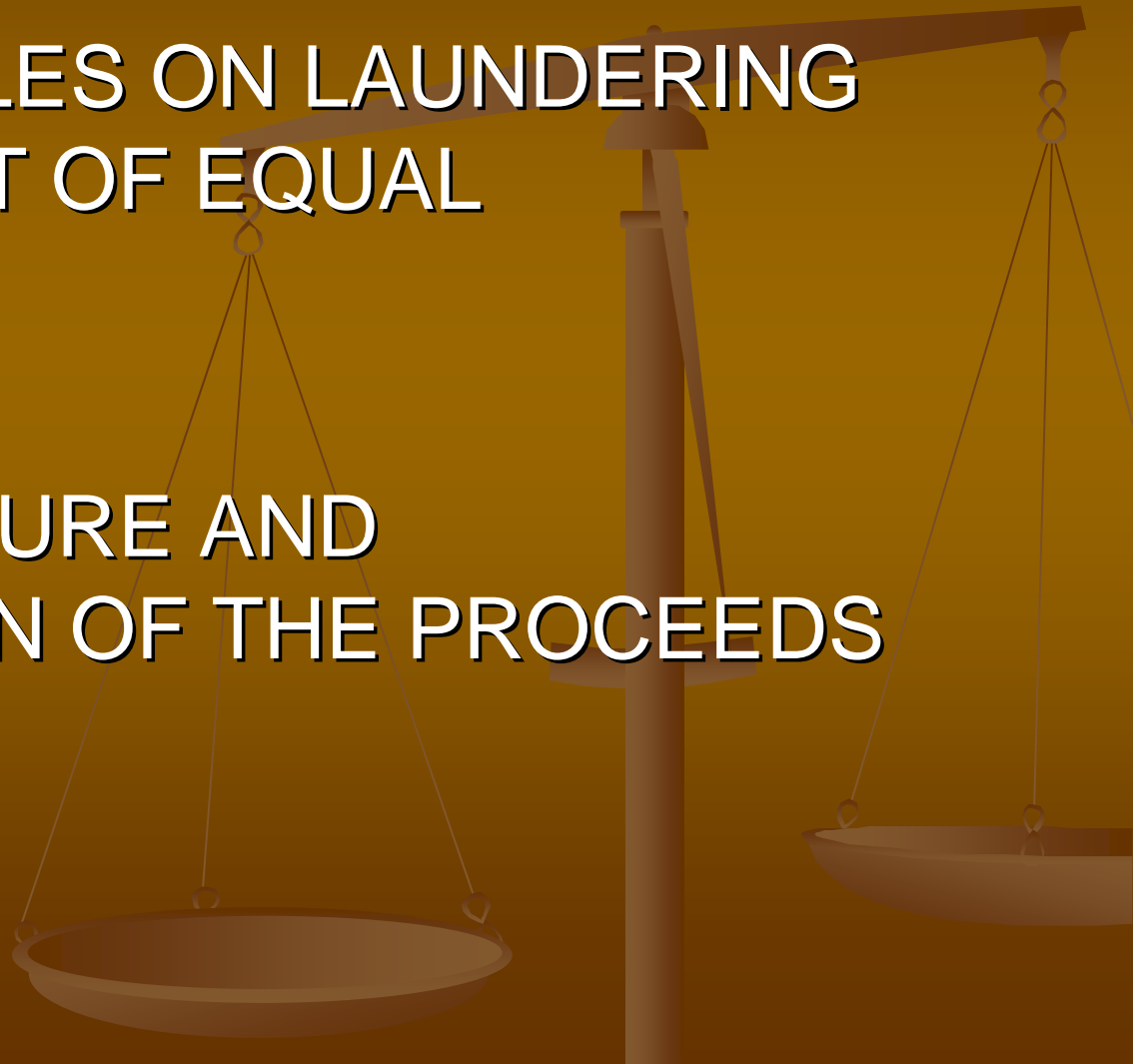
# FORFEITURES, SEIZURES AND CONFISCATION OF PROCEEDS OF CRIME

AN ESSENTIAL PART OF EVERY  
CRIMINAL PROCEDURE AGAINST  
SERIOUS ECONOMIC  
CRIME/GRAND CORRUPTION  
AND  
A FOLLOW UP OF A FINANCIAL  
INVESTIGATION




# COUNCIL OF EUROPE CONVENTION *No. 141*

- NOT JUST RULES ON LAUNDERING  
BUT (AT LEAST OF EQUAL  
IMPORTANCE)  
ON
- SEARCH, SEIZURE AND  
CONFISCATION OF THE PROCEEDS  
FROM CRIME



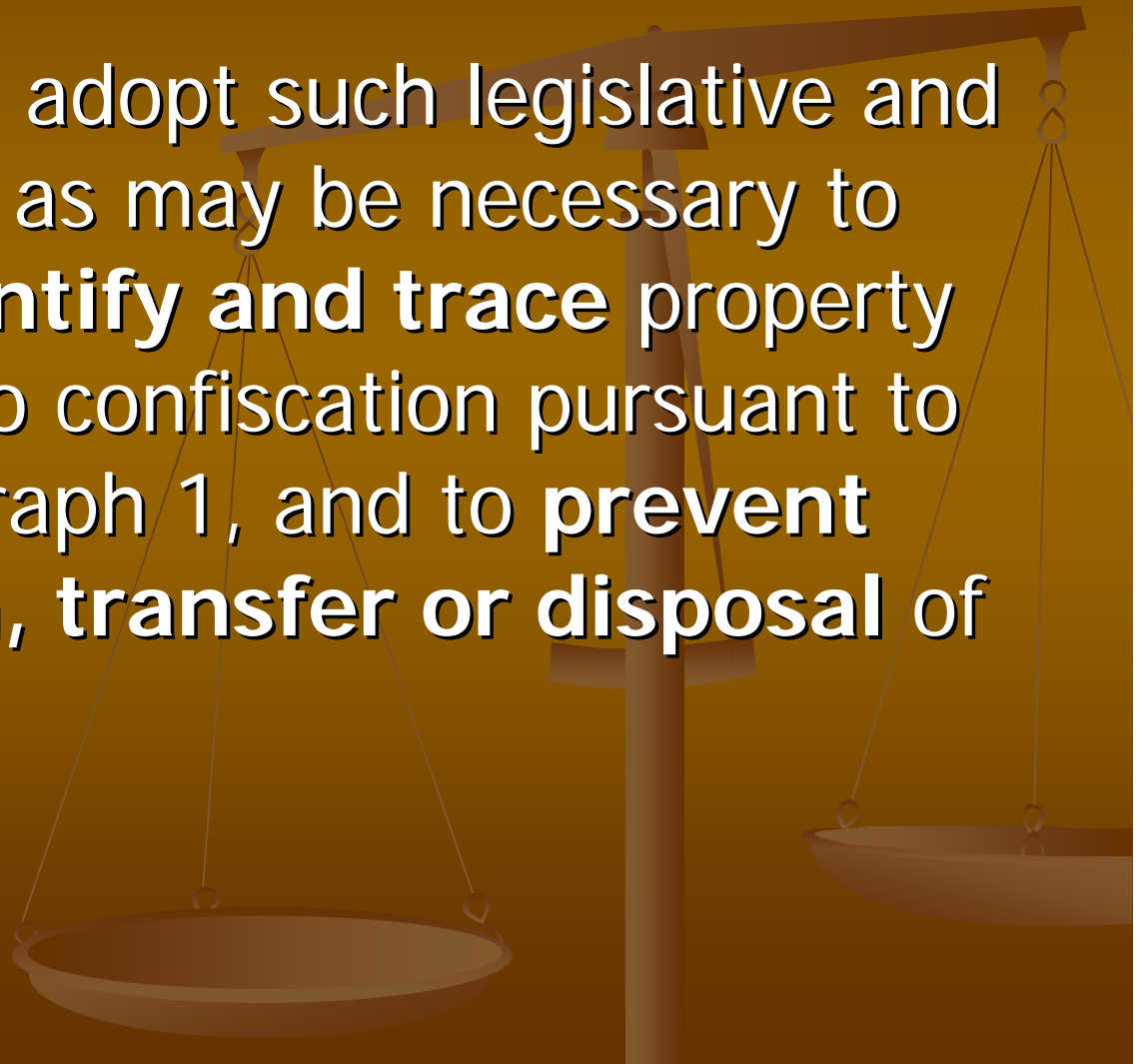
## Article 2 – Confiscation measures

Each Party shall adopt such legislative and other measures as may be necessary to enable it to **confiscate** instrumentalities and proceeds or property the value of which corresponds to such proceeds.

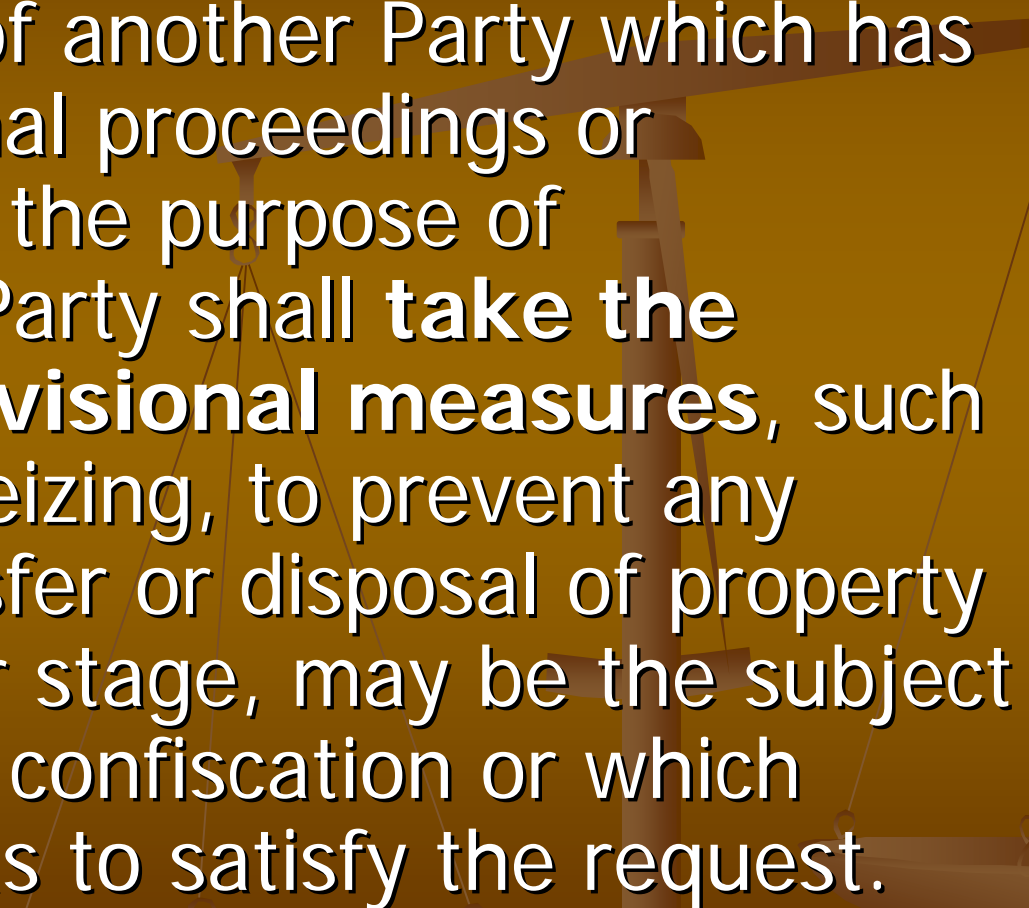


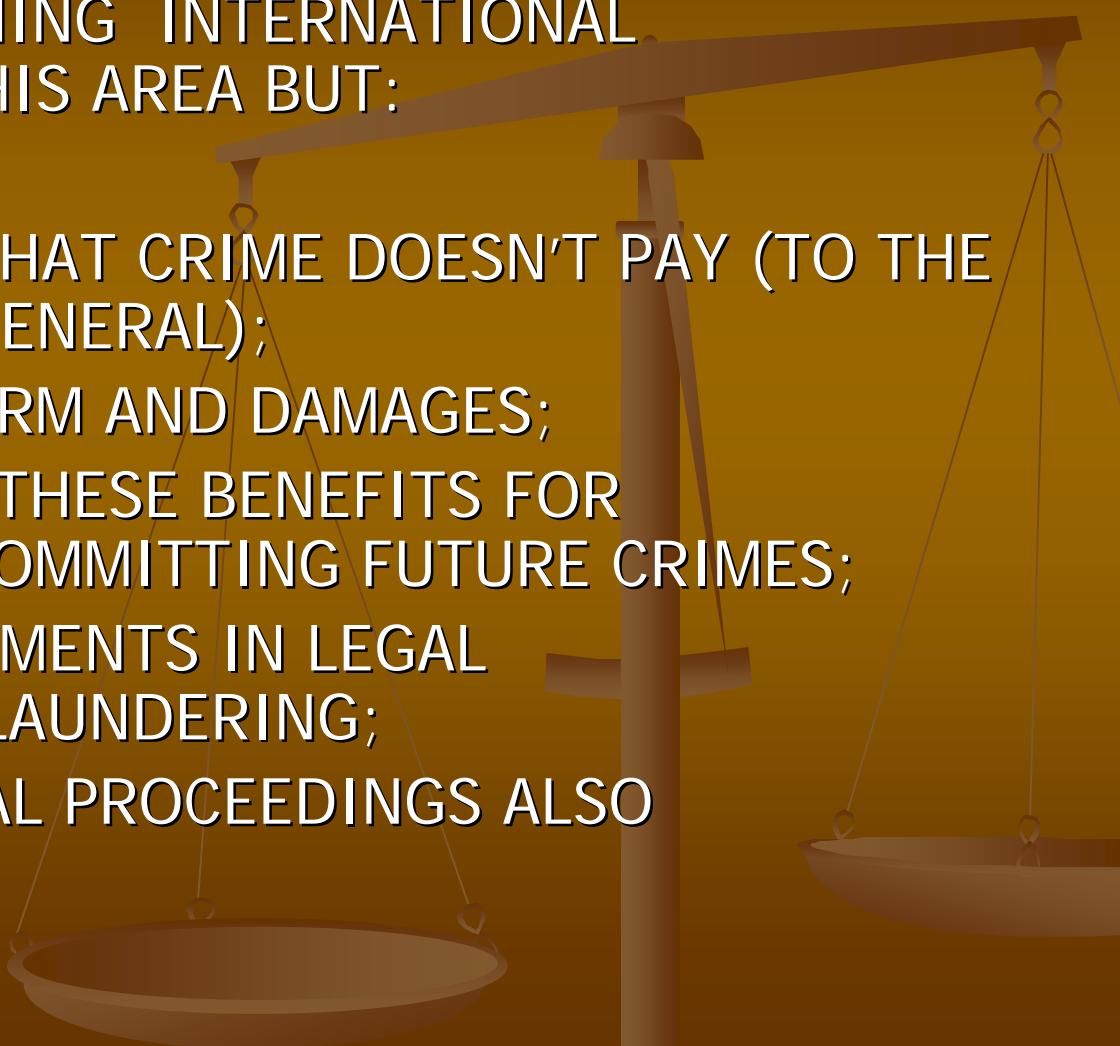
## Article 3 – Investigative and provisional measures

- Each Party shall adopt such legislative and other measures as may be necessary to enable it to **identify and trace** property which is liable to confiscation pursuant to Article 2, paragraph 1, and to **prevent any dealing in, transfer or disposal** of such property.



# Article 11 – Obligation to take provisional measures

- At the request of another Party which has instituted criminal proceedings or proceedings for the purpose of confiscation, a Party shall **take the necessary provisional measures**, such as freezing or seizing, to prevent any dealing in, transfer or disposal of property which, at a later stage, may be the subject of a request for confiscation or which might be such as to satisfy the request.
- 



- OBLIGATIONS FOR THE PARTIES TO THE CONVENTION ARE OBVIOUS; THE TASK IS NOT JUST FULLFILING THEM IN ORDER TO BE ABLE TO FULLY DEAL WITH REQUESTS CONCERNING INTERNATIONAL COOPERATION IN THIS AREA BUT:

- TO DEMONSTRATE THAT CRIME DOESN'T PAY (TO THE OFFENDER AND IN GENERAL);
- TO COMPENSATE HARM AND DAMAGES;
- TO PREVENT USING THESE BENEFITS FOR FACILITATION OF COMMITTING FUTURE CRIMES;
- TO PREVENT INVESTMENTS IN LEGAL BUSSINESS/MONEY LAUNDERING;
- TO JUSTIFY CRIMINAL PROCEEDINGS ALSO ECONOMICALLY.

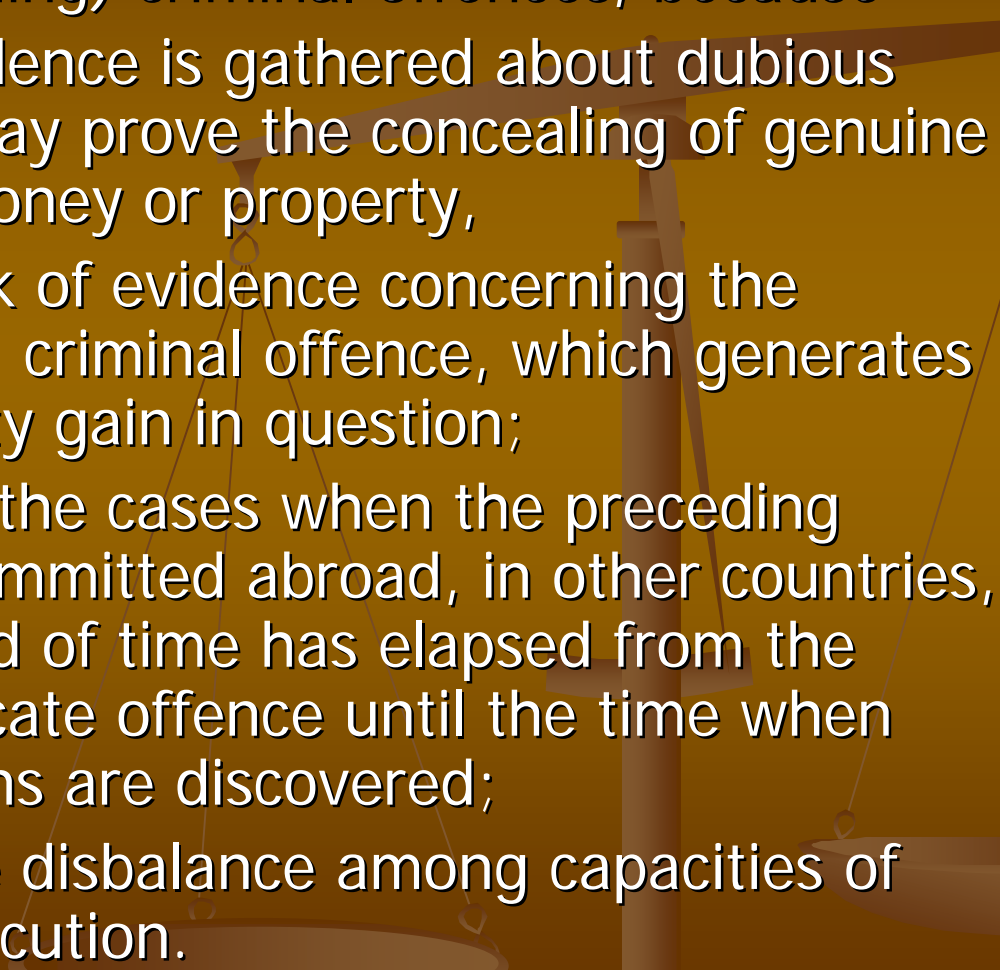
# PROBLEMS CONCERNING CRIMINAL OFFENCE OF MONEY LAUNDERING



- the main objective of the perpetrator of criminal offence of money laundering (money launderer) is legalization of «dirty money» that originates from a criminal offence.

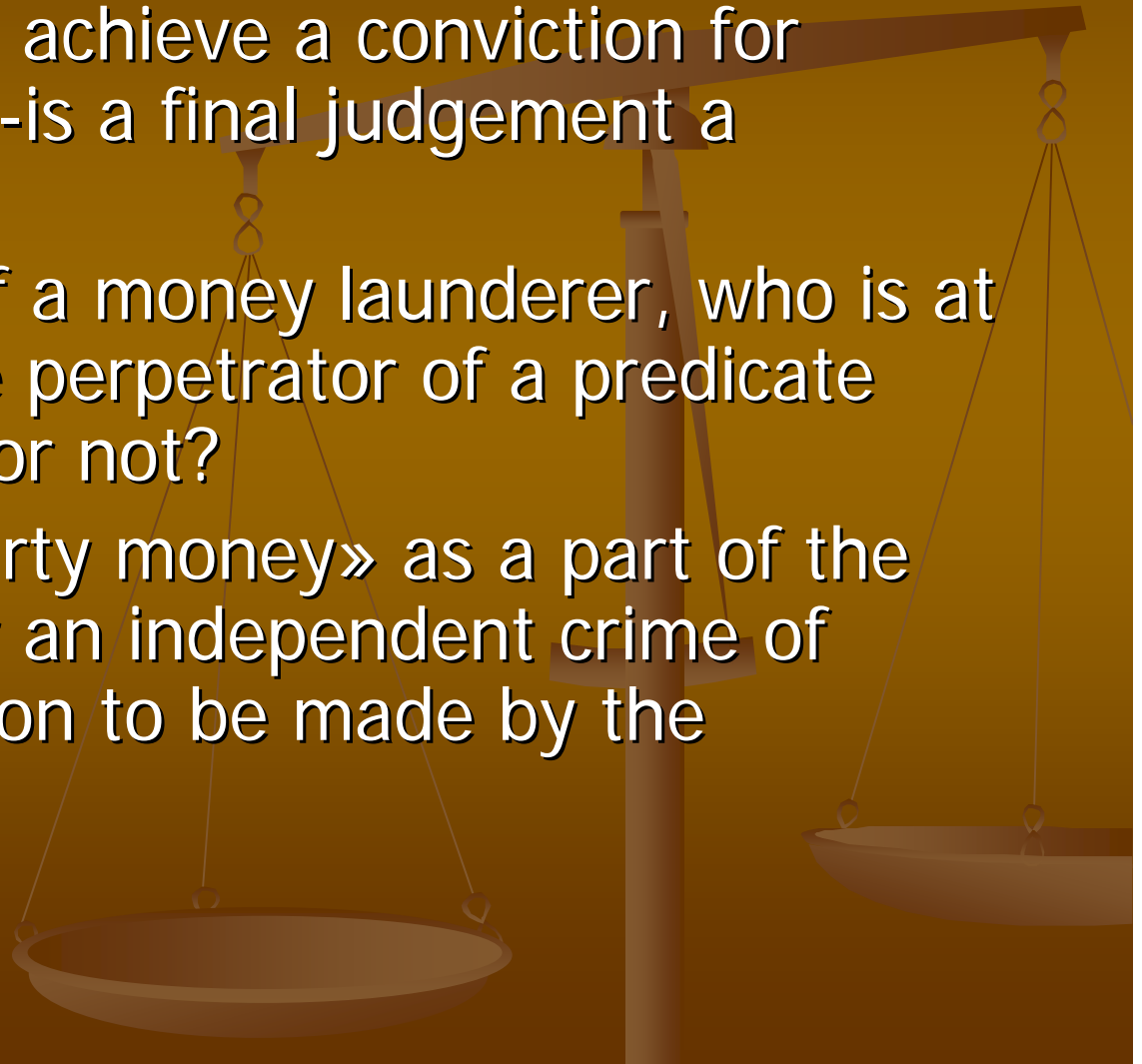


## PROBLEMS THAT MIGHT ARISE ARE:

- how to prove (sometimes even the very existence of) the predicate (preceding) criminal offences, because
  - as a rule enough evidence is gathered about dubious transactions which may prove the concealing of genuine source or origin of money or property,
  - but there is often lack of evidence concerning the predicate (preceding) criminal offence, which generates the money or property gain in question;
  - problem escalates in the cases when the preceding criminal offence is committed abroad, in other countries, or when longer period of time has elapsed from the moment of the predicate offence until the time when suspicious transactions are discovered;
  - in relation to possible disbalance among capacities of FIU, police and prosecution.
- 

# MORE MONEY LAUNDERING ISSUES

- To what extent the predicate offence need to be proven in order to achieve a conviction for laundering as well-is a final judgement a prerequisite?
- Criminal liability of a money launderer, who is at the same time the perpetrator of a predicate offence-excluded or not?
- Legalization of «dirty money» as a part of the original offence or an independent crime of laundering?-decision to be made by the prosecutor



# WHERE RESPONSIBILITY OF LEGAL PERSONS FOR CRIMINAL OFFENCES EXISTS:

- special importance in the area of economic crime and grand corruption;
  - it is necessary from the very beginning of investigations or prosecution to take into account and check whether there are grounds for liability of legal persons for criminal offences;
  - procedures against legal person should be conducted simultaneously, i.e. concurrently with obtaining evidence and establishing guilt of physical persons;
  - forfeiture and confiscation of benefits from legal persons – usually more successful than from natural persons
- 