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## ECONOMIC POLICY AND CRIMINAL POLICY IN THE PRACTICE: NEW TRENDS AND CHALLENGES IN THE FIGHT AGAINST MONEY LAUNDERING IN EUROPE AND HUNGARY<sup>1</sup>

### ABSTRACT

*Criminal policy prevails mainly in the field of legislation. Judicial power is an independent power; judges are only subject to the laws. Economic policy is more practical than science, although it has a theoretical background for applied economics. It can be defined as the state's active intervention in the economy, a conscious, coherent and targeted action that affects production, consumption, and exchange and capital formation. The relationship between economic policy and criminal policy in the area of combating economic crime can be characterized by the fact that criminality policy should be more in keeping with economic policy considerations than vice versa. Badly elected criminal policy does not necessarily help the development of the economy, economic policy and criminal policy considerations need to be carefully coordinated. In this essay we will examine the relationship between the economic policy and the criminal policy in the light of the new anti-money laundering and counter-terrorist financing regulation.*


**Keywords:** *criminal policy, economic policy, money laundering, terrorist financing, criminal law, 4th EU Anti-Money Laundering Directive, MONEYVAL*

### 1. INTRODUCTION

Economic Policy and Criminal Policy sometimes can affect each other at the same time. A good example is the field of the fight against money laundering and terrorist financing. Perpetrators of certain crimes can spend the assets originating from criminal activities without money laundering. There are, however, such crimes:

- in which the perpetrators gain extremely huge amount of income or,

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<sup>1</sup>  Supported BY the ÚNKP-17-4-III. New National Excellence Program of the Ministry of Human Capacities”

- in case of which the perpetrators regularly (weekly, monthly) realize illegal benefit originating from criminal activities without having legal sources of income.

In these 2 cases the risk of being detected is too high, criminal can watch the money rose from the crime at home but he cannot spend it. Or in other words he can try it but with it he can draw the attention of tax authority and of the investigating authorities. They need money laundering what is in criminological sense such an illegal economic service whose aim is to make justifiable the origin of the wealth from the criminal activity, getting rid of its obviously illegal being.

The European Union's Fourth Anti-Money Laundering Directive came into force last year, on the 26th June 2017. The 4<sup>th</sup> AML Directive includes some fundamental changes to the anti-money laundering procedures, including changes to CDD, a central register for beneficial owners and a focus on risk assessments.

Hungary was the first from the Council for Mutual Economic Assistance (or Comecon) member states who enacted the regulations against money laundering in 1994. Since then the regulation has been numerously modified, but in spite of this the crime has not got significant practice. Annually, in average less than ten investigations begin with the suspect of money laundering. This activity was developed with capitalism in our country in the '90s.

The Hungarian anti-money laundering regulation, operating from 2017, can be found in two acts, in the Criminal Code (act C of 2012) and in the Act of Prevention of Financing Money Laundering and Terrorism (Act LIII of 2017). The previous mentioned Criminal Code contains presently two crimes in connection with money laundering and one crime in connection with terrorist financing.

In this article I will examine the possible the effectiveness of the Hungarian criminal policy (in connection with the economic policy) in the light of the new EU regulation.

## **2. SOME THOUGHTS ABOUT THE ECONOMICS OF MONEY LAUNDERING**

Money laundering is the complex entirety of illegal economic transactions pursued under the concealment of legal economic transactions that aim to justify the origin of wealth obtained through criminal act, this way getting rid of its recognisably illegal nature. "Therefore the reason and origin of money laundering is al-

ways a crime that becomes non rentable, while its aim is that the fortune obtained this way should be used in the legal economy.”<sup>2</sup>

On the other hand money laundering has become one of the most paying and vast businesses in the world. According to the IMF estimations in the last two decade the volume of money laundering amounts to 2-5% of the unified GDP of all the countries on Earth. This seems to be true in 2018 too. Translated to concrete sums this means at least 590-1.500 billion USD annually<sup>3</sup> ten years ago, but in 2018 we can estimate this sums about more than 10.000 billion USD. In 1999 John Walker estimated this amount to be 2.850 billion USD annually in his work about modelling the tendencies of money laundering.<sup>4</sup> According to the estimations of the FATF the sum of the annually laundered “dirty money” equals to the total annual production of the economy of Spain, that also underlines the largeness of the danger.<sup>5</sup> This number does not seem to be exaggerated if we take into consideration that behind an important number of crimes committed all over the world there is a motive to gain material benefit. (To the question why he had robbed banks, the notorious American bank robber, Willie Sutton gave the laconic answer: “Because money is there.”<sup>6</sup>) We could almost regard it as logical that perpetrators of a crime try to avoid to raise the attention of the investigating or tax authorities by newer and newer, diverse methods. On the following pages we introduce nineteen such techniques.

Who has money deriving from crime in his possession first has to decide whether there is need for money laundering. That is to say up to a certain amount (for an average Hungarian citizen this is about 50.000 EUR) the sum can be spent without any problem or it can be used in legal economic activity (this latter is also qualified as money laundering). In cases of financial or bank transactions with the division of the sum (for example 50.000 EUR can be divided to five 10.000 EUR) the limit of 3.600.000 HUF (approximately 11.500 EUR) can be easily avoided.

If the sum of money of suspicious origin reaches a certain amount that can make the “smooth” use risky, then still there is possibility for the perpetrator to account

<sup>2</sup> Ferenc K., *The criticism of the bill against terrorism and preventing money laundering* [[www.jogforum.hu/publikaciok/index.php?p=47&print=1](http://www.jogforum.hu/publikaciok/index.php?p=47&print=1)] Accessed 5 November 2001

<sup>3</sup> Moulette, P., *Money laundering: staying ahead of the latest trends* In: Observer No. 220. April 2000. 28. oldal

<sup>4</sup> Lilly, P., *Dirty transactions. The world of money laundering* Perfekt Economic Consulting, Educational and Publishing Spa., Budapest, 2001 p. 39

<sup>5</sup> Johnson, J., *In Pursuit of Dirty Money: Identifying Weaknesses in the Global Financial System*, in Journal of Money Laundering Control Henry Stewart Publications London, Autumn 2001. 122. oldal

<sup>6</sup> Levy, S. M., *Federal Money Laundering Regulation (Banking, Corporate, and Securities Compliance)*, New York, 2003. Chapter 1, p. 3

for the origin of the guilty money in case of the danger of being caught: the source is a family gift, succession, loan from a friend. There is no need for anything else just to invent a credible legend (expression used at Secret Service) about the origin of the money. The main point is the adequately worked out strategy for crisis and of course it is advisable to consult a lawyer continually.

If it is about a really huge sum (of course it is relative what sum is to be considered “big”) then there might be the need for money laundering. A sum around half million EUR absolutely “claims” laundering. Naturally the amount is very relative: if someone has already had a fortune of some million and pursues legal economic activity (also), for that person not even the spending of half million EUR of illegal origin means risk. So we can say that “above a certain level”, steered with adequate economic (and political) relations there is no need for the laundering of the money obtained in an illegal way, it can be spent “filthily”...

Moreover if the perpetrator has at least one legally registered firm, then about 30% of the turnover of the firm can be laundered through it annually with the help of an accountant with enough expertise (and “venturesome”). The adequate technique for example is fictitious billing. In this sense money laundering is nothing else then the complementary transaction for tax fraud. Tax fraud is usually committed by keeping in secret a part of the income or by showing costs bigger than they are in reality. It is a basic economic relation that the profit is the part of the total income decreased by the total costs that is usually indicated with the following formula: profit is the total revenue minus the total costs. As we define the variant of money laundering with the help of economic activity as the complementary transaction for tax fraud, the logic of the commission of this crime is reversed, that is either the costs should be showed as less than in reality or (and this is more common) income should be showed as more than in reality. It is nearly a well-known fact that in Hungary it is not a serious problem for anyone to decrease his income before taxation by fictitious cost bills. (We could only suppose it with some malice that when creating taxation laws, the tax creator reckons in advance that a lot of people admit a lot less of income than it is really, so the rates of taxes are adjusted to this de facto situation...) The generality of fictitious billing is backed up also by the fact, that so called “bill factories” – that means firms that do not pursue real economic activity and produce bills in unlimited amounts for some percentage of the bills without real economic performance and after a while the actual owners disappear with the money (the registered owners of the firms are either non-existing people or homeless from whom of course the remaining public debts cannot be recovered) – are regularly pinched. After this it is easy to see that if it is relatively easy to get fictitious cost bills, then it is even more easier to get fictitious income bills and for this even some percent of commission can be

asked for and not even the tax authority will suspect a thing if someone accepts to pay the rates and taxes after his fictitious incomes. It is conceivable that the cost of money laundering is here the least as the rates and taxes that have to be paid after the fictitious income bills can be decreased by the “commission” received for the bills. Moreover the rates and taxes are to be paid after the income decreased with costs; meanwhile “commission” can be asked for the total value of the bill. This way such a situation can occur that the operation of money laundering will not be loss-making.! (Just think it over: 50% of average cost level, 30% of rates and taxes and if the buyer pays 15% of the value of the bill for the fictitious bill then the result of the operation will be 0, so there is not going to be neither profit nor loss.) It is worth for the perpetrators to use this method even if 10-20% loss is formed, furthermore the danger of getting caught is possibly here the least.

Even those might need money laundering who realise income regularly from crimes and have no civil job, so who perpetrates crime as a life style. The easiest technique even here is to establish a cover firm.

### 3. ECONOMIC POLICY AND CRIMINAL POLICY<sup>7</sup>

Criminal policy is always a dynamic activity that is geared to a quantitative, qualitative change in crime and to a sense of social certainty, and is therefore constantly changing dynamic activity, whose instrumental system is not determined by the quantitative and qualitative changes in crime but by the civilization level of society.<sup>8</sup>

Criminal policy prevails mainly in the field of legislation. Judicial power is an independent power; judges are only subject to the laws.

In the legal practice (at least in the constitutional state) criminal policy only as the will of the legislator can prevail, so the courts cannot be controlled directly.<sup>9</sup> From that reason, we do not mention the judiciary (criminal law) policy as a separate area within the criminal justice policy. Policy is a group decision-making process. Economic policy means the totality of tools, methods and measures necessary to achieve the economic goals of the government. Economic policy is one of the elements of general policy, and therefore

<sup>7</sup> See more: Gál, I. L., *Relationship Between Criminal Policy and Economic Policy* In: Mrvić Petrović, N., Grbić Pavlović N., (eds.) *Usaglasavanje pravne regulative sa pravnim tekovinama (Acquis Communautaire)* Evropske Unije, Banja Luka: Istraživački Centar, 2018, pp. 65-71

<sup>8</sup> Farkas A., *A kriminálpolitika és a büntető igazságszolgáltatás hatékonysága*, Tanulmányok Szabó András 70. születésnapjára Magyar kriminológiai Társaság Budapest, 1998. 81. oldal

<sup>9</sup> Finszter G., *Kriminálpolitika tegnap és ma*, Rendészeti Szemle 2006. 12. szám 77. oldal

the objectives are to be achieved by the state. Implementation of the economic policy is the task of state leadership. The purpose of the economic policy is to ensure the functioning of the economy, to meet the higher social needs and to meet social well-being. The achievement of these goals is primarily driven by the fiscal policy and the monetary policy. These two policies are the two main parts of the economic policy.

Economic policy is more practical than science, although it has a theoretical background for applied economics. It can be defined as the state's active intervention in the economy, a conscious, coherent and targeted action that affects production, consumption, and exchange and capital formation. The main components of economic policy are:

- setting objectives, such as growth, full employment, balance of payments, reducing inequalities, price stability, sustainable (and sustainable) development;
- Setting up a target hierarchy: some goals are incompatible, so a priority order has to be set up;
- Analysis of relationship between objectives: economic policy takes into account the relationships that economists have identified between each target;
- Choice of instruments: economic policy presupposes the use of instruments to achieve the objectives (monetary or fiscal instruments, etc.).<sup>10</sup>

The relationship between economic policy and criminal policy in the area of combating economic crime can be characterized by the fact that criminality policy should be more in keeping with economic policy considerations than vice versa. Badly elected criminal policy does not necessarily help the development of the economy, economic policy and criminal policy considerations need to be carefully coordinated.

Criminal policy, have to focus other factors in economic policy terms, but criminal policy must focus on of the medium- and long-term economic objectives of economic crime. Criminal law must show relative stability, but the regulation of economic crime often changes, and in these economic terms this is understandable. It is not advisable to use strict punishment, but it is essential to ensure the ultimate role of criminal law in the economy. This should be done even if we find that economic players doubt the effectiveness of an economic criminal law - often unjustifiably.

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<sup>10</sup> Közgazdasági és Társadalomtudományi Kisenciklopédia Napvilág Kiadó Budapest, 2005. 165-166. oldal

“Despite the fact that the criminal law provisions on the protection of fundamental economic interests can be considered part of the criminal law concept inherent in the traditional sense, the criminal law of modern capitalism has recognized the fact that the principles of criminal policy do not fully apply to crimes committed in connection with economic activity. There have been cases of breaches in the enforcement of the criminal law of both legislation and enforcement in relation to economic crimes. The reason to create the criminological category of white collar criminals, it was precisely the recognition that there is a group of offenders who are against the general objectives of criminal policy do not apply.”<sup>11</sup>

The common feature of economic policy and criminal policy is that they both have close relationship with social policy. The best criminal policy is good social policy (as Franz von Liszt has already recognized), that is to say, the fight against crime cannot be effectively tackled by means of criminal law.

Economic policy and criminal policy interact with each other. This interaction is basically two-way. A well-elected economic policy is able to reduce the number of criminal offenses, especially the rate of crime against property may be reduced. As a result of an economic crisis caused by an improper economic policy, the volume of crime against property may increase.

A non-novel research topic is the search for correlation between economic indicators and crime. Based on the Bavarian data series from 1835 to 1861, Georg von Mayr quantified the relationship between the price of cereal and the number of thefts. The increase in grain prices has led to an increase in stealing and vice versa.<sup>12</sup>

In the 1880s, the famous French criminal lawyer and criminologist, Lacassagne, also examined the relationship between economic factors and crime. He found that the change in wheat prices was almost entirely combined with a change in the number of crimes against property and the effects of economic crises.<sup>13</sup>

During the economic crisis of the United States in the 1890s, criminal statistics also indicated something. “At the beginning of the crisis, newspapers reported a huge increase in corruption. On January 1, 1895, in a Chicago Daily Tribune article, he claimed that in 1894 he had been the largest number of embezzlement since 1878, which was also a serious crisis.”<sup>14</sup>

<sup>11</sup> Wiener, A. I., *Gazdasági büncselekmények* Közgazdasági és Jogi Könyvkiadó Budapest, 1986, 42. p

<sup>12</sup> Martens U., *Wirtschaftliche Krise, Arbeitslosigkeit und Kriminalitätsbewegung* Freiburg i. Br., 1978, p. 5-6

<sup>13</sup> Lacassagne, A., *Marche de la criminalité en France 1825-80*, Revue Scientifique, 1881

<sup>14</sup> Akerlof, G. A., Shiller, R.J., *Animal Spirits*, Corvina Kiadó Budapest, 2011, p. 91

According to a German research carried out by Exner after the First World War<sup>15</sup>, the following relationship was demonstrated: the increase in the number of unemployed with every million people is expected to increase the number of convicts stealing by ten thousand on average.

Between 1882 and 1914, rye and bread prices almost all went together with the number of thefts known in Germany, according to research by Eduard Joachim<sup>16</sup>. At the beginning of the 20th century Dorothy Swaine Thomas examined the correlation between economic cycles and various types of offenses between 1865 and 1915.<sup>17</sup> And the literature examples could be prolonged.

#### **4. KEY ELEMENTS OF THE 4TH EU ANTI-MONEY LAUNDERING DIRECTIVE**

The fourth Anti-Money Laundering Directive (EU) No. 2015/849 entered into force on 26<sup>th</sup> June 2015. After it entered into force, Hungary started to make the new AML regulation. This is the Act LIII. of the year 2017. which contains the most important elements of the new Hungarian AML regulation, and totally comply with the 4<sup>th</sup> EU Directive.

The key elements of the 4<sup>th</sup> Directive according to a recent article published in this topic are the followings:

“Under the 4th AMLD, a key role is accorded to the principle of risk analysis and the corresponding adequate safeguards. Both the EU Commission and jointly the European supervisory authorities EBA, EIOPA and ESMA (ESAs) shall conduct an analysis of money laundering and terrorism financing risks. The EU Commission is instructed to send its findings and its recommendations based on this analysis to the Member States and the obliged entities under the Directive so that the Member States can better understand and counteract such risks more effectively.

In addition, the 4th AMLD will also provide for an extension of the scope of anti-money laundering legislation requirements: for example, by reducing the threshold for cash transactions above which persons trading in goods qualify as ‘obliged entities’ and in particular in which an obligation to identify the customer is triggered. This threshold will be reduced from €15,000 to €10,000.

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<sup>15</sup> Exner, F., *Krieg und Kriminalität Kriminalistische Abhandlungen*, Heft 1., Leipzig, 1926

<sup>16</sup> Eduard, J., *Konjunktur und Kriminalität*, Offenburg, 1933, p. 19

<sup>17</sup> Dorothy, S. T., *Social Aspects of the Business Cycle*, New York, 1927



The 4th AMLD also extends its applicability to providers of gambling services which are now listed as ‘obliged entities’. The Member States can, however, remove these providers – with the exception of casinos – partially or completely from the list of obliged entities if a low money laundering risk is evidenced.

The scope of the 4th AMLD is also extended by including as obliged entities not only real estate agents involved in the purchase or sale of real estate properties, but also those agents involved in the letting of real estate properties.

As regards beneficial ownership, the EU Member States are obliged under the 4th AMLD to create central registers containing information on the beneficial ownership of corporations, including Anglo-American trust structures.

The 4th AMLD provides that the competent national authorities (such as the Financial Intelligence Units) and obliged entities have to have access to the central register under the national anti-money laundering legislation for exercising their customer due diligence. Persons and organisations capable of evidencing a ‘legitimate interest’ in this information (e.g., an interest relating to money laundering) must get access to the central register except for information regarding trust structures.

The 4th AMLD no longer differentiates between politically exposed persons (PEPs) resident in the same country as the obliged entity and in other countries. Further, special obligations apply with respect to PEPs classified as beneficial owner. Furthermore, the 4th AMLD expands the category of PEPs to include members of the governing bodies of political parties, which will result in the necessity to update existing PEP lists.

Whilst already under the current European legislation, banks and certain other companies in the finance sector are obliged to establish group-wide compliance systems, including due diligence requirements relating to money laundering, this obligation will in future also apply to other obliged entities under the Directive.

As regards sanctions, the 4th AMLD is following an approach pursued in recent European legislation of requiring specific and far-reaching powers of the Member States to be exercised in case of non-compliance with the requirements of the Directive.

The approach of ‘naming and shaming’, which can likewise be observed more frequently in recent European legislation, is also being pursued. That means that the competent authorities shall publish the decisions based on breaches

of the requirements laid down by the 4th AMLD, unless overriding reasons require an anonymous publication.”<sup>18</sup>

Major changes to EU (EU) 2015/849 are the followings<sup>19</sup>:

1) Improving access to registers of ultimate beneficial owners

This will make the ownership of businesses and trust providers more transparent. The records will be linked to facilitate cooperation between the Member States. Member States may, in accordance with their national law, continue to provide wider access to this information.

2) Handling risks associated with prepaid cards and virtual payments

For prepaid cards, the cardholder must be identified over EUR 150 instead of the former EUR 250 card and the customer identification requirements have been added. Virtual Paying Platforms and Wallet Service Providers will be required to perform customer due diligence, eliminating the anonymity of such transactions.

3) Improve cooperation between national financial information units

National information units will be able to access the data stored in central accounts of bank accounts and payment accounts so that they can identify account holders.

4) Stricter controls on high-risk third countries

The Commission has established and regularly updates a harmonized list of third countries where deficiencies exist in the money laundering prevention system.

## 5. THE EFFECTIVENESS OF THE HUNGARIAN AML POLICY

In the former decade the number of the money laundering investigations in Hungary was not so high. In the official crime statistics, we could see 5-10 cases in a year.

Today something is happening, only in Budapest there are more than 100 money laundering investigations. The number of the reported suspicious transactions was around 10.000 in the last decade every year. The new AML regulation is effective

<sup>18</sup> Kunz, J. H., *Key elements of the 4th EU Anti-Money Laundering Directive* [<https://www.financierworldwide.com/key-elements-of-the-4th-eu-anti-money-laundering-directive/#.WtMmZC5uaUk>] Accessed 15.04.2018

<sup>19</sup> [<http://www.consilium.europa.eu/hu/policies/fight-against-terrorism/fight-against-terrorist-financing/>] Accessed 15.05.2018

enough, in the Act LIII. of the year 2017. and in the Hungarian Criminal Code (Act. C. of the year 2012.) as well.

We had a MONEYVAL monitoring process in 2016; the results were published in December 2017<sup>20</sup>. “As a result of Hungary’s progress in strengthening its framework to tackle money laundering and terrorist financing since its mutual evaluation in September 2016, MONEYVAL has re-rated the country on 13 of the 40 Recommendations. Hungary has been in an enhanced follow-up process, following the adoption of its mutual evaluation, which assessed the effectiveness of Hungary’s anti-money laundering and counter-terrorist financing (AML/CFT) measures and their compliance with the Recommendations by the Financial Action Task Force (FATF). In line with MONEYVAL’s rules of procedure, the country has reported back to MONEYVAL on the progress it has made to strengthen its AML/CFT framework. This report analyses Hungary’s progress in addressing the technical compliance deficiencies identified in the mutual evaluation report. The report also looks at whether Hungary has implemented new measures to meet the requirements of FATF Recommendations that have changed since the country’s 2016 mutual evaluation. MONEYVAL decided that Hungary should remain in enhanced follow-up and next report back in December 2018 as per Rule 23, paragraph 1 of MONEYVAL’s 5th round rules of procedure.”<sup>21</sup>

There are countries that conduct a very profitable business through the tacit suffering of money laundering, by allowing phantom firms to be formed and, by the very strict interpretation of banking secrets, make anonymous bank deposits possible. As “unclean” money very quickly finds such areas, these countries come into outstandingly high incomes through money laundering. We have to admit, however, that Hungary must not choose this way not only for sheer moral reasons (although these alone would be enough), but also for reasons dictated by economic rationality. An average-sized European country with a democratic political culture would lose more as a result of the sanctions introduced by the international community and the organisations dealing with money laundering than the profits it would gain from the capital to be laundered coming in to be laundered in the country. We could also say that we are neither small, nor large enough to put up with money laundering. Every opinion in between, any tiny allowance could be equally dangerous as tacitly letting money launderers gain ground. Therefore, the interest of Hungary is to prosecute money laundering with all the means at its disposal, or at least try to drive it out of the country.

<sup>20</sup> [<https://rm.coe.int/moneyval-2017-21-hungary-1st-enhanced-follow-up-report-technical-comp-1/1680792c61>] Accessed 15.04.2018

<sup>21</sup> [<https://www.coe.int/en/web/moneyval/home>] Accessed 15.04.2018

In the interest of the struggle against money laundering as an objective, we need to cooperate with other countries and international organisations. With respect to this, we have already undertaken several international obligations but we are to be ready to conclude further agreements or the reinforcement of the earlier ones; at the same time, we are also to initiate such.

## 6. CONCLUSION

The New Hungarian regulation of the AML/CFT is effective enough. We have more and more cases in the practice. We cannot give up on the development and continuous improvement of the legal regulations in view of the fact that the problem of money laundering cannot be solved through exclusively criminal law means. Criminal law – as we can unfortunately experience nowadays – is not able to remedy the deleterious social phenomena; furthermore, it cannot even solve the problems emerging in connection with crime. Crime is a social phenomenon in connection with which criminal law – to use a medical expression – can only provide symptomatic treatment. In spite of this, this branch of law cannot be neglected or replaced by anything else either. In the fight against money laundering, however, we should give priority to non-criminal law means; that is, we should develop the financial system in such a way that money laundering in Hungary would be possible only through extreme difficulties. This way, a great percentage of “unclean money” would avoid the country and would move towards areas where it would not meet such strong opposition. If we achieve this, while simultaneously taking part in the cooperation conducted for the fight against money laundering, we can say that we have performed the obligations we have undertaken internationally. However, we can still not lean back as the methods of money laundering are continuously being perfected; perpetrators are developing newer and newer techniques. As far as we can see, the fight will never end, consequently, the main aim can only be that we are a step ahead of the perpetrators, and we preserve this step for the longest possible time.

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