Corruption Criminal Offenses as Predicate Economic Crimes to Money Laundering

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Abstract

The paper assumes that corruption offenses, as one of the typical phenomenological forms of economic crime, represent predicate crimes to money laundering. Therefore, the principal goal of the paper is the examination of the causal link between money laundering and corruption criminal offenses. In order to questioning the validity of the starting hypothesis, in the first part of the paper, it is analyzed the international and European legal framework concerning corruption offenses as predicate crimes to money laundering. After analyzing the relevant provisions of the named legal framework, it seems that the next step is the process of considering the most common phenomenological forms of corruption offenses as predicate crimes to money laundering. However, since there are numerous phenomenological forms of corruption offenses, in this paper, it will be analyzed only the following: 1) abuse of office; 2) soliciting and accepting bribe as well as making bribe; 3) influence peddling and 4) embezzlement. Finally, the last part of the paper is dedicated to analyzing the methods of laundering the proceeds arising from corruption offenses, according to the criteria of the entity through which money is laundered. Considering the variety of phenomenological forms of money laundering arising from corruption offenses, as well as the concealment in the placement and integration of laundered money into legal financial flows, in the concluding considerations some recommendations, for implementing a proactive approach in the process of detecting this crime, are provided.

Keywords: *corruption offenses, predicate crimes, money laundering, economic crime*

I. Introduction remarks

Money laundering means the process of conversion or transfer of illegally derived property, by concealing or disguising the illicit origin of that property, as well as eliminating traces of its acquisition, possession or use in order to integrate laundered proceeds into legal financial flows.[1] In that context, it should be noted that money laundering has three stages of execution:

1) placement of illegally derived property into financial flows;

2) concealment of the source of acquisition or possession of that property and

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3) integration of laundered proceeds into legal financial flows. During the placement phase, perpetrator inserts the proceeds derived from corruption criminal offenses in the financial system, through e.g. gambling activities.[2] This stage is followed by the next one, known as concealing stage, when illegally derived proceeds flow through financial system, by the realization of a numerous of different forms of transactions, such as cases of fictitious sale and purchase, fraudulent contracts, use of trusts, companies and similar specialized forms of legal entities whose role is to assist in the transfer of illegal proceeds to the desired destination.[3] Finally, in the last phase, so-called integration stage, occurs the unification of illegal proceeds derived from corruption offenses with legal proceeds in financial system, through the investment of proceeds derived from corruption criminal activity in e.g. the real estate market, purchase of luxury goods, import-export business ventures, jewelry trade.[4]

When it comes to the proceeds derived from corruption criminal offense, it should be noted that property subject to money laundering may derive from any criminal activity, including proceeds derived from corruption offenses.[5] In other words, corruption offenses can be predicate crimes to money laundering, which implies that laundered proceeds may derive from some corruption crime. In this regard, the main goal of this paper is to explain the causal link between money laundering and corruption criminal offenses with a focus on the analysis of relevant international and European framework as well as the most common phenomenological forms and modus operandi of corruption offenses recognized as predicate economic crimes to money laundering.

II. International and european framework regarding corruption criminal offenses as predicate economic crimes to money laundering

At the UN level, money laundering has begun to attract the attention of decision-making stakeholders since the late 1980s, when the *United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* was adopted in Vienna in 1988, sanctioning, among other things, acts of laundering of proceeds of crime derived from illicit traffic in narcotic drugs and psychotropic substances.[6] However, in this sense, it should be noticed that the main limitation of this Convention is related to the fact that it recognized only criminal offenses concerning illicit traffic in narcotic drugs and psychotropic substances as predicate crimes to money laundering. In other words, according to this Convention, corruption offenses had not been recognized as predicate crimes to money laundering.

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[2] Srbljanovic, R., et. al., *Money Laundering typologies in the Republic of Serbia*. OSCE Mission to Serbia, Belgrade, 2013, 11.

[3] Royal Institution of Chartered Surveyors, *Countering bribery, corruption, money laundering and terrorist financing*. Royal Institution of Chartered Surveyors, London, 2019, 3.

[4] Reed Q., Fontana A. „Corruption and illicit financial flows-the limits and possibilities of current approaches" *Chr. Michelsen Institute U4 Issue* No.2. 2-13.

[5] UNODC, *Money laundering and financing of terrorism*. UNODC, Vienna, 2009, 12;Bošković A., Pavlović Z., „Special Evidentiary Actions in the Function of Combating Organized Crime in Serbia", *Journal Of Eastern ¬European Criminal Law*, No.1. 2015, 41.

[6] United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 20 December 1988, United Nations, Treaty Series, vol. 1582.

Therefore, it should be mentioned that criminalization of the laundering of proceeds of crime received broader significance from 2000 when the *United Nations Convention against Transnational Organized Crime* was adopted in Palermo, since it did not only limited criminal offense of money laundering to the proceeds derived from illicit traffic in narcotic drugs and psychotropic substances, but also has extended the provision to include the wide range criminal offenses as possible forms of predicate crimes to money laundering, especially those related to the area of organized crime.[7] In this respect, the additional significance of this convention is recognition of corruption criminal offenses as one of the predicate offenses to money laundering, in the form of promising, offering or giving bribe on the one hand, as well as soliciting or accepting bribe, on the other hand.

Although the United Nations Convention against Transnational Organized Crime has established the link between money laundering and corruption offenses, the comprehensive recognition of corruption offenses as the form of predicate economic crimes to money laundering was introduced by the *United Nations Convention against Corruption* adopted in New York in 2003, prescribing as standalone crime laundering of proceeds derived from corruption criminal offenses.[8] In this sense, it should be mentioned that this Convention has prescribed a wide range of corruption crimes including the following:

a) bribery of national public officials (Article 15);

b) bribery of foreign public officials and officials of public international organizations (Article 16);

c) embezzlement, misappropriation or other diversion of property by a public official (Article 17); g) trading in influence (Article 18);

d) abuse of functions (Article 19);

f) illicit enrichment (Article 20);

e) bribery in the private sector (Article 21) and g) embezzlement of property in the private sector (Article 22).

On the other side, when it comes to the Council of Europe's framework regarding recognition of corruption criminal offenses as the form of predicate economic crimes to money laundering, it should be emphasized that there are two main legal acts (Pavlović, 2018: 58).[9] Firstly, there is *Criminal Law Convention on Corruption* adopted in 1999 in Strasbourg which has prescribed as standalone criminal offense - money laundering of proceeds from corruption offences, meaning under this crime the following phenomenological forms of corruption crimes such as:

a) active bribery of domestic public officials (Article 2);

b) passive bribery of domestic public officials (Article 3);

c) bribery of members of domestic public assemblies (Article 4);

d) bribery of foreign public officials (Article 5);

e) bribery of members of foreign public assemblies (Article 6);

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[7] United Nations Convention against Transnational Organized Crime, New York, 15 November 2000, United Nations, Treaty Series, vol. 2225. V. Cvetković, „U susret izmenama zakona o oduzimanju imovine proistekle iz krivičnog dela", *Bilten vrhovnog kasacionog suda*, br. 2, 2016, 35-36.

[8] United Nations Convention against Corruption, New York, 31 October 2003, United Nations, Treaty Series, vol. 2349.

[9] Pavlović Z., „Institucionalni kapaciteti Srbije za suprotstavljanje organizovanom kriminalu, terorizmu i korupciji", *Zbornik radova sa naučne konferencije Finansijski kriminalitet. (ur. J.Kostić, A.Stefanović)* Institut za uporedno pravo i Institut za kriminološka i sociološka istraživanja u saradnji sa Pravosudnom akademijom. Beograd, 2018, 58.

f) active bribery in the private sector (Article 7); g) passive bribery in the private sector (Article 8);

h) bribery of officials of international organizations (Article 9);

i) bribery of members of international parliamentary assemblies (Article 10);

j) bribery of judges and officials of international courts (Article 11); and

k) trading in influence (Article 12).[10]

Finally, considering the issue of money laundering derived from corruption criminal offenses, relevant legal act at the Council of Europe level represents the *Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism* adopted in Warsaw in 2005, which has recognized criminal offenses of bribery as well as embezzlement as predicate economic crimes to money laundering.[11]

III. The most common phenomenological forms of corruption offenses as predicate economic crimes to money laundering

Depending on the nature of corruption offenses, money laundering can be manifested through various phenomenological forms of execution (Financial Conduct Authority, 2013: 3).[12] However, the most typical manifestations of money laundering derived from corruption offenses are the following:

1) abuse of office;

2) soliciting and accepting bribe as well as making bribe;

3) influence-peddling and

4) embezzlement.

First of all, it should be noted that *abuse of office* as predicate crime to money laundering includes perpetrator's acts of abusing of office or authority, exceeding the limits of his official authority or dereliction of duty with intent to acquire for himself or another natural person or legal entity any benefit, or to cause damages to a third party or seriously violate the rights of another. In this regard, an illustrative example of abuse of office is the case of a general director of a state-owned company who, through abuse of his or her official position, acquired for himself benefit by making a fictitious contract with a foreign company concerning the purchase of equipment, without the intention of implementing it. Instead of that, the perpetrator, after the transfer of money to a bank account of a foreign company falsely intended for the payment of the agreed equipment, was transferred it to its own non-resident accounts that were opened in numerous foreign countries for the purpose of using that money for purchase of real estate and motor vehicles, thereby committing money laundering derived from a corruption crime.[13]

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[10] Criminal Law Convention on Corruption, Strasbourg, 27.I.1999, Council of Europe Treaty Series-No. 173.

[11] Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw, 16.V.2005, Council of Europe Treaty Series -No. 198.

[12] Financial Conduct Authority, „Anti-Money Laundering and Anti-Bribery and Corruption Systems and Controls" Financial Conduct Authority, London, 2013, 3.

[13] Pantelić J., et.al. *Money Laundering typologies- Money Laundering case studies*, OSCE Mission to Serbia, Belgrade, 2015, 57-58.

On the other hand, in the context of *soliciting and accepting bribe as well as making bribe*, the process of money laundering derived from corruption offenses can be explained through two successive stages.[14] The first stage involves arranging the transfer of money or gifts to the recipient of the bribe in exchange for authorizing the execution of some kind of service, e.g. for the right to use certain state resources, a perpetrator pays the fee to the corrupt official for that service. In the next phase, the bribe giver transfers funds appropriately to the bribe recipient, from the modus operandi such as payment of cash services fees, through more complex methods such as depositing funds into the accounts of the bribe recipients that are opened in his home country in the name of a fictitious natural or legal person, to those the most complex which involve the transfer of funds outside the home country of the recipient of a bribe through e.g. shell companies and trusts, by making electronic money transfers to accounts opened in offshore countries where the origin of illicit proceeds can be easily concealed, with the aim of investing such laundered proceeds into a legal activity.

Furthermore, predicate crime of money laundering may be the *influence-peddling* where a domestic or foreign official, solicits or accepts, makes a promise or an offer, or gives either directly or through a third party a reward or any other benefit for himself or another in order to use his official or social position or his real or assumed influence to intercede for the performance or non-performance of an official act or to intercede for performance of an official act which should not be performed or for non-performance of an official act which should have been performed. For example, this may be the case with an official who requires from a legal entity that seeks to invest in a particular business to agree in advance on the distribution of profits that is expected, in order to influence through his or her official or social position to get that legal entity business. Finally, phenomenological forms of money laundering derived from corruption offense can be embezzlement.[15] In this sense, it should be noted that this offense covers cases in which a perpetrator appropriates money, securities or other movables entrusted to him by virtue of office or position in government authority, enterprise, institution or other entity or store with the intent to acquire for himself or another unlawful material gain. Thus, for example, in the first stage a person who is an employee in a government agency, appropriates money entrusted to him for the implementation of environmental contracts in the field of waste water management with the intent to acquire for himself or another unlawful material gain, committing thus criminal offense of embezzlement. Subsequently, in the second stage perpetrator commits money laundering by e.g. transferring the proceeds derived from embezzlement, as a corruption crime, into fictitious third-party accounts in foreign countries.[16]

IV. Modus operandi of corruption offenses as predicate economic crimes to money laundering

Due to the complexity as well as a variety of modus operandi of money laundering derived from corruption offenses, it is almost impossible to point out all existing

[14] Ivanov E., „AML/CFT and Anti-Corruption Compliance Regulation: Two Parallel Roads?“ Laxenburg: International Anti-Corruption Academy, *Research Paper Series* No. 2, 2018, 6.

[15] FATF, *Laundering the Proceeds of Corruption*. FATF, Paris, 2011, 16.

[16] Ferguson G., *Global Corruption*, University of Victoria, Victoria, 2018, 308-311.

methods of execution. Therefore, it will be analyzed only those ways of execution according to criteria of the most commonly used entities in the process of money laundering derived from corruption offenses.[17] According to the abovementioned criteria, the following analysis includes entities such as:

1) offshore legal entities;
2) domestic legal entities;
3) domestic financial institutions;
4) guardians of the financial system;
5) mediators.[18]

In the context of entities used in the process of money laundering derived from corruption offenses, firstly, it should be noted that *offshore legal entity* represents one of the most frequent subjects used for committing this offense, due to numerous reasons such as low level of control of financial transactions, anonymity manifested in the process of transferring of illegal proceeds, low taxes and favorable policy climate in offshore jurisdiction, that all together create an ideal environment for concealing the origin of obtained proceeds.[19]

Besides, a standalone way of committing money laundering derived from corruption offenses is through *domestic legal entities*, which may include e.g. corporations, partnerships and foundations. In this context, an illustrative example is the case of a Spanish lawyer accused of suspicion of setting up and managing offshore companies in tax free offshore jurisdictions, while at the same time opening real estate companies in his home country, but on behalf of a foreign company established with the aim of money laundering, that controlled the ownership of companies established in Spain. This fact allowed the perpetrator to place money into the bank accounts of offshore companies in order to transfer it to companies established in the host country for the purpose of integrating that money into legal real estate sales. Money laundering was facilitated in this case because of the lack of identity between bank account users in offshore companies and companies in Spain. On the other hand, perpetrators often use *domestic financial institutions* as a way of committing money laundering derived from corruption offenses. In this regard, it should be mentioned the example of a former President of the Philippines who was charged with money laundering derived from bribery. Precisely, in order to cover up the increase in proceeds derived from corruption activities, the perpetrator had deposited illegal funds in a special account opened in the name of a fictitious person in a domestic financial institution, after which he began investing money in legal activity, which in this case was the purchase of real estate. Therefore, the key point of this case is related to the fact that the defendant by using a domestic financial institution, was able to transfer, conceal and invest illegally derived proceeds in legal activities. Moreover, money laundering derived from corruption offenses can also be manifested through the use of *guardians* of the financial system who represent persons whose role is to protect the functioning of the system from any misuse, including from corruption criminal activities. In that context, the guardians may include lawyers, notaries, trusts, company service providers, real estate agents and accountants. The

[17] Reed Q., Fontana A., *op. cit.,* 14; Livescu I., *The link between Money Laundering and Corruption Is the fight effective?,* Tilburg University Law School, Tilburg, 2017, 36-45.

[18] Ferguson G., *op. cit.,* 316-321.

[19] FATF, 2011, *op. cit.,* 23.

guardians play their role in the process of concealing the illegal origin of proceeds in order to invest them in legal activities and thus integrate them into the financial system. Therefore, instead of implementing the measures they are obliged to undertake in order to protect the financial system from negative influences, the guardians use their knowledge and influence to help money launderers to conceal the origins of proceeds derived from corruption criminal offenses.[20]

In the sense, it should be mentioned the case of a former Zambian president accused of money laundering derived from embezzlement of state money.[21] The key characteristic of case is related to the fact that the perpetrator used the legal services of a law agency and its lawyer as the guardian of the financial system for transferring embezzled money into the accounts of clients of that law agency, from where, with the help of that lawyer, money was transferred to other accounts opened in host as well as foreign countries with the aim to integrate it into legal financial flows through the purchase of property for state needs.[22]

Finally, the common way to commit money laundering derived from corruption offenses includes the use of *mediators*. In terms of the use of mediators, it should be pointed out the case of a former Nicaraguan president who was accused of money laundering derived from the embezzlement of state money. Precisely, in this case the perpetrator firstly had established a legal entity in Panama on behalf of his wife to whom accounts he had transferred money with the help of his friend, a tax officer, in order to conceal the origin of the proceeds and use that proceeds to invest money in legal activities, which was the sale of helicopters. From all the above-mentioned stems the fact that the perpetrator, in this case, used his wife and his friend, a tax officer, as mediators in the process of money laundering derived from embezzlement of state money.[23]

V. Concluding remarks

In the fight against money laundering derived from corruption offenses, it is observed that the competent authorities are confronted with numerous challenges in the process of detecting this criminal offense because of the complexity and variety of phenomenological forms of execution as well as due to the concealment in manifesting of modus operandi. Besides that, when it comes to the issue of international and European framework concerning money laundering derived from corruption offenses it should be noticed that although required normative steps have already been taken, it still lack completely implementation of adopted international standards.

Furthermore, one of the commonly recognized challenges in this area concerns the lack of comprehensive cooperation between competent institutions dealing with money laundering derived from corruption offenses. In addition, the next one challenge is related to duplication of administrative structures that often have the

[20] Ferguson G., *op. cit.*, 316.

[21] FATF, *Specific Risk Factors in Laundering the Proceeds of Corruption*, FATF, Paris, 2012, 20.

[22] FATF, 2011, *op. cit.*, 20-21.

[23] Gordon R., *Laundering the Proceeds of Public Sector Corruption*, Case Western Reserve School of Law Cleveland, 2009, 38-39; The Egmont Group, *Egmont Cases, Financial Analysis Cases 2011 – 2013*, The Egmont Group, Canada, 2014.

same or very similar competencies in combating money laundering derived from corruption offenses, thereby causing difficulties in the process of the establishment whose jurisdiction falls under a particular task. This all together contributes to delaying in detecting this crime in a timely manner, thus allowing corrupt officials to place, conceal and integrate proceeds derived from corruption offense in the legal financial flows. In this sense, it is necessary to establish an inter-institutional link between the competent authorities dealing with anti-money laundering policy, enabling them to define and identify their roles, scope and limits of competences.

Moreover, when it comes to the existing challenges in this area it should be pointed out that there is the absence of available staff trained to fight against money laundering cases, as well as a lack of technical capacity and adequate equipment. Therefore, in this regard, it should be mentioned that significant financial investment in the process of improvement of technical capacity, as well as organizing of thematic training for officials from competent bodies regarding the ways of suppression of cases related to money laundering derived from corruption offenses, represent required steps in the context of establishment of better conditions for detection of this crime.

Finally, an inevitable recommendation in the sense of the fight against money laundering derived from corruption offenses is related to the duty of the competent authorities to collect statistics on risk assessments and vulnerabilities of individual sectors to money laundering in order to make easier to official to recognize the most common ways of execution as well as the applied methods of money laundering derived from corruption offenses.

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