

MONEY LAUNDERING AS AN ISOLATED PHENOMENON AND LEADING FACTOR IN WHITE-COLLAR CRIMINALITY, PUTS MOLDOVA CASE JUDICIARY ON THE SPOT

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Money laundering is a leading factor in white-collar criminality, with a big effect upon Gross National Product of the Israeli and Moldova economies. Israel and Moldova have made the first steps In order to cope with money laundering phenomenon. The model of handling the phenomenon in the USA has been studied that constitutes a role model of fighting money laundering. The vast majority (77%) of all frauds were committed by individuals working in one of six departments: accounting, operations, sales, executive/upper management, customer service and purchasing.

In Moldova, money laundering for the most part is connected to traditional forms and activities sources of illegal proceeds .Moldova is a transit country for money laundering. A money-laundering scandal is casting Moldova's judiciary in an unfavorable light and is raising concerns about the government's commitment to reforms needed to keep European Union integration on track. It is a need to address corruption as a national priority, and the priority of the relations between the EU and Moldova. The money laundering scandal indicates that Moldova is reluctant to wade deeply into judicial reform. In fact, the laundered of \$20 billion, is an amount more than twice the size of Moldova's GDP in 2013, and may be that it is just the tip of the iceberg, probably.

White-collar criminality in Israel and Moldova means success of coping of the enforcement and judicial systems. In order to cope with this phenomenon, Israel makes its first steps. Anyway, the message must pave the way through a creation of a new model for dealing with reduction the isolated phenomenon of money laundering in both states.

Keywords: *money laundering, white-collar criminality, Gross National Product, damages due to frauds, tax evasions black market, robbing the State Funds, illegal proceeds, judicial reform, copying of the enforcement and judicial systems.*

SPĂLAREA DE BANI, UN FENOMEN IZOLAT ȘI UN FACTOR IMPORTANT ÎN CRIMINALITATEA GULERELOR ALBE, PUNE PRACTICA JUDICIARĂ DIN REPUBLICA MOLDOVA INTR-O SITUAȚIE DIFICILĂ

Spălarea de bani este un factor important în criminalitatea gulerelor albe, având un efect semnificativ asupra produsului național brut al economiei din Israel și din Moldova. Israelul și Republica Moldova au făcut primii pași în ceea ce privește combaterea fenomenului spălarea banilor. A fost studiat modelul de manipulare a fenomenului din SUA, care este un model demn de urmat privind combaterea spălării banilor. Majoritatea fraudelor (77%) au fost comise de către persoane care lucrează în unul dintre cele șase departamente: contabilitate, operațiuni, vânzări, director / manager, servicii pentru clienți, cumpărare.

În Moldova, spălarea de bani este legată în cea mai mare parte de formele tradiționale și de activitățile surse ale veniturilor ilegale. Moldova este o țară de tranzit pentru spălarea banilor. Spălarea banilor pune sistemul judiciar al Republicii Moldova într-o lumină nefavorabilă și acest flagel crește îngrijorarea privind realizarea angajamentului guvernului de a face reformele necesare pentru a menține pe drumul cel bun integrarea în Uniunea Europeană. Deci, corupția necesită a fi abordată drept o problemă prioritară în consolidarea relațiilor dintre UE și Moldova. Recentul scandal privind spălarea banilor indică faptul că Moldova nu dorește să intre în esența reformelor sistemului judiciar. De fapt, s-ar părea că spălarea a 20 miliarde de dolari – o sumă de două ori mai mare decât PIB-ul Republicii Moldova în 2013 – să fie doar vârful aisbergului.

Criminalitatea gulerelor albe în Israel și în Republica Moldova înseamnă insuccesul activității sistemelor judiciare. În ce privește combaterea acestui flagel, Israelul a făcut primii pași. Același lucru îl face și Republica Moldova. Oricum, mesajul trebuie să deschidă calea creării unui nou model de a reduce în ambele state fenomenul spălarea banilor.

Cuvinte-cheie: *spălare de bani, criminalitatea gulerelor albe, produs intern brut, daune cauzate de fraude, evaziuni fiscale pe piața neagră, jefuirea fondurilor de stat, venituri ilegale, reformă judiciară, realizările sistemelor executiv și judiciar.*

Money laundering is a leading factor in white-collar criminality, with a big effect upon Gross National Product of the Israeli and Moldova economies.

Israel and Moldova have made the first steps In order to cope with money laundering phenomenon. The model of handling the phenomenon in the US has been studied that constitutes a role model of fighting money laundering. The success of the United States can be learned about both from the vast amount of suits and

convictions in the US due to A. a steep rise in money smuggling outside of the US; and B. an increasing use of non-bank financial entities for money laundering.

Survey participants estimated that the typical organization world loses 5% of its revenues to fraud each year. Applied to the estimated 2011 Gross World Product, this figure translates to a potential projected global fraud.

The vast majority (77%) of all frauds in a study were committed by individuals working in one of six departments: accounting, operations, sales, executive/upper management, customer service and purchasing. This distribution was very similar to what we found in 2010 study [2].

In Israel, several years ago, the Commissioner of Customs and VAT estimated that the amount of black capital in Israel reaches about 17 billion \$. This estimation is based on the assumption that the amount of black capital in Israel approaches the rate of 15% of the Gross Domestic Product. The origin of a significant portion of the black capital which is estimated at 2-5% of the Gross Domestic Product is in laundering of capital procured by criminal activity [7]. In a report made by Fahn, Kane and Co. PCA firm, it has been estimated that the scope of damage caused to the Israeli economy due to frauds reaches some 3 billion\$ annually. From an examination of dozens of white-collar offences perpetrated in Israel in 2001, the firm investigators arrived at a sum of about 250 million\$ of damages due to frauds. Based on the estimation that only 10-15% of the frauds are being exposed, it indicates the immense sums of money under discussion [3]. Here are some examples: The black capital – 40% of the Israeli public are involved in tax evasions, about 50 billion\$ are in circulation in the black market. In tender coordination – the antitrust authority has no sufficient information regarding the financial damage caused to the economy, however according to the data of the Accountant General, the scope of purchases made by the Governmental Ministries in 2005 for instance by the purchasing units through tenders was at about 7 billion\$. Operating from a very flexible standpoint according to which 20% of the bids submitted in the governmental tenders have been set after coordination between the competitors and the coordinated bid is 20% higher, we are then talking about over 1.2 billion\$ annually.

Forgery of document through advanced and sophisticated technological means of criminal factors (such as: ID cards, passports, visas, car licenses, insurance policies, credit cards, checks and more) serves mainly for perpetration of fraud and scam offences, but also for other offences, such as: capital laundering, impersonation and acts of terrorism. Forgery of documents allows for fraud offenders to take over lands, perpetrate mortgage frauds, loans by false identity and more. As of end of 2011, there have been 5.8 million active credit cards in Israel. The annual turnover of credit card purchases for 2011 was at 1.1 billion\$. The affair of Discount Bank ATM card forgery, which cause damage of at least 2 million\$, is not the first case of fake ATM cards [8]. According to the data of the Ministry of Internal Security from 2012, the damages of fraud criminality in Israel are at a rate of about 1 billion\$ whereas the financial damage from scam offences is 24.1% of the total damage of about 3.5 billion \$ and since 2001 the total damage of about 13.5 billion \$ [5].

Money laundering Following is a verdict that encompasses a complex of rulings of judging white-collar criminals:

Criminal file 346/04 in the Jerusalem District Court 13/09/2004, state of Israel though Jerusalem district attorney versus Avraham (Ben Daniel) Lugassi. The defendant Avraham Lugassi, has been convicted according to his admission in a corrected indictment in perpetration of 72 offences of aggravated act of fraud, an offence according to section 415 of the penal code 1977 which states: a perpetrator of fraud is liable to a sentence of 3-years in prison, and if the offence is aggravated – his is liable to 5 years of imprisonment. Argument for punishment – stated by the judge: In criminal file (Jerusalem) 1001/01 state of Israel versus Avraham Piro and Barty Bibs (unpublished):" therefore, even if we suppose that the funds have eventually served the passengers (note: the fraud money has been returned) it is not enough to rule out the formulation of the offence. The Court dealt with this in criminal file (Tel-Aviv) 360/96 state of Israel versus Zeev Bashan, correction 1366 (3) 2001. And it states there in section 2.2 as follows: the return after the fact is not enough to change the question of existence of basis for the offence (Also, see file 8573/96 Mordechai Markado about stock manipulation, versus the state of Israel verdict 51(5) 481, regarding the aggravated circumstances, See Y. Kedmi, on the criminal law, 1988, vol. 1, 4141; according to 446/01 Max Rodman versus the state of Israel, verdict 56(5), 25). The sum under discussion in this file where the defendant has been convicted is at 250,000\$, however in instances where the sophistication and the misrepresentation was vast, the courts have been more

sever in punishment of the criminals of these offences, (criminal appeal 9788/03 state of Israel versus David Golan et al. (unpublished) even if the sums were lower. This has been expressed by the honorable judge T.Strasberg-Cohen, in criminal appeal 2910/94 Yeffet versus the state of Israel, verdict 84 (2), 221: "even sophisticated acts done by an individual in the fields of society and economics, can cause severe damage to the economy and the private person ... the various financial offences are amongst such acts". And furthermore, on the need to make the punishment more severe in financial offences that harm the general public has been said by the honorable judge A. Barak (his title at that time) in criminal appeal 624/80 Weiss Ernest Ltd. versus the state of Israel, verdict 35(3), 311, as follows: "***the white-collar criminals should know that the collar of the perpetrator of the offence is not 'white' and it is as the collar of any burglar and thief, where as one is robbing the State Fund and the other the funds of an individual...***". (Also see criminal appeal 4735/03 Alon Zabari versus the state of Israel). More severe punishments have been leveled in many instances amongst which criminal appeal 2243/98 (9 years) to Romanovski, (12 years) to Arad versus the state of Israel (unpublished) who sold apartments to others and took by fraud about 600,000\$. A similar case to the one before me was in criminal appeal 6676/95 Avi Shiloah versus the state of Israel (Savir, 47(10), 146). In that case the appellant has taken by fraud 650,000\$ worth of goods ... and the court sentenced him with 3 years of active prison term, and the appeal for it has been rejected (see also criminal appeal 7082/93 Boaz Kedmi versus the state of Israel, Savir, 43, 17. Here the defendant has been sentenced to 4 years of active prison term and a 50,000 \$ fine for formation of straw companies which purchased goods by credit and sold them in cash) In criminal file 1249/00 (Jerusalem) state of Israel versus Lionid Roitman, the defendant has been sentenced with 10 years of active prison term and a 300,000 \$ fine, the honorable judge Y.Tzur states: "*this is a severe case of the defendant's abuse of the harsh distress of hundreds of new immigrants from Russia who asked to come to Israel ... and cause d damage to hundreds of families with the total sum of 18 million\$ after the monies given to him were lost and not returned*" [1].

In Moldova money laundering, for the most part, is connected to traditional forms of organized crime activities and sources of illegal proceeds include smuggling of consumer products (cigarettes, alcohol, consumer goods and foodstuffs are smuggled into Moldova and sold on the local market), racketeering, extortion Narcotics trafficking, auto theft, fraud, embezzlement, illegal alien smuggling Pandering and prostitution, corruption and tax evasion. Although Moldova is not a, Well-developed financial center and is not considered as an international haven for the laundering of illicit proceeds, there are indications that extremely favorable Money-laundering conditions exist .

Investigations confirm that this type of activity has taken place and that Moldova is a transit country for money laundering. The major foreign destinations for illegal proceeds are Russia and other countries of Commonwealth of Independent States, Western Europe and Israel .

An example of international action is the great British money launderette as was published in the newspapers: At least 19 UK firms under investigation for an alleged conspiracy to make \$20bn of dirty money seem legitimate. The scam appears to have gone on for four years before being shut down by investigators in another of its main centers – the former Soviet republic of Moldova. It happened on 2014.

As we have seen, white-collar criminality constitutes an isolated phenomenon and therefore is not perceived as fertile field of research. That paves the way through this Hypothesis: there is a positive essential relation between money laundering as a leading factor in white-collar criminality, and between essential adverse effect upon Gross National Product of Israeli and Moldovan economies.

Origin offences are almost all the offences in the statute book, that produce profit for the offender such as, drugs, property, fraud, gambling, white slave trafficking, homicide, and others through which the white-collar criminal gains the laundered capital and the need arises for laundering of the criminal property, while the laundered money allows for and finances the continuation of the criminal activity. This current turnover, that grows and increases in scope, leads to the establishment of organized crime.

It can be said, generally, that the offence of money laundering process is accompanied more than once by further offences that are perpetrated in order to allow the laundering. These offences are called accompanied offences and amongst them can be such offences as bribery and fraud.

As stated earlier, the International Monetary Fund estimates that between 2% of the Annual Global Gross Product stems from money laundering. The scope of funds according to these estimations is between 600 billion \$ and 1.5 trillion \$. According to other estimations the true number of laundered funds each year

globally is 2.8 trillion \$ [9]. The scope of funds from illegal sources that are being laundered each year bestows criminal factors with influence and power that are employed for bribing of judges, affecting decision makers in all political levels, purchasing advanced measures that are used once more for perpetrating offences etc. Thus for instance, recently it has been published that an American drug cartel was facing the acquirement of a Russian submarine 15 million\$ worth, for opening of a new smuggling route. The money for the purchase has been laundered through a chain of strip clubs operating in Florida.

No data have been found regarding the scope of the phenomenon in the republic of Moldova, but however the phenomenon is quite extended in this developing country, and Moldova Money-Laundering Case Puts Judiciary on the Spot [4].

A money-laundering scandal is casting Moldova's judiciary in an unfavorable light and is raising concerns about the government's commitment to reforms needed to keep European Union integration on track. The money-laundering scandal broke back, when a non-profit investigative news organization, the Organized Crime and Corruption Reporting Project, published a story detailing how Russian criminal organizations and politicians used Moldovan banks between 2010 and 2014 to launder roughly 20 billion \$. Moldova was only a weigh-station for the illicit Russian funds, the final destination of which was primarily Latvia [6].

To give the scam the appearance of legality, "over 20" Moldovan judges allegedly issued more than 50 court orders for loan guarantors to pay off a string of fictitious bad debts. The cash was funneled from the privately owned Moldinbank to Latvia's Trasta Komerbanka, in the European Union.

A lack of transparency has marked the official response to the scandal. The Moldovan government reportedly started its own investigation in February into the judiciary's role in the money-laundering scandal, well before the initial OCCRP report. But little information about that official probe has made its way into the public sphere.

More broadly, information about the fallout from the scandal has been spotty. An undefined number of judges have resigned, while others are said to remain under investigation. One judicial executor, a court-appointed individual charged with overseeing a ruling's implementation, has been arrested, and another barred from leaving Moldova, according to the National Anti-Corruption Center's Preventing and Combating Money Laundering Service [6].

Government officials and experts on Moldova's judicial system either declined to be interviewed by EurasiaNet.org, or have done so only anonymously. **Arguably, the corruption is underlying factors behind such reticence.**

Moldovan courts' independence from "the government and political interference" is nominal, according to an Investment Climate Statement issued by the US State Department in 2013. Moldova's president appoints lower-court judges at the recommendation of a judicial council. Corruption is widely believed to run rampant in the judiciary. In Transparency International's 2013 Global Corruption Perceptions survey on Moldova, 80 percent of respondents described Moldova's judicial system corrupt – the highest percentage for any public institution. Officials insist they are committed to reforming the judiciary in the wake of the money-laundering scandal. But, apparently, makeover attempts are not coming fast enough for the EU, which signed an association pact with Moldova.

Brussels reduced the amount of financial assistance to Moldova for judicial reforms from an expected 15 million euro (about \$19.06 million) to 13 million euros (roughly \$16.52 million). There was a limited progress in fighting corruption. It is a need to address corruption as a national priority, and the priority of the relations between the EU and Moldova. Also there is a need that the draft law will be currently under consideration in parliament to increase the independence of the prosecutor's office from government pressur.

The money-laundering scandal indicates that **Moldova is reluctant to wade deeply into judicial reform.** We can hear "some" voices that saying: "there is no evidence" that the funds which passed through Moldovan banks were "obtained illegally". In response to criticism about the slow pace of the investigation, officials continue to cite the reluctance of Russian law enforcement agencies to provide information about the funds' origin, as well as the need to obtain details from EU countries. Some observers, though, scoff at those explanations.

In fact the laundered of \$20 billion, an amount more than twice the size of Moldova's GDP in 2013, is just the tip of the iceberg probably. A former Russian Interior Ministry official who is the head of a Moscow-based anti-corruption information service, Analysis and Security, with ties to the Russian government, have said that Russia is not a big obstacle as Moldova officials are making it out to be. "If the Moldovan authorities

would like to get more light on this case, they could do it without any problems and without the help of the Russian side," he said.

In order to cope with this phenomenon, the model of handling the phenomenon in the US has been studied that constitutes a role model of fighting money laundering. From 1970 when the Bank Secrecy Act (BSA) has been legislated and until today a unique experience has been accumulated in the US with no parallel to it elsewhere, in all matters of fighting money laundering. Israel makes its first steps. Same is Moldova. The success of the United States can be learned about both from the vast amount of suits and convictions in the US due to A. a steep rise in money smuggling outside of the US; and B. an increasing use of non-bank financial entities for money laundering.

A change is required for the Money Laundering Prohibition Authority would be responsible for determining the required reports form the various entities, including who is supposed to report, the way of reporting, scope and more. Section 17(b) of the Money Laundering Prohibition Law in **Israel** states that, the one responsible for these duties is the Minister that the reporting entity is under his responsibility while advising the Minister of Justice and the Minister of Internal Safety.

Another essential amendment that is recommended is increasing of authority to the money laundering prohibition authority such as the lately events, in case of the Israeli Leumi Bank which was found non-reporting of financial transactions, of about 100 million \$ and creating of begun paid taxes event.

Thus, this paper, having a theoretical as well as a qualitative and practical framework, allows for dealing with the approach of money laundering. This paper's subject stems from the desire and need to deal with the wide-spread and grave phenomenon of Money Laundering in Israel and the Republic of Moldova. This article focuses on how to understand the phenomenon of Money Laundering by criminal elements in Israel and the Republic of Moldova, And to produce the necessary steps to reduce this phenomenon by constitutional - legal standpoints. White-collar criminality in Moldova means success of coping of the enforcement and judicial systems in Moldova.

The law enforcement agencies fighting against organized crime are part of the Ministry of the Interior, which has a General Department for combating Organized Crime with three specialized units

- ✓ the Department for Combating Organized Crime;
- ✓ the Anti-Trafficking in Human Beings Department;
- ✓ the Anti-Drug Department.

This article message must pave the way through an analysis of current situation in the field of white-collar criminality research, as a step of presenting a new model for dealing with reduction of white-collar criminality in Israel and Moldova. It will be implementing in our study.

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