Complex Methods of Investigation of Money Laundering in the Integration Process

Anatolie DONCIU
Law Faculty of USEM

„It is easy to to break the structure of a well established castle,
but it is difficult to lay order in a bad organized castle"
Teognis

Abstract: The phenomenon of money laundering affects in great part each state that is both a member of the European community and is placed outside its frontiers. The adoption of some efficient measures of fighting money laundering represents an international prerogative and in any way a particular one of every state since the sovereignty of a country does not find recognition and respect among the criminals and other ethnicities that practice destroying activities towards the policy of society development. The intensification of the stopping of this phenomenon appears as a logical necessity of the protecting of the economy of each state both separately and of the whole community of states. The adhesion to the international standards, confirmed in treaties implies the assumption of some engagements by each state with regards to the implementation of the efficient strategies that would annihilate the danger of the „realimentation" of the criminal activity and of the neglecting of state as independent subject in the formation and guaranteeing of the law.

The stopping of the phenomenon of money laundering, as well as the process of reducing of any anti-social phenomenon requires educational measures in the spirit of intolerance, of preventing as well as fighting measures. Yet we specify that in this situation an increasing effect is achieved namely by the fighting measures that annihilate not just the process of money laundering itself but also prevent a possible criminal manifestation of funds generating.

It is obviously that the operative and efficient investigation of money laundering and of authentication of goods obtained through criminal ways has an especial significance for the integration process.

This fact is firstly due to all the terrible impact of this phenomenon on the national economy, especially during transition period.

Secondly, possessing a transnational feature, the phenomenon of money laundering influences negatively the economy of other states, including of the European Union countries, which have, or will have further economical relationships with the Republic of Moldova.

And thirdly, the ignoring or the negligent attitude towards the process of repressing of this scourge generates situations of advanced risk concerning the fact that the incomes obtained in the result of dirty money laundering and of the authentication of the goods of illegal origin might be used at the financing of the acts of terrorism.

Concluding the above mentioned facts it could be said that for the efficient stopping of money laundering, especially within the process of European integration of our country there is imposed the necessity of elaboration and implementation of some methodologies, of some special, complex mechanisms of investigation of this transnational phenomenon.

The efficiency of the struggle against the economic crimes determines the state evolution and the possible economic-social stability. The development of the criminality and the increase of the crimes in the economic sphere impose to the state the logical necessity to undertake the necessary measures in order to interrupt these phenomena and to assure the respecting of the citizens' rights and freedoms and their legal interests.

These activities represent a fundamental priority within the policy of every democratic governing, no matter the plan itself of governing. The process of integration can not take place through the neglecting of the communitarian policies and of the assumed engagements on the continental plan as well as on the world one.

The adherence to the standards of the European community supposes the application of some concrete measures with regard to the stopping of the destructive manifestation of the criminological and anti-social phenomena from every state.

At the moment, especially when the world economic-financial crisis is vigorously developed, the economic criminality is amplified due to the fact that the economic sphere becomes more and more vulnerable, inclusively as a result of the appeared economic problems and of the multiple attacks from the side of the criminal world.

The causes of criminality in the economic sphera bears both an objective and subjective character.

Some of the motives of the appearance and development of the economic criminality reffers to the lack of the economic policy promoted by the state, the lack of a corresponding control system, the fall in *un-sueing* of the law norms towards the relationships that it is to coordinate or the lack of dinamism in the adoption of these norms.

The infraction of money laundering (*in continuation there can be used the abreaviation* ML) represents an economic offence with a destructive resonance for the social relatioships that are related to the activity and the economic security of the state in general and of each citizen in particular.

Undoubtedly, alongside the development of these relationships they become to be much more exposed to the criminal virus called money laundering.

Apparently, the described situation might seem paradoxical, yet, the objective reality denotes that as much as there increases the level of the quality of the bank service or of other types of service that represents namely the object of the actions of money laundering, much more there increases the danger of exposing them to the risk of „infection" of malady of legalizing of the goods obtained illegally. Whereas the process of preventing, as a rule pleads for the aim of annihilation of the offence or of the illicit act, in the case of the offence of money laundering, this activity is often inverted. The criminals elaborate diverse schemes and complicated enough in order to elude the factors of prevention established by the states and the ethnities exposed to the financial-infractional activity.

In this regard, a better application concerning the stopping of the phenomenon of money laundering has the process of fighting. The fighting itself, represents a system of actions forseen by the processual-penal legislations of the states applied with the aim of detecting, investigating and punishing of the illegal and anti-social acts, inclusively of the according category. In comparison with the process of preventing, the fighting might take place just through the exclusive authority of the state, represented by the corresponding organisms with specific duties of restrictiv-penal type with the direct application of the penal law.

Thus the efficiency of fighting the money laundering is related to more factors, some of which can be considered the level of involving of the state organisms in the process of anti-laundering of money, the implementaion of the international foresights and of the good practices, adopted successfully by some states, as well as the preofessionalism of the collaborators of the law authorities, in charge with the fighting of money laundering.

Even if the detecting and the investigation of some infractions is related to the legislative policy of every state, in the process of fighting the money laundering, in a more extended way concerning the

fighting of other infractional manifestations, the application of the norms of the international treaties of the domain as well as of the recommendations of the international institutions (MONEYVAL, GAFI/FATF, EGMOND) is logically imposed.

Money laundering represents a social phenomenon, global, transnational and its defeating in an individual way will not succeed. Accordingly, besides the adoption of a practical technique of detecting and investigation on a state level every state has to intensify the international collaboration and cooperation, including the regional one.

One of the most relevant normative acts at the international level is the Convention regarding money laundering, the detecting, sequestring and confiscating of the goods obtained from the infractional activity, adopted at Strasbourg on 08.11.1990(in continuation Convention).

In this regard, the Convention offers over two thirds from the content namely to the international cooperation, establishing measures that follow to be adopted by the part states both on the national and international level.

A special attention the Convention offers to the measures of blocking, sequestring and confiscating of the goods proceeded from the ilicit actions – crime predicat. The adoption of such measures as well as international judiciary assitance in domain represents important research activities that contribute to the efficiency of the struggle against the phenomenon of money laundering both of each state separately and the whole commnnity of the European community.

As it is known the process of money laundering is divided in the following three steps:

- **The placement** – represents, directly „the deliverance" of the cash and the physical moving off of the initial incomes derived from the illeagal activity. It is the most vulnerable step of money laundering as it is implies the collecting and handling of a big quantity of cash. We could imagine the situation of a street drugs trafficker who at the end of "working" day has an income of ten tousands of Euros in small banknotes (of ten or twenty euros). These will be noticeable not jut by the sum they constitute, but also by their imposing volume and the by their physical aspect (a lot of old, wrinkled banknotes, etc.). That is why within the phase of placement of the income the criminal will try to convert the small banknotes in ones of bigger value. The detecting and investigating at the step of placement of the illicit incomes is easier as it supposes the real existance of the goods (money, titles of value or other goods) in the jurisdiction where the process of laundering takes place. Here the competent authorities have the possibility to act promptly in order to block the circulation of these goods.

- **The stratification** – in specialized literature this step is also defined with the name of investment, that is the process through which a person or more realize a series of financial banking transactions using the money that proceed from criminal sources (lacking economic justification) in order to make impossible the establishment of a connection with the illicit provinience. At this step the criminal's task is simplified as this managed already to avoid a considerable part of the riks of counteracting of the process of money laundering. In other words there were successfully realized all the actions of eluding of the control from the part of the control authorities at the most vulnerable step, the next phase of the realization of the criminal intention beeing the disguising of the incomes origin. As a rule the criminals apply to realize a bigger number of transactions in order that these would be difficult to sue. The difficulty of sueing the further circulation of money through bank transfers comes to the fact that these are perfomed on a higher speed than the possibility of the competent bodies to grasp and the possible adoption of a decision regarding the stopping of the transaction. This very transaction can not be often blocked since at the moment of emitting of interrupting decision it is already realized.

- **The Integration** – represents the moving of the funds laundered through the legal organizations; the attributing of a legality noticeable to a richness gained in a criminal way. It is a final step of money laundering within which the goal of the criminal is realized, the laundered goods returning to this one having hidden origins. He is, effectively out of some dangers and can purchase

„open" goods by the usual legal modalities. The frequent methods of integration might be the the purchasing of real goods, fictional borrowings, the use of false bank cards, selling-purchasing contracts in which in fact the seller and the client is the one same person, etc. The detecting of the dubious transaction within the phase of integration represents just a step in the process of investigation, this being insufficient for probation but constituting a reason for the start of a penal investigation.

Due to the sophisticated structure of carrying on of the steps of money laundering the investigation of these crimes is quite difficult, fact which imposes the elaboration and application of some special measures with operational and organizational character regarding the process of money collecting necessary for probation.

The experience in the according domain attests the fact that the investigation of money laundering requires the implementation of some specific elements of research which is some peculiarities.

A first aspect represents the **financial-banking** investigation of money laundering.

This refers especially to the processing and analysis of the reports of the financial entities with the aim of detecting of the fraudulent transactions that meet the charactersitics of an action of money laundering. Detecting the transaction the authorized body (FIU-unity of financial investigation) will inform the competent authorities to realize judiciary-penal investigations.

Another peculiaritiy is the **investigation under economic aspect**. Within this activity there follows to realize measures in order to establish the process of administrating of the patrimony of the reporting entity as well as of the sources of formation of this one (income, expenses, financial transactions, economic relations with other agents). There will be also studied and analized the economic activity of the reporting entity for the according period of time both on the national and nternational plan in order to identify the generating factors of the illegal funds. In this regard there si also imposed the verification of the process of honouring of the fiscal obligations to the public budget as well as the realization of the economic-financial revisions (fiscal inspections, audit).

The next aspect is the **juridical-penal investigation** of money laundering, which is given a great attention to in this work.

The juridical-penal investigation comprises a complex system of investigations, as well as legal penal actions in the framework of these researches, with the goal of capturing and detecting the money laundering, that is proving the existence of the crime, identifying the offenders, establishing the guilt of these ones, as well as taking into consideration some other circumstances.

An essential element of this step is detecting the offence. In this respect we underline that the source of information about the offence can be different. In our oppinion these sources can be:

1. Intimations provided by the reporting subjects.
2. intimations proided by individuals materialized by complaints, denunciations, and self-denunciations.
3. Unofficial sources of information(mass-media, Internet).
4. Investigation activity.

Intimations provided by the reporting subjects represent an important source of informing concerning the commiting of a money laundering offence. Annualy, the FIU-s process millions of reports provided by the reporting subjects regarding some laudry money transactions.

The body of penal pursuit can be informed not only by reporting subjects, but by other persons too.

Also the qualified authority will be able to auto-inform or will perform a preliminary investigation in the case when on the internet or other means of communication an information of money laundering is broadcasted.

However, these two means of detecting are very rare, as money laundering in itself is attributed to anti-detecting offences.

The investigation activity represents an efficient measure not only for the detecting of the offence, but for its investigation as well. The representatives of the judicial bodies apply for a series of investigation masures including: home surveillance, collecting information, questioning, visual surveillance, operative infiltration, bank account surveillance, etc. The operative activity of investigation is efficient and absolutely necessary for the detecting of offences commited by criminal groups or in the interest of a criminal group. This is because the criminal activity of these groups is very well organized. The criminal groups ask for help from specialists, who manage to elaborate complicated schemse which cannot be detected by banks, or even by specialized agencies specialized in detecting suspicious transactions. Also, the criminal groups look for different camouflage techniques, they hide their criminal activities through bribing public workers or the employees of financial institutions, as well as by intimidating them(blackmail, threat).

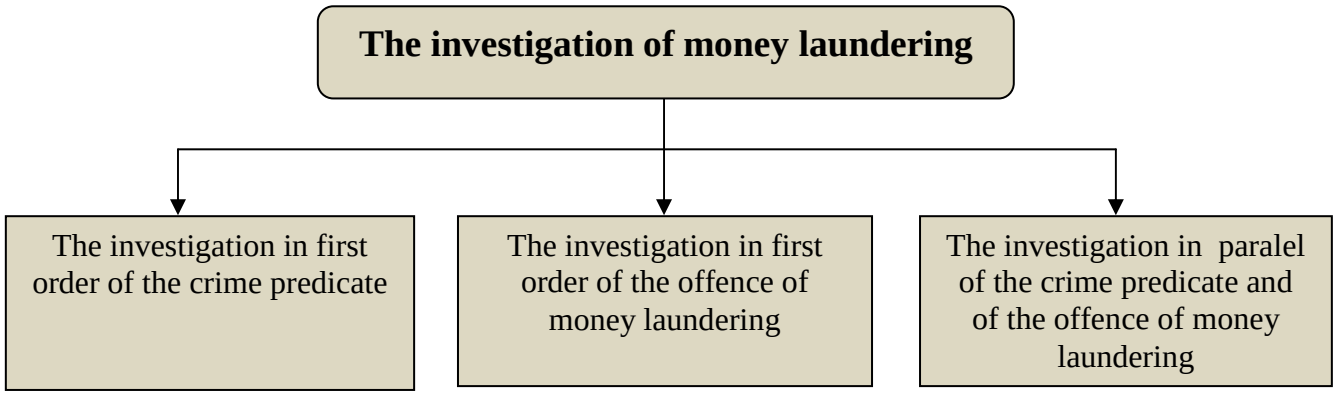
In the investigation of the money laundering crimes there apear a number of difficulties arising from the crime itself, the intellect and organizational capacities of both the offender and the degree of qualification of the investigation authorities.

These difficult issues might be:

- The determination and distinguishinh of lawful actions and illicit ones in the process of legalization of income;
- The establishing of criminal source (mandatory aspect), ie the predicate crime;
- The dynamic adaptation of criminal schemes to the new systems for the prevention of economic frauds;
- The high-level qualification of the offender in the field of economy, financial-banking or law or the existence within the criminal organization of a specialist, or group of specialists in the above mentioned fields;
- The Identification and establishing of an appropriate psychological environment (contact) with the offender, especially during the hearing;
- The continuous character of the money laundering crime;
- The special character of the money laundering crime, ie, most often work illegally obtained income activity is systematic, the offenders are using scheme which were checked by time, or conduct transactions through financial institutions in whose activity there are some unnoticed gaps, amd bribe the same persons involved in the offense of money laundering (usually employees of the reporting entity), etc;
- The existence, as a rule, of a limited number of witnesses or the absence of those (this usually depends on the ability to establish witnesses of the predicate crime);
- High level of corruption among reporting entities and / or the law protection bodies;
- Insufficient qualification, in some cases, of employees of the law protection authorities;
- The transfer character of the money laundering (transactions through offshore zones, through banks in countries where the banking secrecy can not be removed by court decisions);
- The existence in the State of areas with special economic status determined by law (such as free economic zones);
- The existence in the State of areas temporarily impossible to be verified (such as the separatist republics);
- Lack of technical means that would enable a qucik and qualitative investigation of the crimes of money laundering;
- Other cases depending on the circumstances of the concrete offense.

We would like to mention that the investigation of the crime of money laundering, the prosecution is to attract increased attention to predicate crime. Predicate crime is an unlawful act which is the origin of illicit income subject to the money laundering process. The proving of illicit character of the act which is the basis of obtaining revenues (crime, infraction as appropriate), is an indispensable and efricient means of proof. Thus, one of the main aims of the investigation of money laundering is to establish the causal link between the discovered incomes and the source of their origin, or in case we have no illicit act as the origin, we can not incriminate an individual concrete offense of money laundering. The legal and criminal investigation of money laundering involves the investigation of the event as a problem in its complexity. This means the offense of money laundering along with income-generating crimes, are vital signs. Thus, the authority empowered to investigate a crime of money laundering is to establish with certainty the offense committed and the source material of committing it. In fact, money laundering is a complementary crime and in the situation where the prosecution will refer to any laundering of funds without identifying the predicate crime, the first can not be proven. However, in theory, the fact of unproven predicate crime will not influence the investigation of money laundering in a criminal investigation because the purpose of a criminal investigation is to accumulate factual data to establish the existence of the crime, identifying of the actors and the demonstration of their culpability. However, the criminal investigation will not be considered successful if for the court as a main proof will be only the demonstration of the existence just of a predicate crime.

In this vein, there is a distinct need for **planning of the investigation process** of acts of money laundering, using where appropriate, the elements of the following schedule.



From the exposed above we deduce:

In the first case, by the the body of penal pursuit **it is identified the crime predicate**, accumulating sufficient and convincing proofs in order that the instance would recognize an illicit deed, generating of funds and an acting person, without begining the penal pursuit on the fact of commiting the offence of money laundering. After the obtaining of a judiciary decision, the body of penal pursuit is to gather proofs that would establish just the connection between the crime predicate and the offence of money laundering, fact which allows the fastening of the solving of the cause concerning money laundering. This variant of investigation is a prudent one, reason for which it supposes some laks and drawbacks. The investigation and settling in first order of the crime predicate with the aim obtaining a judiciary decision proving for the further investigation of money laundering, can represent a lasting porcess, whereas the juridical-penal investigation of money laundering manifests a „prompt" character (the urgent blocking of the laundered funds, the immediate identification of the offender, the application of the processual measures of restrain, etc.). Accordingly in these cases, investigating the crime predicate, the body of penal pursuit risks „to loose" the realizer of the money laundering offence.

In the second case, at the initial step it is realized the **investigation of the offence of money laundering.** Thus the competent body will initiate the penal pursuit within a separate legal dossier just on the fact of money laundering as soon as from a notification would result a reasoning doubt regarding the committing by a person of the according offence. But arising from the complementary character of money laundering, such a legal dossier could not be examined separately in the court instance before having obtained a judiciary decision concerning the crime predicate. Accordingly in the case when the instance will establish the non-existence of the crime predicate, the efforts of the body of legal pursuit will be in vain and useless, since as it was mentioned, the crime predicate is the main porobatory element.

The third variant, considered the most optimal and convinient represents the **investigation in paralel of crime predicate and of the offence of money laundering**, i.e of the criminal manifestation in its full complexity. In this case the body of legal pursuit will be able to undertake all the measures regarding the blocking of the funds and the examining following the ”hot traces” of the both crimes. Also, in order to assure an efficient result the both cases are to be connected , the link between them existing from the the essence itself of money laundering. No matter the character of the crime predicate, this one and also the offence of money laundering are to be investigated just by a sole body of penal pursuit and namely by the authority empowered with the investigation of money laundering.

In the case of judiciary-penal investigation there can be also realized special inquiries. These suppose diverse operative measures of investigation (operative infiltraion, the surveyance of the bank accounts, the intereception of the phone conversations, etc) as well as processual measures of restraining without which the investigation of money laundering is exposed to an unsuccessfull risk, i.e the blocking and sequestring of the laundered goods. It is also very important the aspect of assuring of retrieveing of the caused damage as well as actions regarding the assurance of the special confiscation of the goods obtained as a result of the offence.

The laundered funds are usedin different goals by different persons or criminal or terrorsitic organizations. The impact produced by the development of the illicit trafficing of drugs, armies, terroristic attack made the phenomenon of money laundering to be perceived by the civilized world as a grave warning in the address of the international stability and the national security of the states. The according events showed that there are totally disregarded the priniples, norms and the values on which are oriented the interhuman relationships from the civilized world. The neglecting of such phenomena can have catastrophical consequences for all the world community, and the consequnces of these ones can not be estimated but just in human lives, that accordingly are priceless, the life of every man representing a supreme value within any democratic society.

Bibliographical references:

The Convention regarding money laundering, the detecting, sequestring and confiscating of the goods obtained from the infractional activity, adopted at Strasbourg on 08.11.1990

The Law of the Republic of Moldova regarding the preventing and fighting the money laundering and terrorism financing, Nr. 190-XVI from 26.07.2007;

The Service of Preventing and Fighting of Money Laundering. Annual Report 2007, 17.

V.M. Meskov, V.A.Popov, The operative –investigational tactics and the peculiarites of legalizing of the obtained information alongside the penal pursuit, Moscow, 1998, 18.