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## Prosecution and punishment of The Dark Crime Offences: The white-collar criminals should know that the collar of the perpetrator of the offence is not white

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### Abstract

This paper's subject stems from the desire and need to deal with the wide - spread and grave phenomenon of Dark of Crime offences by law offenders, from a constitutional-legal standpoint. Economic Crime in Moldova, as everywhere in former Soviet republics, has risen dramatically since the fall of the Soviet Union.

There are about 300 criminal groups and 35 criminal families which control the economic, political and social performance of the country. The monthly traffic of heroin alone is estimated at up to 150-200 kg, and the estimated number of drug addicts has risen from 3,000 to 60,000. Just in 1998, their number grew by 5 times in comparison to 1997. The annual volume of the drugs business in Moldova is estimated at \$200-250m, this figure exceeds annual direct foreign investment in Moldova by 3.5-4 times. Moldova has been transformed into a corrupt and kleptocratic state, with a mafiotic psychology and culture and an amoral nepotism. How else, if not through corruption and lobbyism. There are about 300 criminal groups and 35 criminal families in Moldova which control the economic, political and social performance of the country. The problem of the non-payment of debts can be easily solved with criminal structures playing the role of informal courts, for 50% of the sum. Drug trafficking In addition, on the territory of Moldova there are four channels of drug trafficking. The monthly traffic of heroin alone is estimated at up to 150-200 kg. By this, The

legislation of Moldova does not even define the term "racket", that no special measures are envisaged as regards crimes, and that there is no special system and measures adopted as regards the taxation of gambling for example. Certain legal provisions have become more constraining in Moldova. It is estimated that only 2-3% of the white-collar crimes are reported to the Israeli Police, because the handling of these offences is finalized inside the organizations and because crimes are sophisticated and hard to discover. Capital in Israel approaches the rate of 15% of the Gross Domestic Product. About the black capital – 40% of the Israeli public are involved in tax evasions, about 50 billion\$ are in circulation in the black market. 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 \$.

Israel and Moldova have made the first steps in order the need to cope with money laundering phenomenon. Thus, measures are required for both countries for the fighting with money laundering: Punishment by fine for perpetration in the Law is in order, to increase origin offences, report bar, entities obligated to report, concentrating entity of data pool expanding of the duties of Money Laundering Prohibition Authority as a regulator and with authority to assign fines, etc.

**Keywords:** Dark of Crime offences, constitutional-legal standpoint white-collar criminal groups and criminal families, measures as regards crimes

### Introduction

#### Financial damages: World organization revenues loses

Survey participants estimated that the typical organization 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 our study was 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.

#### Estimation of the damages in Israel

Estimation of the damages in Israel - before-mentioned that the estimation is that only 10-15% of the frauds are being exposed, it indicates the immense sums of money under discussion.<sup>13</sup> According the black capital – 40% of the Israeli

public are involved in tax evasions, about 50 billion\$ are in circulation in the black market.

**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.

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

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.

**Thus, in relation to the Money Laundering legislation in Israel and Moldava - the following measures are required for both countries for the fighting with money laundering**  
**A. Punishment**

From reviewing section 3 of the Money Laundering Prohibition Law in Israel it is revealed that the legislator set a maximal punishment of 10 years for the offence of money laundering or a **fine** 150 times Average salary in Israel and Moldava

**Thus, a change of the section of fine for perpetration of money laundering offence in the Law is in order, as follows**

Transaction represents the proceeds of some form of unlawful activity, conducts or attempts to conducts such a financial transaction which in fact involves the proceeds of specified activity... shall be sentenced to a fine of not more than 150 times Average salary in Israel and Moldava twice the value of the property involved in the transaction, whichever is greater, or imprisonment for not more than

twenty years, or both.

It is important to mention that the prison sentences set by the law are the high bar, nonetheless the punishment set by the law teaches a judge the level of severity of the act from the viewpoint of the legislator.

**B. Origin offences**

The called for change is that the list of origin offences would be unlimited and would include all the criminal offences including tax and VAT offences!

In second addition to the Israeli law, a list of origin offences is detailed that the funds produced from these are laundered. This is a closed list that mainly includes offences from the Penal Code. The American Law also includes a closed list of origin offences that includes over 170 offences including: drug trafficking, weapon smuggling, murder, frauds, acts of terrorism, tax offences and more. It can be stated that there are countries around the world that chose not to limit the origin offences and included in them all the criminal offences, such as England. In Australia for example, tax offences have also been included whereas in Israel they have not. To the opinion of the researcher it might create the false impression of severe political public opinion – that stealing from the public is not considered as stealing from an individual person. The meaning is that income tax money evaded is not considered illegal money.

**C. Foundation of the offence**

Section 4 of the Israeli Law states that one taking action upon property with the knowledge that it is a forbidden property is perpetrating an offence. For this matter the section defines "knowledge" as reduction of turning a blind eye – as it is meant in section 20(c)(1) of the Penal Code. From reviewing protocols of committees discussing the Law it appears that the addition of this subject has been made upon the request of banks which feared to find themselves involved in a process of money laundering as a result of an omission of some clerk. In this instance the Legislator has also chosen to submit to a pressure group. Therefore:

**To the opinion of the researcher**, after assimilating the report system and acquiring experience that began in the banking system in Israel, it is warranted that the Legislator cancels the matter of turning a blind eye, and to this matter, the term the Israeli Legislator would use is "Knowledge", and it shall be determined that:

*“Knowledge can be shown by proving willful blindness, deliberate ignorance, or a conscious attempt to avoid knowledge, “legitimate” business people who tried hard not to “know” about their client’s illegal activities.....”<sup>14</sup>*

**D. Report bar**

It can be seen that the sums of report set in Israel are much higher than the United States: the obligation of reporting set forth in the US is 10,000\$. Every sum that is higher than this ceiling must be reported to the Authorities. In Israel it has been determined (by a bank decree) that the bar for deposit/withdrawal from a bank account in NIS and/or in foreign currency is at least 14,000\$, as well as changing money including conversions that are above 6 times Average salary in Israel and Moldava and issuing a bank check for sum surpassing 20 times Average salary in Israel and Moldava. Additionally, many clauses have been added that are related to the bar of reporting of actions higher than about a half of

Average salary in Israel and Moldova from countries according to addition 4 of the Decree (countries from the black list of FATE, as well as other countries including the Palestinian authority, Libya, Iran, etc.) would be obligated to report and that is in order to financially hurt terrorist organizations. In the fourth addition of the Israeli Law it has been determined that the sums of money obligated by a report upon entering the country are of about 10 times Average salary in Israel. Therefore, the called-for action is: any sum higher than the ceiling of 4 times Average salary in Israel and Moldova must be reported to the Authorities as well as upon issuing a bank check of a sum above 10 times Average salary in Israel and Moldova. Needless to say that the higher is the report bar the less "white-collar criminals" will get caught in the net of the Law.

### E. Entities obligated to report

The sector of diamonds as well as real-estate and car merchants that are abundant in "*turning a blind eye*" in Israel are to be added to list of sectors that are obligated to report, as in the US these sectors are obligated to report. The cancellation of exemption from obligation of reporting is necessary.

### F. Concentrating entity of data pool

Recommendation: in Israel, the reports are delivered to the Money Laundering Prohibition Authority from various financial institutions (banks, portfolio managers, insurance agents, stock exchange companies, provident funds and more) regarding different actions performed by their customers. Additionally, an obligation of reporting has been set regarding transfers of funds from those entering and departing from the country. The Authority has been authorized according to section 30 of the law to deliver information to three factors only: a. The Israeli Police; B. the General Security Service; C. parallel entities in other countries. In Israel, on the other hand, enforcement agencies are required to deliver an explained request. It can be stated that in Israel there is an absurd situation in which information would be delivered to FinCEN as part of the global cooperation and from there to the IRS whereas the Israeli income tax has no access to the information. In this situation, it might be that an Israeli citizen would be convicted in the US with money laundering that is related to tax offences that he has perpetrated in Israel. Therefore: the establishment of an entity that would concentrate an information pool and that would deliver it to the investigation entities the vast information collected is inevitably an important tool in the fight against the plague of money laundering in Israel and Moldova. Investigators from all enforcement authorities would make an extensive use of the information that is there (just as in the US in the FinCEN) for their current work almost with no limits. The scope of the phenomenon of money laundering and the financial situation make it necessary for a change with a cost of damage to privacy.

### G. Expanding of the duties of Money Laundering Prohibition Authority as a regulator and with authority to assign fines.

The fact that Authoritylike Money Laundering Prohibition Authority is not a regulatory entity adversely affects the fight with money laundering, enforcement and deterrence. And therefore:

- A change is required for the Money Laundering

Prohibition Authority in Israel, or any authority in Moldova would be responsible for determining the required reports from 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 granting of authority to the money laundering prohibition authority such as the authority assigned to the FinCEN in the US<sup>15</sup>, to assign fines to entities that violate the obligation of reporting, safeguarding documents or other orders. Thus for example, in case of the Sovereign Bank that was under proceeding on March 3, 2002, the bank has been assigned with a fine of 700,000\$ for non-reporting on financial transactions (Currency Transaction Report – CTR), for a period extending for two years<sup>20</sup>. On this matter, the Israeli Legislator has chosen to assign the authority to a committee that is authorized to assign a financial sanction. For example: Stock Exchange members have been assigned with financial sanctions who have not upheld the above decree (and fine with about 50,000\$).

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.

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