Section 5

Money Laundering: Defining its true added value to criminal repression

I. Recognizing the objective of recovering financial gains as a requirement for the de-escalation of criminal repression in the field of money laundering

Money laundering legislation has contributed to the recovery of financial gains being recognized as an important sub-target of law enforcement, both locally and internationally. In this respect, articles 46 and 47 of Law 3691/2008 and similar provisions in previous legislation helped to gradually promote this new discussion.

On the other hand, the fragmented nature of legislative interventions and the anxious attempt to follow international developments have not so far helped formulate an overall coherent legal framework for the recovery of laundered assets in Greece.

However, it should be noted that the legitimate objective of law enforcement's fair access to the proceeds of crime should first and foremost be disconnected from the indirect requirement of affirming criminality for money laundering. This is crucial because such an approach practically leads to the widespread standardization and identification of criminal wrongfulness not as a proportionate response to the infringement of a legally protected interest, but rather as a means to achieve distinct goals, which can be fulfilled without the affirmation of additional culpability.

In light of these considerations, the implementation of a new strategy for recovering the proceeds of crime is a necessary condition for the de-escalation of criminal repression in the field of money laundering, by abandoning its instrumental perception as a means of seizing the proceeds of crime.

II. Basic guidelines for the demarcation of punishability

Under such an approach, it is primarily necessary to formulate a simpler method for the classification of criminal liability for individual acts of money laundering, the de-escalation of currently threatened sanctions, which are not justified by the country's relevant international commitments, and the preservation of significantly fewer felonies, especially with respect to organized crime proceeds in conjunction with the amount of laundered assets.

Considering that money laundering contributes to the continuation of a separate unlawful situation instigated by the predicate offense, a maximum penalty of ten years incarceration and a basic misdemeanour can be established. The latter can have more individual gradations, their criterion being the genuine or not nature of laundering acts, i.e. whether the perpetrator contributes to obtaining a legal title for the illegal assets or is simply linked to them while knowing their unlawful origin.

Especially the amount of criminal proceeds laundered, together with other criteria (genuine or not nature of money laundering, assets originating from organized criminal activity), can construct a more comprehensible actus reus and contribute to the narrower delineation of this novel criminal policy tool. It can also help avoid the

likelihood of criminal liability for money laundering to trigger considerably harsher sanctions compared to those envisaged for principals or participants to predicate offenses, which is incompatible with the proportionality principle.

In this context, the "list" of certain predicate offenses and the general clause referring to their threatened sanctions can be abandoned, as it complicates the demarcation of criminality and culpability without visible reason.

It is also fitting to abolish Article 2 § 2 point d of Law 3691/2008, i.e. using banking institutions as a separate form of money laundering. The relevant cases which may be of criminal interest can easily be addressed via other provisions, while the highly problematic affirmation of criminality through the mere depositing of dirty money to a bank account kept by the perpetrator of the predicate offense may anyhow be avoided through the active limitation of “self-laundering”, as shown next.

The same should happen with Article 2 point e of Law 3691/2008 (i.e. conspiracy to commit money laundering), as Greece’s obligations under the relevant international conventions can easily be covered by Art. 187 § 5 GPC and do not require special provision.

A particularly aggravated form of money laundering could be envisaged for the “professional” commission of the relevant crime, albeit through a more precise definition, requiring the acquisition of revenue from laundering itself and not its predicate offenses.

As to mens rea, it seems preferable to associate genuine money laundering with a similar additional intent of anticipation and to maintain direct intent of the second degree for non-genuine laundering. Such an approach is justified given that completed "genuine" money laundering is very difficult to isolate in the letter of the law.

Provided that these amendments take place, the current complex system that makes the punishment for money laundering subject to the demerit of the predicate offense should be abandoned, as –despite its contribution to the avoidance of certain extreme consequences of early legislation– it is sometimes associated with evaluative inconsistencies and has not yet achieved a smooth absorption in the criminal litigation practice.

Moreover, in view of the peculiar association between actus rei of money laundering and predicate offenses on the basis of unlawfully appropriated assets, it appears justified to standardize broader prerequisites of repentance for acts of money laundering, even if they target public property or incite corruption.

Regardless of the necessity to generally reform the relevant legislation (or alongside it), "special" provisions for the protection of the public sector that lack adequate justification need to be re-evaluated. The "special" aggravated liability for money laundering of bribery proceeds is a typical example, as the relevant stipulations were most probably constructed under the weight of a single-sided review of the experience gained by the recent implementation of the provisions, without general rational assessments of the demerits linked to the relevant behaviours. Insofar as

one recognizes that the contribution to the appropriation of assets unlawfully obtained by violations against the public sector incorporates additional demerit, a general provision should be considered for its stricter punishment (e.g. typifying such money laundering as aggravated).

III. Towards a drastic limitation of self laundering sanctioning

Imputability for money laundering upon the perpetrator of the predicate offense and in relation to assets obtained from such conduct poses challenging issues that are not uniformly encountered at an international level.

As to genuine forms of the abovementioned conduct, a provision could be added to the general part of the GPC to expand the threatened range of sentences for the predicate offense, along the lines of the current Art. 81A GPC. As obvious, such a provision would a contrario render criminally indifferent all acts of non-genuine self-laundering, and also negate individual additional culpability for acts of genuine money laundering, at least whenever the offender is actually held criminally liable for the predicate offense.

IV. Stipulating offenses in the special part of the GPC – Essential organizational improvements in the "prevention" system and detaching it from criminal liability

In view of their substantial scope, criminal provisions on money laundering are better off described in a separate chapter of the Greek Criminal Code, with the explicit distinction between genuine and non-genuine forms and the inclusion therein of all elements determining criminality and culpability.

The provision for self-laundering should be incorporated in the general part of the Criminal Code. On the contrary, the provisions on territorial jurisdiction of criminal provisions should more preferably be included in the special part: Article 2 § 3 of Law 3691/2008 certainly constitutes an improved basis for establishing Greek criminal justice competence in money laundering cases with international aspects, compared to the previous problematical provisions of Law 2331/1995. However, an additional intervention seems vital at this point, so that money laundering of “Greek” unlawful assets conducted abroad by a foreign national can safely be dealt with by the Greek criminal jurisdiction.

As to the legislation on regulatory compliance itself, it seems preferable to abolish the relevant transgressions when perpetrated by “legally accountable” persons (who will, nevertheless, still face increased liability for committing money laundering) and envisage harsh administrative sanctions.