LEGAL AND CRIMINALISTICS FEATURES OF THE CRIMES OF "ABUSE OF POSITION AND AUTHORITY" AND "MONEY LAUNDERING AND OTHER PROCEEDS OF CRIME"

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Abstract

The criminal offenses "Abuse of official position or authority" and "Money laundering and other proceeds of crime" are in the group of economic-financial crimes and they have their criminalistics characteristics and may be related to each other in a criminalistic situation in cases where the illegal property gains, gained from abuses, are legalized through money laundering. These are complex criminalistics situations in which it is important to distinguish the criminal behavior of the previous crime from the criminal behavior of money laundering, especially because the Macedonian legislator provides for the crime of abuse of officials in financial institutions involved in the process of money laundering or disclosing information about a secret financial investigation.

This paper will analyze the criminal-legal characteristics of the two crimes, analyzing the criminalistics characteristics especially from the aspect of their connection. The study of these two crimes is important because the crime "Abuse of official position and authority" is the most committed economic-financial crime, with which the perpetrators gain high criminal proceeds that are subject to money laundering, and it will be analyzed through a case from the Macedonian criminal practice.

The purpose of the paper is to obtain indicators for real connection of the mentioned crimes, indicators for the status of perpetrators, the manner of execution, and the used money laundering schemes, but also indicators for actions taken to secure and confiscate illegally acquired property.

Keywords: abuse of office, money laundering, crime, criminal proceeds, indicators, confiscation.

1. INTRODUCTION

The criminal situations with elements of the criminal acts "Abuse of official position and authority" and “Money laundering and other criminal offenses" are complex in which several perpetrators with different status characteristics are involved, namely officials, responsible persons, persons performing work of public interest, but there is also the involvement of legal entities, through whose accounts the financial transactions are performed to infiltrate the criminally acquired money and conceal their criminal origin.

The Macedonian legislator through most amendments to the listed crimes incriminates most forms of criminal behavior which is an important prerequisite in terms of
detecting, elucidating, and providing evidence of individual crimes of all perpetrators involved in the criminal situation. The process of detection is related to obtaining general information that is important for conducting checks through legal sources of knowledge and raising the level of suspicion on grounds of suspicion important for taking specific measures and activities for criminal and financial research and providing evidence such as the criminal offense “Abuse of official position and authority” that has a predictive character, as well as the criminal offense “Money laundering and other proceeds of crime“ that involves criminally obtained proceeds in the legal financial system. What is most important is to clarify the connection of these crimes and identify all the perpetrators involved in the criminal situation and their criminal roles. This is also important because the criminal offense ”Money laundering and other proceeds of crime“ provides that the perpetrators may be officials in financial institutions as perpetrators who abused their job and enabled the placement, transfer, or integration of financial resources arising from a previously punishable offense, regardless of the offense in question or providing clients with information on a financial investigation being conducted against them. In recent years, criminal situations with these crimes have become more common in criminal practice, especially in organized cases of criminal activity. In that direction is made an analysis of cases from the practice to obtain information on the manner of criminal activity and knowledge of used laundering schemes, money created and used by the perpetrators. The annual reports of the State Statistical Office are analyzed to analyze the reported, accused and convicted perpetrators in the period 2007-2019 and to obtain information about the quality of the proceedings from the very beginning of the reporting until the final court decision.

2. LEGAL AND CRIMINALISTICS FEATURES OF THE CRIMES OF "ABUSE OF POSITION AND AUTHORITY"

The criminal act “Abuse of official position and authority“, according to Article 353, is in the group of Criminal acts against official duty systematized in Chapter 30 of the Criminal Code of the Republic of Macedonia.

For the crimes against official duty, the provisions of the Convention against Corruption are important, where Article 8 stipulates that each signatory state will adopt legislation and other measures that will be necessary for the establishment of criminal offenses, committed intentionally by promising, offering, or giving to a public servant, directly or indirectly, inappropriate advantage, for the official himself or another person or entity, for the official to act or refrain from acting in the performance of his official duties. In the second form, by request or receipt by the public servant, directly or indirectly inappropriate benefit, for the official himself or another person and entity, in order for the official to act or refrain from acting in the performance of his official duties.

The first criminal acts against official duty date back to the period of the establishment of the institute of responsibility, the first criminal charges against officials of Rom are according to the Law of Lex Acilija. According to the provisions of this law, the perpetrators of abuses were not only obliged to compensate the damage but such behaviors according to the prescribed sanctions were equated with theft, so that the compensation was paid in double amounts. “According to the later Law Lex Servilija, for the perpetrators of abuses, in addition to compensation in double amount, there was a loss of political rights.“ (Tomanović, 1990)
These crimes are not a relic of the past, but unfortunately, they occur in all social order and are more common at the beginning of the 21st century. Such crimes harm the whole society, but also individuals. That abuse, corruption, and self-government of officials holding public authority is a great social evil that at the same time leads to damage to the reputation of certain bodies and institutions, certain professions, and even the authority of the government. Therefore, with the criminal acts against the official duty, it strives to ensure correctness, legality, efficiency, and expediency in the work of the state bodies and institutions with public authorizations and preservation of the citizens' trust in the current government and the legal order. (Mišić, 2005) Therefore, it is in the interest (and imperative) of every state to suppress these illicit behaviors of individuals and groups and to compel them to exercise their powers and competencies within the limits of laws and bylaws, and any overstepping and the abuse of those powers to be declared prohibited, unlawful and punishable. (Simović M., Jovašević D, & Simović V., 2019)

Offenses against official duty are different forms of abuse of official position and public authority in the performance of official duty that is performed by officials as holders of authority. Most often it is about the actions of the officials during the performance of official duty, not in the interest and the need of the service they perform, but in their interest or realization of interest of someone else in order to gain illegal property benefit for themselves or another natural person or legal entities, and thus cause damage to the state body, institution, public enterprise or violate the rights of other persons. (Jovašević, 2011)

In legal theory, several divisions of crimes against official duty can be found. The basic division is considered to be: (Simović M., Jovašević D, & Simović V., 2019)
- Commits official criminal acts when they can be committed only by an official or responsible person in the performance of their official duty or public authority and
- Commits official crimes that can be committed within the service but by other persons who do not have the properties of servitude, but the criminal situation connects them with the crime of officials.

An official criminal offense is "Abuse of official position and authority" according to Article 353 of the Criminal Code of the Republic of Macedonia (Official Gazette of the RM, No. 37/96 ... 248/18). The crime covers the forms of execution, the status of the perpetrators and especially emphasizes the misuse of public money that is misused through public procurements realized by the officials within their authorizations. The crime provides that:

1. An official person who by using his/her official position or authorization, by exceeding the limits of his/her official authorization or by not performing his/her official duty will gain for himself/herself some benefit or harm to another, shall be punished with imprisonment from six months to three years.
2. If the perpetrator of the crime from the item (1) obtains greater property gain or causes greater property damage or more severely violates the rights of another, he shall be punished with imprisonment of six months to five years.
3. If the perpetrator of the crime from item 1 obtains significant property benefit or causes significant damage, the perpetrator shall be punished with imprisonment of at least three years.
4. A responsible person, a responsible person in a foreign legal entity that has a representative office or performs an activity in the Republic of Macedonia or a person that performs activities of public interest shall also be punished with a fine referred to in paragraphs 1, 2 and 3 his special authority or duty.
(5) If the crime referred to in paragraphs (1) and (4) is committed during public procurement or to the detriment of the funds from the Budget of the Republic of Macedonia, public funds, or other funds of the state, the perpetrator shall be punished with imprisonment of at least five years.

The crime envisages three ways of execution, as follows: (Nikoloska: 2015-2)

Exercising official position and authority, when the official or responsible person does not abuse in a formal sense, because they do not exceed the official authority or do not perform the official duty or authority, but they substitute the real interests of the service and its proper fulfillment in their own interests or the interests of a third party. This is especially emphasized in the discretionary powers of the official or responsible person in the cases when the official person is left with the assessment of the expediency of his actions and decisions based on law or regulation. This manner of execution is most often associated with non-compliance with the provisions of the Law on Prevention of Corruption and Conflict of Interest, which regulates measures and activities to prevent corruption in the exercise of power, public authority, official duty and policy, measures and activities to prevent conflict of interests, measures and activities for prevention of corruption in the performance of activities of public interest of legal entities related to the exercise of public powers. (Official Gazette of the RM, No. 12/19)

Exceeding the limits of his/her official authorization, acting of the official or responsible person who retains the official character, but goes beyond the limits of the authorization of the official person. The action itself must have an official character when the undertaking of the actions has an official character and by an act are provided as a competence of the official or responsible person.

Failure to perform his official duty, criminal behavior which can be said to occur by non-commission when the official or responsible person does not perform the competencies arising from his scope of work provided by law, regulation, or collective agreement. The omission or non-performance of official duty must be related to some benefit or cause of harm.

As perpetrators, it is envisaged that these are persons with the status of an official, responsible person in a legal entity and a foreign legal entity that has a representative office in our country and a person who performs activities of public interest related to his special authority or duty. In this criminal offense, about the sanctions, a gradation was made depending on the acquired illegal property gain or the damage caused, for: higher property gain that corresponds to 5 average salaries at the time of the commission of the crime; significant property gain corresponding to 50 average salaries. (Art 122 p. 34 and 35 Criminal Code of the RM, Official Gazette of the RM, No. 19/04… 284/18) The perpetrators are sentenced to 6 months in prison for the basic crime, and the highest prison sentences are provided if the crime was committed while performing public procurement or to the detriment of the funds from the Budget of the Republic of Macedonia, from the public funds or other funds of the State. A qualified form of the crime is if it is committed by misusing the financial resources of the State Budget and public funds during the realization of public procurements. The legislator also defines the status of the perpetrators in the Criminal Code in Article 122, paragraphs 4.5.6.7.8 and 9. (Official Gazette of the RM, No. 19/04… 284/18)

Abuse of official position and authority in an objective sense exists when the official person acts outside the limits of objective legal norms in terms of substantive law, procedure, and jurisdiction. In a subjective sense, it occurs when the official person objectively remains within the limits of the official position and authority but does not act in the interest of the service, but to realize his own interest or the interest of another person. Abuse of official
position and authority as criminal behavior can be provided in another crime, but an important element to distinguish is the manner of execution, subjective and status characteristics of the perpetrators. (Tumanovski: 2008)

3. LEGAL AND CRIMINALISTICS FEATURES OF THE CRIMES OF “MONEY LAUNDERING AND OTHER PROCEEDS FROM CRIME”

Money laundering is linked to a period of prohibition in the United States in the 1930s, when organized crime groups portrayed cash earned from smuggling and selling alcoholic beverages, prostitution and illegal betting as profits in the laundry chain clothes. But this problem became topical in the late 1980s when the international community recognized it as a serious threat to democracy, human rights, and the rule of law, which are fundamental values of modern democracies. As a threatening phenomenon, money laundering is expanding its dimensions using the intensive processes of globalization, technological transformation, and European integration. (Nikoloska, 2015 -1)

Money laundering is an illegal activity that can generally be defined as the legalization of criminally obtained money, other proceeds, or property. The legalization process is associated with transactions that conceal the true source of money or other property, for which there are grounds for suspicion that they were illegally acquired in the country or abroad, and the purpose is to show that they were acquired legally. (Ivanov & Maroši, 2014).

Money laundering allows criminal organizations to buy protection for themselves and their profits through corruption and consolidate their economic power by penetrating the legal economy, creating the most important link between the criminal world and the legal society. (Taseva, 2003)

Money laundering as a phenomenon can be investigated from several aspects: financial, legal, criminological, criminal, etc. In essence, money laundering is a process of legalizing criminal money and presenting it as legal. In both legal and illegal contexts, it means placing money from illegal flows into legal ones that are not related to illegal activities. (Crumbley, Heitger, & Stevenson, 2007). That is, the purpose of money laundering is precise to extract money from illegal activities and infiltrate them into legal businesses or place them in safe places in order to further use them as legally acquired money. It is a complex process due to the numerous activities of the perpetrators in order to "launder" the criminal money and make it legal, but also due to the involvement of a large number of perpetrators who committed predicative acts and who enabled the money laundering process. Officials and responsible persons from the financial institutions are especially involved in the washing process in order to be successful in the realization.

The Macedonian legislator, according to all recommendations and guidelines from the international community and legal acts of international bodies and organizations, first criminalized the crime of money laundering in 1996, and then the crime itself has undergone several changes and amendments in order to cover all three phases (placement, transfer and integration) and to cover the special category of perpetrators who abuse their official powers for money laundering, but also to initiate proceedings for money laundering cases when it is allowed by objective circumstances that indicate illegally obtained money. It is possible to initiate a procedure for a predicate offense due to the existence of subjective circumstances. A sufficient element is a well-founded suspicion of the illegal origin of money or other proceeds of crime.
The criminal offense “Money laundering and other proceeds of crime” after 273 is systematized in Chapter 25 of Criminal Offenses against public finances, payment operations, and the economy of the Criminal Code of the Republic of Macedonia. (Official Gazette of the RM, No. 37/96, 19/04… 284/18)

The work itself is structured in 13 paragraphs as follows:

(1) A person who puts into circulation, receives, takes over, substitutes, or forfeits money or other property which he/she has acquired by a criminal offense or knows to have been acquired by a criminal offense, or by conversion, alteration, transfer or otherwise concealing that it came from such a source or concealing his location, movement or ownership shall be punishable by imprisonment of one to ten years.

(2) The punishment referred to in paragraph 1 of this Article shall also apply to a person possessing or using property or objects which he/she knows to have been acquired by committing an offense or by falsifying documents, failing to report facts, or otherwise concealing the origin, or conceals their location, movement, and ownership.

(3) If the offense referred to in paragraphs 1 and 2 has been committed in banking, financial or other business or if the transaction has been avoided, the offender shall be required to report cases provided for by law, and the offender shall be punished by imprisonment of at least three years.

(4) Anyone who commits the offense referred to in paragraphs 1, 2 and 3 and is liable and entitled to know that the money, property and other proceeds of crime have been obtained by the offense, shall be punishable by a fine, or by imprisonment of up to three years.

(5) A person who commits the offense referred to in paragraphs 1, 2 and 3 as a member of a group or other association engaged in money laundering, the unlawful acquisition of property or other proceeds of crime, or with the assistance of foreign banks, financial institutions or persons, will be sentenced to imprisonment of at least five years.

(6) An official, a bank officer, an insurance company, a gambling company, an exchange office, money exchange or any other financial institution, a lawyer, unless acting as a lawyer, notary public or any other person with public authorizations or performing public works that enable or permits a transaction or business relationship against his/her statutory duty or perform a transaction despite a prohibition imposed by a competent authority or a provisional measure ordered by a court or fails to report money laundering, that he/she has learned about in the course of his/her function or duty shall be punishable by imprisonment of at least five years.

(7) An official, responsible person in a bank or other financial institution, or a person performing public interest affairs, who is authorized by law to apply measures and actions for the prevention of money laundering and other proceeds of crime, who would reveal data relating to investigation of suspicious transactions to clients or an unauthorized person, shall be punishable by imprisonment of three months to five years.

(8) If the offense is committed for profit or for purposes of data abuse abroad, the offender shall be punished by imprisonment of at least one year.

(9) If the crime referred to in paragraph 7 of this Art has been committed out of negligence the offender shall be punished with a fine, or with imprisonment of up to three years.

(10) If there are factual or legal obstacles to establishing an earlier offense and prosecuting its offender, the existence of such offense shall be determined based on the factual circumstances of the case and the existence of a reasonable suspicion that the property was acquired by such offense.
(11) The offender's knowledge, that is, his/her duty and ability to know that the property was acquired by a criminal offense, may be determined based on the objective factual circumstances of the case.

(12) If the offense referred to in paragraph 1 is committed by a legal person, it shall be punished by a fine.

(13) The proceeds of the crime shall be confiscated and, if such confiscation is not possible, the offender shall be deprived of any property corresponding to its value.

The object of protection is defined as: 1) monetary, financial and 2) legally in terms of acquiring and disposing of money and property in economic operation (Petrović, 2009). As an object of protection in this crime, the following is important: 1) whether the money or property was acquired through the commission of a previous crime or were there reasonable suspicions that the money or property was of an illegal source; 2) to determine the characteristics, status and criminal role of the perpetrators in the criminal operation; 3) the structure and functioning of a criminal gang, in order to detect whether the money laundering is an offense committed by an organized criminal group or gang; 4) ascertain the involvement of official, responsible persons or persons performing public interest activities; 5) type and amount of money sent.

The object of protection comes first from the money that comes from the crime, but also from the money that comes from other illegal activities (exempli causa), but the term of illegal activities is not clearly defined (lex certate infringement), usually considered to be money originating from a “gray economy" or finances obtained by performing an unregistered activity (Đorđević, 2016).

The act of enforcement is placing on the market, receiving, taking over, exchanging or scattering money, or concealing in another way that they originate from punitive action. These are different modalities of action that allow money from criminal sources to be found in banking, finance or other business operations. An object of an action is money obtained from any crime. The focus of the wrongdoing is precisely to cover up the criminal origin and to include "dirty money" in the legal cash flows. The regularity and security of payment operations and economic relations presuppose that money and other property goods circulating in circulation are acquired legally. If, on the other hand, the fruits of illegal transactions flow into it and they acquire the status of legally acquired capital in multiple transfers to others (through banks, accounts, purchase agreements, etc.), the capital market loses its function and value orientation and becomes a sphere of unpunished finalization of criminal activities. The incrimination of money laundering, therefore, represents the last stage of the previous criminal activities, as well as their material result. (Kambovski, 2003)

Perpetrators of money laundering can be “any person" who commits any criminal activity provided by the incrimination as a way of committing, but it is provided that the perpetrator can also be an official who, by using or disrespecting the legal duty, will act criminally several ways, as follows: non-reporting of a limited or suspicious transaction, will enable or allow a transaction or business relationship contrary to the law, does not act upon a pronounced measure of prohibition or a temporary measure of a transaction or business relationship. The perpetrator acts criminally within the framework of his official duty arising from the performance of the function (director, manager) or the performance of works and work tasks (treasurer, clerk), a person performing works of public interest (lawyer, notary), etc. This category of perpetrators has criminal responsibility for non-compliance with the laws in their work, especially the Law on Prevention of Money Laundering and Financing of Terrorism, and the legislator provides for liability when a criminal and financial investigation of criminal cases has already begun, and the entities themselves are required
or certain checks and the provision of data necessary for the investigation are checked. Disclosing this information or providing information that a client is being investigated is a criminal act for which it is responsible, as it “helps” the ”client perpetrators“ to react at a time when the court has not yet imposed a measure to secure money and property and the same to be ”extracted“ or transferred to ”safe places“, of course, again with the help of perpetrators from the ranks of officials and responsible persons of the entities. (Nikoloska, 2015)

This refers to the involvement of persons from the Anti-Money Laundering System that is established in the Republic of North Macedonia, and under the direct influence of the recommendations of the International Community and the obligations arising from the ratified international legal acts. The system itself is set up in such a way that money laundering can be detected at the very beginning when placing in one of the entities because it is a legal obligation of their employees to doubt the legality of money or other returns by applying indicators. Their responsibility is to act legally, but very often under the influence of corruption or direct involvement (member of a criminal group or gang), their official powers are abused and instead of preventing money laundering, money laundering is allowed, which is the most dangerous form of criminal activity, as is the transfer of criminal money electronically to „safe places“, beyond the reach of the forces of justice, and preventing their securing and confiscation. (Nikoloska, 2013)

4. VOLUME, STRUCTURE AND DYNAMICS OF REPORTED, ACCUSED AND CONVICTED PERPETRATORS

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Table No. 1 Volume, structure and dynamics of reported, accused and convicted persons
• An analysis was made for the period 2007-2019 for reported, accused, and convicted perpetrators of the criminal offenses "Money laundering and other proceeds of crime" under Art. 273 and "Abuse of official position and authority" under Art. 353 according to the data from the Annual Reports of the State Statistical Office. The purpose of the analysis is to perceive the situation in the process from filing criminal charges with grounds for suspicion, filing an indictment with reasonable suspicion to a final court verdict. According to the data for the investigated period, a total of 121 perpetrators were reported for the first crime, but 132 perpetrators were charged, which indicates the fact that in the criminal investigation, prosecutors in cooperation with criminal inspectors provided evidence of involvement of other persons in the cases and in the application of appropriate measures and actions, and especially with financial investigations that track the money that leads to all those involved in a criminal situation.

• Regarding the conviction of the accused 132,110 perpetrators have been convicted, but these are only data by years, but some procedures have not been completed so it can be concluded that for money laundering a smaller number of perpetrators report, accuse and convict for a reason, which is a secondary crime, for which the cases are processed after the relevant evidence for the predicative crimes is provided and solid evidence is usually provided for the perpetrators based on which the verdicts are rendered.

• Regarding the connection of the two criminal acts in individual criminal situations, a research was conducted for the period 2006-2019, organized by the Financial Intelligence Directorate, which includes several working groups of representatives of the entities, the Financial Intelligence Unit, officials from the bodies of persecution and the judiciary and representatives of academia who investigate the relevant issues to determine the risk assessment of money laundering and terrorist financing, where after comprehensive work and analysis of data, information was obtained that the greatest correlation of realized criminal cases these crimes, so that the crime "Abuse of official position and authority" is first on the list of the high threat of money laundering. (Money Laundering and Terrorist Financing Risk Assessment Report, FIU, 2020)

• In the Report from the stated research, from the analysis of the accusations raised in the investigated period, data were obtained that public sector officials were involved, responsible persons managing the private sector, but also officials and responsible persons from public enterprises and institutions, but in certain cases in the money laundering, elected officials - mayors from the local self-government are involved. Money laundering typologies have also been extracted, as follows:
  • Financing a political party through cash payments with counterfeit payment slips that originated from illegal sources.
  • Legal entities have repeatedly received funds originating from a crime, and the received funds, which originate from illegally approved loans and the illegal purchase of shares in a bank.
  • The suspects transferred the funds originating from damage to creditors and fraudulent actions to other legal entities.
  • Money originating from a criminal offense “Abuse of official position and authority” have been transferred on several occasions to the accounts of natural persons based on fictitiously concluded employment contracts.
• The movable and immovable property was purchased with cash derived from the sale of drugs.
• The organized crime group that smuggled migrants received compensation for the smuggling in cash that was collected through fast money transfer agents.
• By establishing several legal entities, taking loans and then causing false bankruptcy of those legal entities, the funds have been withdrawn from the accounts on several occasions and the movable and immovable property has been purchased.
• A legal entity that acquired the funds contrary to the Law on Public Procurement through a Public Enterprise and the Municipality, were used to purchase a share in another legal entity.
• Responsible persons in several legal entities used the funds they earned from the sale of trade goods without accounting documentation and records, for the purchase of trade goods and for entering transaction accounts based on loans and deposits.

5. CASE ANALYSIS OF A COMPLEX CRIMINAL SITUATION

The connection between money laundering and other crimes, and especially the abuse of official position and authority, especially the manner of connection and the chronology of criminal events can be seen through analysis, for example, from the public prosecution practice, because cases where there are suspicions of money laundering and organization of the shooters, is taken over by the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption Skopje.

Example 1. In one criminal situation, seven persons from Tetovo, owners and managers of two legal entities from Tetovo and one from Struga, were reported due to the existence of grounds for suspicion that they committed criminal offenses Money Laundering and other proceeds of crime, Tax evasion, Fake bankruptcy, Abuse of official position and authority. The criminal activities started in 2005 when several changes were made regarding the properties of managers and owners, and in the beginning of 2013, a bankruptcy procedure was initiated with the same legal entity. In the period from July to December 2011, three of the applicants, in order to gain illegal property gain, abused their position by selling and collecting from the total inventory of one of the legal entities without preparing invoices, delivery notes and other documentation for sale. Secondary products in cash and the funds were paid in cash on their transaction accounts or on the accounts of legal entities in the name of loans and founding deposits in the amount of MKD 6,700,000. Also, one of the reported parts of the funds from the illegal sale of stocks used them for procurement of secondary products for MKD 1,946,880, and two of the reported without submitting invoices for the sale of waste, certain quantities of waste copper and brass were made available to one of the legal entities from Tetovo for which it exported to Italy, from where funds of MKD 3,300,000 were paid. In this way, with the committed incriminating actions, the defendants legalized funds originating from a crime in the total amount of MKD 11,946,000, thus committing the crime of money laundering and other proceeds of crime, illegally sold stock of cash without preparing proper documentation and without paying the funds to the account of the legal entity, knowingly and intentionally evaded the legal obligations to pay VAT and personal income tax in the total amount of MKD 15,689,750 thus committing tax evasion, and because they submitted a request for opening a bankruptcy procedure in order to meet the conditions, they committed illegal actions and caused a state of false bankruptcy.

Example 2. An Indictment was filed by the Basic Public Prosecutor's Office for Prosecution of Organized Crime and Corruption Skopje against two persons for misuse of IPA funds after an international investigation, which included the international organizations OLAF and Eurojust. Based on the collected evidence, the first defendant AA is charged with committing criminal offenses in co-perpetration with the second defendant BB Abuse of official position and authority, Money laundering and other proceeds of crime and Unauthorized manufacture, possession, broking or trading substances. The second defendant is charged with committing criminal offenses Abuse of official position and authority and Money laundering and other proceeds of crime. The criminal acts took place in the period from October 2012 to April 2017, the first defendant as an official - appointed official and chairman of the project steering committee, together with a previous agreement with the second defendant - managing civil servant and member of the steering committee, intending to obtain illegal property gain for themselves and for a legal entity from Italy, acted contrary to their official duties and used their official positions and powers. The defendants, contrary to the principle of confidentiality and the principle of equal treatment of applicants, shared confidential tender information for two IPA projects implemented in two ministries. The legal entity from Italy used the unauthorized shared information and prepared a bid adapted to the needs and met all the technical and financial conditions. At the same time, the defendant BB in a previous agreement with the defendant AA, for one project assisted in the preparation of the financial bid of the legal entity - applicant and adjusted it according to the conditions that were announced in the tender. By such actions, the defendants enabled the legal entity to have an illegal legal advantage over the other bidders and to be selected as the contractor of the projects. As a reward for the support, the defendants, in addition to tourist trips, were also rewarded with cash. Thus, the first defendant, with the actions he performed for himself, obtained illegal property gain in the total amount of MKD 2,609,445 or 42,430 euros, while the second defendant for the services he performed during the implementation of the projects illegally acquired MKD 3,508,698, i.e. 57,052 euros - an amount that the legal entity paid from the funds intended for the implementation of the project on its account opened in Greece. With the actions taken, the defendants questioned the legality of the implemented projects. The European Commission, following Article 29.1 of the Framework Agreement concluded with the Former Yugoslav Republic of Macedonia, in the framework of the implementation of assistance under the Instrument for Pre-Accession Assistance (IPA), through the Directorate General for Enlargement and Neighborhood Policy, requests a refund of funds allocated for project implementation from 982,307 euros for the first project, i.e. 771,620 euros for the second project. The amount in the total value of 1,753,927 euros should be returned to the EC, to the detriment of the budget of N. Macedonia. During the search of the home of the first defendant, in 2019, a weapon was found - a Luger pistol, which was not registered in the weapons records and which the defendant possessed without authorization.

6. CONCLUSIONS AND RECOMMENDATIONS

The criminal offense “Abuse of official position and authority“ is a criminal offense with a high risk of money laundering, it appears as a predictive criminal offense where the gained illegal property gain, the perpetrators by using certain typologies of money laundering legalize and present as legally acquired money and other property that is in the country, but also part of the acquired funds are transferred through certain transactions abroad. The perpetrators are officials and responsible persons in the state sector, as well as in the private sector, and it is especially expressed through illegal public procurement and concluding public procurement contracts of the state sector with legal entities from the private sector, were part of the financial means. They end up criminally with the officials, which enables their enrichment, usually at the expense of the budget money of the State. In criminal situations, in addition to the connection between abuses and money laundering, other predicate crimes have been solved, such as crimes with elements of tax evasion, illegal possession of weapons, drug smuggling, smuggling of migrants, etc. This indicates that as predicate crimes there were several crimes from which the perpetrators gain illegal property gain.

According to the analysis of the abuse of official position and authority, it can be concluded that only part of the reported perpetrators are convicted persons, which indicates the fact of suspicion of corruption, which should be an incentive for a comprehensive investigation, especially of crime with elements of abuse and paying attention to criminal investigation bodies for gathering information, detecting, clarifying and providing evidence of corruption in the judiciary, because judges also have legal responsibility and are officials who should respect the law and during their actions to pay attention to a comprehensive analysis of the attached evidence, but also to propose measures and actions in order to clarify certain situations and determine whether there are criminal acts and to establish responsibility for the perpetrators. In particular, to pay attention to the type and amount of the acquired illegal property gain and on that basis the imposition of the measure for confiscation of criminally acquired money, other proceeds and property and the measure for prohibition to perform activity, duty or profession within the highest levels would be prevented, and to send a message to future perpetrators that such crimes are punishable by imprisonment and that a job can be lost, a ban on doing a profession or activity can be obtained but also confiscation of everything acquired criminally, and thus to send a message that the crime does not pay off.
7. REFERENCES

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