

## Specificity of the legal structure of money laundering crimes related to corruption under Algerian legislation

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### Abstract:

The Algerian legislator paid attention to the crime of money laundering proceeds of corruption crimes under the Penal Code and the law on the prevention and fight against corruption; it does not exist unless its essential elements are present, which contain a type of specificity that distinguishes it from other crimes; through the stipulation of its provisions and its regulation. There is no crime or penalty except by text, which is the legal element, followed by the material element represented by the act of transferring money and hiding or disguising its true nature, then possessing, acquiring, or using it, and laundering the proceeds of corruption is an intentional crime as the Algerian legislator insisted that its perpetrator be aware that the money came from illegal sources. This is in addition to the assumed element that distinguishes it from others, represented in the original crime.

**Keywords:** Corruption crimes; laundering proceeds; money; the original crime.

## 1. INTRODUCTION

There are various crimes that have become a threat to societies, the most important of which are crimes of corruption. These crimes affect and erode economic security in particular, where their criminal activity has seen an unprecedented evolution, benefiting from the advantages of technological development. Among the forms of corruption studied is the crime of laundering the proceeds of corruption, which aims to hide or alter the nature of funds obtained from criminal activities and illegal sources, making them appear as clean money.

No crime, regardless of its type and nature, is established without the legal requirements represented in its elements and basic elements required by the law. The

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crime of laundering the proceeds of corruption is one of those crimes that do not deviate from this rule, as its material element takes different forms, in addition to its criminal subject matter of its unique nature. It is not possible for it to be committed by mistake as it opposes the direction of the perpetrator's will to commit it, which constitutes its moral element. It is self-evident that there is no crime or punishment except by text, which consequently establishes the legal element. In addition to the three basic elements, what distinguishes the crime of laundering the proceeds of corruption is the assumed element, without which it would not exist.

As a problem that could be posed for this topic, where does the specificity of the crime of laundering the proceeds of corruption crimes lie in terms of the elements it is based on, which separate it from the original crime represented in one of the forms of corruption? How has the Algerian legislator addressed it in the legal arsenal that regulates it?

This study aims to clarify the legal framework that regulates the crime of laundering the proceeds of corruption by identifying the elements it is based on, including the general and specific elements.

To answer the posed problem, we have chosen to approach it according to the requirements of the descriptive method required by such studies, as well as the analytical method in some elements of the research.

We divide the research study into two sections. In the first section, we deal with the general elements of the crime of laundering the proceeds of corruption, while in the second section; we delve into the study of the assumed element as a condition for the existence of the crime of laundering the proceeds of corruption.

## **2. The Specificity of the Basic Elements of the Crime of Money Laundering Proceeds from Corruption**

The crime of laundering proceeds from corruption is considered one of the most important forms of complex and dangerous corruption crimes, as stipulated and punished under Article 42 of Law 06-01, which states: "The same penalties provided for in the current legislation in this field shall be imposed for laundering the proceeds of the crimes stipulated in this law." <sup>1</sup>

The definitions of money laundering crime or money laundering vary; it is any act or initiation aimed at hiding or disguising the nature and truth of the proceeds derived from illegal activities; as if they were inspired by legitimate sources to be used in legitimate activities, whether at the national or international level. <sup>2</sup>

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<sup>1</sup>- Article 42, Law No. 06/01 dated on: February 20, 2006, on the prevention of corruption and combating it, Official Journal of the Algerian Republic (OJAR), issue 14 of 2006, as amended and supplemented by Order No. 10/05 dated on: August 26, 2010, OJAR issue 50 of 2010, and as amended and supplemented by Law No.11/15 dated on: August 2, 2011 OJAR issue 44 of 2011.

<sup>2</sup>- Muhammad Mohi El Din Awad, Money Laundering Crimes, First Edition, Center for Studies and Research, Naif Arab University for Security Sciences, Riyadh, 2004, p.15

It is also the "pumping of illegal money and investing it and employing it in legitimate operations. These illegal funds are usually made through poor countries or in need of hard currencies such as the dollar." <sup>1</sup>

Therefore, money laundering can be defined as the process of converting and using all properties valued in money and derived from illegal sources; into legitimate money through their use in clean legal activities.

As for the meaning of corruption proceeds or criminal proceeds, it has been defined in Article 2 of Law 06-01 as: "all properties derived or obtained, directly or indirectly from committing a crime of corruption." <sup>2</sup>

Through these definitions, it is clear that the crime of laundering the proceeds of corruption necessarily requires a primary crime that precedes it, primarily represented in one of the forms of corruption crimes specified and stipulated in the Law 06-01 amended and supplemented.

For any crime, regardless of its type and nature, it requires the presence of basic elements required by law; where the act takes different activities that form the material element, as it opposes the diversion of the perpetrator's will to cause it without the possibility of its occurrence by mistake, which constitutes the moral element of the crime, in addition to this, it is obvious that there is no crime and no punishment except by text; which implies the establishment of its legal element.

The elements of the crime of laundering the proceeds of corruption crimes appear to be somewhat similar to the elements of the crime of money laundering, which the Algerian legislator organized its provisions in the sixth Bis section of the Penal Code as amended by Law No. 04-15 dated on: February 10, 2004, by virtue of Article 389 Bis and following, but it is distinguished from it in the place where the crime is focused and also the branching of the laws that included the crime of laundering the proceeds of corruption.

Therefore, our research study requires us addressing the elements of the crime of money laundering in the context of corruption offenses, which are primarily represented by three elements: the legal element, the material element, and the moral element, as follows.

## **2.1 The legitimate and legal element**

The legal element of a crime is one of its most important aspects, as it represents the unlawful nature of an activity or action. This is the punitive provision that

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<sup>1</sup>- Saqr bin Hilal Al-Mutairi, *The Crime of Money Laundering, a study on its concept and the obstacles to investigating it and the problems of coordinating international efforts to confront it*, a study presented to complete the requirements for obtaining a master's degree, Faculty of Graduate Studies, Naif Arab University for Security Sciences, Riyadh, 2004, p. 11

<sup>2</sup>- Article 02, Law No. 06/01 amended and supplemented.

determines the appropriate punishment for each crime and derives its source from the texts of the Penal Code or complementary laws. All behaviours and actions that we consider crimes are those stipulated in the criminal law in advance, i.e., the provision must be issued before the act is committed<sup>1</sup>.

Therefore, there must be a legal rule that shows the nature of the behaviour, whether it is criminal or permissible, and the essence of this rule is that the judge cannot consider any behaviour a crime unless there is a legal text for it, even if it constitutes harm to society<sup>2</sup>.

As per the first article of the Penal Code: "There is no crime, no punishment, or security measures without law"<sup>3</sup>. In addition to the text of Article 43 of the Constitutional Amendment of 2020: "There is no condemnation except by virtue of a law issued before the criminal act is committed"<sup>4</sup>. This means that it is not permissible to punish and convict any person without a legal text issued before he commits his behaviour.

The Algerian legislator organized the crime of laundering the proceeds of corruption crimes in the Corruption Prevention and Combat Law, and also in the Penal Code on the grounds that its provisions are the same as the provisions of money laundering crimes by determining the appropriate penalties to deter this crime.

As stipulated in Article 389 bis 1 of the sixth section bis of the third chapter of the Penal Code, the penalty for money laundering is imprisonment from 05 five years to 10 years and a financial fine from 1,000,000 to 3,000,000 Dzd.

In addition to that, Law No. 05-01 related to the prevention of money laundering and the financing of terrorism and combating them, amended and supplemented, has organised and separated this crime, especially the physical element that forms it.

In the event of certain circumstances, such as habitual commission of the crime, or the use of facilities provided by a professional activity, or the commission of the crime within a criminal group, the penalty for which is stipulated in Article 389 Bis 2 is imprisonment from 10 to 20 years and a fine from 4,000,000 to 8,000,000 Dzd. As for

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<sup>1</sup> - Mohamed Sobhi Najm El Din, Penal Law General Part General Theory of Crime, Sixth Edition, Dar Al Thaqa for Publishing and Distribution, Amman Jordan, 2015, p. 51.

<sup>2</sup>- Tawfiq Al Majali System, Explanation of the Penal Code General Part, Third Edition, Dar Al Thaqa for Publishing and Distribution, Amman Jordan, 2010, p. 81.

<sup>3</sup>Article 01, Order No. 66-156 dated on: 18 Safar 1386 corresponding to June 8, 1966, including the Penal Code, amended and supplemented by Law No. 09/01, dated on: February 25, 2000, Official Gazette of the Algerian Republic, issue 15.

<sup>4</sup>Article 43, the constitutional amendment for the year 2020, issued by presidential decree number 20-442 dated on: 15 Jumada I 1442 corresponding to December 30th, 2020, regarding the issuance of the constitutional amendment, approved in the referendum on November 1, 2020, in the Official Gazette of the People's Democratic Republic of Algeria, issue 82.

the attempt to commit this crime, it is punished with the penalty prescribed for the completed crime, according to the text of Article 389 Bis 3<sup>1</sup>.

Article 53 of the Anti-Corruption and Combating Law<sup>2</sup> states that a legal person is criminally liable for the crimes stipulated in this law, including the crime of laundering the proceeds of corruption in accordance with the rules established in the Penal Code. The legislator directly referred the matter to the application of the penalties prescribed for money laundering.

Through the presentation and description of the legal element of this crime, we note the most prominent and important features that distinguish it from other crimes, which is the diversity and dispersion of the legal texts regulating it. We are faced with the prevention and fight against corruption Law, the Penal Code, in addition to the law on the prevention and fight against money laundering and the financing of terrorism. Not only this, but we find every time the legislator refers between these laws.

## **2.2 The material element**

The material element of the crime is generally defined as any external action of a physical nature perceived by the senses<sup>3</sup>. This action could be positive or negative in order to achieve a certain result. The material element consists of three basic elements: the criminal behaviour, represented in the unlawful act contrary to the law, the criminal result arising from this behaviour, provided there is a causal relationship between the behaviour and the criminal result.

The crime of laundering the proceeds of corruption is one of the positive crimes where the actor has a positive, illegal behaviour focused on a specific place. Therefore, we will discuss the elements of the material element of this crime as follows:

### **2.2.1 Broad forms of criminal behaviour for laundering the proceeds of corruption:**

The crime of laundering the proceeds of corruption or money laundering has many forms that form the criminal behaviour included in Article 02 of Law No. 05-01, related to money laundering<sup>4</sup>, and Article 389 bis of the Penal Code, which are as follows:

#### **Transfer or transport of money:**

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<sup>1</sup>Amara Amara, Criminal Protection of Public Money in the Context of Newly Introduced Crimes in Algerian Law, PhD Thesis, Faculty of Law and Political Science, Mohamed Boudeiaf University of M'sila, 2020-2021, p. 241.

<sup>2</sup>- Article 53, Law 06-01.

<sup>3</sup>- Tawfiq Al-Majali system, the previous reference, p 211.

<sup>4</sup>- Law No. 05-01 dated on: February 6, 2005 related to the prevention of money laundering and financing of terrorism and combating them, Official journal No. 11 dated on: 09-02-2005, amended by Law No. 15-06 dated on: 25/02/2015, Official journal No. 8 dated on: 15-02-2015.

The first form involves two different activities and operations, namely conversion and transfer. The conversion here does not mean transfer of ownership, but rather replacing illegal money with clean money<sup>1</sup>; This means converting the properties derived from the original crime, and an example of this may be buying properties, movables, or gold with money derived from the primary crime, such as embezzlement or bribery, or converting the money into a foreign currency, or by buying hard currency in the parallel market<sup>2</sup>.

As for the transfer, it is done by transferring money from one place to another, either physically by using transportation means, or banking through banks, or technically by using modern technology means like electronic transfer using the internet without resorting to the use of regular banks to escape the control of financial intelligence. The purpose behind these two operations, namely transfer and transportation, is to distance the dirty and illicit money, conceal it, cut off its connection, and cover it up<sup>3</sup>.

### **Concealing or disguising the true nature or source of property:**

The true nature of property and funds derived from corruption crimes are concealed in any way, or their source, location, or manner of disposition, movement, or associated rights are disguised, with the perpetrator knowing that they are criminal proceeds.<sup>4</sup> The act of concealment involves not disclosing or hiding through the use of specific methods and transferring the location of illicit funds, such as transferring them from one country to another.<sup>5</sup>

Most jurists distinguish between concealment and disguise; the former refers to any act or action that impedes the disclosure of the truth for the illegitimate source by any means, such as purchasing the thing obtained from embezzlement. Disguise refers to making a project contrary to the truth for these funds, such as introducing illegitimate money into the profits of a legal company as if they were legitimate profits. This scenario forms the basis of money laundering operations as those involved resort to using legitimate channels that cannot be restricted, such as buying bankrupt businesses like hotels and restaurants, and in a short time these projects appear successful as their gross revenues increase due to the addition of funds from illegitimate sources or by using shell companies, among other examples<sup>6</sup>.

### **Acquiring, possessing, or using property:**

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<sup>1</sup>- Omar Hamas, financial corruption crimes and mechanisms for combating them in Algerian legislation, a thesis submitted to obtain a doctorate, Faculty of Law and Political Science, Abi Bakr Belkaid University, Tlemcen, 2016-2017, p 89.

<sup>2</sup> - Ahsan Bouskia, Summary of Special Criminal Law Crimes Against People Crimes Against Money Some Special Crimes, Part One, Fourteenth Edition, Homa House, Algeria, 2012, p 415.

<sup>3</sup>Mohamed Mohy El Din Awad, previous reference, p. 313.

<sup>4</sup> Muhammad Hazeet, Mechanisms for Combating Corruption Crimes in Algerian Legislation, First Edition, Belkis House for Publishing, Dar Al Bayda Algeria, 2023, p. 163.

<sup>5</sup> Omar Hamas, previous reference, p. 89.

<sup>6</sup>Abdulrahman Khalafi, Criminal Liability of Legal Persons for Money Laundering Crimes: A Study in Algerian Legislation with Reference to Jurisprudence and Comparative Legislation, Academic Journal for Legal Research, Faculty of Law and Political Science, University of Bejaia, Vol. 09, Issue 02, 2018, Algeria, p. 32.

This scenario occurs by simply possessing money, regardless of whether it is owned by the possessor or owned by others on the basis of trust or deposited in a deposit account, and using this money for any legal or illegal purpose; provided that the perpetrator knows when it is handed over to him that it is obtained from one of the crimes. The criminal character is based on possession, acquisition, or use of money even if the laundered money is legal as long as the perpetrator knows at the time of receipt that it is dirty and comes from criminal proceeds<sup>1</sup>.

### **Contributing to the commission of one of the previous actions:**

Contribution to the commission of the aforementioned scenarios can occur in any association, agreement, or attempt to participate in aiding or abetting or providing advice in practicing activities laundering corruption proceeds<sup>2</sup>. This scenario does not depend on assistance and cooperation only, but the perpetrator may be convicted merely by proving that he provided advice or was consulted about committing a crime laundering corruption proceeds<sup>3</sup>.

Going back to the text of Article 389 bis of the Penal Code, we find that it mentioned the term participation, but the closest to the truth is to use the term contribution, because the contributor is more comprehensive than the partner; the contributor takes the rule of the original actor<sup>4</sup>.

### **2.2.2 Assigning the offense of laundering the proceeds of corruption as a distinct crime**

The subject matter of the crime of laundering proceeds of corruption is represented in the illicit money and properties. And the Algerian legislator has expanded its concept to include everything that comes from crimes directly or indirectly, whether this money is tangible or intangible, movable or immovable. It also includes the legal bonds that prove the ownership of this money subject to whitening<sup>5</sup>.

And Article 02 of Law 06-01 has defined criminal proceeds as: "All properties directly or indirectly obtained or accrued from committing a crime<sup>6</sup>".

And in the same article, properties "les biens" are defined as: "Assets of all kinds, whether tangible or intangible, movable or immovable, tangible or intangible, and legal

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<sup>1</sup> Abdulrahman Khalafi, the previous reference, p. 33.

<sup>2</sup> Muhammad Hazeet, the previous reference, p. 163.

<sup>3</sup> Shama Sami Muammar, Criminal Liability of Some Legal Persons for the Crime of Money Laundering, University of Algeria Annals 1, Part Four, Volume 31, Issue 4, Algeria, pp. 314-315.

<sup>4</sup> Ammara Ammara, the previous reference, pp. 232-233.

<sup>5</sup> Abdul Salam Hassan, Money Laundering Crime and Ways to Combat It in Algeria, PhD Thesis, Faculty of Law and Political Science, Lamine Debaghine Setif University, 2015-2016, p. 131.

<sup>6</sup> Article 02, Law 06-01

documents or bonds that prove the ownership of these assets or the existence of a right in them"<sup>1</sup>.

And Article 04, as amended by Law No. 23-01 related to prevention of money laundering and terrorist financing and combating them, states that money includes "any type of property or money of any nature, including economic resources and virtual monetary values, tangible or intangible, movable or immovable... and documents or legal bonds in any form, including electronic or digital, indicating the ownership of such money or interest in it, including in particular bank credits, checks, traveler's checks, transfers, shares, securities, bonds, bills of exchange, and letters of credit..."<sup>2</sup>

Therefore, the money laundering crime scene includes the following forms:

-Proceeds that are converted into money, assets, values or movables, and naturally, it does not prevent their pursuit.

-Mixing criminal proceeds with legitimate money also does not prevent their pursuit<sup>3</sup>.

Accordingly, and through the above, we can say that we have a definition of money and criminal proceeds in Law 06-01 on the one hand; and on the other hand, we have a broader and more comprehensive definition of money in Law 23-01 mentioned above, so should we take this definition contained in the law on money laundering prevention or is it sufficient what is stated in Article 02 of the corruption prevention law in the crime of whitening corruption proceeds?

In our opinion, it suffices to use the definition of money that is in Law 06-01 because the subject matter of the two crimes is different, as the whitening of corruption proceeds is limited to a specific kind only, which is the proceeds resulting from one of the forms of corruption; unlike money laundering which does not specify any crime specifically."

### **2.2.3 The criminal outcome of laundering the proceeds of corruption:**

The criminal outcome of the crime of laundering the proceeds of corruption lies in concealing or disguising the illegitimate source of the properties. However, the realization of the outcome does not always require as sometimes criminalization is based on criminal behaviour regardless of any outcome.

Therefore, the criminal liability for this crime does not arise when the outcome is achieved only, but even in the case of mere behaviour. We note that the legislator has succeeded in criminalizing money laundering whether the criminal outcome is achieved

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<sup>1</sup>Article 02, Law 06-01

<sup>2</sup>Article 04, Law No. 23-01, dated on: 16 Rajab 1444 corresponding to February 7, 2023, amending and supplementing Law No. 05-01 dated on: 27 Dhul Hijjah 1425 corresponding to February 6, 2005 and related to the prevention of money laundering and terrorist financing and combating them.

<sup>3</sup> Abdul Salam Hassan, previous reference, pp. 131-132.



or not; which contributes to facilitating proof of responsibility for this crime, especially since it is characterized by complexity and difficulty of proof<sup>1</sup>.

### **2.3 The moral element of the crime of laundering the proceeds of corruption**

If the physical element of the crime is the tangible external appearance of the criminal behaviour, then the moral element is an internal psychological aspect<sup>2</sup> embodied in the perpetrator's intention, which can be recognized through the facts of behaviour; in order for this element to exist, a psychological link between the perpetrator of the illegal activity and the criminal outcome is required<sup>3</sup>.

On the level of the moral element, it is noticeable that the crime of laundering the proceeds obtained from one of the corruption crimes is an intentional crime, and mere negligence or carelessness or other forms of error are not enough to establish it<sup>4</sup>.

Therefore, it is necessary to have both general and special intent in this crime. The general intent consists of the elements of knowledge and will, while the special intent is the perpetrator's knowledge of the illegitimate source of the money.

#### **2.3.1 The Availability of General Intent for the Crime of Laundering the Proceeds of Corruption**

The general intent of the crime of money laundering is based on two elements: knowledge and will, that is, knowledge of the illegitimate sources of money, and knowledge of the facts when the perpetrator commits the criminal behaviour on which the crime is based. In referring to the Algerian legislator, we find that he pointed in Article 389 of the Penal Code to the knowledge and will of the perpetrator as two basic elements for the general criminal intent, provided that the will is free, conscious, and devoid of defects. However, in reality, there are several difficulties in deducing the criminal intent and ensuring its availability, especially in some forms of money laundering crime, for example, when accepting a deposit or transferring illegal money, as banking operations have become carried out through very advanced mechanisms and methods<sup>5</sup>.

Therefore, intent is established if the actor knew that the money he concealed its illegal source, or participated in this concealment, while intent does not exist if the actor is ignorant of the illegal source of the money.<sup>6</sup>

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<sup>1</sup> Dries Bakhouya, Money Laundering Crime and its Combat in Algerian Criminal Law, Comparative Study, PhD Thesis, Faculty of Law and Political Science, Abou Bakr Belkaid University, Tlemcen, 2011-2012, p. 177.

<sup>2</sup> Talal Abu Afifa, Explanation of the Penal Code General Section, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2012, p. 309.

<sup>3</sup> Mohammed Ali Al-Salem Ayad Al-Halabi, Explanation of the Penal Code General Section, First Edition, Dar Al-Thaqafa for Publishing and Distribution, Amman, Jordan, 2008, p. 185.

<sup>4</sup> Kawther Yaish, United Nations Convention against Corruption and Tunisian Legislation, First Edition, Dar Al-Itihad for Publishing and Distribution, Tunisia, 2019, p. 86

<sup>5</sup>- Khadoudja Khaloufi, Farida Louni, The Elements of Money Laundering in Algerian Legislation, Professor-Researcher Magazine for Legal and Political Studies, M'sila University, Volume 2, Issue 8, December 2017, p. 236.

<sup>6</sup>- Khoukha Jamal, Money Laundering Crime, Memo for the Master's degree, Abu Bakr Belkaid University of Tlemcen, 2007-2008, p. 91.

### **2.3.2 Requirement of specific intent for the crime of laundering the proceeds of corruption**

The Algerian legislator did not suffice with the general intent in the crime of money laundering, but required a specific intent, which is what Article 02 of Amended Law 05-01, which states: "Transferring and moving money, knowing that it is direct or indirect proceeds of a crime for the purpose of concealing and disguising the illegitimate source of that money, or assisting any person involved in the commission of the original crime from which the money was obtained to escape the legal consequences of his actions". Thus, the specific intent is the direction of the perpetrator's intention to achieve a specific goal and prompts him to commit the act to achieve an illegal result<sup>1</sup>.

### **3. The presumptive element as a special condition for the crime of laundering the proceeds of corruption**

To establish the crime of laundering the proceeds of corruption, a primary original crime is required to precede it, which is what was clarified in the text of Article 389 of the Penal Code regarding money laundering; but what is the nature of the original crime?

#### **3.1 The specific nature of the original crime**

The law in the same article requires that the funds subject to laundering be criminal proceeds; meaning that their source should be a crime, regardless of its legal description, whether it's a felony, misdemeanour, or infraction, and regardless of its nature and type. However, when referring to the text in its French version, it is restricted to a felony by saying: "produit d'un crime," meaning proceeds from a felony. This is the same matter followed by the legislator in law 06-01, where the term criminal proceeds was used in the Arabic version and "produit d'un crime" in the French version. Although most forms of corruption have the description of a misdemeanour, which excludes felonies and infractions in this crime,

it is therefore necessary to reconsider the wording of the text in line with the Algerian legal system to avoid any confusion and ambiguity<sup>2</sup>.

The original and primary crime naturally is one of the forms of corruption such as bribery, embezzlement of property, damaging it, and crimes related to public transactions, or otherwise. This is contrary to what we find in the previous crime of money laundering where it is not specified; the important thing is that it is a felony or misdemeanour without the infraction.

#### **3.2 Proving the original crime**

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<sup>1</sup>.- Khadoudja Khaloufi, Farida Louni, Previous Reference, p. 237.

<sup>2</sup> - Ahsan Bouskia, the previous reference, pp. 410-411.

To establish a crime of laundering corruption proceeds, it requires that these proceeds come from one of the forms of corruption as previously mentioned, and the question that arises in this regard is whether a conviction judgment is required for the original crime, or is it sufficient to have the basic elements in it?

The principle is that the proof of the previous crime is by a conviction judgment<sup>1</sup>; according to the constitutional rule, which states that every person is considered innocent until a judicial entity proves his guilt<sup>2</sup>, However, it is permissible to pursue criminal prosecution regarding money laundering even in the absence of a conviction judgment in the following cases:

- The presence of a record of instigating public action, such as prescription, death, and others.
- The existence of an impediment from the criminal liability impediments such as being underage, insanity, and coercion; these situations are not imagined in corruption crimes where the supposed element in them i.e., the status of the perpetrator, it requires to be a public official or equivalent.
- If there is an impediment from the punishment impediments, which is also ruled out in corruption crimes<sup>3</sup>.

Article 02 of Law 23-01 states: "Money laundering is a crime independent of the original crime, regardless of whether the perpetrator of the original crime has been convicted or not". We notice that although the two crimes, i.e. money laundering and the original crime, are connected, they are completely independent and each stands on its own.

### **3.3 The original crime committed abroad**

The original crime may be committed abroad, such as bribery or embezzlement of property, then its criminal proceeds are laundered and invested in legitimate activities. Are the perpetrators pursued for money laundering despite it not taking place within the concerned state? In this case, a crime committed outside the judicial jurisdiction of the state cannot be considered an original crime unless the activity committed represents criminal behaviour under the domestic law of the state in which it was committed and would be considered criminal behaviour under the domestic law of the state party that considers it as such if committed there. This is stipulated in Article 23 paragraph 2 of the United Nations Convention against Corruption<sup>4</sup>.

From this, we can say that one of the basic conditions for the crime of laundering the proceeds of corruption is that it is preceded by a primary crime and is one of the forms of corruption stipulated and punishable under Law 06-01, whether committed

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<sup>1</sup> - Ahsan Bouskia, the same reference, p. 412

<sup>2</sup> - Article 41 of the constitutional amendment for 2020.

<sup>3</sup> - Ahsan Bouskia, the previous reference, p. 413.

<sup>4</sup> - Kawthar Ya'ish, the previous reference, p. 86.

within the borders of the state or outside it. The important thing is that it constitutes a criminal act in the eyes of the state in which it occurred.

#### **4- Conclusion**

Through the research study on the specificity of the legal structure of the crime of laundering the proceeds of corruption, we were able to reach the following results:

\* There is a similarity between the crime of money laundering and laundering the proceeds of corruption, but the difference between them is apparent through the elements that characterize the latter and the branching of the laws.

\* Referring to the laws enacted by the legislator indicates points of similarity and difference between the two crimes (money laundering crime, and the crime of laundering the proceeds

of corruption); from one side, it is not permissible to repeat the common provisions between them, and from another side, the necessity of specifying special provisions for the crime of laundering the proceeds of corruption.

\* What distinguishes the crime of laundering the proceeds of corruption from others is that its material element consists of a set of different actions, meaning that it is not achieved by a single act like other crimes.

\* The Algerian legislator dedicated the crime of laundering the proceeds of corruption to a special subject matter, represented in illegitimate money and properties, as it clarified it in the text of Article 02 of Law 06-01.

\* As for the perpetrator, like the rest of the forms of corruption crimes stipulated in Law 06-01, we find that the legislator, every time, affirms the necessity that the crime committed is by a public employee; but in the text of Article 42 of the same law, we notice that he did not mention a specific status; this, if it indicates anything, indicates the seriousness of this crime and its non-exclusivity to avoid the escape of criminals from punishment, as well as not narrowing its scope.

Starting from the above, we present some of the following suggestions:

- Since the crime of laundering the proceeds of corruption has a kind of specificity, if its provisions are detailed in the anti-corruption law, considering it one of its forms, and abandoning the referral to the penal law and its complementary laws, to avoid legal loopholes that lead to the escape of its perpetrators from punishment.
- Work on tracking the movement of funds looted from the commission of the original crime so that it does not reach laundering, meaning confronting the original crime to avoid this crime.

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