Court of Cassation Affirms the Independence of Money Laundering From the Predicate Offence in light of FATF Recommendations

Al Zahraa Bakr
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Appeal No. 10024 of Judicial Year 94.

Court of Cassation (Criminal Circuit)

12 November 2024

On 12 November 2024, **Egypt's Court of Cassation affirmed the independence of the crime of money laundering from the predicate offense, in line with both domestic legislation and Egypt's international Commitments.**

The appellant, a public official, was charged with the offence of money laundering. The funds in question were allegedly proceeds derived from the offence of unlawful gain. It was contended that the appellant attempted to conceal the illicit origin of these funds by purchasing a residential unit in his wife's name, then transferring ownership to himself, and subsequently selling it to a third party.

On 15 January 2024, the Economic Court (Felony Circuit) convicted the appellant. He subsequently filed an appeal before the Court of Cassation arguing that the case is inadmissible on the grounds that the matter had already been finally adjudicated as constituting the offense of illicit gain. Accordingly, he may not be prosecuted for the offense of money laundering associated with the offense of illicit gain.

The Court rejected this argument stating *inter alia* that:

> ..no specific method is required to prove the offense of money laundering other than the general means of proof, and that it suffices—as is the case, in principle, with all crimes—that the court be convinced of the occurrence of the constitutive act based on any evidence or presumption presented before it.

It further held that:

> The appealed judgment has set forth sufficient and reasonable grounds to establish the occurrence of the offense of money laundering against the appellant, both in its *actus reus*

and *mens rea* elements, since the law does not require the court adjudicating the offense of money laundering to be bound by the existence of a prior determination of the predicate offense of unlawful acquisition of funds.

In that context, the Court highlighted that:

> **money laundering constitutes an independent offense separate from the original crime,** such that it is not necessary for a person to be convicted of the predicate offense beforehand in order to consider the funds or assets as criminal proceeds; rather, the court may examine the illegality of their acquisition independently. Moreover, the identification of the perpetrator of the predicate offense or the institution of criminal proceedings against him is not necessary for the validity of convicting the perpetrator of money laundering, so long as it is established that the latter committed it with knowledge of the illegal origin of the funds, in accordance with Article (2) of Law No. 80 of 2002 on Combating Money Laundering (hereinafter, the Anti-Money Laundering Law)...

The Court further emphasized that

> **The third recommendation of those issued by the Financial Action Task Force (FATF), together with its interpretative note— which are binding internationally upon Egypt pursuant to Article (48) of the Charter of the United Nations under Chapter VII and the relevant Security Council resolutions, and are primarily addressed to investigative authorities and courts—provides that "a conviction for a predicate offense shall not be a prerequisite for establishing that property constitutes proceeds of crime". This had the effect of prompting a response and intervention aimed at giving effect to such binding recommendations and interpretations, as reflected in the Executive Regulations of the Anti-Money Laundering Law issued by the Prime Minister's Decree No. 951 of 2003, as amended by Decree No. 2331 of 2023—which, as a legislative instrument, introduced Article (2) bis, stipulating that: "The offense of money laundering shall be considered an independent crime from the predicate offense, such that it is not required that a person be previously convicted of committing the predicate offense in order for the funds or assets to be deemed criminal proceeds.**

Accordingly, the Court decided that the plea that the case is inadmissible due to prior adjudication of the offense of illicit gain is unfounded.

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