

Karaparanın Aklanması Sorunu: Bir Türkiye Perspektifi

Money Laundering Problem: A Turkey Perspective

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ÖZET

Birçok suç için başlıca motivasyon kaynağı paradır. Çünkü bireyler, hatta ülkeler bile sahip oldukları ekonomik güce göre itibar görmektedirler. Soğuk savaş sonrası oluşan barışçıl atmosferin de etkisiyle oluşan küreselleşme ve finansal liberalizasyon rüzgarı, ülkeler için askeri veya nüfusa dayalı gücün yerine ekonomik gücün ön plana çıkmasına yol açmıştır. Diğer bir ifadeyle, modern çağda para, güç için tek kriter haline gelmiştir. Paranın getirdiği güç, insan hayatının her kademesine sirayet etmiştir.

Karaparanın aklanması ülkelerin hukuki düzenlerine karşı büyük bir tehlike unsuru olmakla birlikte hükümetlerin, finansal kuruluşların ve ekonomik hayatın bütünlüğü, güvenilirliği ve istikrarını tehdit etmektedir. Hızla yaşanan küreselleşme süreci, finansal sektörde benimsenen liberal politikalar ve yüksek teknoloji ürünü telekomünikasyon araçlarının da etkisiyle hızla yaygınlaşan karaparanın aklanması suçu, günümüzde bütün dünya ülkelerini her zamankinden daha fazla tehdit etmektedir. Sınıraşan organize suç örgütleri başta uyuşturucu kaçakçılığı, insan ticareti ve göçmen kaçakçılığı, silah kaçakçılığı ve tarihi eser kaçakçılığı olmak üzere işgal ettikleri yasa dışı faaliyetler üzerinden çok büyük karlar elde etmektedirler. Karaparanın aklanması suçu ile ilgili yürütülen soruşturmanın zorluğu ve karmaşıklığı sadece gelişmekte olan ülkeler için değil, modern ve gelişmiş ülkeler için de son derece zor bir süreç olarak ortaya çıkmaktadır. Türkiye ise, karaparanın aklanmasına karşı yürütülen mücadeleyi zorlaştıran ve bu yönüyle ülkemizi diğer ülkelerden ayıran ekstra engellerle mücadele etmek zorundadır.

Bu makalede ana hatlarıyla Türkiye’de kara paranın aklanması probleminin ortaya çıkış ve gelişim süreçleri ile ülkemizin karaparanın aklanması ile mücadelede gerek ulusal, gerekse de uluslararası alanda ortaya koyduğu girişimlerin incelenmesi hedeflenmektedir.

Türkiye’de Karaparanın Aklanması Suçunun Tarihi Gelişimi

Yolsuzluk ve karaparanın aklanması gibi kavramlar yaklaşık son yirmi yıldır ülke gündeminde ciddi yer işgal etmeye başlamıştır. Ancak, Türkiye’de karaparanın aklanması suçunun sistematik bir şekilde işlenmeye başlanması 1960’lı yıllara dayanmaktadır. Bu yıllarda karaparanın en büyük kaynağını uyuşturucu kaçakçılığı oluştururken, 1990’lı yıllara geldiğimizde bu durum değişmeye başlamış ve vergi kaçakçılığı en büyük karapara kaynağı haline gelmiştir. 2000’li yılların ortalarında Türkiye ekonomisinin yaklaşık yarısının kayıt dışı olduğu tahmin edilmektedir. Vergi kaçakçılığı ve uyuşturucu kaçakçılığı haricinde Türkiye’de kara paranın kaynağını oluşturan başlıca suç türleri insan ticareti ve göçmen kaçakçılığı, tarihi eser kaçakçılığı ve silah kaçakçılığı olarak ifade edilmektedir.

Türkiye’de Karapara ile Mücadelede Uluslararası Girişimler

Son yirmi yıl içerisinde Türkiye, karapara ile mücadele alanında yürütülen hemen hemen bütün uluslararası girişimler içerisinde aktif bir şekilde yer almıştır. Bu girişimlerin sonucu olarak ülkemiz şu an sınıraşan suçlarla mücadelede çok taraflı işbirliğini öngören birçok uluslararası anlaşmaya taraf olmuştur. Özellikle karapara ile mücadele alanında Türkiye 1991 yılından itibaren Mali Eylem Görev Gücü’nün (FATF) üyesidir. Bu üyelik sürecinde Türkiye finansal sektörde hayata geçirdiği düzenlemelerle FATF tavsiye kararlarının büyük çoğunluğunu yerine getirmiştir. Türkiye ayrıca 1998 yılından itibaren karapara ile mücadelede önemli bir küresel aktör olan Egmont Grubu’nun üyesidir.

Türkiye’de Karapara ile Mücadelede Yasal Mevzuatın Gelişimi

Karaparanın aklanması suçu, Türkiye’de ilk defa 1996 yılında yürürlüğe giren “4208 Sayılı Karaparanın Aklanmasının Önlenmesine Dair Kanun” ile bağımsız bir suç türü olarak tanınmıştır. Bu manada söz konusu kanun, Türkiye’nin karapara ile mücadelesinde önemli bir köşe taşı olarak kabul edilmektedir. 4208 Sayılı Kanun’un Türkiye’de karapara ile mücadeleye sağladığı en büyük katkı Mali Suçları Araştırma Kurulu’nun (MASAK) kurulması olmuştur. Ülkemizin Mali İstihbarat Birimi (FIU) olarak görev yapan MASAK, karapara ile mücadele alanında veri toplama, analiz ve değerlendirme, denetim, inceleme, koordinasyon ve politika belirleme ve mevzuat geliştirme fonksiyonlarını icra etmektedir. 4208 Sayılı Kanun her ne kadar Türkiye’nin karapara ile mücadelesine büyük katkı yapmış olsa da zamanla kanunun birçok açıdan eksikliklerinin bulunduğu ve mücadelede yetersiz kaldığı görülmüştür. Bu doğrultuda daha etkin bir mücadele için yeni bir kanun arayışları hız kazanmıştır.

2006 yılının Ekim ayında yürürlüğe giren “5549 Sayılı Suç Gelirlerinin Aklanması Hakkında Kanun” ile 4208 Sayılı Kanun’da yer alan eksikliklerin giderilmesi ve karaparanın aklanması suçuna karşı daha etkin bir mücadelenin yürütülmesi hedeflenmiştir. Bu kanun ile 4208 Sayılı Kanun’un kontrollü teslimat hükümleri hariç bütün hükümleri yürürlükten kaldırılmıştır. Kanunda ayrıca MASAK’ın görev ve yetkileri yeniden tanımlanmıştır. 5549 Sayılı Kanun uluslararası çevrelerde takdirle karşılanmış ve Avrupa Birliği Türkiye ile ilgili raporlarında geniş yer bulmuştur.

Türkiye’nin Karapara ile Mücadelesini Olumsuz Yönde Etkileyen Faktörler

Türkiye’de karaparanın önemli bir bölümünü uyuşturucu kaçakçılığında elde edilen suç gelirleri oluşturmaktadır. Bu doğrultuda Türkiye’de karapara karşı etkin bir mücadelenin yürütülebilmesi için uyuşturucu kaçakçılığının önüne geçilmesi gerekmektedir. Ancak, Asya ve Avrupa kıtaları arasında bir köprü pozisyonunda bulunan ülkemizin coğrafi konumu, sınıraşan

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organize suç grupları için son derece elverişli bir zemin oluşturmaktadır. Afganistan'da üretilen eroinin en büyük tüketici pazar konumunda olan Avrupa ülkelerine yapılan kaçakçılığında Türkiye, önemli bir transit ülke konumundadır ve bu kaçakçılıktan olumsuz bir şekilde etkilenmektedir. Benzer durum göçmen kaçakçılığı ve insan ticareti için de geçerlidir.

Türkiye'de karaparanın diğer bir büyük kaynağını da vergi kaçakçılığı oluşturmaktadır. Hatta 1990'lı yıllardan sonra vergi kaçakçılığından elde edilen yasa dışı gelirlerin uyuşturucu kaçakçılığından elde edilen suç gelirlerinin çok üzerinde olduğu tahmin edilmektedir. 2000'li yılların başlarında ekonomisinin yaklaşık yarısının kayıt dışı olduğu tahmin edilen Türkiye, söz konusu kayıt dışı ekonomiyi kayıt altına almak için son yıllarda büyük çaba sarf etmektedir. Kayıt dışılığın bu kadar büyük olduğu bir ekonomide vergi kaçakçılığı ile mücadele oldukça zorlaşmaktadır. Bu nedenle, Türkiye'de karaparaya karşı etkin bir mücadele yürütülmesinde vergi kaçakçılığının önlenmesi büyük önem taşımaktadır.

Sadece Türkiye için değil, dünya genelinde karapara ile mücadeleyi zorlaştıran en büyük faktörlerden birisi kıyı bankacılığı (offshore banking) sistemidir. Genellikle vergi cenneti ülkeler (tax-heaven countries) olarak adlandırılan ülkelerde faaliyet gösteren offshore bankaları normal bankaların tabi olduğu birçok zorunluluktan muaf tutulmaktadırlar. Bu bankaların en büyük çekiciliği, işlemlerini büyük bir gizlilik içerisinde yürütmesidir. Bu sistem karapara aklayan suç grupları için büyük fırsatlar sunmaktadır. Sınıraşan suç örgütlerinin yasa dışı faaliyetlerinden elde ettikleri büyük gelirleri saklamak amacıyla son yıllarda artan bir şekilde offshore merkezlerini kullanılmaya başlamaları, yürütülen karapara soruşturmalarını oldukça zorlaştırmıştır. Offshore merkezlerinin uluslararası müşterilerine kendilerine ait finansal bilgilerin gizliliğini garanti ederek ülkelerinde yürütülen soruşturmalara karşı koruma sağladığı bilinmektedir.

Sonuç

Karapara soruşturmalarında yaşanan en büyük engel, bir suç ile yasal görünümü bir ekonomik aktivitenin iç içe geçmiş olmasıdır. Bu nedenle, karapara ile mücadelede yüzde yüz başarının sağlanamayacağı artık kabul edilmektedir. Karaparanın aklanması sadece az gelişmiş ya da gelişmekte olan ülkelerin değil, gelişmiş ülkelerin de büyük bir sorunudur. Türkiye ise, diğer birçok ülkeden farklı olarak, karapara ile mücadelesinde bir takım olumsuz faktörlerin üstesinden gelmek zorundadır. Bütün zorluklara rağmen güçlü ve istikrarlı bir ekonomik büyüme için Türkiye karapara ile mücadelesini kararlılıkla sürdürmelidir.

Anahtar Kelimeler: karaparanın aklanması, Türkiye, suç, suç gelirleri

Çalışmanın Türü: Derleme

ABSTRACT

For the majority of crimes, the primary motive is money, as individuals and even states are differentially treated depending upon their economic power. Coupled with the peaceful atmosphere of the post-Cold War era, financial liberalization and globalization of countries has resulted in economic power replacing military and demographic power. In other words, money has become the unique criteria of power in the modern age. The power of money has penetrated every aspect of human life. Thus, within the crime world, it can be argued that money laundering is the pre-eminent crime.

Money laundering poses a serious challenge to the maintenance of law and order within countries, and it threatens the integrity, reliability, and stability of governments, financial institutions, and economic life. Fueled by the development of high-tech telecommunications and financial liberalization and globalization, the entire world now faces the threat of money laundering more than ever.

Transnational criminal organizations make huge profits by engaging various illicit activities, mainly narcotics trafficking, the most far-reaching and profitable one, and trafficking in person, arms trafficking, trafficking in environmental products, and smuggling of art and antiquities. The difficulty and complexity of money laundering investigations is challenging not only for developing countries but also for modern and industrialized countries. As for Turkey, It has to face a number of extra impediments distinguishing it from other countries and making its fight against money laundering more difficult.

This paper aims to elucidate and explain Turkey's money laundering problem and focus on the efforts Turkey invested both at the national and international level to curb money laundering in Turkey.

Keywords: money laundering, crime, Turkey, proceeds of crime

Type of Study: Review

Introduction

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Transnational criminal organizations make huge profits by engaging various illicit activities, mainly narcotics trafficking, the most far-reaching and profitable one, and trafficking in person, arms trafficking, trafficking in environmental products, and smuggling of art and antiquities. However, "these profits

remain useless, unless the criminal groups can somehow place them into the licit global financial infrastructure without the knowledge of law enforcement or regulators. Hence, almost all transnational criminal organizations engage in some form of money laundering to dispose of their profits” (Shelley, L., Picarelli, J., & Corpora, C., 2003)

Mackrell (1996) argues that money laundering is the process that makes crime worthwhile. It has the ability to give legitimacy and respectability to people who do not legitimately possess these qualities on a regular basis, and it unfairly transfers economic power from law-abiding taxpayers to criminals.

Yukselturk et. al. (2010) gives some estimates about the monetary volume of global money laundering. Accordingly, the International Monetary Fund (IMF) estimates that two to five percent of global gross domestic product involves laundered money. Caliskan, Yilmazer, and Bal (2008) emphasizes the impact of money laundering on national gross domestic products of countries. The UK government estimates it to be ranging from £19bn to £48bn annually. Estimates differ but, one thing is certain that it is not possible to accurately determine the seriousness and monetary volume of money laundering in the world. Similarly, volume and the amount of the money laundered in Turkey is unknown (Yukselturk et. al., 2010).

I. Background

Corruption and money laundering have become major topics on Turkey's political agenda especially in the last two decades. Historically, systematic practice of money laundering in Turkey dates back to mid 1960s (Ergul, 2001). During the migrant influx to Europe in those years, some people or groups in pursuit of huge profits engaged in some illicit activities. Living in a transit country on major drug trafficking routes from Middle Eastern countries to European countries, those people mostly engaged in drug trafficking, which generated the biggest source for the dirty money in Turkey (Ergul, 2001). Until recent years, drug trafficking remained the single largest source of illegal proceeds in Turkey, as stated in the Financial Action Task Force's (FATF) annual evaluation reports.

However, this situation has shifted starting from early 1990s, and tax evasion, mostly through fictitious exportation, has led to a huge volume of unregistered economy. Tax evasion accounted for a substantial amount of money laundering in Turkey and it was estimated that almost 50 percent of the economy was unregistered (U.S. Department of State, 2004). The report also stated that local narcotics-trafficking organizations were responsible for only a small portion of the total funds laundered in Turkey and there was no significant black market for smuggled goods in Turkey. According to the report, other crimes which generated illicit proceeds in Turkey were smuggling of historical works, illicit trade in items of cultural or natural importance and smuggling of weapons and explosive materials.

Starting from the late 1990s, illicit trafficking in persons has played an important role along with other crimes that has generated illicit proceeds. It has gained particular importance in the political agenda of Turkey after the United States Department of State designated Turkey "Tier 3" offender in 2003. Tier 3 offender denotes a country who does not fully comply with the minimum standards for the elimination of trafficking and is not making significant efforts in combating trafficking under the provisions of the U.S. government's Trafficking Victims Protection Act of 2000.

International institutions fighting against money laundering often stressed that both banks and nonbank financial institutions involved in money laundering in Turkey and bank transfers into and out of the country, and cross-border smuggling of currency, as well as purchase of high value items such as gold, real estate, and luxury automobiles were traditional methods used for laundering money in Turkey. However, Turkey has been able to change this negative perception with its sincere efforts to combat money laundering in the last years.

II. International Efforts against Money Laundering in Turkey

Especially in the last two decades, Turkey has highly been involved in international efforts against organized crime and money laundering, which often accompany each other. As a result of these efforts, Turkey now is a party to many of the conventions on international cooperation in criminal matters. Turkey's major initiatives against money laundering on the international arena are listed below:

- Turkey has signed and ratified the UN Convention against Illicit Traffic in Narcotics Drugs and

Psychotropic Substances of 1988.

- Turkey is a party to the Nairobi Convention (World Customs Organization's International Convention on Mutual Administrative Assistance for the Prevention, Investigation, and Repression of Customs Offences).
- Turkey ratified the Vienna Convention in November 1995 and the Chemical Weapons Convention in May 1997.
- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed in July 2000 and was incorporated into the Turkish Penal Code.
- In September 2001, Turkey signed the 1999 Council of Europe civil and criminal law conventions on corruption and following the convention a central department was established by The Ministry of the Interior to fight smuggling.
- With regard to the fight against terrorism, Turkey ratified the UN Convention for the suppression of the financing of terrorism as well as the UN Convention for the suppression of terrorist bombings in January 2002.
- Finally, Turkey ratified the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in January 2003.

Specifically in the field of anti-money laundering efforts, Turkey has been a member of Financial Action Task Force on Money Laundering (FATF) since 1991, and since its membership, Turkey has realized most of the FATF's recommendations by enacting regulations in the financial sector. Turkey has also been a member of Egmont Group since 1998, which is a global actor in fight against money laundering.

III. Development of Legal Framework on Money Laundering

1) *Law No: 4208 on Prevention of Money Laundering and Amendments to the Law*

Since money laundering was first criminalized with the enactment of the Law on Prevention of Money Laundering in 1996, it is accepted as a corner stone in the field of fight against money laundering in Turkey (Aydin & Kucukuysal, 2012). US Department of State noted in its International Narcotics Control Strategy Report that anti-money laundering legislation issued in November 1996 was the most important development in achieving the objectives of the 1988 UN Convention. The report stressed that "the structure of the money laundering legislation meets FATF recommendations including controlled delivery" (U.S. Department of State, 1997; p. 2).

The law defined the term of money laundering, determined the predicate crimes for money laundering, and defined the crime of money laundering and determined its punishment (Ustun, O., 2010). The law introduced a money laundering offence based on a range of predicate crimes including terrorism, weapon smuggling, narcotics-related crimes, trafficking in human organs and in women, illicit trade in antiquities, and counterfeiting (The Law No: 4208). This method, however, has highly been criticized in the related literature (Ergul, 2005). After enactment of the law, Turkey continued to take action against money-laundering and introduced a considerable number of new measures, which include expanding government oversight of Turkish banks and taking steps to bring the large unregistered economy under fiscal control (Aydin & Kucukuysal, 2012).

The most important step in this direction was the establishment of Financial Crimes Investigation Board (MASAK) following the anti-money laundering law of 1996, which is one of the biggest contributions of the law to the anti-money laundering efforts in Turkey. Operating under the Ministry of Finance, MASAK serves as Turkey's financial intelligence unit and receives, analyzes, and refers suspicious transaction reports for investigation. MASAK has a crucial role between the financial sector and law enforcement, investigators, and judiciary (Aydin & Kucukuysal, 2012).

In November 2002, Article 4 of the Money Laundering Law was amended about the procedures for all liable groups to report suspicious transactions and the customer identification requirements. Following the amendment to the Money Laundering Law, a decree issued in the same month by the Financial Crimes

Investigation Board came into effect. The decree required banks and private financial institutions to appoint a person responsible for reporting irregularities.

Regarding the fight against corruption and fraud, Turkey adopted new legislation in January 2003. The legislation aimed at implementing the 1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which was ratified in 2000. According to new legislation, the Turkish Penal Code, the Law on Public Officials, the Law on Preventing Money Laundering, the Law on Control of Narcotics, the Public Procurement Law, and the Law on the Organization and Tasks of the Ministry of Finance and were revised. These amendments mainly introduced two new offences into Turkish legislation: "the offence of bribing a foreign public official was inserted into Article 211 of the Penal Code and laundering property and proceeds obtained or derived from bribery, including bribing a foreign public official, has been added to Article 2 of the Law on Prevention of Money Laundering. Furthermore, in accordance with the above-mentioned amendments, legal persons were made subject to criminal liability with respect to bribery" (Commission of the European Communities, 2003; p. 114).

In order to increase the government's ability to track suspicious financial transactions, the Ministry of Finance issued a circular mandating that a tax identity number be used in all financial transactions as of September 1, 2001. The circular applied to all banks and to branches of foreign banks operating in Turkey, as well as other financial entities.

Although the Law on Prevention of Money Laundering made significant contributions to curb money laundering in Turkey, it was deficient and had some shortcomings in some respects. Most importantly, the law criminalized money laundering not for all crimes but only certain types of crimes (Aydin & Kucukuysal, 2012). According to the law, only the money obtained from the offences listed in law was accepted as dirty money and the money obtained from other crimes were not. For instance, offences against State were listed in the law; however, these kinds of crimes are committed for political reasons and financial benefits are not the purpose of these crimes. Unlike this, for example, the proceeds of a hired assassin could not be accepted as dirty money as it was not stated in the law (Aydin & Kucukuysal, 2012).

Turkey experienced the most severe impacts of the shortcomings of the anti-money laundering law in the banking sector in early 2000s. In Turkey, the crime of giving unsecured loans was described as breach of trust in the Turkish Penal Code and the proceeds obtained through unsecured loans could not be accepted as dirty money as it was not stated in the anti-money laundering law. However, in three years between 2001 and 2003, the government had to intervene nineteen times to salvage failing private banks and recently privatized state banks as they were under guarantee of the State. With a few exception, the owners were accused of emptying bank coffers through giving unsecured loans to the companies they owned and to the other companies owned by their family members or some close friends. Turkish government had to pay billions of dollars to the bank depositors, which became the main reason for the financial crisis of Turkey in 2001. Furthermore, the corrupt owners of these banks could be sentenced no more than two years as they could only be charged with breach of trust. They could not be charged with violation of the law on the Prevention of Money Laundering as the offence they committed was not listed in the law.

Inefficiency of the Money Laundering Law of 1996 could best be observed in the Financial Crimes Investigation Board's investigations. U.S. Department of State International Narcotics Control Strategy Report 2004 provided some statistical data about more than 500 money laundering cases the board pursued since its inception. Accordingly, of more than 500 cases, 59 were prosecuted, with only two cases resulting in convictions as of December 2003. This, of course was a sheer failure. This was not only because of some deficiencies and loopholes in the law but also due to the lack of technical personnel in the area. The report emphasized that there was a lack of coordination between the courts that prosecuted the predicate offenses and the courts that prosecuted money laundering cases, and Turkey's prosecutors, judges, police, and investigators needed substantial training in dealing with financial crimes.

Financial Action Task Force 1999 Annual Report also pointed out to burden of proof that prosecution had, which was a major hurdle for money laundering investigations. Some basic provisions about confiscation and provisional measures included in the Criminal Code put the burden of proof totally on the prosecution, thus making money laundering convictions much harder and presenting a fertile ground to organized crime groups to launder their huge profits in Turkey. In this respect, in Turkey it was almost

impossible for the prosecution to prove that property is the proceeds of the crime of which the person was convicted unless it was detected in the placement stage of money laundering. Even in the placement stage, convicted person could still find a way to circumvent punishment. In the layering and integration stages, after putting proceeds in the legal system, there was no reason for the criminals to concern about their assets and enjoy their profits.

As well as the shortcomings in the law itself, application of the law was also problematic. In other words, Turkey had some difficulties in putting some enacted regulations into practice. As stated in the 2004 International Narcotics Control Strategy Report, Turkey passed regulations, which applied to banks and a wide range of nonbank financial institutions, including jewelry dealers and insurance firms, mandate reporting and require customer identification and the maintenance of records for five years. However, despite the fact that Turkey's economy was mostly cash-based, the number of suspicious transaction reports was much lower than expected. (U.S. Department of State, 2004). The low level of suspicious transaction reports was also stressed in FATF's annual report as causing considerable concern.

FATF's annual report in 1999 stated that Turkey did not meet Recommendations 19 and 20:

Recommendation 19:

Countries should consider:

- *Implementing feasible measures to detect or monitor the physical cross-border transportation of currency and bearer negotiable instruments, subject to strict safeguards to ensure proper use of information and without impeding in any way the freedom of capital movements.*
- *The feasibility and utility of a system where banks and other financial institutions and intermediaries would report all domestic and international currency transactions above a fixed amount, to a national central agency with a computerized data base, available to competent authorities for use in money laundering or terrorist financing cases, subject to strict safeguards to ensure proper use of the information.*

Recommendation 20:

- *Countries should consider applying the FATF Recommendations to businesses and professions, other than designated non-financial businesses and professions, which pose a money laundering or terrorist financing risk.*
- *Countries should further encourage the development of modern and secure techniques of money management that are less vulnerable to money laundering.*

Another important area of weakness stated by the FATF's report was the lack of active supervision. "A program of off-site and on-site supervision of financial institutions is vital to the effectiveness of any anti-money laundering system, and the primary responsibility for this function should be taken on by the Treasury, the Central Bank and the CMB, which already supervise most of the financial sector institutions for general supervisory purposes" (Financial Action Task Force, 1999; p. 23).

2) *Law No. 5549 on Prevention of Laundering Proceeds of Crime*

Recognizing the above-stated shortcomings of the Law on Prevention of Money Laundering, Turkey issued a new legislation named "Prevention of Laundering Proceeds of Crime Law (Law No: 5549) on October 11th, 2006. This law mainly aimed to determine the procedures and principles to prevent laundering proceeds of crime.

Changes made with the new law can be examined under two categories: a) changes made on the definition of the obliged parties b) changes made on the obligations.

a) *Changes Made on the Definition of the Obligated Parties:*

The new law specifically listed obliged parties in the financial sector, which was not covered in the Law on Prevention of Money Laundering of 1996. The law defines obliged parties as below:

"Obligated Party means those who operate in the field of banking, insurance, individual pension, capital markets, money lending and other financial services, and postal service and transportation, lotteries and bets; those who deal with exchange, real estate, precious stones and metals, jewelry, all kinds of transportation vehicles, construction machines, historical artifacts, art works, antiques or intermediaries in these operations; notaries, sports clubs and those operating in other fields determined by the Council of Ministers"

b) Changes Made on the Obligations:

The Law on Prevention of Money Laundering of 1996 stated some obligations such as customer identification, suspicious transaction reports, periodically reporting, and providing information and documents. However, while these obligations were regulated through communiques and directives in the previous law, they were both listed and regulated in the new law itself. Thus, with the new law obligations are regulated in a higher legal norm, which facilitated conforming to obligations. Following are the obligations listed in the new law: customer identification, suspicious transaction reports, training, internal control and risk management systems and other measures, periodically reporting, providing information and documents, retaining and submitting, access system, protection of obliged parties, inspection of obligations and international information exchange.

The new law on Prevention of Laundering Proceeds of Crime was welcomed and acclaimed by international circles. It was regarded as the product of Turkey's sincere efforts to fight against money laundering. The most important of all, the new law had a broad repercussion in the EU 2007 Turkey Progress Report, which was published after one year the enactment of the law. The report mainly emphasized that the new law was a significant progress towards the alignment of Turkey's anti-money laundering legislation with the EU regulations. (Commission of the European Communities, 2007).

Overall, signing international conventions, enacting national regulations in line with the international conventions, establishing financial investigation unit, and becoming members of FATF and Egmont Group, Turkey has proved its commitment to combat money laundering and financing of terrorism (Aykın, 2007).

IV. Negative Factors In Turkey's Fight against Money Laundering

1. Geographical Position and Drug Trafficking

Drug trafficking still remains a major source of illegal proceeds in Turkey. Turkey has to eradicate drug trafficking in order to make a substantial progress against money laundering. However, Turkey has serious disadvantages in its fight against drug trafficking due to its geographical position. Turkey's central geographical position is of crucial importance, attracting many transnational crime groups by presenting a fertile ground for almost any kind of illicit trade. Turkey is situated on the cross-roads of Europe, Asia, the Middle-East, the Black Sea, and the Mediterranean Sea. Greece, Bulgaria, Georgia, Armenia, Azerbaijan, Iran, Iraq and Syria are the neighbors along its land borders. The country has sea route connections with the Black Sea, which is surrounded by Bulgaria, Romania, the Ukraine, Russia, and Georgia. Many land and sea connections that Turkey has constitute the potential to play an important role in any trade.

This has particularly been true for drug trafficking, but also applies to illicit trafficking in persons and smuggling of historical works. For many centuries Turkey has been a bridge for trade used between the East and West because of its geographical position. Therefore, Turkey has been affected intensely from the drug trafficking that has the same features in terms of demand-supply as the legally operated spice and silk trade routes. The route named as the Balkan Drug Route is the exit to Europe for these historical roads which have served as important highways to transport goods and materials for many centuries from the past to the present. Moreover, Turkey is in a nearby position to the South West Asian countries where illegal opium poppy is highly cultivated and in addition to being at a point near the production areas, Turkey is also neighbor with the Western European countries where drug consuming highly exists. In brief, Turkey is situated on the transit drug smuggling route realized from the producing countries to the consuming countries.

As well as drug trafficking from the East to the West, Turkey is also affected from the illicit trade of synthetic drugs and chemical substances from the West to the East for the reasons mentioned above. This situation constitutes double threat for Turkey, and distinguishes it from other countries that struggle with partial problems regarding drug trade. The illicit trafficking of the acetic anhydride is particularly important as it has the vital importance in the production of heroin among all the chemical substances.

In this sense, Turkey is affected by three main drug trafficking routes, which are shaped as the Balkan Route, the Northern Black Sea Route and the Eastern Mediterranean Route and they separate into branches among themselves. Turkey has to protect its borders and control these routes the trade volumes of which are directly affected from the regional conflicts, the civil wars, and from the changes in the

political structures of the countries. Of course, it is not an easy task due to the enormous motivation that transnational crime groups have to conduct their illicit businesses. "Therefore, there is a great disproportionality between those seeking to violate border regulation and the capacity of even the most affluent states to safeguard their borders" (Shelley, L., 2006; p. 255).

2. Tax Evasion

The tax evasion issue is highly embedded in money laundering criminality around the world. In the United States according to the International Revenue Service, all income, irrespective of whether it appears to be legal or illegal, has the possibility of having been involved in crime. Therefore, the IRS is responsible for investigating currency and money laundering offenders and pursuing the assets of those offenders for the purposes of criminal tax evasion prosecution and asset forfeiture, whether within or outside of the country. As Richard (1999) stated, the main thesis of the IRS is that "all income is taxable" (p.121). Thus, the agency is supposed to have a significant role in investigating and controlling money laundering.

Tax evasion is also a significant source of money laundering in Turkey. According to the International Narcotics Control Strategy Report of 2004, it was the biggest portion of the total of funds laundered in Turkey, which directly linked to money laundering. The use of falsified invoices as a source of laundered money in Turkey was also stated in the FATF's annual evaluation report in 1999.

Tax evasion is of course not unique to Turkey, but it is more challenging for Turkey as it is a major impediment for its effort to control inflation and to complete the transition from developing to developed country. The substantial part of the tax evasion in Turkey takes place through fictitious exportation through which huge amounts of illicit money have been generated. In this system, export and import declarations are made higher or lower than they actually are (Sen, Y. F. & Yalcin, E., 2007).

3. Offshore Banking

The offshore financial world is made up of countries and political subdivisions that use their sovereign status to protect the wealth of foreign costumers from the civil and criminal law of their own countries (Blum, J., 1999; p. 57). Offshore banks, located in financial havens, have business relations primarily with foreigners. Offshore banks are exempt from many of the regulations that "onshore" financial institutions are subject to, such as taxes, capital reserve requirements, and governmental supervision. The main appeal of offshore banks is secrecy. Offshore banks carry out their business activities behind the wall of secrecy that money launderers need.

Increasing trend in using off-shore banking among crime groups and businessmen to hide their illicit profits has made money laundering investigations more difficult under a blanket of secrecy. Blum (1999) states that offshore money has grown largely for the last four decades and the banking and investment activity that is carried out in the offshore havens is a significant part of the total global economy.

The World Bank Institute points out in its "Anti-money Laundering Literature Search" that the major money laundering cases coming to light in recent years have a common feature: organized crime groups are widely utilizing the opportunities presented by offshore centers to launder criminal proceeds, thus creating impediments to criminal investigations. Financial havens offer an extensive range of facilities to the foreign investors who are not willing to disclose the origin of their assets.

In many cases, the fact that financial havens are based on strict financial secrecy increase the difficulties for investigators. Offshore centers effectively protect their foreign clients from investigations and prosecutions held in their home countries.

This common trend in offshore banking has also showed itself in Turkey in recent years. Legal development of anti money laundering regulations and the beginning of implications of these regulations in the financial system, though not complete and as effective as it should be, has constituted a deterrent effect for crime groups and businessman who easily integrated their illicit proceeds into legal financial system before the regulations. This partly has led illegal people to prefer offshore jurisdictions to hide and protect their illicit proceeds.

In general, offshore banking has been used by two types of people in Turkey: organized crime groups, mostly ones who engage in drug trafficking, and businessmen with the purpose of tax evasion. These

illegal people have used offshore banking and established businesses in various offshore jurisdictions around the world. Among these offshore locales, Cyprus, within easy reach of Turkish crime groups and businessmen, particularly presented a fertile ground to its Turkish investors.

A money laundering investigation involving offshore banking with all its complexity is certainly challenging for law enforcement agencies, not only in Turkey but also in all over the world. This applies to even the most affluent and developed countries.

Conclusion

The main handicap with money laundering is that it involves both a criminal offense and a legitimate-appearing economic activity in which the instruments and institutions of both anti-social activities and highly social phenomena are intermingled. Because money laundering is a mainly criminal use of a nation's financial system, it is very difficult to offer a hundred percent success rate in money laundering control. The American Bar Association noted that money laundering control chiefly exists as a matter of persistent balancing between the needs of a society for financial control and personal privacy. Presumably, however, the way a country chooses to tackle money laundering is mostly a reflection of the nature of its systems, its financial structure, and the financial regulations in its general legal system.

The difficulty and complexity of money laundering investigations is challenging not only for developing countries but also for modern and industrialized countries. Quickstad (1996) emphasizes on the impediments of combating money laundering due to difficulties in tracing dirty money: “Money can change form as smoothly as water turns to ice. It can be converted to merchandise or real estate, moved overseas, laundered through dummy corporations, or put in a relative’s name. These endless permutations make following of the money trails difficult, but they are crucial” (p. 51).

As for Turkey, It has to face a number of extra impediments distinguishing it from other countries and making its fight against money laundering more difficult. Although some circles claim that Turkish economy is highly dependent on the unregistered economy and even it is good for the economy, it has proved to have severe impacts on the economy and on the legitimate businesses of Turkey in the long term. Having a legal economy integrated with illegal, unregistered, and uncontrolled economy is certainly the main reason for the unstable and fluctuating economy and high rate of inflation in Turkey for years.

Turkey has declared its commitment to combat money laundering and terrorist financing. From this understanding, Turkey has made significant progress in fight against money laundering adopting serious regulations in its legal infrastructure and imposing obligations on businesses and professions. Besides, Turkey has improved its judicial system, including increasing the number of judges and providing them with training in money-laundering issues. However, Turkey still has a long way to go. Most importantly, Turkey also has to achieve more effective and efficient coordination and cooperation between law enforcement and operational bodies, across, and with the financial sector.

In spite of serious difficulties that Turkey has to confront, it is vital for Turkey to achieve to eradicate money laundering to have a strong, stable, and growing economy as it is obviously the main reason behind many other problems.

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