Criminal Investigation of Money Laundering in the Practice of the Financial Intelligence Unit of the State Investigation and Protection Agency

Ajla Šurković

Ph.D. Candidate, Department of Criminal Justice,
Faculty of Criminal Justice, Criminology and Security Studies,
University of Sarajevo, Sarajevo, Bosnia and Herzegovina

Abstract

Money laundering is an illegal activity aimed at concealing the real origin of property gains and presenting the verse as legally acquired income. Preventing the detection and proving of money laundering encompasses a whole range of activities carried out during the criminal investigation. As a special legal institute, a financial investigation was introduced, which enabled the determination of the property of both suspects and third parties. This paper aims to present the activities related to the criminal investigation of money laundering in the practice of the Financial Intelligence Department of the State Investigation and Protection Agency. When it comes to methods, the general scientific methods will use the statistical method needed in data processing to describe and analyze the results of research, and content analysis as a method of data collection. The results of the research show the frequency of reporting suspicious transactions and the establishment of international cooperation, the number of evidentiary actions taken, the number of submitted reports on conducted financial investigations, as well as the number of submitted reports on the commission of money laundering. The conclusion based on this paper indicates the importance of the existence of a central financial intelligence department that undertakes various activities, from receiving reports of suspicious transactions, through actions aimed at obtaining evidence and financial investigations, to establishing international cooperation and reporting on the crime of money laundering. In that way, a more efficient system of preventing, detecting, and proving the crime of money laundering has been established.

Keywords: Money laundering, a criminal investigation, suspicious transaction, financial investigation, international cooperation.

Introduction

Money laundering is an activity that involves various ways of investing illegally acquired property gains in legal financial flows. Namely, money laundering implies the use of money obtained from illegal activities by hiding the identity of the persons who obtained the money and turning it into the property that seems to come from a legitimate source (Madinger, 2012). Thus, the main goal is to cover up the illegal nature of the funds held by certain persons.

This paper aims to present the activities related to the criminal investigation of money laundering in the practice of the Department for Financial Intelligence of the State Investigation and Protection Agency. The criminal investigation seeks to detect and prove the characteristics of the crime of money laundering, but also to prevent such activities. A criminal investigation is a process of legally gathering evidence of a crime that has been committed or is being committed (Brown, 2001). The Financial Intelligence Department of the State Investigation and

Protection Agency (hereinafter FIU) receives reports on suspicious¹, cash and connected² transactions from those liable to implement the Law on Prevention of Money Laundering and Terrorist Financing³. Namely, its competencies are prescribed by Article 55 of the said Law as follows:

- 1) Activities related to prevention, investigation, and detection of money laundering and terrorist financing operations under the provisions of the Law on the State Investigation and Protection Agency, this and other laws, to promote cooperation between competent authorities of BiH, FBiH, RS, and BDBiH prevention of money laundering and terrorist financing, as well as to promote cooperation and exchange of information with the competent authorities of other countries and international organizations in charge of money laundering and terrorist financing is performed by the FIU under the supervision of the Director of the State Investigation and Protection Agency.
- 2) The FIU is a central financial intelligence unit that receives, collects, records, and analyzes data, information and documentation.

¹A suspicious transaction is any transaction for which a person under obligation or competent body evaluates that, in relation with the transaction, there are basis grounds for suspicion of committing a criminal o act of money laundering or financing of terrorist activities, that is, that transaction includes assets which result from illegal activities (Article 3, item b) of the Law on Prevention of Money Laundering and Financing of Terrorist Activities).

² Connected transactions are two or more transactions originating from or destined to an account or a legal or natural person in which the amounts the transactions are below the amount for conducting the identification or reporting according to provisions of this Law, but which together exceed the amount referred to in Article 6 of this Law, and can be considered to be related to each other due to the time span in which they have been made, the recipient or the originator of the transactions, the method of the transactions, the reason for which the transactions have been made, or other factors due to which the transactions can be considered connected (Article 3, item d) Of the Law on Prevention of Money Laundering and Financing of Terrorist Activities).

³("Official Gazette of BiH" No. 47/14 and 46/16).

- 3) The FIU investigates and forwards the results of analyzes and/or investigations, data, information, and documentation to the competent prosecutor's offices, bodies investigating the criminal offense of money laundering and/or terrorist financing, and/or other competent bodies under the provisions of this Law.

Actions aimed at obtaining evidence are carried out by authorized officials under the applicable provisions of criminal procedure and the rules of criminal science. Namely, they are prescribed in the eighth chapter of the Criminal Procedure Code of Bosnia and Herzegovina⁴, and are carried out during the criminal investigation of money laundering, especially the following: Search for Apartments or other Premises and Persons, Seizure of Objects and Property, And Expert Evaluation. It is important to point out the Order Issued to a Bank or to Another Legal Person performing financial operations to turn over information concerning the bank accounts of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect, which is prescribed within the action Seizure of objects and property Namely, banks can provide investigators with a wealth of financial data to establish crucial facts that indicate the existence of a criminal offense (Manning, 2011).

Financial investigation is a new institute that enables the discovery of facts that indicate money laundering. The aim of the same is to determine if the income from illegal activities, to determine the property of the suspect and third parties, to ensure the property by applying temporary security measures, and to confiscate the income from illegal activities. It should be taken in a timely and urgent manner to prevent the concealment of illegal property gain. From the aspect of the criminal offense of money laundering, it is clear that its detection is

⁴ ("Official Gazette" of Bosnia and Herzegovina, 3/03, 32/03, 36/03, 26/04, 63/04, 13/05, 48/05, 46/06, 76/06, 29/07, 32/07, 53/07, 76/07, 15/08, 58/08, 12/09, 16/09, 93/09, 72/13 i65/2018).

significantly more difficult, if only the predicate criminal offense is not detected (Orlović, 2016). The financial investigation involves two methods - the first is known as net worth analysis and is used in cases where the suspect has attention-grabbing assets, while the second is defined as a sources analysis and use of funds, and is applied when the suspect has prominent consumer habits (Richards, 1999: 215).

A special role in the criminal investigation of money laundering with an international dimension is played by international cooperation in which information and data on certain cases are exchanged between financial intelligence units of different countries. The Egmont Group has recognized that the exchange of financial intelligence is of paramount importance and has become a "cornerstone" of international efforts to combat money laundering and terrorist financing. Financial intelligence units around the world are obliged to exchange information and participate in international cooperation under international standards concerning money laundering and terrorist financing. As an international financial intelligence forum, the Egmont Group facilitates and encourages this among its FIU members⁵

After the measures and actions taken within the criminal investigation of money laundering, the authorized official person compiles a report on the commission of a criminal offense. According to Pasco, AG (2013), with all the analyzed, categorized and synthesized facts that

can serve as evidence, the investigator can create a logical representation of the same that they describe using the deductive method and that certain facts point to the perpetrator of the financial crime. Since the success or failure of the case depends on the accuracy of the numbers, they must be presented comprehensively and understandably in the report (Madinger, 2012).

Material and Methods

Research of problems, subjects as well as methods of research implies the application of research methods. Of the general scientific methods, the statistical method required for data processing will be used to describe and analyze the research results obtained. When it comes to data collection methods, content analysis will be used. The content analysis will collect relevant domestic and foreign literature related to the subject of research. The subject of the content analysis will be the Reports of the Financial Intelligence Unit (FIU) of the State Investigation and Protection Agency in the period 2017-2019. Also, the types and the number of actions aimed at obtaining evidence taken by the FIU, the number of financial investigations undertaken as an achievement of international cooperation in specific cases will be presented. Finally, the number of submitted reports on the commission of a criminal offense submitted to the prosecutor will be presented, as well as the number of natural and legal persons to whom the reports refer.

The Results

Reports of suspicious, cash, and connected cash transactions

The persons under obligation to implement the Law on Prevention of Money Laundering and Financing of Terrorist Activities are obliged to submit reports on suspicious, cash, and connected cash transactions to the FIU. When it comes to suspicious transactions, 528 reports were submitted in 2017, in 2018 the number of suspicious transaction reports dropped to 455, while in 2019 the number of reported reports increased to 737 (see Graph 1).

Graph 1. The number of submitted reports on suspicious transactions

⁵ According to <https://egmontgroup.org/en/content/about> 16.12.2020.godine.

The Financial Intelligence Unit also received reports on cash and connected cash transactions. Namely, in 2017, 478,832 reports on them were received, in 2018 that number was reduced by slightly more than three (3) thousand,

more precisely 475,631 reports, while in 2019 391,888 reports on cash and related cash transactions were submitted by taxpayers (see Graph 2).

Graph 2. The number of submitted reports on cash and connected cash transactions

Actions Aimed at Obtaining Evidence

During the period under review, the following Actions Aimed At Obtaining Evidence were taken: Questioning of the Suspect, Examination of Witnesses, Seizure of Objects and Property, and Search of Dwellings or Other Premises and Persons. In 2017, suspects were

questioned and witnesses were examined concerning fifty-five persons (55), about which minutes were drawn up, 2018 minutes were made in the examination of witnesses and questioned of suspects concerning thirty-one (31) persons, while In 2019, suspects were questioned and witnesses were examined concerning seventy-six (76) persons (see Graph 3).

Graph 3. The number of compiled minutes on questioning of suspects and examination of witnesses.

Seizure of objects and property is carried out by the authorized official person, within which there is a possibility of sending an Order Issued to a Bank or Another Legal Person that performing financial operations to turn over information concerning the bank accounts of the suspect or of persons who are reasonably believed to be involved in the financial transactions or affairs of the suspect. Namely, in 2019, one hundred and twenty (120) items were seized, while the reports for 2017 and 2018 do not contain data on seized objects. When it comes to the possibility of sending an order to a bank or other legal person that performs financial operations for it to submit data on bank deposit and other financial transactions such orders were sent. in the

considered period. Namely, in 2017, eight (8) orders were issued to banks for temporary suspension of transactions. on accounts and nine (9) orders to banks for continuous monitoring of financial operations on the accounts of their clients. In 2018, eight (8) orders were issued for the temporary suspension of transactions, and three (3) orders to banks for continuous monitoring of financial operations on the accounts of their clients. Finally, in 2019, twenty-five (25) orders were issued to banks for temporary suspension of transactions, and five (5) orders to banks for continuous monitoring of financial operations of five (5) legal persons (shown above in Graph 4).

Graph 4. The number of orders issued to banks for temporary suspension of transactions and continuous monitoring of financial operations

When it comes to the Search of Dwellings or Other Premises and Persons in 2017, one (1) was carried out, in 2018 the said operation was carried out at twenty-five (25) locations, and in 2019 ten (10) (see Graph 5).

Financial Investigations

The FIU conducted a financial investigation during the years 2017-2019 on the order of the competent prosecutor's offices. Namely, in 2017, fifty-nine (59) reports on financial investigations

Graph 5. The number of accomplished Search of Dwellings or other Premises and Persons

were submitted, namely: thirty-three (33) to the Prosecutor's Office of BiH, twenty-two (22) to the Cantonal Prosecutor's Offices, two (2) to the Court of BiH and two (2) to the Cantonal Courts. Afterward, the total number of submitted reports in 2018 is fifty-eight (58), namely: twenty (20) to the Prosecutor's Office of BiH, twenty-two (22) to the cantonal prosecutor's offices, four (4) to the Court of BiH and twelve (12) to the cantonal

courts. As for 2019, thirty-four (34) reports were submitted to the Prosecutor's Office of BiH, twenty-four (24) to the Cantonal Prosecutor's Offices, six (6) to the Court of BiH, one (1) to the Municipal Court, and four (4) to the Cantonal Courts. makes a total of seventy-one (71) reports submitted by the FID. The above is shown in Graph 6.

Graph 6. The number of submitted reports on conducted financial investigations

International cooperation

International cooperation is an important part of criminal investigation because it enables the detection of illegal activities with an international dimension. During 2017, the FID contacted the FIU abroad one hundred and sixty-seven (167) times, of which seventy-two (72) requests related to cooperation on specific subjects of work. In three hundred and seventy-six (376) cases, the FID was contacted by various FIUs, of which sixty-four (64) requests from

foreign FIUs related to specific cases (Financial Intelligence Unit of the State Investigation and Protection Agency, 2018).

According to (Financial Intelligence Unit of the State Investigation and Protection Agency, 2019), during 2018, the FID contacted the FIU abroad on one hundred and seventy-one (171) occasions, of which sixty-two (62) requests related to cooperation in specific cases. work, and 109 to mutual information that is not related to specific subjects of work. In three hundred and

eighty-one (381) cases, FIU was contacted by different FIUs, of which 46 requests from foreign FIUs related to specific work items.

According to (Financial Intelligence Department of the State Investigation and Protection Agency, 2020), during 2019, the FID contacted the FIU abroad two hundred and thirty-eight (238) times,

of which one hundred and thirty-five (135) requests related to cooperation by specific subjects of work. In five hundred and one (501) cases, the FIU was contacted by various FIUs, of which sixty-one (61) requests and amendments to requests from foreign FIUs related to specific subjects of work. The above data will be shown in Graph 7.

Graph number 7. The number of requests for cooperation during the years 2017-2019.

The result of a criminal investigation

After the criminal investigation, the authorized official persons compile a Report on the committed crime. Namely, during 2019, the FIU submitted twelve (12) reports to the prosecutor's offices, documenting the existence of grounds for suspicion that sixty-five (65) persons

fifty-five (55) natural persons, five (5) legal persons, and five (5) unidentified persons committed the crime of money laundering and several predicate crimes, while in 2018 a total of eight (8) reports and two (2) amendments to the report were submitted to the competent prosecutor's offices for fifty-nine (59) persons, (thirty-two (32) natural persons and twenty-seven (27) legal persons (Financial Intelligence Unit of the State Investigation and Protection Agency, 2020).

Graph 8. The number of the Reports submitted by the FIU during the years 2017-2019.

During 2017, the FIU submitted to the prosecutor's offices six (6) reports and one (1) supplement to the report documenting for twenty-seven (27) persons the existence of grounds for

suspicion that they committed the crime of money laundering and several predicate criminal offenses. thus being into legal financial flows put into 10,275,546.00 KM of illegally acquired money and caused material damage in the amount of about 2,000,000.00 KM and gained property in the total amount of about 8,935,546.00 KM (Financial Intelligence Unit of the State Investigation Agency and protection, 2018). The above data on the reports submitted by the FIU during the years 2017-2019 are shown in Graph 8.

Discussion

The assessment of the initial investigative situation and the selection of specific criminal methods and procedures, to verify the initial knowledge and suspicion of money laundering, rely on criminal intelligence and other information and data that are systematically analyzed and used in the work of police bodies. The FID receives initial information from taxpayers who recognize certain indicators that point to money laundering. Distinguishing truly suspicious transactions from those that are simply illogical requires a comprehensive analysis (Schott, 2004). Taking into account the specialized methods of action of organized criminal groups that commit the crime of money laundering, to combat their actions it is necessary to simultaneously conduct information-gathering activities with appropriate actions within a criminal investigation so that by investigating on the spot, the data can be immediately verified and made available (Nedelcum, 2010). When it comes to the number of suspicious transaction reports submitted, the UK Financial Intelligence Unit continues to record a record number of 573,085 suspicious transaction reports received and processed (NCA, 2020). In 2019, the FIU received an increased number of reports compared to previous years.

In the domain of syllogistic proceeding, the criminal investigation includes the application of regular actions aimed at obtaining evidence, based on which the prosecuting authorities collect quality evidence and establish relevant facts about the existence of the criminal offense of money

laundering. A search of dwellings or other premises and persons is an act of proving which carries out a material investigation of persons or things to find traces of a criminal offense or to find and apprehend a suspect or accused (Bubaločić and Pivić, 2016). The mentioned action was performed by the FIU, about which minutes were made. From the minutes on the actions taken to prove and confirm the seizure of the object, it is necessary to see the trace of the movement of the seizure object, as well as when this object is kept (Petrović, 2004). Special cases of seizure of object include seizure of funds in connection with an order to a bank or other legal person and seizure of illegally acquired property (Sijerčić-Čolić, 2008). FIU issued orders for suspension of transactions and orders to banks for continuous monitoring of financial operations.

As an integral part of the criminal investigation of money laundering, financial investigations are conducted in parallel and regularly, which collect data on real property and determine the proceeds of these crimes. As he points out (Letizia, 2014) there are two types of financial investigations: dependent and independent. Dependent investigations start from a specific crime; the police use the information to investigate the extent and location of illicit proceeds. Consistent with the nature of the entire proceeding, this type of financial investigation is reactive. In contrast, independent financial investigations are initiated in response to a suspicious transaction report. This type of investigation is proactive and starts from the detection of property related to the crime. However, it is very difficult to identify and determine the crimes from which the suspicious property arises until the police do not indicate the actual origin of the property. Therefore, the concept of financial investigations is much more successful in its classical, reactive form. Financial investigations were also conducted by the FIU, on which reports were compiled and submitted to the competent authorities on whose orders were undertaken.

International cooperation and the system of international law are based on sovereign states, but they can no longer be imagined without international organizations (Danilović, 2019). To combat money laundering, international organizations have been formed that issue recommendations, conduct studies, and otherwise contribute to the fight against money laundering. According to (Cindori, 2008) under FATF Recommendation 40, states should ensure that the competent authorities provide the widest possible scope of international cooperation to related foreign bodies. There must be a clear and effective approach to facilitate the rapid and constructive exchange of data directly between related bodies spontaneously or on request, relating to both money laundering and predicate offenses (from which that money originates). The Egmont Group, of which the FOO of the State Investigation and Protection Agency is a member, is an international organization consisting of 166 financial intelligence units. According to (Financial Intelligence Unit of the State Investigation and Protection Agency, 2020) as the central financial intelligence unit in BiH, the FIU continuously achieves international cooperation with foreign FIUs and international organizations working in the field of combating money laundering and terrorist financing. International cooperation is being realized in connection with specific investigative activities as well as in connection with the fulfillment of BiH's international obligations in the field of combating money laundering and financing terrorist activities.

The report on the committed criminal offense as well as its amendment is compiled by the authorized officials of the FIU and is the same result of the company of measures and working operational and procedural character. Thus, the report, as the most common source of information on the competence of prosecutors to initiate a crime, contains the results of operational activities of authorized officials, ie, all information gathered about the beginning of the crime and its beginning during criminal processing (Vasiljević Grubač, 2011). If the authorized official found out about

new facts, evidence, or traces of a criminal offense after submitting the Report, he is obliged to collect the necessary obligations and immediately submit the Report to the Prosecutor as a supplement to the previous Report (Deljković, 2016).

Conclusion

Money laundering is an illegal activity that is performed using various techniques to conceal an illegal source of funds so that they do not cause suspicion among the authorities responsible for preventing, detecting, and proving money laundering. In cases when certain activities indicate the suspicion that it could be money laundering, those obliged to implement the Law on Prevention of Money Laundering and Financing of Terrorist Activities are obliged to inform the Financial Intelligence Department of the State Investigation and Protection Agency.

In cases where there is a certain degree of suspicion, the authorized officials start a criminal investigation in which information and data obtained from various sources are collected and verified. Success depends on the timeliness, accuracy, and reliability of the information and data available at a given time and which are the basis for later action and evidence. The result of actions aimed at obtaining evidence are facts that can serve as evidence in criminal proceedings if they are collected legally. The specificity of the criminal investigation of money laundering is reflected in the use of financial investigation as a new institute that enables the connection of illegally acquired property gain with certain criminal activities. Financial investigations were conducted by order of the competent prosecutor's offices and courts in Bosnia and Herzegovina. Also, orders were issued to suspend financial transactions in cases where this is following legal regulations. Given that money laundering is a global problem in which various international organizations are involved, international cooperation is necessary, which is successfully implemented both between the FIU and foreign financial intelligence units and between the FIU

and international organizations that determine the obligations that need to be respected.

The results of the research show the frequency of reporting suspicious transactions and the establishment of international cooperation, the number of evidentiary actions taken, the number of submitted reports on financial investigations, as well as the number of submitted reports on the commission of money laundering. The

conclusions are drawn from this paper point to the importance of having a central financial intelligence department that undertakes various activities, from receiving reports of suspicious transactions to taking evidence and financial investigations, to establishing international cooperation and reporting on money laundering. In that way, a more efficient system of preventing, detecting, and proving the crime of money laundering has been established.

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