



Case study

Bosnia and Herzegovina

**- Financial investigation and international
cooperation -**

1. -

a. Case description

This case was brought before the Cantonal Court in Sarajevo, from 2016 to mid-2019, against three accused persons; two men aged 47 and one woman aged 38 years. The Cantonal Prosecution Office of Sarajevo Canton has filed charges of criminal offenses of organized crime, tax evasion and money laundering.

The first instance verdict was rendered in July 2018, but following the appeals of the parties to the proceedings, the Supreme Court of the Federation of BiH revoked that judgment and ordered case retrial.

Following a retrial, the trial court again issued a conviction, finding the defendants guilty, sentenced to 13 years' imprisonment (first and second defendants) and three years to the third defendant. In addition to BiH citizenship, the first and second defendants also have citizenship of the Russian Federation.

The case is currently on appeal before the Supreme Court of the Federation of BiH, and this analysis does not prejudice anyone's responsibility and does not challenge the presumption of innocence of the persons involved, but solely deals with legal issues related to the asset recovery.

b. Main characteristics of financial investigation

The investigation in this case was led by the Sarajevo Cantonal Prosecutor, who coordinated the investigative activities led by the competent SIPA department, which has the function of a national FIU. Initial information was obtained by a national FIU in 2012. from a commercial bank, which, on the basis of a monetary transaction monitoring system and risk classification for individual clients, in accordance with the obligations of banks under the Law on Prevention of Money Laundering and Financing of Terrorist Activities of BiH, reported money transactions in the defendants' bank accounts, after which SIPA, as national FIU initiated investigative activities in this case.

In fact, the reason for the commercial bank's creation of a STR (suspicious transactions report) was the presence of a number of indicators of suspicious transactions, especially for a short period of time from opening accounts of resident BiH citizens to the inflow of larger amounts of foreign currency transactions, namely the United Arab Emirates, then the basics for

payment consisting of "payment for services", business documentation that accompanied the money transaction (memoranda of understanding), etc.

Subsequently, active monitoring of the suspected bank accounts of several commercial banks was carried out, which lasted for several months. Tracking expenditures from suspicious accounts, the FIU found that the money in those accounts was not used for business purposes in BiH, but for personal needs, namely the purchase of real estate, equity funds, motor vehicles and other items.

As part of international cooperation, the FIU identified the movements of suspects in several countries, including the UAE, Russia, etc., and through Interpol checks it found that in these countries, the companies identified as having made payments to BiH had no business activities in those countries and that are essentially fictitious.

In total, the inflow of over KM 20 million was detected in the included bank accounts, while in cooperation with the Tax Administration it was determined that there were elements of suspicion for tax evasion based on all financial transactions that were performed.

It is important to point out that there was one person involved in the whole case who has the characteristics of a politically exposed person (PEP), which is a very important indicator in terms of detecting suspicious transactions related to money laundering.

It is also interesting that the financial investigation revealed that a number of financial transactions in several countries, including Germany, were linked to a network of transactions that eventually ended up in the bank accounts of the accused in BiH. Imports of goods (armored vehicles), marketing services, etc. were mentioned as the official reason and basis for realization of these transactions.

c. Relevant legal issues with importance for asset recovery

In this case, several key legal issues were identified that should be mentioned in order to properly understand and evaluate the success of the entire criminal procedure and confiscation of particular criminal assets.

It should first be noted that one of the key challenges in this case is related to the application of international legal sources (especially conventions) that Bosnia and Herzegovina has acceded to and is bound to apply in its legal order. Specifically, the court in this case invoked and applied the Council of

Europe Convention (CETS No. 198) on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, which Bosnia and Herzegovina ratified in 2013 and which applies from 1 June 2013. The jurisprudence of the courts to date was different regarding the direct application of international criminal instruments and varied on a case-by-case basis, and it will be interesting to see how the Supreme Court of the Federation of Bosnia and Herzegovina will decide on this matter, noting that it did not problematize this issue during the first appeal.

The legal standard for establishing a money laundering offense without first identifying a predicate crime is also relevant. Specifically, in this case, the Court was unable to determine from what specific crimes the money that was the subject of money laundering originates and which was ultimately confiscated from the accused. Instead, the Court, referring to the aforementioned Convention, took the position that, under Article 9, a predicate offense does not necessarily have to be established in order to establish a criminal offense of money laundering, and that the subjective element of money laundering could be established on the basis of "objective factual circumstances" which is a relatively well established legal standard of the jurisprudence of developed countries. It could be said that these are the existential factors that directly affect the existence and substance of the entire judgment in this case, and has a direct repercussion on the seizure of illegally acquired (and laundered) property.

If the crime of money laundering is perpetrated in this case, and direct application of international convention is allowed, it would not be necessary to determine, in court proceedings, the predicate crime from which the suspected property arose. Then it will be relatively easy to defend the standpoint that all such property is subject to permanent confiscation, as determined by the court in its judgment. For these reasons, the court referred to the relevant provisions of the Federal Criminal Code (Article 272, paragraph 4) as well as the Law on Confiscation of Illegally Acquired Property (Article 10) in order to determine the confiscation of all property subject to money laundering.

Fulfilling all of the above assumptions would create a coherent, rational and highly effective set of legal standards that would not only allow for the permanent seizure of property of high value (approximately 10 mills. EUR) for the crime of money laundering, but would also build very useful and necessary legal positions for future case law. This is especially important in the context of the fight against organized crime, money laundering and other

serious forms of crime as high priority criminal policy areas in Bosnia and Herzegovina.

d. Specification of recovered assets

After the court rendered the conviction, it also ordered the seizure of property from the convicted persons, which by their nature is of different shapes, and of great value. The assets were seized were: cash, shares in an open -end investment fund, companies, real estates, motor vehicles and other items such as furniture and solar heating system.