

METHODOLOGY OF EFFECTIVE SEIZURE AND THE CONFISCATION OF THE CRIME ASSETS / Marek Kordík, František Vojtuš

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Abstract: *The paper deals with the methods of seizure of property in criminal proceedings and with the individual institutes that may be used for this purpose. This is a form of vademecum of the financial investigation, which is currently one of the priorities of criminal policy. The paper responds to the latest development of the decision-making activities of the courts and tries to point out to certain stereotypes that are already outworn by the decision-making activities in selected decisions.*

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1. INTRODUCTION

The main purpose for cross-border organized criminal groups is a financial gain. This should determine the willingness and possibilities of authorities to search, seize and confiscate the proceeds of crime. The effective prevention should be achieved not only by seizing the proceeds of crime but should be extended also to any property deriving from activities of a criminal nature. Organised criminal groups conduct their activities across the borders acquiring assets in other Member States other than seated as well in third countries. The effective financial investigation requires international cooperation on assets recovery and mutual legal assistance.¹

¹ Rec. 1 and 2 of Directive 2014/42/EU of the European Parliament and the European Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

Money laundering is a global serious anti-social problem and a criminal activity performed as a service through countless channels and schemes. At the same time, it cannot be treated effectively without close and trustful cooperation. It is necessary for all stake holders to create an efficiently functioning system of legislative, technical and organizational-personnel tools (European Commission, 2019, p. 2).

This includes mainly a pro-active engagement of the non-LEA² actors such as the financial institutions and DNFBPs³ in the operational priorities, therefore, to assist agencies to the greatest extent possible, as well as to understand trends and emerging threats from a more strategic perspective. One of the possibilities, according to the Wolfsberg Group is Public-Private Partnerships (PPPs) as a key component of an effective AML/CTF regime (cf. Šimonová, Čentěš, and Beleš, 2019; The Wolfsberg Group, 2020).

Mutual trust between the parties needs to be based on the principle of cooperation, coordination, communication and protection of interests.⁴ At the same time, it should demonstrate a high level of professionalism with self-reflection and objective approach (see The Financial Action Task Force, 2013, pp. 26–37, 2016),⁵ including regular meetings and information sharing not only between FIUs and the financial institutions, but also Criminal Police, investigators and prosecutors, or their governing bodies should take part in the sessions.

The effective Anti-Money Laundering System is not a LEA assessment nor should be used solely for their purposes. It has to be addressed to a wide range of subjects, ranging from intelligence services, law enforcement bodies, courts, supervisory bodies through policymakers to private sector. It focuses significantly on the powers of the private sector and should be taken onboard with highest possible importance. The effective AML system consistently and continuously reflects all the elements of the methodology being available to sector experts and private sector representatives.

The result of the country's overall ML vulnerability is determined by the level of measures in the fight against money laundering and the effectiveness of these measures. The determinant of the weaker country ability to fight against money laundering is its level of searching the fruits of crimes, the level of money laundering prosecution including the quality of issued judgments and the environment for the seizure and confiscation of fruits of crimes.

The successful seizure of criminal assets is determined by interdisciplinary, proactive and public-private joint approach in financial investigation.

The importance of financial investigations has been highlighted in the EU Policy Cycle for organized and serious international crime the European Multidisciplinary Platform Against Criminal Threats (EMPACT). Criminal finances, money laundering and assets recovery (CFMLAR) were chosen by Member States as a new horizontal priority with a dedicated four-year Multi-Annual Strategic Plan (MASP). Pointing out to the cooperation and the cycle information flow, the EU emphasizes the improvement between:

² Law enforcing Agencies, e.g., Police, Customs, Intelligence service, Prosecution Office.

³ Designed Non-Financial Business and Professions.

⁴ A good example of the cooperation between the LEA and the private sector- ICT operators shall be a legal interception agenda, including data retention, if possible. The sessions are on the regular basis, the rules for cooperation are set in advance by law and specified usually by the cooperation memorandum including the costs and way of delivery. Current status of the cooperation between the LEA and the financial institutions within the area of financial investigation is more or less restricted to the request (online, electronic or paper) for the account details including balance and history. Deeper credit and risk analyses, outcomes of the Due Diligence and Know Your Customer verification processes are usually not shared with the LEA.

⁵ See recommendation 3-7, 30-31 of the FATF recommendations.

- FIUs of different Member States,
- FIUs and private sector entities (European Commission, 2019, p. 20) required to report suspicious transactions (STRs)
- different LEA,
- tax authorities and law enforcement authorities,
- FIUs and law enforcement, tax and customs authorities at national level,
- financial institutions and law enforcement authorities

2. CURRENT STATUS

Recognizing the importance of the “follow the money approach” to tackle financial aspects of organized crime and understanding that such an approach requires coordinated measures in a wide array of interrelated areas.

The risk assessment performed by the European Union itself shows that the EU internal market is still vulnerable to ML risks. Money laundering transactions, which may show up in various methods, are intended to replace the identity of the criminal proceeds⁶ with the purpose of pretending to be legitimate assets at some point and to allow the criminals to enjoy the profits of their previous crimes⁷. These are somehow the distinguishing criteria from the terrorism financing, when using the same methods vice-versa lead to the dirtying the legal money to support the terrorist activities by hiding their purpose of use. The study further deals only with the money laundering (Borlini and Montanaro, 2017, p. 1017).⁸

Laundering may take place in several stages:

- Placing: The physical placing of the proceeds – i.e., placing in the financial system
- Disguising: Separation of the proceeds from their source through (financial) transactions in order to hide the audit trail and achieve anonymity
- Integration: Retransfer of funds to a person's property domain in a form where the proceeds have been converted into funds that appear to be legitimate (Stessens, 2000, pp. 82–83).

In the EU Member States, the first attempt to harmonize the criminalization of the money laundering was done on 28th October 2001 by the Council Framework Decision 2001/500/JHA (3) lays down requirements with regard to the criminalisation of money laundering.

As far the Framework Decision was not comprehensive enough and the actual penalisation of money laundering was not sufficiently robust to effectively fight money

⁶ Property means assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or an interest in, such assets.

⁷ So called predicative offence, what means any kind of criminal involvement in the commission of any offence punishable, in accordance with national law, by deprivation of liberty or a detention order for a maximum of more than one year or, as regards Member States that have a minimum threshold for offences in their legal systems, any offence punishable by deprivation of liberty or a detention order for a minimum of more than six months. Art. 2 of Directive 2018/1673/EU of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

⁸ Notwithstanding their differences, international and domestic legal tools jointly deal with these criminal offences. This policy choice is often driven by efficiency considerations. It requires interdisciplinary approach and “horizontal strategy” including criminal law, administrative law, and public international law. Moreover, both crimes anticipate the engagement of financial institutions for illicit purposes and performed similar techniques.

laundering across the Union and results in investigative gaps and obstacles⁹, it has been replaced by current Directive 2018/1673/EU of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law (hereinafter as "the Directive"). The EU Member states need to be compliant with the provisions of the Directive until 3rd December 2020.

The EU member states may, via the Criminal Code, the Criminal Procedure Code, include the AML legislation, too. The provisions of the penal codes usually include the provisions allowing the law enforcing authorities to freeze or confiscate the fruits of crimes. Ensuring the effective investigation can be facilitated by using the same tools as combating organized crime or other serious crimes that are available as stipulated by Article 9 and 11 of the Directive.

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (hereinafter as "Directive 2014/42/EU") harmonizes the recovery, seizure and confiscation of criminal assets by laying down minimum rules for the freezing and confiscation instruments. Member States should, as a minimum standard, ensure the freezing and confiscation of the proceeds of crime in all cases provided for in Directive 2014/42/EU. Member States should deeply consider enabling civil confiscation, if the initiation of the criminal proceeding is not permissible or its continuity is not possible, including the cases where the offender has fled. As requested by the European Parliament and the Council in the statement accompanying Directive 2014/42/EU, the Commission will submit a report analysing the feasibility and possibility of the benefits on future harmonization on the confiscation of property including in absentia convictions. Such analyses will take into account the differences between the legal traditions and systems of the Member States.¹⁰

Under Article 4.1. of Directive 2014/42/EU the Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of the proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings in absentia.¹¹

Where confiscation as required above is not possible, Article 4.2. of Directive 2014/42/EU due to the subjective reasons on the perpetrator's side (illness, etc.), Member States shall take the necessary measures to enable the confiscation of proceeds in cases where criminal proceedings have been initiated regarding a predicative criminal

⁹ Rec. 4 of Directive 2018/1673/EU of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

¹⁰ Rec. 16 of Directive 2018/1673/EU of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law.

¹¹ Art. 4.1. of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014, on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

offence.¹² Very important tools introduced by Directive 2014/42/EU have been the extended confiscation¹³ and the confiscation from the third party.¹⁴

The first part of the compliant implementation of the tools presented is to check whether specific AML/CTF criminal law provisions are formally met, or that all elements of the criminal law tools required by the Directive and Directive 2014/42/EU (hereinafter as "the Directives") are in place.

On the other hand, the purpose of the evaluation of the effectiveness is to provide an objective insight of the whole national AML system and how it can handle the threats and risks of the money laundering. Assessing effectiveness of the tools anticipated by the Directives requires additional examination as to whether, or to what extent defined goals and outcomes are being fulfilled, i.e., whether the key outcomes of an AML system, in compliance with the FATF Standards (The Financial Action Task Force, 2016),¹⁵ are being effectively implemented to (Borlini and Montanaro, 2017, p. 1017; Stessens, 2000, pp. 15–18):¹⁶

- improve the focus on outcomes;
- identify the extent to which the national AML tools are fitting to the goals of the FATF standards;
- identify any systemic vulnerabilities; and
- enable the state and its stakeholders to prioritize measures to improve their system.

AML response is a kind of supranational nature. It is worth saying that the EU AML system is as strong and effective, as the member state (national) AML systems are (in)effective.

For the evaluation of effectiveness, the adopted approach should focus on (Muller, Kälin, and Goldsworth, 2007, pp. 18–19; The Financial Action Task Force, 2013a, pp. 39–41, 2013b):

- How strong the political commitment to fight against the ML is (The Financial Action Task Force, 2013b, pp. 95–98, 133–134).¹⁷

¹² Art. 4.2. of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014, on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union.

¹³ Under Art. 5 of Directive 2014/42/EU: "*Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct.*"

¹⁴ Under Art. 6.1. of Directive 2014/42/EU: "*Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value.*"

¹⁵ See recommendation 26, 27 and 28 of the FATF recommendations, FATF, 2016.

¹⁶ See for more in-depth analyses examining the relationship between the hard law and the soft law.

¹⁷ See Immediate Outcome 1. Depending on the risks identified, authorities should strengthen their risk understanding of serious ML threats, vulnerabilities of beneficial ownership. The AP should include provisions about the risk-based allocation of resources. The policy measures should be more granular in providing concrete measures to mitigate the risks and be better structure. Ensure a high-level political commitment in supporting AML policy development and in facilitating strategic and operational coordination. Strengthen the operational coordination mechanism to become more effective not only vertically but also horizontally.

- How the Member state uses the accessible information sources (The Financial Action Task Force, 2013b, pp. 95–98, 113–115, 133–134);¹⁸
- How the relevant authorities co-operate, and inline activities to combat the ML act (The Financial Action Task Force, 2013b, pp. 95–98, 113–115, 133–134).¹⁹
- How money laundering cases are investigated; prosecuted; and the judicial authorities apply effective sanctions to the convicted (Čentěš and Beleš, 2018; The Financial Action Task Force, 2013b).²⁰
 - o This includes parallel financial investigations and money laundering cases with predicative offence committed outside the jurisdiction of the ML case,
 - o Investigating and prosecuting independent money laundering cases.
 - o Investigation, prosecution, conviction, and sanctions are working coherently to mitigate vulnerability of the system for money laundering.
- How and to what extent the confiscation measures of the proceeds of crime (including foreign property) deprive the person of the property or of an equivalent value (The Financial Action Task Force, 2013b, pp. 118–120).²¹

¹⁸ See Immediate Outcome 5 and partially Immediate Outcome 6. Conclusion, how the FIU analyses disseminated to the investigating authorities are used and to what extent the information initiate the criminal proceeding and to what extent the information sources mentioned further are available to the investigation disposal:

- Information from a credit register that is accessible to banks (most banks use this information in particular when assessing clients before applying for a loan, or refinancing credit or the occurrence of outstanding payments).
- Information from the Social Insurance Agency (which is used in particular when assessing clients applying for a loan; banks obtain information about the amount of the monthly salary of the client or information on the employer who pays compulsory payments for the employee),
- Information from the Land Registry,
- Internal client history information (account statements, past bank product applications, existing products provided, "black" and "grey" lists, questionnaires for bank products, KYC questionnaires prior to establishing a business relationship, and during a business relationship, etc.) - internal information,
- Some banks have their own internal systems into which they deposit preliminary information on specific transactions (when depositing cash in a larger volume, a note on origin of funds will be entered to the system if the client responded to the question of the bank's employee, etc.),
- Information from freely available sources (social networks, Slovak Commercial Register, Trade Register of Slovak Republic, FOAT, information on economic results of business entities and companies, e.g., www.finstat.sk, etc.).
- IT tools for KYC: databases of ownership structures, databases of sanctioned persons, PEPs databases, systems for identifying social and economic links and relations, etc.

¹⁹ See Immediate Outcome 6 and partially Immediate Outcome 5. Efficient information systems for managing information flow, files and documents and then obtaining relevant statistical data. From the horizontal point of view, interconnection between FIU, police, prosecution and court systems.

²⁰ See Immediate Outcome 7. Specialization in the field of detection of the legalization of proceeds of criminal activity, especially dealing with the so-called financial investigation. Systematic preparation of law enforcement authorities, including courts in the area of money laundering and property seizure. See Recommendation 30 and 31 and Immediate Outcome 7.

²¹ See Immediate Outcome 8. This should lead to the sufficient seizure and confiscation of proceeds and income of criminal activity (and the compensation for property damage or economic damage). The success of this measure is determined by the effectiveness of the financial investigation, from the property profiling of the perpetrator to the application of provisional property measures. In case the financial investigators fail to identify all property items that belong to the perpetrator, this failure will unavoidably restrict the scope in which property forfeiture can be applied by the court.

- o Confiscation includes proceeds recovered through judicial or administrative processes include false cash and goods disclosures or declarations and restitution to victims
- o The country manages seized or confiscated assets including cooperation with other countries.

3. THE RULE OF LAW PRINCIPLE

When considering the recovery legislation anticipated by the Directives, it can be concluded that an equilibrium needs to be found between the interests of society and the rights of the convicted person and bona fide third parties.

It needs to be assured that the proceeds or assets are confiscated only on the basis of a final court decision in the proceedings in which proofs are collected about the assets and their origin, with the possibility of participation of all persons whose property interests may come into question and with provided protection of such interests, including bona fide third parties to whom court protection of their rights is always provided.²²

When it comes to the validity and effectiveness of recovery and confiscation decisions when made in regular criminal proceedings, this will depend on the decision on the merits including its quality and persuasiveness.

On the other side, it needs to be ensured that the accused (perpetrator) or other person does not remove the proceeds of a crime or other criminal assets from the reach of the law enforcement authorities and courts, in order to confiscate successfully by imposing the appropriate sentence or a protective measure or to secure the victims claim.

In the case of seizure (securing seizure) of proceeds of crime or any other thing, the provisions of the Codes of Criminal Procedure may apply. The effective tools to withdraw the criminal assets from the economic system shall include i.e., the provisions:

- on securing the victim's tort claim
- on securing the execution of the assets confiscating sanctions.

Regarding the issue of confiscation of assets and securing the victim's claim, it should be noted that such competence shall be granted to the prosecutor or the court, as the judicial authorities. The competence of the police should be as a law enforcement authority in the investigation of the criminal assets and its factual seizure. Further, the administration of seized assets may also be within the competence of the Police when the Asset Management Office is not established or if the Asset Management Office is part of the police structure.

Criminal law provisions related to the seizure of items and assets should recognize also if this is done (Stessens, 2000, p. 29):²³

- for evidentiary purposes, or
- for further confiscation.

While the first one is justified by the necessity of proving particular information, version or hypotheses important for the criminal proceeding, and therefore it shall be seized unless the purpose of its seizure has been fulfilled, the latter one shall be considered as an intrusion into the accused's or third person's property rights and therefore the criteria of legality, legitimacy, proportionality need to be observed.²⁴

²² Article 47 of the Charter of Fundamental Rights of the European Union 2012/C 326/0.

²³ For more in-depth view see *Ibid.*, p. 29-38.

²⁴ ECtHR, *Zschüschen v. Belgium* [dec.], app. no. 23572/07, 1 June 2017.

The corner stone of successful confiscation is the resolution of burden of proof. A confiscation of the crime assets is based on the understanding that the owner or principal cannot reasonably explain the difference between his/her legal income and the value of assets as a beneficiary owner, often called as a reversed burden of proof (Stessens, 2000, p. 29). This concept suffers from constitutional compliance since it anticipates the perpetrator to prove his/her innocence. Due to this risk it has been replaced by the concept of "unexplained wealth"²⁵ or "gross disproportion"²⁶ that shall be defined as the court satisfaction that there are reasonable grounds for suspecting that the known sources of the lawfully obtained income available to the person²⁷ would have been insufficient to enable him or her to obtain the property.²⁸ This may include the factors such as the evidence of a person's status as a state employee and the unlikelihood that, as such, his legitimate income would have been sufficient to generate funds used to purchase the Property. Secondly, although there was evidence that he had been involved with companies and property transactions, it was not such as to come close to undermining the reasonable suspicion that such income would have been insufficient to fund the purchase of the Property.²⁹

It is not a violation of the presumption of innocence if the LEA demands the confiscation of the property of a person who is in a "significant gross disproportion" with his legal income, if this is duly proven in the proceedings and at the same time the person has not explained its origin in any reasonable way. The Constitutional Court also deals with the nature of these proceedings in the decision and interestingly states that this is not a repressive institute, which should be subject to the principles of punishment, but a special procedure that is preventive. Its purpose is to prevent illegally acquired property from being mixed in the economic system with legally acquired values. Which is fully in line with the interests of a state protected by criminal law.³⁰

4. SEIZURES BY PURPOSE

4.1 *Seizure of movable assets and property to secure the victim's compensation*

The victim who suffered material or immaterial damage as a result of the committed crime shall be entitled to compensation for the damage by the convicted. For this purpose, it is possible to secure the property, property rights of the accused solely for the purpose to secure the victim's claim for damages. At the same time, securing the victim's entitlement also constitutes a method of drawing off proceeds from the crime. Seizure may be possible not only at the property or property rights of the accused, but also at the property of a legal person where the accused has a share. Satisfying the victim's tort claim is also a way of depriving the perpetrator of the assets. It has to be prioritized over the imposition of the confiscation sanctions (Dion, 2015, pp. 432–433).

The actual conditions under which the victim's tort claim can be secured should incorporate the legal prerequisite for it is a reasonable concern that a compensation of a victim's claim will be endangered or obstructed. The extent to which the claim can be seized should be equal and limited to the likely amount of the damage caused. This

²⁵ United Kingdom, *Zamira Hajiyeva v. National Crime Agency* [2020] EWCA Civ 108.

²⁶ Germany, Federal Constitutional Court, M., 2 BvR 564/95 (14 January 2004).

²⁷ It should be noted that as for this particular person, she was considered also as a politically exposed person (PEP) as a relative of a state official. See para. 33 and 37 of United Kingdom, *Zamira Hajiyeva v. National Crime Agency* [2020] EWCA Civ 108.

²⁸ Para. 37 of United Kingdom, *Zamira Hajiyeva v. National Crime Agency* [2020] EWCA Civ 108.

²⁹ Para. 42 of United Kingdom, *Zamira Hajiyeva v. National Crime Agency* [2020] EWCA Civ 108.

³⁰ Germany, Federal Constitutional Court, M., 2 BvR 564/95 (14 January 2004).

should be applied in the context of proportion according to which seizure must be restricted if it proves unnecessary to the extent it was ordered. In practice, such a situation may arise for example if the amount of the actual damage caused is reduced, e.g., after expert examination, return of the case, partial compensation of the accused, etc. In such a case extent of the seizure should be appropriately limited (Reuter and Truman, 2004).

If so, the victim's claim should have been secured within:

- the property of the accused (included the share of the property co-owned by the accused),
- the property rights of the accused in a legal person in which the accused has a share;
- the property rights of the legal person in that the accused is a statutory body, a member of a statutory body, a member of another body, a proxy, a head of a foreign branch, if there is a justified suspicion that the offense that is prosecuted was committed by the accused on behalf, for the benefit of that legal person (business shares of the accused),
- property rights of a legal person in which a legal person in which the accused has a direct or indirect ownership or is a statutory body, a member of a statutory body, a member of another body, a proxy, or the head of foreign branch, if there is a justified suspicion that the prosecuted offense committed by the accused was committed on behalf, for the benefit of that legal person (any property share on the assets of the company),
- other property rights of the accused.

Under the property of the accused it needs to be understood everything in the possession of the accused. These include, in particular, movables, immovable property, ownership interests in such matters, as well as claims and other property rights. Other property rights of the accused are all rights of the accused valued in money. These include in particular claims and their accessories, rights to fruits of the contracts, trademarks, designs, licenses, copyrights and the company shares (Stessens, 2000, p. 29).³¹

Seizure of the accused's property should have been taken only by the judicial decision which should also contain an exact specification and identification of the property. Further, it shall state a ban for the accused or legal person to dispose with the seized property and the property rights. The negative definition in relation to the possibility of securing the claim of the victim should exclude e.g., a claim for the return of unjust enrichment, a claim already initiated in civil proceedings, the claims of the accused for paying a salary or similar, payments of sickness insurance and social security benefits.

The judicial authority should decide on seizure of the accused's property based on the application of the prosecutor, the victim or the non-governmental organization. It is questionable whether the judicial authority should have secured a victim's claim *ex offa*.

If the decision constitutes just the legal title of freezing, not its factual execution, it is always more appropriate to secure it prior to the issuance of the search orders or together with the search orders at the latest. Further, it is advised that the search order in its justification refers to the particular judicial decision securing the victims claim or at

³¹ For more in-depth view see *Ibid*, p. 111-112.

least it should include a detailed description of the property accompanied by the purpose for its search laid in the securing the victims claim (Richards, 1999, pp. 194–199).

In the preliminary proceedings, it is assumed that an investigator has a broader view of the case, the property of the accused. Therefore, the investigator should notify the prosecutor to consider the need to seize the accused's property for the purpose of securing the claim of the victim, by the following effective tool (Richards, 1999, pp. 205–212):

- to secure the assets from the intellectual property right at the Registration Authority
- house search, personal search and search of other premises and parcels
 - o to secure cash, valuables, movables and physical non-booked bonds and securities
 - o securing electronic money, credits, cryptocurrencies to satisfy the claim of the victim
 - if the investigator prepares to carry out home searches, searches of other premises and parcels, personal search for a predictive offense, it is advisable to include in the request for the warrant specifically the purpose of carrying out the searches to secure the victim's claim.³²
- Securing the bank accounts incl. funds additionally received to the bank account, including accessories.
 - o The order, delivered to the bank, should be justified and if, at the time of the decision on the seizure, the amount to which it relates may be quantified, it shall be stated in the relevant currency.
 - o At the same time, it is the duty of law enforcement authorities (in particular the prosecutor in pre-trials) to ensure the protection of such seized assets, e.g. also by cancelling their seizure and imposing an obligation on the accused to transfer them to another financial institution, or to impose, for example an obligation for the accused to deposit the funds if the bank has a liquidity problem and is at risk of becoming bankrupt.³³
- Securing booked bonds and securities at the Registration authority.³⁴

³² If, for objective reasons, the Prosecutor's resolution to secure the victims claim cannot be obtained before or at the same time as the search warrant (it is not possible to determine in advance individual things to secure the claim of the injured party). to secure things up to the amount of damages claimed by the injured party. Subsequently, it is necessary to secure these matters as important for the prosecution and additionally ask the prosecutor to issue a resolution to the specified extent to secure the cases in the required amount. If additional items are found during the searches other than those specified in the warrants, these items cannot be seized without issuing a new order or warrant. It is necessary to ask the person to voluntarily release the case. The exception would be if their seizure would be necessary for reasons of protection of life and health or other public interest.

³³ Slovakia, Constitutional Court of the Slovak Republic, III. ÚS 117/06 (23 August 2006).

³⁴ The system of securities usually is:

- a) shares,
- b) temporary letters;
- c) units,
- d) bonds
- e) certificates of deposit,
- f) treasury bills
- g) passbooks
- h) coupons

4.2 Seizure of property and items for the purpose of forfeiture or confiscation

In order to execute the property confiscation sanction not to bypass or obstruct the execution of the sanction, it is necessary to ensure that the accused does not remove it from the reach of law enforcement authorities and courts under the conditions laid down in the Code of Criminal Procedure. The property belonging to the accused should only be seized by the judicial authority during the pre-trial proceedings.³⁵

As for a decision to seize property, it should be met under the rule of law, namely: expectation of imposition of a forfeiture sentence and/or specific intent to obstruct the sanction. The latter condition may impose heavy burden of proof on the LEA that may jeopardize factual seizure not proving the actual intent to observe the future sanctions (Richards, 1999, pp. 205–212).

Seizure for the purpose of the forfeiture of the property shall be possible if the accused is prosecuted for an offense for which, due to the nature and severity and the accused's circumstances, the forfeiture can be expected. Such seizure is carried out by the court and during the pre-trials by the prosecutor. The seizure shall be carried out solely for the purpose of execution of the penalty. In the event that this item or part of the property is not attainable, or if it is mixed with other property and cannot be separated, the so-called forfeiture of the comparable substitute belonging to the offender, should be performed.

The Code of Criminal Procedure does not specify when a police officer should demand the seizure of property, however, it is always preferable to do so before the actual execution of the seizure act (surrender, seizure, search warrant, etc.), preferably at the same time as administering the order or consent to the searches. That decision constitutes the legal title of seizure of those cases or property for the purpose of execution of the sentence. While it is commendable the order or consent cross- refers to the resolution on the seizure of property (Richards, 1999, pp. 213–217).

In general, it can be stated that the seizure covers the entire property of the accused as well as the property and items acquired by the accused after the seizure. However, it does not apply to the property and items not legally subjected to the forfeiture of property. For property or the items in co-ownership, the forfeiture may relate only to the share, coming from the criminal assets. The proceeds of crime may not become part of the joint ownership of spouses.³⁶

As a tool interfering into the rights, it must always be justified by the facts, both in relation to the entity whose funds or things or assets are seized as well to the specific act for which prosecution is being conducted.

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- i) bills of exchange;
 - j) checks;
 - k) traveller's checks,
 - l) consignment notes;
 - m) storage certificates,
 - n) storage bonds,
 - o) goods consignment notes,
 - p) cooperative unit certificates,
 - r) investment certificates,
 - s) deposit receipts,
 - t) certificates according to a special regulation,
 - u) another type of security which is declared by a special regulation as a security.

³⁵ Art. 47 of the Charter of Fundamental rights of the European Union 2012/C 326/02.

³⁶ Czechoslovakia, Supreme Court of Czechoslovakia, Tz II 1/77 [R 31/1978] (24 March 1977).

The forfeiture of the thing and the seizure of the item should not be used if the victim was entitled to compensation for the damage suffered, the satisfaction of which would be obstructed by the forfeiture or confiscation of the thing, or, if the value of the thing is obviously disproportionate, the court will refrain from punishing the perpetrator (Banerjee, n.d.).

The following institutes shall be used to seize property for the purpose of securing the execution of a sentence or protective measure:

- Related to real estate, business shares (not bonds!) and other property rights,
- Release of an item and withdrawal of an item:
 - o shall be used in the case of cash, BNI, valuables, movable assets and paper securities
- Securing computer data
 - o In the case of various forms of electronic money, credits, cryptocurrencies, etc.,
- Securing the money in bank account and booked bonds and securities
 - o it is possible to use the tool if the money is in the bank account, if there is a reasonable suspicion that it is proceeds of crime, or that it was used to commit a crime or is intended for committing a crime.
 - o The justification must be given by specific facts, both in relation to the accused, but also in the nature of the offense for which prosecution is being conducted in accordance with Section 95 par. 1 of the Code of Criminal Procedure
- Home search, personal search and search of other premises and land
- The obligation to deposit a sum of money or thing for safekeeping
- The prohibition to dispose of certain items or rights
 - o The second measure is to restrict the handling of certain items or rights the nature of whose does not allow to seize such value from the accused. It is usually an intangible, property rights, receivables, IP rights (patents, licenses) other intangible assets that cannot be taken into custody.
- The obligation to do something, to refrain from something, or to endure something.
 - o The nature of the measure is that a legal person is obliged to refrain from continuing criminal activity by restricting the possession of certain rights or things or values, which, however, cannot be effectively withdrawn from the possession of the accused's legal person by virtue of point (a), for example, a ban on transfers of funds to other domestic or foreign accounts, or limiting transfers of funds to a certain amount.

5. CONCLUSION

Effective Anti-Money Laundering System requires the main authorities having good understanding of the ML and terrorist financing (TF) risks together with an outstanding cooperation and coordination. The country should have had developed the national AML strategy together with national risk assessment. The Financial Intelligence Unit should perform good quality financial intelligence that is used for the large and complex financial investigations and prosecutions. The national AML system represented by the law enforcing agencies should be able to confiscate larger amounts

of proceeds of crime including standalone ML cases based on foreign predicative cases and/or involving legal persons as well as to the length of the judicial process (The Financial Action Task Force, 2016b).

Financial intelligence unit should be proactive and produce larger number of in-depth analyses with added significant value based on properly filled and delivered suspicious transactions reports from reporting entities and notifications by the Border Guards and Customs on cash couriers and smugglers. The received prosecutions and delivered convictions should include all types of ML cases, including self-laundering, third party ML and stand-alone ML. The convictions with the confiscation of the identified proceeds of crime, through financial investigation should be compliant with the risk-profile of the country based on the national risk assessment outcomes. The parallel financial investigations should reflect and prioritize more complex cases, including potential misuse of the financial or non-financial sector (The Financial Action Task Force, 2016a).

The past and current involvement of banks, lawyers, accountants and "gestorias" in the formation of legal persons, and possibility that some professional trustees reside in Andorra are administering foreign legal arrangements have not been considered sufficiently. Measures to avoid the misuse of the banks, lawyers, accountants and other professional trustees should include the identification of the beneficiary owners through controls conducted over foreign investment and requirement for companies with foreign ownership to hold a bank account (The Financial Action Task Force, 2017).

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