



Luxembourg, 14 January 2021

Judgment in Case C-393/19

Press and Information

Okrazhna prokuratura - Haskovo and Apelativna prokuratura – Plovdiv v OM

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**A national rule permitting the confiscation of an instrumentality that was used to commit an aggravated smuggling offence but belongs to a third party acting in good faith is contrary to EU law**

*Furthermore, the owner of the confiscated property must have an effective remedy against that measure*

OM was employed by a transport company established in Turkey as the driver of an international freight lorry to make a journey from Turkey to Germany.

On 11 June 2018, he agreed to a proposal made to him to transport approximately 3 000 antique coins illegally in the tractor unit used for his journey in return for payment. After crossing the border between Turkey and Bulgaria, OM was subject to a customs check which resulted in the discovery of the coins concealed in the tractor unit.

During the investigation, the Turkish company sought the return of the tractor unit and trailer, maintaining that it had no connection to the criminal offence and that the return of that property would not impede the investigation. That request was refused.

On 22 March 2019, OM was convicted by the Okrazhen sad Haskovo (Regional Court, Haskovo, Bulgaria) of aggravated smuggling. Following that conviction, the coins and the tractor unit were seized for the benefit of the Bulgarian State. Since the trailer was not directly linked to the commission of the offence, it was returned to the Turkish company.

The Apelativen sad – Plovdiv (Court of Appeal, Plovdiv, Bulgaria), hearing an appeal in that dispute, asks the Court of Justice whether Articles 17 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter') preclude the Bulgarian legislation applicable to the case, which provides for the confiscation of the means of transport used to commit a smuggling offence, even where they belong to a third party acting in good faith – in this case the employer of the lorry driver who committed the offence –, and which does not allow that third party the possibility of setting out his or her point of view.

By today's judgment, the Court notes, first, that the confiscation of instrumentalities used to commit a criminal offence punishable by deprivation of liberty for more than one year is governed by EU law, in this case Framework Decision 2005/212.<sup>1</sup> That decision also applies to the confiscation of goods belonging to third parties and requires, inter alia, that their rights be protected where they are acting in good faith. In that context, as the Court stresses, it is necessary to take into account the right to property enshrined in Article 17 of the Charter. That right may be subject to limitations which must genuinely correspond to objectives of public interest pursued by the European Union and do not constitute a disproportionate and intolerable interference, impairing the very substance of the right so guaranteed.

The Court finds that the aim pursued by the Bulgarian legislation is to prevent the unlawful importation of goods into the country. However since the confiscation concerns a third party acting

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<sup>1</sup> Article 4 of Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ 2005 L 68, p. 49).

in good faith, who did not know, nor could have known, that its property was used to commit an offence, such confiscation constitutes, in the light of the aim pursued, a disproportionate and intolerable interference, impairing the very substance of that party's right to property. The legislation does not therefore comply with the right to property enshrined in Article 17 of the Charter.

The Court thus considers that **a national law which permits the confiscation of an instrumentality used to commit an aggravated smuggling offence, where it belongs to a third party acting in good faith, is contrary to EU law.**

As regards the right to a remedy of the owner of the confiscated property, the Court notes that Framework Decision 2005/212 provides for an obligation, on the part of each Member State, to take the necessary measures to ensure that persons affected by the confiscation of instrumentalities and proceeds of criminal offences have effective legal remedies in order to preserve their rights. Furthermore, Article 47 of the Charter provides that any person whose rights and freedoms guaranteed by EU law have been violated has the right to an effective remedy before a court. It follows that a third party whose property has been subject to a confiscation measure must be entitled to challenge the legality of that measure in order to recover that property where the confiscation is unjustified.

According to the information provided by the Apelativen sad – Plovdiv, no such a right to a remedy is laid down in Bulgarian law.

The Court thus considers that a national law which permits the confiscation, in the context of criminal proceedings, of property belonging to a person other than the person who committed the criminal offence, without the former being afforded an effective remedy, is contrary to EU law.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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