



Press and Information

Court of Justice of the European Union

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Judgment in Joined Cases C-845/19 and C-863/19
Okrazhna prokuratura – Varna

The Court provides guidance on specific provisions of the directive on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union

That directive precludes national legislation which allows for the confiscation, in favour of the State, of property allegedly belonging to a person other than the perpetrator of the criminal offence, without that person having the right to appear as a party in the confiscation proceedings

Two Bulgarian nationals ('the persons concerned') were convicted of the possession, in February 2019 in Varna (Bulgaria), of highly dangerous narcotics, without authorisation and with a view to their distribution. Following that criminal conviction, the Okrazhna prokuratura – Varna (Regional Public Prosecutor's Office, Varna) applied to the Okrazhen sad Varna (Regional Court, Varna) for the confiscation of sums of money which had been discovered in their respective homes in the course of searches.

At the hearing before that court, the persons concerned stated that the sums of money seized belonged to members of their respective families. Those family members did not take part in the proceedings before that court, since national law does not permit them to do so. The referring court refused to authorise the confiscation of those sums of money, taking the view that the criminal offence of which the persons concerned had been convicted was not such as to generate an economic benefit. In addition, although there is evidence that the persons concerned had been selling narcotics, they had not been charged with nor convicted of such a criminal offence. The Regional Public Prosecutor's Office, Varna, brought an appeal against that judgment, arguing that that court had failed to take account of Directive 2014/42¹ when applying the relevant national provisions.

In those circumstances, the referring court decided to ask the Court of Justice whether Directive 2014/42 only applies in cross-border situations, and further referred questions concerning the extent of the confiscation provided for by that directive and the scope of the right to an effective remedy of a third party who claims, or in respect of whom it is claimed, that he or she is the owner of property which is subject to confiscation. In its judgment, the Court thus gives a ruling on questions of crucial importance for defining the scope of Directive 2014/42 and the interpretation of some of its key concepts.

Findings of the Court

In the first place, the Court finds that **the possession of narcotics for the purposes of their distribution comes within the scope of Directive 2014/42, even though all the elements inherent in the commission of that offence are confined within a single Member State**. Under the FEU Treaty,² such an offence is a particularly serious crime with a cross-border dimension, as referred to in that treaty. Consequently, the EU legislature is competent to adopt minimum harmonisation rules concerning the definition of criminal offences and sanctions in that area; that competence also covers situations in which the elements inherent in the commission of a particular offence are confined within a single Member State.

¹ 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 (OJ 2014 L 127, p. 39).

² Article 83(1) TFEU.

In the second place, the Court finds that Directive 2014/42 not only provides for the confiscation of property constituting an economic benefit derived from the criminal offence in respect of which the perpetrator has been convicted, **but also provides for the confiscation of property belonging to that perpetrator in respect of which the national court hearing the case is satisfied that it derives from other criminal conduct.** Such confiscation must, however, be carried out in compliance with the safeguards provided for in that directive³ and is subject to the condition that the offence in respect of which the perpetrator has been convicted is among those listed in the directive⁴ and that that offence is liable to give rise, directly or indirectly, to economic benefit.

As regards the first type of confiscation, it is necessary that the proceeds whose confiscation is being contemplated **arise from the criminal offence in respect of which the perpetrator has been finally convicted.**

As regards the second situation, which corresponds to extended confiscation,⁵ the Court notes, first, that, in order to determine whether a criminal offence is liable to give rise to economic benefit, **Member States may take into account the modus operandi, for example whether the offence was committed in the context of organised crime or with the intention of generating regular profits from criminal offences.**⁶ Secondly, the national court must be satisfied **on the basis of the circumstances of the case, including the specific facts and available evidence,** that the property is derived from criminal conduct.⁷ To that end, that court may take account of the fact that the value of the property in question is disproportionate to the lawful income of the convicted person.⁸

Lastly, confiscation from a third party⁹ presupposes that **it has been established that a suspected or accused person has transferred proceeds to a third party or a third party has acquired such proceeds, and that that third party was aware of the fact that the purpose of that transfer or acquisition was to avoid confiscation.**

In the third place, the Court holds that Directive 2014/42, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union, **precludes national legislation which allows for the confiscation, in favour of the State, of property allegedly belonging to a person other than the perpetrator of the criminal offence, without that person having the right to appear as a party in the confiscation proceedings.** That directive requires Member States to take the necessary measures to ensure that the persons affected by the measures provided for therein, including third parties who claim or in respect of whom it is claimed that they are the owner of the property whose confiscation is being contemplated, **have the right to an effective remedy and a fair trial in order to uphold their rights.**¹⁰ In addition, that directive provides for several specific safeguards in order to guarantee the preservation of the fundamental rights of such third parties. Among those safeguards is **the right of access to a lawyer throughout the confiscation proceedings,**¹¹ which clearly entails the right of the third parties to be heard in the context of those proceedings, including the right to claim ownership of the property concerned by the confiscation.¹²

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.

³ Article 8(8) of Directive 2014/42.

⁴ Article 5(2) of Directive 2014/42.

⁵ Article 5 of Directive 2014/42.

⁶ Recital 20 of Directive 2014/42.

⁷ Recital 21 of Directive 2014/42.

⁸ Article 5(1) of Directive 2014/42.

⁹ Article 6 of Directive 2014/42.

¹⁰ Article 8(1) of Directive 2014/42.

¹¹ Article 8(7) of Directive 2014/42.

¹² Article 8(9) of Directive 2014/42.

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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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