

CJEU: Bulgarian Confiscation Rules Excluding Rights for Third Parties Acting in Good Faith Are Contrary to EU Law



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News

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In its judgment of 14 January 2021, the CJEU clarified EU Member States' obligations with regard to [Framework Decision 2005/212/JHA](#) on confiscation of crime-related proceeds, instrumentalities, and property. The case (C-393/19, "OM") dealt with the rights of third parties acting in good faith in confiscation proceedings in Bulgaria.

Facts of the case

In the case at issue, *OM* – an employee at a transport company established in Turkey – used the freight lorry of his employer to illegally smuggle antique coins from Turkey into the EU. After crossing the border, Bulgarian customs checked the tractor unit and found the coins. Following *OM*'s conviction, the Bulgarian authorities seized the coins and the tractor unit for the benefit of the Bulgarian State. The trailer was returned to the Turkish company. On appeal, *OM* opposed the seizure of the tractor unit, claiming that that seizure was contrary, *inter alia*, to the provisions of the TFEU and the CFR.

Questions referred

- The referring Court of Appeal of Plovdiv, Bulgaria, first asked the CJEU whether Bulgarian legislation, which provides for the confiscation of the means of transport used to commit a smuggling offence even if it belongs to a third party acting in good faith, is in line with Art. 17 CFR.
- Second, in the light of Art. 47 CFR, the Court of Appeal asked about the compatibility of the Bulgarian provisions that preclude the owner of the means of transport who is not the perpetrator direct access to the courts to state its case.

Findings of the CJEU

The CJEU confirmed that both approaches of the Bulgarian legislation are contrary to Union law.

First, the CJEU rejected interventions that it would not have jurisdiction over because there is no link between the dispute in the main proceedings and EU law. The CJEU pointed out that the referring court actually sought guidance as to the obligations for the national legislator to comply with the provisions of FD 2005/212 that is applicable in the present case. The FD provides for rules relating to the confiscation of instrumentalities and proceeds from criminal offences and the remedies that must be available to persons

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affected by a confiscation measure, including *bona fide* third parties. These provisions must be interpreted in light of the right to property enshrined in Art. 17 CFR. The right to property does not constitute an absolute prerogative, but may be subject to limitations. In accordance with Art. 52(1) CFR, limitations may be placed on the exercise of the rights and freedoms enshrined therein, on condition that those limitations genuinely correspond to objectives of public interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right so guaranteed.

The CJEU found that the Bulgarian legislation aims to prevent unlawful importation of goods into the country but is a disproportionate and an intolerable interference of the right to property if it subjects the property of a third party acting, in good faith, to a confiscation measure because the property was used to commit an aggravated smuggling offence.

As regards the right to a remedy, the CJEU noted that both FD 2005/212 and Art. 47 CFR provide for the obligation that a third party whose property rights have been affected by a confiscation measure must be entitled to challenge the legality of the measure. Since the Bulgarian law does not afford such a right to a remedy to persons other than the perpetrator of a criminal offence, it is contrary to EU law.

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