ECJ Clarifies Protection of Bona Fide Mortgage Creditors in Cross-Border Confiscation

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News

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On 29 January 2026, the ECJ delivered its judgment in Case C-562/24 (*Munik*) concerning the mutual recognition and execution of confiscation orders under Framework Decision 2006/783/JHA. The case clarified when the rights of a mortgage creditor may prevent the execution of a confiscation order issued in another Member State, in particular where the creditor claims to be a bona fide third party.

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Background of the case

The case arose from criminal proceedings in Italy concerning serious fraud, money laundering, and participation in a criminal organisation. An Italian court ordered the confiscation of immovable properties of the company involved in the fraud scheme that were located in Slovenia and considered to constitute the proceeds of the offences. The confiscation order was transmitted to the Slovenian authorities for recognition and execution in March 2019.

Before the recognition and execution proceedings in Slovenia, in October 2018 and February 2019, a Slovenian company had registered judgment mortgages over one of the properties in order to secure its claims against the convicted company. It argued that it was a bona fide third party and that execution of the Italian confiscation order would prejudice its rights as a mortgage creditor. The Slovenian court, which has to decide on the execution of the Italian confiscation order, therefore asked the ECJ whether such a creditor could fall within the protection of Art. 8(2)(d) of Framework Decision 2006/783.

According to this provision, "[t]he competent judicial authority of the executing State (...) may also refuse to recognise and execute the confiscation order if it is established that: the rights of any interested party, including bona fide third parties, under the law of the executing State make it impossible to execute the confiscation order, including where this is a consequence of the application of legal remedies in accordance with Article 9".

The ECJ's ruling

The ECJ held that a mortgage creditor may qualify as an interested party and, potentially, as a bona fide third party within the meaning of Art. 8(2)(d) of Framework Decision 2006/783. As a result, the competent authority of the executing Member State may refuse to recognise or execute a confiscation order if the creditor's rights make execution impossible under national law.

The ECJ clarified that, for the bona fide status, it must be established that that third party was not aware of the fact that the purpose of that transfer or acquisition was, for the suspected or accused person, to avoid confiscation. The creditor's bona fide status must be assessed by the national court in light of all the circumstances. The fact that the judgment mortgage was registered before the recognition and execution proceedings – and even before the confiscation order itself – may indicate the absence of fraudulent behaviour. At the same time, the national court must consider circumstances that may point in the opposite direction, such as whether insolvency or criminal proceedings were already pending when the mortgage was registered.

The ECJ therefore concluded that Art. 8(2)(d), read in light of Art. 17(1) of the Charter, allows the executing Member State to refuse recognition or execution of a confiscation order concerning immovable property that constitutes proceeds of crime where the rights of a bona fide mortgage creditor would make execution impossible. It remains for the national court to determine whether the creditor was in fact acting in good faith.

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