

CJEU: Recovery of Unduly Paid EU Funds Not Necessarily by Criminal Law

News

Thomas Wahl

The CJEU had to deal with questions of whether the State can enjoy status according to the EU's Victim Rights Directive and to what extent national law must provide criminal law mechanisms for the recovery of wrongly paid EU subsidies. The case (C-603/19, "TG, UF") was decided on 1 October 2020 in response to a reference for a preliminary ruling from a Slovakian criminal court.

Facts of the case

In the case at issue, "TG and UF" were accused of subsidy fraud funded in part by the EU budget. In the criminal proceedings, the authorities from which the accused had received the funds (the district offices for labour, social affairs and family), sought damages, as injured parties, from the accused to the amount of the subsidy wrongly paid. The referring court points out that, on the one hand, the authorities would have difficulties recovering the money in an administrative procedure for compensation, because this can only be directed against the beneficiary: However, the beneficiary in this case was a number of companies, i.e. legal persons, which were managed by the accused and had ceased to exist. On the other hand, the referring court considers itself precluded from awarding damages in criminal proceedings, since, according to the case law of the Supreme Court of the Slovak Republic, State authorities are referred to administrative courts for the purpose of reparation for unduly paid funds.

Questions referred

Against this background, the referring court asked the CJEU:

- Is Directive 2012/29/EU establishing minimum rights of victims of crime (i.e. the right of the injured party to participate actively in criminal proceedings and to secure compensation for damage in criminal proceedings) also applicable to legal persons and the State or State authorities, where the provisions of national law confer on them the status of an injured party in criminal proceedings?
- Is legislation, as interpreted in national case law, such that the State may not claim compensation in criminal proceedings for damage caused to it by fraudulent conduct on the part of an accused person and by not having other remedies by which to assert compensation compatible with Art. 325 TFEU?

The CJEU's response

The first question is clearly answered in the negative. The CJEU argues that the wording of Directive 2012/29 (Art. 1(1)) does not include legal persons within the scope of the Victims Rights Directive.

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As regards the second question, the CJEU clarifies that Art. 325 TFEU obliges Member States to take effective measures to recover sums wrongly paid to the beneficiary of an EU subsidy, but does not impose any constraint as regards the recovery procedure. The only requirement is the effectiveness of the measure. Thus, Member States have leeway, under the condition that they respect the principle of equivalence. The coexistence of different legal remedies with different objectives specific to administrative, civil and criminal law does not, in itself, undermine the effectiveness of the fight against EU fraud. Therefore, the national court (only) has to take account of whether an effective legal remedy for acts affecting the financial interests of the EU exist, be it criminal, administrative or civil proceedings. In this context, the CJEU points out that, next to administrative recovery proceedings, the Slovak law seemingly also provides for the possibility to establish civil liability on the part of the managers of the companies as natural persons following a criminal conviction. Consequently, Art. 325 TFEU does not preclude national legislation, as interpreted in national case law, in which State authorities may not claim compensation for damage in criminal proceedings, but provides for other effective proceedings for the recovery of assistance wrongly received from the EU budget. It is up to the referring court to verify whether the effectiveness of the other proceedings exist under Slovak law.

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