



Reports of Cases

Case C-234/18

**Komisija za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo
against
BP and Others**

(Request for a preliminary ruling from the Sofiyski gradski sad)

Judgment of the Court (Third Chamber), 19 March 2020

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Proceedings for the confiscation of illegally obtained assets in the absence of a criminal conviction – Directive 2014/42/EU – Scope – Framework Decision 2005/212/JHA)

1. *Judicial cooperation in criminal matters – Freezing and confiscation of the instrumentalities and proceeds of crime in the European Union – Directive 2014/42 – Scope – Misappropriation of funds not constituting an offence covered by the legal instruments listed exhaustively in that directive – Not included*
(European Parliament and Council Directive 2014/42, Art. 3)

(see paragraphs 47, 48)

2. *Judicial cooperation in criminal matters – Framework Decision on the confiscation of crime-related proceeds, instrumentalities and property – Scope – Court decision adopted in the context of civil confiscation proceedings – Not included – National legislation providing for the confiscation, without a criminal conviction, of illegally obtained assets – Whether permissible*
(Art. 31(1)(c)TEU; Council Framework Decision 2005/212)

(see paragraphs 53-57, 60-62, operative part)

Résumé

In the judgment, ‘Agro In 2001’ (C-234/18), delivered on 19 March 2020, the Court held that Framework Decision 2005/212 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property,¹ does not preclude legislation of a Member State that provides that the confiscation of illegally obtained assets is ordered by a national court following proceedings which are not subject either to a finding of a criminal offence or, a fortiori, the conviction of the persons accused of committing such an offence

¹ Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ L 15.3.L 2005, p. 49).

That judgment is given in the context of proceedings between the Bulgarian Commission for the combatting of corruption and for the confiscation of illegally obtained assets ('the Commission for the confiscation of assets'), and BP, a private person, and a number of natural and legal persons associated with or controlled by BP, concerning an application for the confiscation of assets obtained illegally by BP and those persons. Criminal proceedings had been brought against BP, in his capacity as chairman of the supervisory board of a Bulgarian bank, for having incited other persons to misappropriate funds of that bank between 2011 and 2014. At the time of the reference for a preliminary ruling, those proceedings had not given rise to any final conviction. Following an investigation against BP in particular, from which it became apparent that BP had acquired assets through financing them by unlawful means, the Commission for confiscation of assets brought civil proceedings before the referring court seeking, inter alia, an order for the confiscation of assets held by BP and members of his family. According to BP and the other persons concerned, assets could be confiscated only on the basis of a final criminal conviction.

The Court rejected that line of reasoning in its judgment. To arrive at that conclusion, the Court stated that, having regard, in particular, to the aims and wording of the provisions of Framework Decision 2005/212, it must be held that that framework decision is to be regarded as an act aimed at obliging Member States to establish common minimum rules for confiscation of crime-related instrumentalities and proceeds, in order to facilitate the mutual recognition of judicial confiscation decisions adopted in criminal proceedings. Consequently, the Court held that Framework Decision 2005/212 does not govern the confiscation of the instrumentalities and proceeds derived from illegal activities ordered by a court of a Member State in the context of proceedings that do not concern the finding of one or more criminal offences. Taking the view that the decision that the referring court is called upon to adopt in the main proceedings does not fall within proceedings concerning one or more criminal offences, but within civil proceedings relating to assets that are alleged to have been obtained illegally, and which are conducted independently of such criminal proceedings, the Court held that that decision does not fall within the scope of Framework Decision 2005/212.