



## Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

28 October 2021 \*

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive 2014/42/EU – Scope – National legislation providing for the confiscation of illegally obtained assets in the absence of a criminal conviction)

In Case C-319/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 2 April 2019, received at the Court on 17 April 2019, in the proceedings

**Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo**

v

ZV,

AX,

**‘Meditainski tsentar po dermatologia i estetichna meditsina PRIMA DERM’ OOD,**

THE COURT (Third Chamber),

composed of A. Prechal, President of the Second Chamber, acting as President of the Third Chamber, J. Passer, F. Biltgen, L.S. Rossi (Rapporteur) and N. Wahl, Judges,

Advocate General: A. Rantos,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo, by S. Tsatsarov,

\* Language of the case: Bulgarian.

- ZV, AX, and ‘Meditinski tsentar po dermatologia i estetichna meditsina PRIMA DERM’ OOD, by S. Kostov and G. Atanasov, advokati,
- the Bulgarian Government, by T. Mitova and M. Georgieva, acting as Agents,
- the Czech Government, by M. Smolek, J. Vlácil and T. Machovičová, acting as Agents,
- the European Commission, initially by N. Nikolova, I. Zaloguín and M. Wilderspin, and subsequently by N. Nikolova and I. Zaloguín, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion, gives the following

### **Judgment**

- 1 This request for a preliminary ruling concerns the interpretation of 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, and corrigendum OJ 2014 L 138, p. 114) and of Articles 17 and 48 of the Charter of Fundamental Rights of the European Union (‘the Charter’).
- 2 The request has been made in proceedings between the Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo (Commission for the combating of corruption and for the confiscation of illegally obtained assets, Bulgaria) (‘the Commission for the confiscation of assets’), on the one hand, and ZV, AX and Meditsinski tsentar po dermatologia i estetichna meditsina PRIMA DERM OOD, on the other hand, concerning an application for the confiscation of assets obtained illegally by ZV and members of her family.

### **Legal context**

#### *EU law*

- 3 Recitals 9, 15 and 22 of Directive 2014/42 state:
  - ‘(9) This Directive aims to amend and expand the provisions of [Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ 2001 L 182, p. 1)] and [Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property (OJ 2005 L 68, p. 49)]. Those Framework Decisions should be partially replaced for the Member States bound by this Directive.

...

(15) Subject to a final conviction for a criminal offence, it should be possible to confiscate instrumentalities and proceeds of crime, or property the value of which corresponds to such instrumentalities or proceeds. Such final conviction can also result from proceedings *in absentia*. ...

...

(22) This Directive lays down minimum rules. It does not prevent Member States from providing more extensive powers in their national law, including, for example, in relation to their rules on evidence.'

4 Article 1(1) of that directive states:

'This Directive establishes minimum rules on the freezing of property with a view to possible subsequent confiscation and on the confiscation of property in criminal matters.'

5 Article 3 of that directive is worded as follows:

'This Directive shall apply to criminal offences covered by:

(a) Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union [(OJ 1997 C 195, p. 1)] ...

...'

6 Article 4 of that directive, entitled 'Confiscation', provides in paragraph 1:

'Member States shall take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings *in absentia*.'

### ***Bulgarian law***

7 The Zakon za otnemane v polza na darzhavata na nezakono pridobito imushtestvo (Law on confiscation in favour of the State of illegally obtained assets) (DV No 38, of 18 May 2012; 'the 2012 Law on the confiscation of assets'), which entered into force on 19 November 2012, was repealed by the Zakon za protivodeystvie na korupsiyata i za otnemane na nezakonno pridobitoto imushestvo (Law on combating corruption and on the confiscation of illegally obtained assets) (DV No 7 of 19 January 2018), but, as the referring court noted in the request for a preliminary ruling, remains applicable *ratione temporis*.

8 Article 1 of the 2012 Law on the confiscation of assets stated:

'1. This law shall govern the conditions and detailed rules for the confiscation by the State of illegally obtained assets.

2. Assets within the meaning of paragraph 1 shall be those assets for which no legal source of acquisition can be identified.'

9 Article 2 of that law provided:

‘The proceedings provided for in this law shall be conducted independently of the criminal proceedings brought against the person under inquiry and/or the persons acting in conjunction with him or her.’

10 Article 22(1) of that law provides:

‘The investigation under Article 21(2) shall be commenced by order of the director of the regional directorate concerned, where a person is suspected or accused of having committed a criminal offence referred to in the following provisions:

...

8. Articles 201 to 203;

...

20. Articles 282, 283 and 283a;

...

of the Nakazatelen kodeks [(Criminal Code)].’

### **The dispute in the main proceedings and the questions referred for a preliminary ruling**

11 On 5 May 2015, the Voенno okrazhna prokuratura – Sofia (Military Prosecutor’s Office of the Sofia region, Bulgaria) notified the Commission for the confiscation of assets of the fact that criminal proceedings had been initiated against ZV for the offence referred to in the first sentence of Article 282(2) of the Criminal Code, read in conjunction with Article 282(1) of that code.

12 In particular, ZV is charged with having, between 29 November 2004 and 10 September 2014, as a public official in charge of the Department of Dermatology, Venereology and Allergology at the Voennomedizinska akademia (Military Medical Academy) of Sofia (Bulgaria), acted beyond the scope of her powers in the context of her duties in order to obtain an economic benefit for herself or for DERMA-PRIM MK OOD, a company in which she was a majority shareholder.

13 The criminal proceedings against ZV are currently pending before the Sofiyski voenen sad (Sofia Military Court, Bulgaria).

14 On the basis of the notification from the Military Prosecutor’s Office of the Sofia region, the Commission for the confiscation of assets opened an investigation concerning ZV, in accordance with Article 22 of the 2012 Law on the confiscation of assets.

15 Following the investigation, that commission found that there was a ‘significant discrepancy’ between the assets of ZV and her husband and their income. Consequently, it lodged, on 18 January 2017, a request before the referring court seeking confiscation in favour of the State of assets illegally obtained by ZV and by natural and legal persons considered to be associated with ZV or being under her control.

- 16 Further to the request made by that commission, the referring court ordered protective measures concerning the assets whose confiscation was sought.
- 17 The defendants in the main proceedings claim that that request is inadmissible, maintaining that the 2012 Law on the confiscation of assets does not comply with Directive 2014/42. They claim that that directive also applies to non-criminal matters and that it was not correctly transposed into Bulgarian law, since, in particular, that law does not lay down procedural safeguards for defendants and third parties to whom the rules relating to protective measures or the confiscation of illegally obtained assets apply.
- 18 The referring court states, first, that the 2012 Law on the confiscation of assets provided expressly in Article 2 that confiscation proceedings brought before a civil court do not depend on criminal proceedings commenced against the person concerned by the investigation or persons associated or controlled by that person. According to the national case-law, the mere existence of criminal charges against a person is a sufficient basis for opening an investigation in respect of that person. Thus, proceedings brought under that law are conducted irrespective of whether the person concerned by the investigation has been subject to a final criminal conviction.
- 19 Next, the referring court stresses that the 2012 Law on the confiscation of assets reversed the burden of proof. It states that it suffices for the Commission for the confiscation of assets to allege plausible reasons to assume that the assets were obtained illegally. The national legislature, thus created a presumption of the unlawful nature of the acquisition of assets whose provenance has not been identified or proved and introduced the concept of ‘disproportionate wealth’ as the sole and decisive proof of the existence of assets that have been obtained illegally. Therefore, not only assets derived from a specific criminal activity or serious administrative offence are subject to confiscation, but also any asset whose origin has not been identified or proven.
- 20 Finally, according to that court, even if the request for confiscation of assets must be dealt with under the rules of civil procedure, the confiscation of illegally obtained assets is, by its very nature, a criminal measure that falls within the scope of Directive 2014/42.
- 21 However, in the view of the referring court, since the 2012 Law on the confiscation of assets does not lay down the minimum procedural safeguards required by Directive 2014/42, it is contrary to that directive. Furthermore, the excessive burden of proof required of the person concerned is also contrary to Article 48 of the Charter.
- 22 Since it nevertheless has some doubts as to the interpretation of the provisions of Directive 2014/42, the Sofiyski gradski sad (Sofia City Court, Bulgaria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Does the confiscation of illegally obtained assets constitute a punitive measure for the purposes of [Directive 2014/42] or a measure under civil law if:
- (a) the objective of the confiscation of assets as declared by national law is general prevention, that is to say the prevention of the possibility of obtaining and disposing of assets illegally, whereby confiscation is not conditional on the commission of a crime or other offence or on a direct or indirect connection between the offence and the assets obtained;

- (b) the confiscation threatens not an individual asset, but (i) the total assets of the person under inquiry, (ii) property rights of third persons (natural and legal) acquired by the person under inquiry, whether for consideration or not, and (iii) property rights of the contracting partners of the person under inquiry and of the third parties;
  - (c) the only condition for confiscation is the introduction of an irrebuttable presumption of the unlawfulness of all the assets for which no legal origin has been identified (without a previously established definition of “legal/illegal origin”);
  - (d) in the absence of proof of the origin of the acquisition of assets by the person under inquiry, the law governing the lawfulness of the acquired assets is revised with retroactive effect for a period of 10 years for all the persons concerned (person under inquiry, third parties and their contracting partners in the past), whereby at the time of acquisition of the specific property right there was no statutory obligation to provide such proof?
- (2) Must the minimum standards of guaranteed rights of owners and third parties contained in Article 8 of [Directive 2014/42] be interpreted as permitting national law and case-law which prescribe confiscation without it being necessary to satisfy the conditions laid down for that purpose in Articles 4, 5 and 6 of [Directive 2014/42] if the criminal proceedings against the person concerned have been terminated (as confirmed by the court) owing to the absence of a criminal offence or the person has been acquitted owing to the absence of a criminal offence?
- (3) In particular, must Article 8 of [Directive 2014/42] be interpreted as meaning that the safeguards contained in that provision for the rights of a convicted person whose assets are subject to confiscation are also applicable in a case such as that in the present proceedings which runs in parallel with and independently of the criminal proceedings?
- (4) Are the presumption of innocence enshrined in Article 48(1) of the [Charter], the guarantee of the rights of the defence enshrined in Article 48(2) of the Charter and the principle of effectiveness to be interpreted as allowing national legislation such as that at issue in the main proceedings which:
- (a) introduces a presumption for the criminal nature of assets of unknown or unproven origin (Article 1(2) of the [2012 Law on the confiscation of assets])
  - (b) introduces a presumption of reasonable suspicion that assets have been obtained illegally (Article 21(2) of the [2012 Law on the confiscation of assets]);
  - (c) reverses the burden of proof regarding the origin of the assets and the means of acquiring them not only for the person under inquiry, but also for third parties, who must prove the origin not of their assets but of those of their legal predecessor, even in cases where the assets are acquired for no consideration;
  - (d) introduces “asset discrepancy” as the sole and decisive means of proving the existence of illegally obtained assets;
  - (e) reverses the burden of proof for all persons concerned, and not only for the convicted person, even before, or irrespective of, the conviction;
  - (f) allows the application of a methodology for legal and financial investigation and analysis by means of which the suspicion of the illegal nature of the relevant assets and the value of the assets are determined, and that suspicion is binding on the adjudicating court without the latter being able to exercise full judicial control over the content and application of that methodology?

- (5) Must Article 5(1) of [Directive 2014/42] be interpreted as allowing national law to replace a reasonable suspicion (on the basis of the facts and circumstances gathered in the proceedings and assessed by the court) that the assets were obtained by means of a criminal offence with a suspicion (presumption) of the illegality of the origin of the increase in assets which is based solely on the established circumstance that the increase is higher than a value referred to in the national law (for example, EUR 75 000 in 10 years)?
- (6) Must the right to property, as a general principle of EU law, enshrined in Article 17 of the [Charter], be interpreted as allowing national legislation such as that at issue in the main proceedings which:
- (a) introduces an irrebuttable presumption regarding the content and scope of the illegally obtained assets (Article 63(2) [of the 2012 Law on the confiscation of assets]);
  - (b) introduces an irrebuttable presumption of the invalidity of transactions acquiring or disposing of assets (Article 65 [of the 2012 Law on the confiscation of assets]) or
  - (c) restricts the rights of third parties holding or asserting independent rights to assets subject to confiscation by means of the procedure for notifying them of the case, as provided for in Article 76(1) [of the 2012 Law on the confiscation of assets]?
- (7) Do the provisions of Article 6(2) and Article 8(1) to (10) of [Directive 2014/42] have direct effect in so far as they provide guarantees and safeguard clauses for the persons affected by the confiscation or for bona fide third parties?

### **Admissibility of the request for a preliminary ruling**

- 23 The Commission for the confiscation of assets maintains that the reply to the questions referred for a preliminary ruling is irrelevant to the outcome of the case in the main proceedings since Directive 2014/42 is not applicable to those proceedings, with the result that the request for a preliminary ruling is inadmissible. In particular, according to that commission, the request for confiscation of assets is based on the offence referred to in Article 282(2) of the Criminal Code. However, that offence does not fall within the scope of any of the offences referred to in Article 3 of Directive 2014/42, which determines the material scope of that directive.
- 24 In that regard, it should be pointed out that, according to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgments of 24 June 2008, *Commune de Mesquer*, C-188/07, EU:C:2008:359, paragraph 30, and of 19 March 2020, '*Agro In 2001*', C-234/18, EU:C:2020:221, paragraph 43 and the case-law cited).
- 25 However, where, as in the present case, it is not obvious that the interpretation of an EU provision bears no relation to the facts of the main action or its purpose, the objection alleging the inapplicability of that provision to the case in the main action does not relate to the admissibility of the request for a preliminary ruling, but concerns the substance of the questions (judgment of 19 March 2020, '*Agro In 2001*', C-234/18, EU:C:2020:221, paragraph 44 and the case-law cited).

26 Consequently, the request for a preliminary ruling is admissible.

## Consideration of the questions referred

### *The first question*

- 27 By its first question, the referring court asks, in essence, whether Directive 2014/42 must be interpreted as applying to legislation of a Member State that provides that confiscation of illegally obtained assets is to be ordered by a national court in the context of or following proceedings which do not relate to a finding of one or more criminal offences.
- 28 It must be noted first of all that it follows from the request for a preliminary ruling that, unlike the acts at issue in the case giving rise to the judgment of 19 March 2020, ‘*Agro In 2001*’ (C-234/18, EU:C:2020:221, paragraph 47), the offences with which ZV is charged fall within the concept of an offence for the purposes of the convention referred to in Article 3(a) of Directive 2014/42.
- 29 The fact that certain parties maintain before the Court that, in fact, those offences fall outside the scope of that convention and that the facts in the main proceedings took place before the entry into force of Directive 2014/42 or before the expiry of the time limit for its transposition cannot call that premiss into question.
- 30 Since the Court cannot, in accordance with the case-law referred to in paragraph 24 of the present judgment, confirm the accuracy of the factual and legislative context set out by the referring court, it must start from the premiss that that directive is likely to apply in the case in the main proceedings.
- 31 That being so, it remains to be confirmed whether Directive 2014/42 governs the confiscation of instrumentalities and proceeds resulting from illegal activities ordered by a court in a Member State in the context of or following proceedings that do not concern the finding of one or more criminal offences.
- 32 To that end, it must be noted that Directive 2014/42 is based on the provisions of Part Three, Title V, Chapter 4 of the FEU Treaty, entitled ‘Judicial cooperation in criminal matters’, and, more particularly, Article 82(2) and Article 83(1) TFEU.
- 33 Those provisions authorise the European Parliament and the Council of the European Union to establish minimum rules, first, in so far as necessary to facilitate the mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters with a cross-border dimension and, second, in relation to the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis.
- 34 In that regard, while it must be possible to confiscate instrumentalities and the proceeds of crime or assets whose value corresponds to that of those instrumentalities or proceeds, it follows from recital 15 of that directive that that should be the case only subject to a final conviction for a criminal offence, where such a final conviction may also arise from proceedings *in absentia*.



- 35 Thus Article 4(1) of Directive 2014/42 requires Member States to take the necessary measures to enable the confiscation, either in whole or in part, of instrumentalities and proceeds or property the value of which corresponds to such instrumentalities or proceeds, subject to a final conviction for a criminal offence, which may also result from proceedings *in absentia*.
- 36 Consequently, given the objectives and the wording of the provisions of Directive 2014/42 and the context in which it was adopted, it must be held that that directive, like Framework Decision 2005/212 whose provisions, in accordance with recital 9 thereof, it aims to expand, is 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. (see, by analogy, with regard to Framework Decision 2005/212, judgment of 19 March 2020, ‘*Agro In 2001*’, C-234/18, EU:C:2020:221, paragraph 56).
- 37 Directive 2014/42 does not therefore govern the confiscation of instrumentalities and proceeds resulting from illegal activities that is ordered by a court in a Member State in the context of or following proceedings that do not concern the finding of one or more criminal offences (see, by analogy, judgment of 19 March 2020, ‘*Agro In 2001*’, C-234/18, EU:C:2020:221, paragraph 57). Such confiscation falls outside the scope, in fact, of the minimum rules laid down by that directive, in accordance with Article 1(1) thereof, and the rules governing it fall within the scope of the power of the Member States, referred to in recital 22 of that directive, to provide more extensive powers in their national law.
- 38 In the present case, it appears that the confiscation proceedings pending before the referring court are civil in nature and that those proceedings coexist, in national law, with the regime for confiscation under criminal law. It is true that, pursuant to Article 22(1) of the 2012 Law on the confiscation of assets, such proceedings are initiated by the Commission for confiscation of the assets where the latter is informed of the fact that a person is accused of having committed certain criminal offences. However, it is clear from the evidence in the file before the Court that, in accordance with the provisions of that law, once commenced, those proceedings, which only concern assets alleged to have been illegally obtained, are conducted independently of any criminal proceedings brought against the person accused of committing the offences at issue, and of the outcome of such proceedings, and, in particular, of the possible conviction of that person (judgment of 19 March 2020, ‘*Agro In 2001*’, C-234/18, EU:C:2020:221, paragraph 60).
- 39 In those circumstances, it must be held that the decision which the referring court is called upon to adopt in the main proceedings does not fall within the context of, or follow on from, proceedings relating to one or more criminal offences. Furthermore, the confiscation that that court might order following the examination of the request before it does not depend on a criminal conviction of the person concerned. Any such measure does not therefore fall within the scope of application of Directive 2014/42 (see, by analogy, judgment of 19 March 2020, ‘*Agro In 2001*’, C-234/18, EU:C:2020:221, paragraph 61).
- 40 That interpretation cannot be called into question by the judgment of 14 January 2021, *Okrazhna prokuratura – Haskovo and Apelativna prokuratura – Plovdiv* (C-393/19, EU:C:2021:8), in which Framework Decision 2005/212 was taken into account by the Court. The case in the main proceedings differ from the case giving rise to that judgment in so far as the confiscation in question in the latter case was provided for in the criminal code, its application was linked to the commission of that offence, in that case, smuggling, and the person concerned had been convicted of that offence.

- 41 Having regard to the foregoing considerations, the answer to the first question is that Directive 2014/42 must be interpreted as not applying to legislation of a Member State which provides that confiscation of illegally obtained assets is to be ordered by a national court in the context of or following proceedings which do not relate to a finding of one or more criminal offences.

*The second, third, fifth and seventh questions*

- 42 In view of the answer given to the first question, there is no need to answer the second, third, fifth and seventh questions.

*The fourth and sixth questions*

- 43 By its fourth and sixth questions, which must be examined together, the referring court asks the Court to interpret the Charter, and more specifically, Articles 17 and 48 thereof.
- 44 Under Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing EU law and, according to settled case-law, the concept of ‘implementation of Union law’ within the meaning of that provision presupposes a degree of connection between an act of EU law and the national measure at issue which goes beyond the matters referred to or the indirect effects of one of the matters on the other, having regard to the assessment criteria laid down by the Court (judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 37 and the case-law cited).
- 45 In the present case, as is apparent from paragraph 41 of the present judgment, the confiscation procedure at issue in the main proceedings does not fall within the scope of Directive 2014/42, with the result that the Bulgarian legislation governing that procedure cannot be regarded as implementing EU law.
- 46 In those circumstances, since the Charter is not applicable to the dispute in the main proceedings, the Court does not have jurisdiction to reply to the fourth and sixth questions (see, to that effect, order of 2 July 2020, *S.A.D. Maler und Anstreicher*, C-256/19, EU:C:2020:523, paragraphs 32 to 34 and the case-law cited).

**Costs**

- 47 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**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, must be interpreted as not applying to legislation of a Member State which provides that confiscation of illegally obtained assets is to be ordered by a national court in the context of or following proceedings which do not relate to a finding of one or more criminal offences.**

[Signatures]