



## Reports of Cases

### JUDGMENT OF THE COURT (Third Chamber)

1 October 2020\*

(Reference for a preliminary ruling – Protection of the financial interests of the European Union – Article 325 TFEU – Criminal proceedings concerning offences relating to subsidy fraud funded in part from the budget of the European Union – National law not allowing State bodies to obtain, in criminal proceedings, the recovery of subsidies by way of compensation for damage caused by the offences)

In Case C-603/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Špecializovaný trestný súd (Special Criminal Court, Slovakia), made by decision of 24 July 2019, received at the Court on 9 August 2019, in the criminal proceedings against

**TG,**

**UF,**

interveners:

**Úrad špeciálnej prokuratúry Generálnej prokuratúry Slovenskej republiky,**

**Úrad práce, sociálnych vecí a rodiny Košice,**

**Úrad práce, sociálnych vecí a rodiny Vranov nad Topľou,**

**Úrad práce, sociálnych vecí a rodiny Michalovce,**

THE COURT (Third Chamber),

composed of A. Prechal, President of the Chamber, L.S. Rossi, J. Malenovský, F. Biltgen and N. Wahl (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– TG and UF, by M. Kráľ, advokát,

\* Language of the case: Slovak.

- the Úrad špeciálnej prokuratúry Generálnej prokuratúry Slovenskej republiky, by J. Palkovič, acting as Agent,
- the Slovak Government, by B. Ricziová and M. Kianička, acting as Agents,
- the Czech Government, by M. Smolek, J. Pavliš and J. Vláčil, acting as Agents,
- the Romanian Government, by E. Gane, acting as Agent,
- the European Commission, by J. Baquero Cruz, A. Bouchagiar and A. Tokár, 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 Article 325 TFEU, Articles 17 and 47 of the Charter of Fundamental Rights of the European Union, Article 38(1)(h) of Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds (OJ 1999 L 161, p. 1), read in conjunction with Commission Regulation (EC) No 1681/94 of 11 July 1994 concerning irregularities and the recovery of sums wrongly paid in connection with the financing of the structural policies and the organization of an information system in this field (OJ 1994 L 178, p. 43), the interpretation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (OJ 2012 L 315, p. 57), Article 2 of Council Regulation (EC) No 994/98 of 7 May 1998 on the application of Articles 92 and 93 of the Treaty establishing the European Community to certain categories of horizontal State aid (OJ 1998 L 142, p. 1), read in conjunction with Article 2(2) of Commission Regulation (EC) No 69/2001 of 12 January 2001 on the application of Articles 87 and 88 [EC] to de minimis aid (OJ 2001 L 10, p. 30), the interpretation of the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on the protection of the European Communities' financial interests, signed in Brussels on 26 July 1995 (OJ 1995 C 316, p. 49, 'the PIF Convention'), and the interpretation of Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law (OJ 2017 L 198, p. 29).
- 2 The request has been made in criminal proceedings brought against TG and UF ('the accused') for acts liable to constitute subsidy fraud funded in part from the budget of the European Union.

### **Legal context**

#### *EU law*

- 3 Under Article 38(1)(h) of Regulation No 1260/1999:

'Without prejudice to the Commission's responsibility for implementing the general budget of the European Communities, Member States shall take responsibility in the first instance for the financial control of assistance. To that end, the measures they take shall include:

...

(h) recovering any amounts lost as a result of an irregularity detected and, where appropriate, charging interest on late payments.’

4 Article 1(1) of Directive 2012/29 provides:

‘The purpose of this Directive is to ensure that victims of crime receive appropriate information, support and protection and are able to participate in criminal proceedings.

...’

5 Under Article 2(1)(a) of that directive:

‘For the purposes of this Directive, the following definitions shall apply:

(a) ‘victim’ means:

- (i) a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence;
- (ii) family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death’.

6 Article 2 of Regulation No 994/98, entitled ‘De minimis’, provides, in paragraph 1:

‘The Commission may, by means of a Regulation adopted in accordance with the procedure laid down in Article 8 of this Regulation, decide that, having regard to the development and functioning of the common market, certain aids do not meet all the criteria of Article 92(1) and that they are therefore exempted from the notification procedure provided for in Article 93(3), provided that aid granted to the same undertaking over a given period of time does not exceed a certain fixed amount.’

7 Article 2(2) of Regulation No 69/2001 provided:

‘The total de minimis aid granted to any one enterprise shall not exceed EUR 100 000 over any period of three years. This ceiling shall apply irrespective of the form of the aid or the objective pursued.’

### ***Slovak law***

8 The zákon č. 301/2005 Z. z., Trestný poriadok (Law No 301/2005 on the Code of Criminal Procedure), in the version applicable to the dispute in the main proceedings (‘the Code of Criminal Procedure’), provides, in Article 46:

‘(1) An injured party is the person to whom bodily harm or material, non-material or other damage has been caused by a criminal offence, or whose other rights or freedoms protected by law have been threatened or harmed. The injured party has the right, in the cases provided for by this law, to express his consent to the bringing of criminal proceedings, to claim damages, to request investigative measures, including supplementary measures, to submit evidence, to consult and examine the case file, to attend the main hearing and public hearings for appeal and negotiated admission proceedings, to comment on the taking of evidence, to make submissions and to bring an action as may be available under this law. The injured party is entitled, at any time during the criminal proceedings, to obtain information on the state of progress of those proceedings. That information shall be provided by the authority acting in the criminal proceedings or by the court seised; the details necessary for that purpose shall be provided to the injured party. The information on the state of progress of the criminal proceedings shall not be provided if that is likely to undermine the purpose of the criminal proceedings.’

...

(3) The injured party, who is legally entitled to compensation for the damage caused to him by the offence committed by the accused, is also entitled to ask the court to require the accused, in the sentence, to pay compensation for that damage; the injured party must submit an application at the latest by the conclusion of the pre-trial investigation or expedited investigation stage. The application must state clearly the grounds on which compensation is sought, and the amount thereof.

...'

- 9 Article 287(1) of that code provides:

'Where the court finds the accused guilty of the offence which caused to others the damage stated in Article 46(1), the court shall, in general, in the sentence, require the accused to pay compensation to the injured party if the latter has duly exercised his right within the prescribed period. The court shall always require the accused to compensate, in whole or in part, the damage which has not been made good, where the amount of that damage is included in the description of the act referred to in the operative part of the judgment by which the accused is found guilty, or if the compensation covers non-material damage resulting from an intentional violent offence under a special law, to the extent that the damage has not yet been compensated.'

- 10 Article 288(1) of that code states:

'If the taking of evidence does not justify an obligation to make good the damage or if, in order to decide on the obligation to make good the damage, it were necessary to take evidence going beyond the requirements of the criminal proceedings and extending those proceedings, the court shall refer the injured party to civil proceedings or, if applicable, to another competent authority.

...'

- 11 The zákon č. 300/2005 Z. z., Trestný zákon (Law No 300/2005 on the Criminal Code), in the version applicable to the dispute in the main proceedings, provides, in Article 261, entitled 'Adverse effect on the financial interests of the European Communities':

'(1) A person who uses or produces a forged, incorrect or incomplete document, or who does not provide the information required, or who uses funds from the general budget of the European Communities, from a budget which is managed by the European Communities or on behalf of the European Communities for a purpose other than those initially fixed and which thus allows for the misappropriation or unlawful holding of funds from that budget, shall be liable to a custodial sentence of six months to three years.

(2) The offender shall be liable to a custodial sentence of one to five years if he commits the offence set out in paragraph 1

a) and in doing so, causes significant damage,

b) for a specific reason, or

c) by carrying out particularly serious acts.

(3) The offender shall be liable to a custodial sentence of three to eight years if he commits the offence set out in paragraph 1 and in doing so causes major damage.

(4) The offender shall be liable to a custodial sentence of seven to twelve years if he commits the offence under paragraph 1

a) and in doing so, causes major damage, or

b) as a member of a dangerous group.’

12 Under Article 31 of the zákon č. 523/2004 Z. z. o rozpočtových pravidlách verejnej správy (Law No 523/2004 laying down the financial rules governing the budget of public administrative authorities), a legal or natural person who has infringed financial rules is required to return the funds to the budget from which they were deducted or paid, and to do so in the amount of the infringement of the financial rules; that person is also required to pay a penalty.

13 Article 420(1) of the zákon č. 40/1964 Zb., Občiansky zákonník v relevantnom znení (Law No 40/1964 on the Civil Code), provides:

‘Each person shall be liable for the damage caused by the breach of his legal obligations.’

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

14 The case in the main proceedings concerns criminal proceedings against the accused, two natural persons, for acts liable to constitute subsidy fraud funded in part from the budget of the European Union. The criminal offence which is the subject of the main proceedings is alleged to have been committed in the context of two calls for tenders issued in 2005 and 2006 respectively by the Ústredie práce sociálnych vecí a rodiny (Central Office for Labour, Social Affairs and Family, Slovakia) for the submission of applications for subsidies to support job creation in micro-enterprises and job creation for disabled persons in sheltered workshops and sheltered workplaces. The first call for tenders gave entitlement to a subsidy by way of one-off assistance, whereas the second gave entitlement to a subsidy in the form of reimbursement of proven costs. The latter subsidy was 75% funded by the European Social Fund.

15 Between May 2005 and March 2006, the accused set up 19 commercial companies, in which they assumed the role of partners and managers. Nine of those companies received no subsidies. The ten other companies, by contrast, obtained subsidies totalling EUR 750 613.79, of which EUR 654 588.34 was actually paid, including EUR 279 272.18 from the budget of the European Union.

16 Following the payment of the subsidies in question, the accused transferred their shares in the companies concerned to a third party, then those companies ceased trading. At the time when criminal proceedings were brought against the accused, the company assets were no longer on the premises of those companies, which were automatically removed from the register of companies.

17 During the period in which the subsidies in question were paid, the commercial companies concerned employed a total of 107 disabled persons, in respect of whom those companies duly discharged their obligations as regards wages and social security contributions. However, those employees’ work did not contribute to the objectives set out in the applications for subsidies. According to an expert’s report, the work was fictitious.

18 The accused managed the companies in question centrally from one of the companies situated in Košice (Slovakia), at the same address as the permanent residence of the accused. In each of those companies, the accused appointed an employee to the position of director.

19 The referring court notes that only the companies to which a subsidy was actually awarded and paid, that is, ten companies in total, are the subject of the charge.

- 20 Criminal proceedings were brought against the defendants in their capacity as partners and managers of those companies on the basis of the charge brought by the Úrad špeciálnej prokuratúry Generálnej prokuratúry Slovenskej republiky (Office of the Special Prosecutor in the Department of the Public Prosecutor of the Slovak Republic, ‘the Office of the Special Prosecutor). The úrady práce, sociálnych vecí a rodiny (the district offices for labour, social affairs and family), as injured parties in the main proceedings, sought damages from the accused during the investigation, in the amount of the subsidy actually paid.
- 21 However, the referring court considers that, in the light of the case-law of the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic), Article 46 of the Code of Criminal Procedure does not permit it, in criminal proceedings, to hear and determine the right of State bodies to compensation. On 29 November 2017, the Criminal Chamber of the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) issued an opinion in which it stated that: ‘State material rights under the rules relating to the various types of taxes, which are initially decided by the competent administrative authority, in accordance with the procedure laid down in the Tax Code ... including material rights arising from an unjustified claim made by a taxable person for repayment of value added tax or excise duty, are administrative in nature and decisions on them are subject to review by an administrative court[;] those rights do not allow damages to be claimed in the context of criminal proceedings in accordance with Article 46(3) of the Code of Criminal Procedure ... . Thus, no overlap is possible, that is to say no conflict of jurisdiction between the different institutions (administrative and judicial), nor a duplication of decisions on the same right.’ The Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) also stated that those legal considerations apply *mutatis mutandis* ‘to any other material right which, by virtue of its substantive basis (that is to say, the provision of law governing that right), does not constitute a right to compensation for damage or ‘non-material’ damage.
- 22 The Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) then applied that case-law in criminal proceedings concerning offences affecting the financial interests of the European Union and offences of subsidy fraud. The referring court therefore assumes that it will also apply that case-law in the event of an appeal against its judgment in the main proceedings.
- 23 The referring court notes that the application of that case-law in the main proceedings could have the effect of preventing the State from bringing an action for compensation for damage caused by fraud. An administrative procedure referred to in the case-law of the Najvyšší súd Slovenskej republiky (Supreme Court of the Slovak Republic) can be directed only against the beneficiary of subsidy in question. The main proceedings concern commercial companies which no longer hold any assets and which were even removed from the register of companies. Such a procedure therefore does not enable the recovery of wrongly paid subsidies. By contrast, bringing an action for damages in the context of criminal proceedings brought against natural persons, in the present case the partners and managers of those commercial companies, can lead to the remedies claimed by the State.
- 24 In addition to that question, the national court asks whether de minimis aid granted in the form of assistance should be assessed individually, for each company, or as a whole, because of their centralised management. Finally, the referring court asks whether, in the present case, the total amount of the wrongly paid subsidy should be regarded as damage or whether, from that amount, it is necessary to deduct the costs which, admittedly, were incurred lawfully, but solely in order to conceal the fraud, delay the detection of the fraud and thus obtain the full amount granted.

25 In those circumstances, the Špecializovaný trestný súd (Special Criminal Court, Slovakia), taking the view that an interpretation of EU law is necessary in the main proceedings, decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

1. Is Directive 2012/29/EU ... establishing minimum standards on the rights, support and protection of victims of crime (principally the right of the injured party to participate actively in criminal proceedings and the right to secure compensation for damage in criminal proceedings) applicable, as regards rights which, by their nature, are not enjoyed solely by a natural person, as a sentient being, also to legal persons and the State, or State authorities, where the provisions of national law confer on them the status of injured party in criminal proceedings?
2. Are legislation and decision-making practices, such that the State may not claim compensation in criminal proceedings for the damage caused to it by fraudulent conduct on the part of an accused person resulting in the misappropriation of funds from the budget of the European Union, or may not appeal, under Article 256(3) of the Code of Criminal Procedure, against the order by which the court decides not to admit it, or not to admit the authority representing it, to the main proceedings to seek compensation for the damage as an injured party, and it does not have any other type of procedure available to it by which it may assert its right as against the accused, which means that it is also not possible to guarantee its right to compensation for damage against the property and property rights of the accused under Article 50 of the Code of Criminal Procedure, thus rendering that right *de facto* unenforceable, compatible with Articles 17 and 47 of the Charter of Fundamental Rights ..., Article 325 [TFEU] and Article 38(1)(h) of ... Regulation No 1260/1999 ..., read in conjunction with ... Regulation No 1681/94 ...?
3. Is the concept of ‘the same undertaking’ referred to in Article 2 of Regulation ... No 994/98 ..., read in conjunction with Article 2(2) of ... Regulation ... No 69/2001 ..., to be interpreted only formally as meaning that it is necessary and sufficient to establish whether the companies concerned have separate legal personality under national law, such that it is possible to grant to each of those companies State aid of up to EUR 100 000, or is the decisive criterion the actual mode of operation and management of those companies, held by the same persons and inter-related, in the manner of a system of branches managed by a central company, even though each has its own legal personality under national law, so that they must be deemed to form ‘the same undertaking’ and, as a single entity, may receive State aid of up to EUR 100 000 only once?
4. For the purposes of the [PIF Convention or Directive 2017/1371], does the term ‘damage’ mean only that part of the funds wrongly obtained which is directly related to the fraudulent conduct, or also the costs actually incurred and duly proven and the use of the assistance, if the evidence shows that their expenditure was necessary to conceal the fraudulent conduct, delay the detection of the fraudulent conduct and obtain the full amount of the State aid granted?

### **Consideration of the questions referred for a preliminary ruling**

#### ***The admissibility of the third and fourth questions***

26 As a preliminary point, it should be noted that, according to the Court’s settled case-law, the procedure provided for by Article 267 TFEU is an instrument for cooperation between the Court and national courts by means of which the Court provides national courts with the criteria for the interpretation of European Union law which they need in order to decide the disputes before them (see, *inter alia*, judgment of 27 November 2012, *Pringle*, C-370/12, EU:C:2012:756, paragraph 83 and the case-law cited).

- 27 In the context of the cooperation between the Court and the national courts provided for in Article 267 TFEU, it is solely for the national court, before which the dispute has been brought and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions submitted concern the interpretation of EU law, the Court is, in principle, bound to give a ruling (judgment of 25 July 2018, *AY (Mandat d'arrêt – Témoin)*, C-268/17, EU:C:2018:602, paragraph 24 and the case-law cited).
- 28 It follows that 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 and the accuracy of which is not a matter for this 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 is unrelated to the actual facts of the main action or its object, 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 (judgment of 25 July 2018, *AY (Mandat d'arrêt – Témoin)*, C-268/17, EU:C:2018:602, paragraph 25 and the case-law cited).
- 29 Thus, since the order for reference serves as the basis for the procedure followed before the Court, it is essential that the national court should, in that decision, set out the factual and legislative context of the dispute in the main proceedings and give at the very least some explanation of the reasons for the choice of the EU law provisions which it seeks to have interpreted and of the link it establishes between those provisions and the national legislation applicable to the proceedings pending before it (see, to that effect, inter alia, judgments of 26 January 1993, *Telemarsicabruzzo and Others*, C-320/90 to C-322/90, EU:C:1993:26, paragraph 6, and of 9 March 2017, *Milkova*, C-406/15, EU:C:2017:198, paragraph 73).
- 30 Those cumulative requirements concerning the content of a request for a preliminary ruling are set out explicitly in Article 94 of the Rules of Procedure of the Court of Justice and are also set out, in particular, in the Recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2018 C 257, p. 1). The third indent of paragraph 15 of those recommendations states that the request for a preliminary ruling must contain 'a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings'.
- 31 It is in the light of those principles that the Court must examine the admissibility of the third and fourth questions.

### *The third question*

- 32 By its third question, the referring court asks, in essence, how it should interpret the concept of 'the same undertaking' in Article 2 of Regulation No 994/98, read in conjunction with Article 2(2) of Regulation No 69/2001, in order to assess whether there has been any circumvention of the law applicable to State aid in the dispute in the main proceedings.
- 33 The Slovak Government considers that the third question is inadmissible in so far as it is manifestly unrelated to the subject matter of the main proceedings. The Office of the Special Prosecutor argues that that question is inadmissible on the ground that it is hypothetical and unfounded.
- 34 In the present case, the dispute in the main proceedings concerns a ruling on the possible criminal liability of persons prosecuted for offences and, where applicable, those persons' obligation to make good the damage caused to the State in the event that they are held liable.



35 However, the order for reference does not explain why the referring court considers that an interpretation of the concept of ‘the same undertaking’ in Article 2 of Regulation No 994/98, read in conjunction with Article 2(2) of Regulation No 69/2001, is necessary for the purposes of deciding the dispute pending before it.

36 The third question is therefore inadmissible.

#### *The fourth question*

37 By its fourth question, the referring court asks, in essence, whether the concept of ‘damage’, within the meaning of the PIF Convention and Directive 2017/1371, must include costs actually incurred and duly proven, and the use of the financial assistance, if it is established that those costs were necessary to conceal fraudulent conduct, delay the detection of the fraud and obtain all the State aid in question.

38 The Slovak Government submits that that question is inadmissible, given that the order for reference does not contain the factual and legal information which would enable the Court to give a useful answer to that question.

39 Without expressly raising a plea of inadmissibility, both the Office of the Special Prosecutor and the Commission point out that the order for reference does not refer to any specific provision of the PIF Convention or of Directive 2017/1371.

40 In that regard, it must be noted that the order for reference does not specify which national provisions are applicable to the dispute in the main proceedings, nor does it give any indication of the reasons for choosing the rules of EU law of which the referring court seeks an interpretation or why an answer to the fourth question might affect the outcome of that dispute.

41 Thus, by asking the Court of Justice, in essence, to define the concept of ‘damage’ in the light of the PIF Convention, which does not state that term, or in the light of Directive 2017/1371, which is not applicable to the main proceedings since it is subsequent to the facts in question, without referring to any national provision whatsoever or giving any indication as to how it intends to use that answer, the referring court has not provided the Court of Justice with the necessary factual and legal information which would enable it to give a useful answer to the questions referred.

42 The fourth question is therefore inadmissible.

#### *The substance*

##### *The first question*

43 By its first question, the referring court asks, in essence, whether Article 2(1) of Directive 2012/29 must be interpreted as meaning that that directive also applies to legal persons and the State, in so far as national law confers on them the status of ‘injured party’ in criminal proceedings.

44 In that respect, it should be noted that, in accordance with Article 1(1) of Directive 2012/29, the purpose of that directive is to provide certain guarantees to victims of crime. Article 2(1) of that directive defines as a ‘victim’, within the meaning of Article 1, a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence, and family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person’s death.

45 Such wording clearly does not permit the inclusion of legal persons within the scope of that directive.

46 The answer to the first question is, therefore, that Article 2(1) of Directive 2012/29 must be interpreted as meaning that that directive does not apply to legal persons or to the State, even if national law confers on them the status of injured party in criminal proceedings.

*The second question*

47 By its second question, the referring court asks, in essence, whether Article 325 TFEU must be interpreted as precluding provisions of national law, as interpreted in national case-law, under which, in criminal proceedings, the State may not claim compensation for damage caused to it by fraudulent conduct on the part of the accused person resulting in the misappropriation of funds from the budget of the European Union, and under which the State does not have, in those proceedings, any other type of action available to it by which it may assert its right as against the accused.

48 As a preliminary point, it should be noted that, according to the Court's case-law, Article 325(1) and (2) TFEU obliges the Member States to counter illegal activities affecting the financial interests of the European Union through effective deterrent measures and, in particular, obliges them to take the same measures to counter fraud affecting the financial interests of the European Union as they take to counter fraud affecting their own interests (judgment of 26 February 2013, *Åkerberg Fransson*, C-617/10, EU:C:2013:105, paragraph 26 and the case-law cited).

49 In that regard, the Court has already held that the Member States have freedom to choose the applicable penalties, which may take the form of administrative penalties, criminal penalties or a combination of the two, whilst specifying that, in cases of serious fraud, criminal penalties may nevertheless be essential (see, to that effect, judgment of 8 September 2015, *Taricco and Others*, C-105/14, EU:C:2015:555, paragraph 39).

50 Member States therefore have a precise obligation as to the result to be achieved that is not subject to any condition regarding the application of the rule laid down in Article 325(1) and (2) TFEU. Those provisions therefore have the effect, in accordance with the principle of the precedence of EU law, in their relationship with the domestic law of the Member States, of rendering automatically inapplicable, merely by their entering into force, any conflicting provision of national law (see to that effect, judgment of 8 September 2015, *Taricco and Others*, C-105/14, EU:C:2015:555, paragraphs 51 and 52).

51 In the present case, the referring court raises the question, more specifically, of the compatibility with the obligations arising from Article 325 TFEU of national rules of criminal procedure as interpreted in national case-law which, in a case such as that in the main proceedings, do not allow the State to be accorded a right to compensation as the injured party in the criminal proceedings.

52 The referring court notes, however, that the State could recover the wrongly paid sums by bringing administrative proceedings for breach of financial discipline, within the meaning of Article 31 of Law No 523/2004 on financial rules governing the budget of public administrative authorities. That court explains that, in accordance with that provision, the grant or use of public funds for purposes other than those laid down for those funds constitutes a breach of financial discipline. However, again according to the referring court, administrative proceedings enable repayment of the wrongly paid financial assistance to be demanded only from the formal beneficiary of the subsidy, namely, in this case, legal persons.

53 In its written observations, the Slovak Government argues that, under national law, it is also possible for the State to bring not only a civil action against the legal person to which the assistance was wrongly paid, but also to obtain, following a criminal conviction, compensation from the convicted natural person for the damage suffered.

- 54 In that context, it is important to note that, under Article 325(1) TFEU, in order to counter illegal activities affecting the financial interests of the Union, Member States must adopt effective deterrent measures which are equivalent to those taken at national level to counter fraud affecting the interests of the Member State concerned.
- 55 As the Commission noted, Member States are in particular required to take effective measures to recover sums wrongly paid to the beneficiary of a subsidy funded in part from the budget of the European Union. On the other hand, Article 325 TFEU does not impose on Member States any constraint, other than that relating to the effectiveness of the measures, as regards the procedure which must enable such an outcome to be achieved, so that the Member States have some leeway in that respect, subject to observing the principle of equivalence.
- 56 In that regard, it should be noted at the outset that the coexistence of different legal remedies with different objectives specific to administrative law, civil law or criminal law, cannot, in itself, undermine the effectiveness of the fight against fraud affecting the financial interests of the European Union, provided that the national legislation, as a whole, enables the recovery of wrongly paid assistance from the Union budget.
- 57 In the present case, the referring court raises more specifically the question of compliance with the obligation of effectiveness laid down in Article 325 TFEU, in the event that the State is not granted a right to compensation, as the injured party, in the context of criminal proceedings, and where the administrative proceedings allow the recovery of wrongly paid financial assistance only from the legal person which received that assistance.
- 58 In that regard, it should be noted, first, that, as follows from paragraph 56 of the present judgment, the non-recognition of a State's right to compensation as an injured party in criminal proceedings cannot, in itself, be contrary to the obligations under Article 325 TFEU.
- 59 Although criminal penalties may be essential to enable Member States to combat certain cases of serious fraud in an effective and dissuasive manner (judgments of 8 September 2015, *Taricco and Others*, C-105/14, EU:C:2015:555, paragraph 39, and of 5 December 2017, *M.A.S. and M.B.*, C-42/17, EU:C:2017:936, paragraph 34), such penalties are required in order to ensure that national law is dissuasive and are not intended to permit the recovery of sums paid but not due.
- 60 Second, it follows from paragraph 56 of the present judgment that the existence in the legal order of the Member State concerned of an effective remedy for acts affecting the financial interests of the European Union, whether in the context of criminal, administrative or civil proceedings, is sufficient to satisfy the obligation of effectiveness laid down by Article 325 TFEU provided that that remedy allows the recovery of wrongly paid assistance and provided that criminal penalties make it possible to combat cases of serious fraud.
- 61 That is the case here, provided that, which it is for the referring court to verify, the State has the option, according to the applicable national law, of bringing, first, administrative proceedings enabling it to obtain the recovery of the assistance wrongly paid to the legal person and, second, civil proceedings not only to establish the civil liability of the legal person which received the wrongly paid assistance, but also to obtain, following a criminal conviction, compensation from the convicted natural person for the damage suffered.
- 62 Consequently, the answer to the second question is that Article 325 TFEU must be interpreted as not precluding provisions of national law, as interpreted in national case-law, under which, in criminal proceedings, the State may not claim compensation for damage caused to it by fraudulent conduct on the part of the accused person resulting in the misappropriation of funds from the budget of the European Union, and under which the State does not have, in those proceedings, any other type of

action available to it by which it may assert its right as against the accused, provided that, which it is for the referring court to verify, the national legislation provides for effective proceedings for the recovery of assistance wrongly received from the budget of the European Union.

### Costs

- <sup>63</sup> 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:

- 1. Article 2(1) of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA must be interpreted as meaning that that directive does not apply to legal persons or to the State, even if national law confers on them the status of injured party in criminal proceedings.**
- 2. Article 325 TFEU must be interpreted as not precluding provisions of national law, as interpreted in national case-law, under which, in criminal proceedings, the State may not claim compensation for damage caused to it by fraudulent conduct on the part of the accused person resulting in the misappropriation of funds from the budget of the European Union, and under which the State does not have, in those proceedings, any other type of action available to it by which it may assert its right as against the accused, provided that, which it is for the referring court to verify, the national legislation provides for effective proceedings for the recovery of assistance wrongly received from the budget of the European Union.**

[Signatures]