Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

4 October 2024*

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Confiscation of crime-related proceeds, instrumentalities and property – Framework Decision 2005/212/JHA – Directive 2014/42/EU – Scope – National criminal proceedings capable of leading to the confiscation of illegally obtained assets – No finding of a criminal offence – Confiscation without conviction – Reasons other than illness or absconding)

In Joined Cases C-767/22, C-49/23 and C-161/23,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia), made by decisions of 8 December 2022, 31 January 2023 and 14 March 2023, received at the Court on 12 December 2022, 1 February 2023 and 16 March 2023, respectively, in the proceedings

1Dream OÜ,

DS,

DL,

VS,

JG (C-767/22),

AZ,

1Dream OÜ,

Produktech Engineering AG,

BBP,

Polaris Consulting Ltd (C-49/23),

VL,

ZS,

Lireva Investments LTD,

* Language of the case: Latvian.

VI,

FORTRESS FINANCE Inc. (C-161/23),

intervener:

Latvijas Republikas Saeima,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, T. von Danwitz, A. Kumin and I. Ziemele, Judges,

Advocate General: P. Pikamäe,

Registrar: I. Illéssy and S. Spyropoulos, Administrators,

having regard to the written procedure and further to the hearing on 15 April 2024,

after considering the observations submitted on behalf of:

– 1Dream OÜ, by S. Bērtaitis, advokāts,

– VS, DL, DS, by A. Jaunzars, advokāts,

– JG, by I. Nikuļceva and A. Voroņko, advokāti,

– AZ, by R. Valdemārs, advokāts,

– Produktech Engineering AG, by T. Krūmiņš and L. Liepa, advokāti,

– BBP, by A. Rasa, advokāts,

– Polaris Consulting Ltd, by A. Liepiņš, advokāts,

– VL, by L. Lielbriede, advokāta palīdze, and S. Oborenko and E. Rusanovs, advokāti,

– ZS, by A. Ņikiforovs, jurists,

– Lireva Investments LTD, by A. Rasa, advokāts,

– VI, by D. Siliņa, advokāte,

– FORTRESS FINANCE Inc., by L. Baltiņa, advokāta palīdze,

– the Latvian Government, by J. Davidoviča, K. Pommere and S. Zābele, acting as Agents,

– the Czech Government, by M. Smolek, T. Suchá and J. Vláčil, acting as Agents,

– the European Commission, by I. Naglis, I. Rubene, M. Wasmeier and I. Zaloguin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2024,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), 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), 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 the principle of the primacy of EU law.

2 The requests have been made in constitutional actions brought by 1Dream OÜ, DS, DL, VS, JG (C-767/22), AZ, 1Dream, Produktech Engineering AG, BBP, Polaris Consulting Ltd (C-49/23), VL, ZS, Lireva Investments LTD, VI and FORTRESS FINANCE Inc. (C-161/23) concerning the constitutionality of national provisions governing asset confiscation proceedings.

Legal context

European Union law

Framework Decision 2005/212

3 Article 2(1) of Framework Decision 2005/212 provides:

'Each Member State shall take the necessary measures to enable it to confiscate, either wholly or in part, instrumentalities and proceeds from criminal offences punishable by deprivation of liberty for more than one year, or property the value of which corresponds to such proceeds.'

Directive 2014/42

4 Recitals 5, 15, 16, 21 and 22 of Directive 2014/42 state:

'(5) The adoption of minimum rules will approximate the Member States' freezing and confiscation regimes, thus facilitating mutual trust and effective cross-border cooperation.

…

(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. When confiscation on the basis of a final conviction is not possible, it should

nevertheless under certain circumstances still be possible to confiscate instrumentalities and proceeds, at least in the cases of illness or absconding of the suspected or accused person. However, in such cases of illness and absconding, the existence of proceedings in absentia in Member States would be sufficient to comply with this obligation. When the suspected or accused person has absconded, Member States should take all reasonable steps and may require that the person concerned be summoned to or made aware of the confiscation proceedings.

(16) For the purposes of this Directive, illness should be understood to mean the inability of the suspected or accused person to attend the criminal proceedings for an extended period, as a result of which the proceedings cannot continue under normal conditions. Suspected or accused persons may be requested to prove illness, for example by a medical certificate, which the court should be able to disregard if it finds it unsatisfactory. The right of that person to be represented in the proceedings by a lawyer should not be affected.

…

(21) Extended confiscation should be possible where a court is satisfied that the property in question is derived from criminal conduct. This does not mean that it must be established that the property in question is derived from criminal conduct. Member States may provide that it could, for example, be sufficient for the court to consider on the balance of probabilities, or to reasonably presume that it is substantially more probable, that the property in question has been obtained from criminal conduct than from other activities. In this context, the court has to consider the specific circumstances of the case, including the facts and available evidence based on which a decision on extended confiscation could be issued. The fact that the property of the person is disproportionate to his lawful income could be among those facts giving rise to a conclusion of the court that the property derives from criminal conduct. Member States could also determine a requirement for a certain period of time during which the property could be deemed to have originated from criminal conduct.

(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.’

5 Article 1 of Directive 2014/42 provides:

‘1. 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.

2. This Directive is without prejudice to the procedures that Member States may use to confiscate the property in question.’

6 Under Article 2 of that directive:

‘For the purpose of this Directive, the following definitions apply:

(1) “proceeds” means any economic advantage derived directly or indirectly from a criminal offence; it may consist of any form of property and includes any subsequent reinvestment or transformation of direct proceeds and any valuable benefits;

(2) “property” means property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title or interest in such property;

(3) “instrumentalities” means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences;

(4) “confiscation” means a final deprivation of property ordered by a court in relation to a criminal offence;

…

(6) “criminal offence” means an offence covered by any of the instruments listed in Article 3.’

7 Article 4 of that directive, entitled ‘Confiscation’, states:

‘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.

2. Where confiscation on the basis of paragraph 1 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States shall take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.’

8 Article 5 of Directive 2014/42, entitled ‘Extended confiscation’, provides, in paragraph 1:

‘Member States shall adopt the necessary measures to enable the confiscation, either in whole or in part, of property belonging to a person convicted of a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, where a court, on the basis of the circumstances of the case, including the specific facts and available evidence, such as that the value of the property is disproportionate to the lawful income of the convicted person, is satisfied that the property in question is derived from criminal conduct.’

9 Article 6 of that directive, entitled ‘Confiscation from a third party’, states, in paragraph 1:

‘Member States shall take the necessary measures to enable the confiscation of proceeds, or other property the value of which corresponds to proceeds, which, directly or indirectly, were transferred by a suspected or accused person to third parties, or which were acquired by third parties from a suspected or accused person, at least if those third parties knew or ought to have known that the purpose of the transfer or acquisition was to avoid confiscation, on the basis of concrete facts and circumstances, including that the transfer or acquisition was carried out free of charge or in exchange for an amount significantly lower than the market value.’

10 Under Article 8(1) and (8) of Directive 2014/42:

‘1. Member States shall take the necessary measures to ensure that the persons affected by the measures provided for under this Directive have the right to an effective remedy and a fair trial in order to uphold their rights.

…

8. In proceedings referred to in Article 5, the affected person shall have an effective possibility to challenge the circumstances of the case, including specific facts and available evidence on the basis of which the property concerned is considered to be property that is derived from criminal conduct.'

11 Article 14(1) of that directive provides:

'… the first four indents of Article 1 and Article 3 of Framework Decision [2005/212], are replaced by this Directive for the Member States bound by this Directive …'

Regulation (EU) 2018/1805

12 Recital 13 of Regulation (EU) 2018/1805 of the European Parliament and of the Council of 14 November 2018 on the mutual recognition of freezing orders and confiscation orders (OJ 2018 L 303, p. 1) is worded as follows:

'This Regulation should apply to all freezing orders and to all confiscation orders issued within the framework of proceedings in criminal matters. "Proceedings in criminal matters" is an autonomous concept of Union law interpreted by the Court of Justice of the European Union, notwithstanding the case-law of the European Court of Human Rights. The term therefore covers all types of freezing orders and confiscation orders issued following proceedings in relation to a criminal offence, not only orders covered by Directive [2014/42]. It also covers other types of order issued without a final conviction. …'

Latvian law

13 The first and second sentences of Article 92 of the Latvijas Republikas Satversme (Constitution of the Republic of Latvia; 'the Latvian Constitution') provide:

'Everyone is entitled to assert his or her rights and legitimate interests before an impartial court or tribunal. Everyone shall be presumed innocent until proved guilty according to law.'

14 Article 124(6) of the Kriminālprocesa likums (Law on criminal procedure) of 21 April 2005 (*Latvijas Vēstnesis*, 2005, No 74), in the version applicable to the facts in the main proceedings ('the Law on criminal procedure'), provides that, in criminal proceedings and in proceedings relating to illegally obtained assets, evidence concerning the unlawful origin of the assets is deemed to be established if, in the course of submission of the evidence, there is reason to believe that the assets are, in all probability, of criminal origin and not of lawful origin.

15 Under Article 125(3) of that law, assets that have been laundered are deemed to have been obtained illegally if the person involved in criminal proceedings is unable to provide a credible explanation as to the lawful origin of the assets and if all the evidence allows the person directing the proceedings to assume that those assets are, in all probability, of unlawful origin.

16 Article 126(3.[1]) of that law states:

'If the person involved in criminal proceedings claims that the assets cannot be regarded as having been obtained illegally, the onus shall be on that person to demonstrate that the assets are of lawful

origin. If no credible information concerning the lawfulness of the origin of the assets is provided within the prescribed period, that person shall be denied the possibility of securing compensation for the damage caused by the restrictions imposed on the use of his or her assets in the context of the criminal proceedings.'

17 Article 626(1) of the Law on criminal procedure provides:

'The investigator, with the agreement of the public prosecutor leading the investigation, or the public prosecutor, may, in the interests of the timely resolution of property issues raised during the preliminary stage of the criminal proceedings and in the interests of procedural economy, separate the materials relating to illegally obtained assets from the criminal case file and initiate proceedings if the following conditions are met:

(1) all of the evidence suggests that the assets removed or seized were obtained illegally or are linked to a criminal offence;

(2) bringing the criminal case before the courts in the foreseeable future (within a reasonable time) is, for objective reasons, impossible or may give rise to substantial [and] unjustified costs.'

18 Under Article 627(1) to (5) of that law:

'1. In the circumstances referred to in Article 626 of this law, the person directing the proceedings shall take a decision to initiate proceedings for the illegal acquisition of assets and shall forward to the court the materials concerning the illegally obtained assets.

2. In his or her decision, the person directing the proceedings shall:

(1) provide information on the facts capable of establishing a link between the assets and the criminal offence or the unlawful origin of the assets, and on the materials which have been separated from the file in a criminal case under investigation relating to the unlawful acquisition of assets;

(2) identify the persons connected to the assets;

(3) state the measures that he or she proposes with regard to the illegally obtained assets;

(4) identify the victim, where appropriate.

3. The decision and the attachments thereto shall be forwarded to the rajona (pilsētas) tiesa (District Court).

4. The materials in the case file concerning illegally obtained assets shall be covered by the confidentiality of investigations and may be consulted by the person directing the proceedings, the public prosecutor and the court seised of the case. The persons to whom Article 628 of this law refers may access the materials in the case file with the authorisation of the person directing the proceedings and to the extent that that person so stipulates.

5. A decision of the person directing the proceedings refusing a request for access to the materials in the case file may be challenged by way of an action brought before the rajona

(pilsētas) tiesa (District Court) hearing proceedings relating to illegally obtained assets. The court shall adopt a decision allowing or dismissing the action in whole or in part. No appeal may be brought against that decision. The court may, in order to enable it to decide whether access to the materials in the case file interferes with the fundamental rights of individuals, undermines the public interest or impedes the attainment of the objective of the criminal proceedings, request and examine the criminal case file.'

19 Under Article 628 of the Law on criminal procedure:

'The person directing the proceedings shall immediately forward a copy of the decision referred to in Article 627 of this law to the suspected or accused person and to the person whose assets have been removed or seized, if those persons are the subject of the criminal proceedings concerned, or to another person who has a right of ownership over the assets in question …'

20 The Law of 7 October 2021 (*Latvijas Vēstnesis*, 2021, No 202) deleted, with effect from 2 November 2021, the words 'the suspected or accused person and' in Article 628 of the Law on criminal procedure.

21 Pursuant to Article 630 of the Law on criminal procedure:

'1. When examining the materials concerning the illegally obtained assets, the court shall determine:

(1) whether the assets were obtained illegally or are linked to a criminal offence;

(2) whether information exists about the lawful owner or possessor of the assets;

(3) whether any person has a legitimate right over the assets;

(4) which measures should be taken in relation to the illegally obtained assets.

2. If the court finds that the link between the assets and the criminal offence has not been established or that those assets are not of unlawful origin, it shall take a decision terminating the proceedings relating to the unlawful acquisition of assets.'

22 Article 631 of the Law on criminal procedure provides, in paragraph 1 thereof, that 'an appeal may be brought against the decision of the court within 10 days before the apgabaltiesa (Regional Court)' and, in paragraph 3, that, 'after examining the action, the court may set aside the decision of the rajona (pilsētas) tiesa (District Court) and adopt a decision as referred to in Article 630 of this law', that latter decision being 'not open to challenge'.

The disputes in the main proceedings and the questions referred for a preliminary ruling

Case C-767/22

23 Funds, financial instruments and immovable property belonging to 1Dream, DS, DL, VS and JG were seized in criminal proceedings initiated in 2019 and 2020, mainly for large-scale laundering of the proceeds of crime.

24 When the request for a preliminary ruling was made, those criminal proceedings were still at the investigation stage.

25 Between 12 March 2021 and 21 February 2022, the person directing those proceedings initiated proceedings relating to illegally obtained assets which targeted those funds, financial instruments and immovable property. To that end, that person forwarded the files in those proceedings to the courts having jurisdiction.

26 As regards, in particular, the funds belonging to 1Dream, the Rīgas apgabaltiesas Krimināllietu tiesas kolēģija (Regional Court, Riga (Division of Criminal Cases), Latvia) held, on 7 October 2021, that 1Dream's funds had been obtained unlawfully. That court therefore decided to confiscate the funds and transfer them to the State budget. The proceedings relating to the assets of DS, DL, VS and JG were stayed.

27 In the context of those proceedings relating to illegally obtained assets, 1Dream, DS, DL, VS and JG applied to the person directing the proceedings, under Article 627(4) of the Law on criminal procedure, for access to the materials in the case file. Having granted their applications only in part, 1Dream, DS, DL, VS and JS challenged the decisions of that person.

28 Taking the view that the rules laid down in Article 627(4) and (5) of the Law on criminal procedure places them at a disadvantage vis-à-vis the person directing the proceedings, 1Dream, DS, DL, VS and JG brought actions before the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia), which is the referring court, seeking a declaration of unconstitutionality in respect of those provisions, arguing that they are inconsistent with the right to a fair trial, as enshrined in the first sentence of Article 92 of the Latvian Constitution, read in the light of Framework Decision 2005/212 and Directive 2014/42.

29 In order to rule on those actions, the referring court asks, in the first place, whether Framework Decision 2005/212 and Directive 2014/42 are applicable to proceedings relating to illegally obtained assets provided for in Article 626(1) of the Law on criminal procedure.

30 The referring court states, in that regard, that the offences being prosecuted in the pending criminal proceedings, which are separate from the proceedings relating to illegally obtained assets, are among those referred to in Article 2(1) of Framework Decision 2005/212 and Article 3 of Directive 2014/42.

31 The referring court also notes that, unlike the cases which gave rise to the judgments of 19 March 2020, '*Agro In 2001*' (C-234/18, EU:C:2020:221), and of 28 October 2021, *Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo* (C-319/19, EU:C:2021:883), proceedings relating to illegally obtained assets are governed by the rules of criminal procedure.

32 Furthermore, the referring court enquires whether Article 4(2) of Directive 2014/42 covers the confiscation of assets in situations where a conviction cannot be handed down for reasons other than illness or absconding of the suspected or accused person.

33 That court explains that proceedings relating to illegally obtained assets are intended to ensure a swift, effective and economical resolution of issues concerning the lawful origin of the assets or their connection with a criminal offence which are raised during the pre-trial stage of the criminal

proceedings. A finding that assets were obtained illegally is made by the court before the commission of a criminal offence has been established or a conviction handed down. Moreover, that finding does not equate to a finding that one or more criminal offences have been committed.

34 Thus, proceedings relating to illegally obtained assets are initiated by decision of the person directing the proceedings by separating from the case file in the criminal proceedings the materials concerning the assets subject to the proceedings relating to illegally obtained assets, where that person takes the view that (i) all of the evidence suggests that those assets were obtained illegally or are linked to a criminal offence, and (ii) bringing the case before the courts in the foreseeable future or within a reasonable time is, for objective reasons, impossible or may give rise to substantial and unjustified costs.

35 In those circumstances, the person directing the proceedings may decide to bring the matter before a court, which would then determine only whether the assets were obtained illegally or whether they are linked to a criminal offence. Once the court seised has ruled on that matter, it is deemed to have been finally disposed of and is no longer dealt with in the criminal proceedings in the course of which the proceedings relating to illegally obtained assets were initiated.

36 If Framework Decision 2005/212 or Directive 2014/42 were considered to be applicable in the present case, the referring court asks, in the second place, about the scope of the right of access of a person – whose assets are subject to proceedings relating to illegally obtained assets – to the file in those proceedings and, where appropriate, about the possibility of maintaining the temporal effects of provisions which it finds to be incompatible with EU law.

37 In those circumstances, the Latvijas Republikas Satversmes tiesa (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does national legislation pursuant to which a national court rules on the confiscation of the proceeds of crime in separate proceedings relating to the illegally obtained assets, which are separated from the main criminal proceedings before it is established that a criminal offence has been committed and before anyone has been found guilty of that offence, and which also provides for confiscation based on materials taken from the criminal case file, fall within the scope of Directive 2014/42, in particular Article 4 thereof, and Framework Decision 2005/212, in particular Article 2 thereof?

(2) If the first question is answered in the affirmative, is the legislation on access to materials in the case file in proceedings relating to illegally obtained assets to be considered compatible with the right to a fair trial enshrined in Article 47 of the Charter and in Article 8(1) of Directive 2014/42?

(3) Is the principle of the primacy of European Union law to be interpreted as precluding the constitutional court of a Member State, which is seised of an action for a declaration of unconstitutionality brought against national legislation which has been held to be incompatible with European Union law, from ruling that the principle of legal certainty is applicable and that the legal effects of that legislation are to be maintained in relation to the period during which it was in force?’

Case C-49/23

38 Immovable property owned by AZ and funds belonging to 1Dream, Produktech Engineering, BBP and Polaris Consulting were seized in criminal proceedings initiated between 2012 and 2020 for large-scale laundering of the proceeds of crime.

39 When the request for a preliminary ruling was made, those criminal proceedings were still at the investigation stage.

40 Between 9 April and 8 June 2021, the person directing those proceedings initiated proceedings relating to illegally obtained assets which targeted that immovable property and those funds. To that end, that person forwarded the files in those proceedings to the courts having jurisdiction.

41 As regards the immovable property owned by AZ and the funds belonging to 1Dream, Produktech Engineering and BBP, those courts found that the immoveable property and funds in question had not been obtained illegally and closed the proceedings. As regards the funds belonging to Polaris Consulting, the court having jurisdiction held that some of those funds had been obtained illegally. That court ordered that the funds in question be confiscated for the benefit of the State and closed the proceedings in respect of the remainder of the assets.

42 Hearing actions against those decisions, the Rīgas apgabaltiesas Krimināllietu tiesas kolēģija (Regional Court, Riga (Division of Criminal Cases)) held, between 22 July and 19 October 2021, that all the immovable property and funds at issue in the main proceedings, including the funds of Polaris Consulting which had not yet been confiscated, had been obtained unlawfully. Those assets were therefore confiscated and transferred to the State budget.

43 Since the decisions of the Rīgas apgabaltiesas Krimināllietu tiesas kolēģija (Regional Court, Riga (Division of Criminal Cases)) are not open to challenge in accordance with Article 631(3) of the Law on criminal procedure, AZ, 1Dream, Produktech Engineering, BBP and Polaris Consulting brought actions before the Latvijas Republikas Satversmes tiesa (Constitutional Court), which is the referring court, seeking a declaration of unconstitutionality on the ground that the provisions barring such a challenge are inconsistent with the right to a fair trial, as enshrined in the first sentence of Article 92 of the Latvian Constitution, read in the light of Framework Decision 2005/212 and Directive 2014/42.

44 In order to rule on those actions, the referring court raises, in the first place, questions concerning the applicability of Framework Decision 2005/212 and Directive 2014/42 in the same terms as those summarised in paragraphs 29 to 35 above.

45 If that framework decision or that directive were considered to be applicable in the present case, the referring court takes the view that it would be necessary, in the second place, to determine whether Article 47 of the Charter and Article 8(6) of that directive require that a right of action should lie against a confiscation order adopted for the first time on appeal, and, where appropriate, to enquire about the possibility of maintaining the temporal effects of provisions which it finds to be incompatible with EU law.

46 In those circumstances, the Latvijas Republikas Satversmes tiesa (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does national legislation pursuant to which a national court rules on the confiscation of the proceeds of crime in separate proceedings relating to the illegally obtained assets, which are separated from the main criminal proceedings before it is established that a criminal offence has been committed and before anyone has been found guilty of the offence concerned, which also provides for confiscation based on materials taken from the criminal case file, fall within the scope of Directive 2014/42, in particular Article 4 thereof, and of Framework Decision 2005/212, in particular Article 2 thereof?

(2) If the first question is answered in the affirmative, must the concept of “confiscation order” within the meaning of Directive 2014/42, and in particular the second sentence of Article 8(6) thereof, be found to include not only the judicial decisions declaring that assets have been obtained illegally and ordering their confiscation but also judicial decisions discontinuing proceedings relating to the illegally obtained assets?

(3) If the second question is answered in the negative, is legislation compatible with Article 47 of the Charter and with the second sentence of Article 8(6) of Directive 2014/42 in so far as it provides no right for persons connected to the assets to challenge confiscation orders?

(4) Is the principle of the primacy of European Union law to be interpreted as precluding the constitutional court of a Member State, which is seised of an action for a declaration of unconstitutionality brought against national legislation which has been held to be incompatible with European Union law, from ruling that the principle of legal certainty is applicable and that the legal effects of that legislation are to be maintained temporarily until the time set in the decision of that court as the point at which the provision at issue will cease to have effect?’

Case C-161/23

47 Funds and immovable property belonging to VL, ZS, Lireva Investments, VI and FORTRESS FINANCE were seized in criminal proceedings initiated for large-scale laundering of the proceeds of crime.

48 When the request for a preliminary ruling was made, those criminal proceedings were still at the investigation stage.

49 Subsequently, the person directing those proceedings initiated proceedings relating to illegally obtained assets which targeted those funds and immovable property. To that end, that person forwarded the files in those proceedings to the courts having jurisdiction.

50 In the context of those proceedings, VL, ZS, Lireva Investments, VI and FORTRESS FINANCE provided either to that person or to the courts hearing the case information on the lawfulness of the origin of their assets. By final decisions delivered in all proceedings relating to illegally obtained assets, those courts found that the funds and immovable property at issue in the main proceedings had been obtained illegally. Those funds and immovable property were therefore confiscated and transferred to the State budget.

51 Taking the view that the rules on evidence laid down in Article 124(6), Article 125(3) and Article 126(3.[1]) of the Law on criminal procedure do not ensure equality of arms in those proceedings and infringe the principle of the presumption of innocence, VL, ZS, Lireva Investments, VI and FORTRESS FINANCE brought actions before the Latvijas Republikas Satversmes tiesa (Constitutional Court, Latvia), which is the referring court, seeking a declaration of unconstitutionality in respect of those rules, arguing that they are inconsistent with the right to a fair trial and the presumption of innocence, as enshrined in the first and second sentences of Article 92 of the Latvian Constitution, read in the light of Framework Decision 2005/212 and Directive 2014/42.

52 In order to rule on those actions, the referring court raises, in the first place, questions concerning the applicability of Framework Decision 2005/212 and Directive 2014/42 in the same terms as those summarised in paragraphs 29 to 35 above.

53 If that framework decision or that directive were considered to be applicable in the present case, the referring court takes the view that it would be necessary, in the second place, to determine whether the rules on evidence applying to proceedings relating to illegally obtained assets are compatible with the rights enshrined in Articles 47 and 48 of the Charter and with those set out in Article 8(1) of that directive, and, where appropriate, to enquire about the possibility of maintaining the temporal effects of provisions which it finds to be incompatible with EU law.

54 In those circumstances, the Latvijas Republikas Satversmes tiesa (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does national legislation pursuant to which a national court rules on the confiscation of the proceeds of crime in separate proceedings relating to the illegally obtained assets, which are separated from the main criminal proceedings before it is established that a criminal offence has been committed and before anyone has been found guilty of that offence, and which also provides for confiscation based on materials taken from the criminal case file, fall within the scope of Directive 2014/42, in particular Article 4 thereof, and of Framework Decision 2005/212, in particular Article 2 thereof?

(2) If the first question is answered in the affirmative, may national legislation concerning proof of the criminal source of assets in proceedings concerning illegally obtained assets, such as that established in the provisions at issue, be considered compatible with the right to a fair trial enshrined in Articles 47 and 48 of the Charter and in Article 8(1) of Directive 2014/42?

(3) Is the principle of the primacy of European Union law to be interpreted as precluding the constitutional court of a Member State, which is seised of an action for a declaration of unconstitutionality brought against national legislation which has been held to be incompatible with European Union law, from ruling that the principle of legal certainty is applicable and that the legal effects of that legislation are to be maintained in relation to the period during which it was in force?’

55 Given the connection between Cases C-767/22, C-49/23 and C-161/23, it is appropriate that they be joined for the purposes of the judgment.

Facts subsequent to the requests for a preliminary ruling

56 After the present requests for a preliminary ruling were made, VL applied to the referring court asking it to clarify or supplement the questions referred to the Court for a preliminary ruling on account of the fact that the criminal proceedings, from which the proceedings resulting in the confiscation of his assets had been severed, had been closed without any determination of his guilt.

57 By decision of 30 August 2024, notified to the Court Registry on 9 September 2024, the referring court dismissed that application. The referring court recalled that it had already informed the Court that proceedings relating to illegally obtained assets are independent of and separate from the criminal proceedings, in that the former are not dependent on the outcome of the latter. Thus, according to that decision, the Court was aware of the fact that proceedings relating to illegally obtained assets may lead to confiscation while the criminal proceedings may subsequently be closed for lack of evidence. Lastly, in that decision, the referring court added that the circumstances referred to by VL did not constitute new information.

The requests that the oral part of the procedure be reopened

58 By documents lodged at the Court Registry on 26 August and 4 September 2024, respectively, JG and VL requested that the oral part of the procedure be reopened.

59 In support of those requests, JG and VL submit that the Advocate General's Opinion concerns matters which were not debated before the Court and which are likely to have a significant impact on the decision which the Court is required to give in the present cases.

60 JG refers to certain arguments, put forward in that Opinion in order to interpret the second sentence of Article 8(6) of Directive 2014/42, which were not debated between the interested parties. In addition, JG states that the interpretation of that provision may also affect the interpretation of Directive (EU) 2024/1260 of the European Parliament and of the Council of 24 April 2024 on asset recovery and confiscation (OJ L 2024/1260). JG argues that the adoption of that directive, which occurred after the hearing, is a new element.

61 VL, for his part, states that the criminal proceedings initiated against him were closed without any determination of his guilt. According to VL, it is necessary to discuss the legal inferences to be drawn from the fact that criminal proceedings against the perpetrator of a criminal offence may be closed even though the confiscation of assets has already been ordered in the context of proceedings relating to illegally obtained assets initiated during those criminal proceedings.

62 In that regard, it should be recalled that, in accordance with Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where a party has, after the close of that part of the procedure, submitted a new fact which is of such a nature as to be a decisive factor for the decision of the Court, or where the case must be decided on the basis of an argument which has not yet been debated.

63 It should also be borne in mind that the Statute of the Court of Justice of the European Union and the Rules of Procedure make no provision for the parties to submit observations in response to the Advocate General's Opinion (judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 37 and the case-law cited).

64 Furthermore, under the second paragraph of Article 252 TFEU, the Advocate General, acting with complete impartiality and independence, is to make, in open court, reasoned submissions on cases which, in accordance with the Statute of the Court of Justice of the European Union, require the Advocate General's involvement. The Court is not bound either by the Advocate General's conclusion or by the reasoning which led to that conclusion. Consequently, a party's disagreement with the Advocate General's Opinion, irrespective of the questions that he or she examines in his or her Opinion, cannot in itself constitute grounds justifying the reopening of the oral part of the procedure (judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 38 and the case-law cited).

65 In this instance, it should be noted, first, that the elements relied on by JG in support of his request that the oral part of the procedure be reopened do not constitute arguments which were not debated before the Court and on the basis of which the present cases must be decided. In particular, at the joint hearing in these cases, in which JG participated, the interested parties were able to set out the matters of law which they considered relevant to enable the Court to reply to the questions submitted by the referring court, including the question concerning the interpretation of the second sentence of Article 8(6) of Directive 2014/42. Specifically, that provision was the subject of a question from the Court which the interested parties were invited to answer at the hearing. Secondly, as regards JG's argument based on Directive 2024/1260, it should be noted, first of all, that no reference whatsoever was made to that directive in the requests for a preliminary ruling. In addition, under Article 33 of that directive, the deadline for the directive's transposition was set at 23 November 2026, so that it would be for the referring court, if necessary, to make a reference to the Court specifically concerning that directive and the possible relevance of its provisions.

66 As regards the elements put forward by VL, it should be observed, as the referring court did, that the information provided by that court included – when the request for a preliminary ruling in Case C-161/23 was made – the fact that the criminal proceedings brought against the alleged perpetrators of a criminal offence may continue during the course of the proceedings relating to illegally obtained assets and ultimately be closed without the alleged perpetrator's conviction, while, in the intervening period, the proceedings relating to those assets may lead to confiscation. It follows that the interested parties had the opportunity to make known their views in that regard.

67 Finally, the Court considers that it has all the information necessary to give a ruling.

68 In the light of the foregoing considerations, the Court takes the view, after hearing the Advocate General, that there is no need to order the reopening of the oral part of the procedure.

Consideration of the questions referred

The first questions in Cases C-767/22, C-49/23 and C-161/23

69 As a preliminary point, it should be borne in mind that, according to settled case-law, in the context of the procedure laid down in Article 267 TFEU which provides for cooperation between national courts and the Court of Justice, it is for the Court to provide the referring court with an answer which will be of use to it and enable it to decide the case before it. To that end, the Court may have to reword the questions referred to it, extracting from all the information provided by the national court, in particular from the grounds of the order for reference, the points of EU law which require interpretation in view of the subject matter of the dispute (judgment of 29 July 2024, *CU and ND (Social assistance – Indirect discrimination)*, C-112/22 and C-223/22, EU:C:2024:636, paragraph 30 and the case-law cited).

70 In that regard, it is apparent from the requests for a preliminary ruling that the national legislation at issue in the main proceedings falls within the scope of the national rules of criminal procedure and provides, where a person is prosecuted for a criminal offence but in a situation in which bringing the case before the courts in the foreseeable future would prove to be, for objective reasons, impossible or would give rise to substantial and unjustified costs, for the possibility of initiating proceedings for the unlawful acquisition of assets, those proceedings being capable of leading to asset confiscation. Under that legislation, the court having jurisdiction may order the confiscation of assets if it appears that those assets were obtained illegally or are linked to a criminal offence. However, those proceedings are not intended to establish whether the criminal offence for which that prosecution was brought was committed and they are wholly separate from the finding by the court hearing the criminal case that that criminal offence was committed.

71 In the light of the foregoing, it must therefore be held that, by its first questions in Cases C-767/22, C-49/23 and C-161/23, which should be examined together, the referring court asks, in essence, whether Framework Decision 2005/212 and Directive 2014/42 must be interpreted as meaning that the scope of those acts covers national legislation which provides for the possibility, in the course of criminal proceedings to determine whether a person has committed a criminal offence, of initiating proceedings for the confiscation of illegally obtained assets, on the basis of materials contained in the file in the criminal proceedings, where those confiscation proceedings do not concern the finding of such a criminal offence and even though there is no reason relating to the illness or absconding of that person which would prevent him or her from standing trial.

72 In that regard, it should be borne in mind that Framework Decision 2005/212 and Directive 2014/42, the latter of which, in accordance with Article 14(1) thereof, partially replaced the provisions of the former, are acts adopted in the field of judicial cooperation in criminal matters (see, to that effect, judgments of 19 March 2020, *'Agro In 2001'*, C-234/18, EU:C:2020:221, paragraphs 52 and 53, and of 28 October 2021, *Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo*, C-319/19, EU:C:2021:883, paragraphs 32 and 33).

73 Those acts oblige 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, to that effect, judgments of 19 March 2020, *'Agro In 2001'*, C-234/18, EU:C:2020:221, paragraph 56, and of 28 October 2021, *Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo*, C-319/19, EU:C:2021:883, paragraphs 36).

74 To that end, Article 2(1) of Framework Decision 2005/212 and Articles 4 to 6 of Directive 2014/42 require Member States to make provision for such confiscation in certain situations (see, by analogy, judgment of 21 October 2021, *Okrazhna prokuratura – Varna*, C-845/19 and C-863/19, EU:C:2021:864, paragraph 48).

75 It should be noted that those situations, as is clear from the wording of the provisions referred to in the preceding paragraph of this judgment, presuppose the existence of a link between the confiscation and a criminal offence. In that regard, the concept of 'confiscation' is defined in Article 2(4) of that directive as 'a final deprivation of property ordered by a court in relation to a criminal offence'.

76 Thus, it is only in those situations that Framework Decision 2005/212 and Directive 2014/42 apply. Such a delimitation of the scope of that directive is, moreover, confirmed by recital 13 of Regulation 2018/1805, from which it is apparent that, unlike that regulation, orders falling within the scope of Directive 2014/42 are not intended to cover all confiscation orders issued following proceedings in relation to a criminal offence.

77 In that context, it should be recalled, first, that in accordance with Article 1(1) of Directive 2014/42, read in conjunction with recitals 5 and 22 thereof, that directive establishes minimum rules on, inter alia, the confiscation of property in criminal matters.

78 Secondly, the Court has held that the minimum rules laid down by Framework Decision 2005/212 and Directive 2014/42 do not cover national legislation on 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, to that effect, judgments of 19 March 2020, '*Agro In 2001*', C-234/18, EU:C:2020:221, paragraphs 57 and 62; of 28 October 2021, *Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo*, C-319/19, EU:C:2021:883, paragraphs 37, 39 and 41; and of 9 March 2023, *Otdel 'Mitnichesko razsledvane i razuznavane*', C-752/21, EU:C:2023:179, paragraph 40).

79 Specifically, the scope of those acts does not cover national proceedings which, although initiated on the basis of information that a person is accused of having committed certain criminal offences, are intended exclusively to establish whether assets have been obtained illegally and are conducted independently of any criminal proceedings brought against the person accused of committing the offences and of the outcome of such proceedings, and, in particular, of the possible conviction of that person (see, to that effect, judgments of 19 March 2020, '*Agro In 2001*', C-234/18, EU:C:2020:221, paragraph 60, and of 28 October 2021, *Komisia za protivodeystvie na koruptsiyata i za otnemane na nezakonno pridobitoto imushtestvo*, C-319/19, EU:C:2021:883, paragraph 38).

80 It follows from the foregoing considerations that neither Framework Decision 2005/212 nor Directive 2014/42 can be regarded as governing proceedings which, although provided for by national rules of criminal procedure, are intended exclusively to determine whether assets have been obtained illegally on the basis of case file materials that were taken from proceedings concerning the finding of one or more criminal offences referred to in those acts, without the court hearing the confiscation proceedings having the power, in the context of those proceedings, to find that such a criminal offence has been committed and without that finding being made in the course of the proceedings concerning the finding of one or more criminal offences.

81 First, although the fact that confiscation proceedings are governed by national rules of criminal procedure may indeed point to the existence of a necessary link between the confiscation proceedings and the finding of a criminal offence, it is not in itself decisive for considering that such confiscation proceedings fall within the scope of Framework Decision 2005/212 or Directive 2014/42.

82 Secondly, Article 4(2) of that directive does not cast doubt on the exclusion from the scope of Framework Decision 2005/212 and Directive 2014/42 of confiscation proceedings intended exclusively to determine whether assets have been obtained illegally, without the court hearing those proceedings having the power to find that a criminal offence has been committed and in the absence of a prior finding of such an offence.

83 In that regard, that provision states that where confiscation on the basis of Article 4(1) of Directive 2014/42 is not possible, at least where such impossibility is the result of illness or absconding of the suspected or accused person, Member States are to take the necessary measures to enable the confiscation of instrumentalities and proceeds in cases where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.

84 As the Advocate General observed in point 27 of his Opinion, the situations in which Article 4(2) of Directive 2014/42 requires Member States to take measures enabling confiscation are defined by contrast to those provided for in Article 4(1) of Directive 2014/42.

85 The latter provision covers the confiscation of instrumentalities and proceeds belonging to the suspected or accused person, or property the value of which corresponds to such instrumentalities or proceeds, which are used for or arise from the criminal offence in respect of which the suspected or accused person has been finally convicted (see, to that effect, judgments of 21 October 2021, *Okrazhna prokuratura – Varna*, C-845/19 and C-863/19, EU:C:2021:864, paragraph 55, and of 12 May 2022, *RR and JG (Freezing of third-party property)*, C-505/20, EU:C:2022:376, paragraph 50).

86 By contrast, Article 4(2) of Directive 2014/42 covers, as is apparent from recital 15 thereof, the situation where such a conviction is not possible due to the non-appearance of the suspected or accused person in certain circumstances, at least in the cases of illness or absconding of that suspected or accused person, but where criminal proceedings have been initiated regarding a criminal offence which is liable to give rise, directly or indirectly, to economic benefit, and such proceedings could have led to a criminal conviction if the suspected or accused person had been able to stand trial.

87 It follows that the confiscation provided for in Article 4(2) of Directive 2014/42, while referring to ‘instrumentalities’ and ‘proceeds’ within the meaning of Article 2, points 1 and 3, of that directive, requires that it be possible, irrespective even of any conviction of the perpetrator of the criminal offence, for the question whether that criminal offence has actually been committed to be assessed by the court ordering confiscation.

88 Accordingly, Article 4(2) of Directive 2014/42 does not cover proceedings, such as those at issue in the main proceedings, enabling confiscation to be ordered swiftly but which are not intended to determine whether a criminal offence has been committed.

89 In the light of the foregoing considerations, the answer to the first questions in Cases C-767/22, C-49/23 and C-161/23 is that Framework Decision 2005/212 and Directive 2014/42 must be interpreted as meaning that the scope of those acts does not cover national legislation which provides for the possibility, in the course of criminal proceedings to determine whether a person has committed a criminal offence, of initiating proceedings for the confiscation of illegally obtained assets, on the basis of materials contained in the file in the criminal proceedings, where those confiscation proceedings do not concern the finding of such a criminal offence and even though there is no reason relating to the illness or absconding of that person which would prevent him or her from standing trial.

The second and third questions in Cases C-767/22, C-49/23 and C-161/23 and the fourth question in Case C-49/23

90 In view of the answer given to the first questions in Cases C-767/22, C-49/23 and C-161/23, there is no need to answer the other questions in those cases, which were put to the Court in the event of an affirmative answer to those first questions, without prejudice to the referring court's finding concerning the possible applicability to the main proceedings of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1) or Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1).

Costs

91 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (First Chamber) hereby rules:

1. **Cases C-767/22, C-49/23 and C-161/23 are joined for the purposes of the judgment.**

2. **Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property and 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 meaning that the scope of those acts does not cover national legislation which provides for the possibility, in the course of criminal proceedings to determine whether a person has committed a criminal offence, of initiating proceedings for the confiscation of illegally obtained assets, on the basis of materials contained in the file in the criminal proceedings, where those confiscation proceedings do not concern the finding of such a criminal offence and even though there is no reason relating to the illness or absconding of that person which would prevent him or her from standing trial.

[Signatures]