Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

14 January 2021*

(Reference for a preliminary ruling – Article 17 of the Charter of Fundamental Rights of the European Union – Right to property – Article 47 of the Charter of Fundamental Rights – Right to an effective remedy – Framework Decision 2005/212/JHA – Confiscation of crime-related proceeds, instrumentalities and property – Directive 2014/42/EU – Freezing and confiscation of instrumentalities and proceeds of crime in the European Union – National legislation providing for the confiscation, for the benefit of the State, of property used to commit the offence of smuggling – Property belonging to a third party acting in good faith)

In Case C-393/19,

REQUEST for a preliminary ruling under Article 267 TFEU from the Apelativen sad – Plovdiv (Court of Appeal, Plovdiv, Bulgaria), made by decision of 16 May 2019, received at the Court on 21 May 2019, in the criminal proceedings against

OM,

intervening parties:

Okrazhna prokuratura – Haskovo,

Apelativna prokuratura – Plovdiv,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, L. Bay Larsen, C. Toader, M. Safjan (Rapporteur) and N. Jääskinen, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the Okrazhna prokuratura – Haskovo, by V. Radeva-Rancheva, acting as Agent,

– the Apelativna prokuratura – Plovdiv, by I. Perpelov, acting as Agent,

– the Greek Government, by M. Tassopoulou, S. Charitaki and A. Magrippi, acting as Agents,

* Language of the case: Bulgarian.

– the European Commission, by Y. Marinova and R. Troosters, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 25 June 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 17(1) and Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request was submitted in the context of criminal proceedings brought against OM concerning the confiscation, following his conviction for aggravated smuggling, of property used to commit that infringement which belongs to a third-party acting in good faith.

Legal context

European Union law

Framework Decision 2005/212/JHA

3 Recital 3 of 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) states as follows:

'Pursuant to paragraph 50(b) of the Vienna Action Plan, within five years of the entry into force of the Treaty of Amsterdam, national provisions governing seizures and confiscation of the proceeds from crime must be improved and approximated where necessary, taking account of the rights of third parties in bona fide.'

4 Under the third and fourth indents of Article 1 of that framework decision, headed 'Definitions':

'For the purposes of this Framework Decision:

…

– "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,

– "confiscation" means a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in the final deprivation of property.'

5 Article 2 of that framework decision, headed 'Confiscation', provides as follows:

'1. 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.

2. In relation to tax offences, Member States may use procedures other than criminal procedures to deprive the perpetrator of the proceeds of the offence.'

6 Article 4 of that framework decision, headed ‘Legal remedies’, provides:

‘Each Member State shall take the necessary measures to ensure that interested parties affected by measures under Articles 2 and 3 have effective legal remedies in order to preserve their rights.’

Directive 2014/42/EU

7 Recitals 9, 33 and 41 of Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union (OJ 2014 L 127, p. 39, and corrigendum OJ 2014 L 138, p. 114) state as follows:

‘(9) This Directive aims to amend and expand the provisions of [Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime (OJ 2001 L 182, p. 1)] and [Framework Decision] 2005/212/JHA. Those Framework Decisions should be partially replaced for the Member States bound by this Directive.

…

(33) This Directive substantially affects the rights of persons, not only of suspected or accused persons, but also of third parties who are not being prosecuted. It is therefore necessary to provide for specific safeguards and judicial remedies in order to guarantee the preservation of their fundamental rights in the implementation of this Directive. This includes the right to be heard for third parties who claim that they are the owner of the property concerned, or who claim that they have other property rights (‘real rights’, ‘*ius in re*’), such as the right of usufruct. The freezing order should be communicated to the affected person as soon as possible after its execution. Nevertheless, the competent authorities may postpone communicating such orders to the affected person due to the needs of the investigation.

…

(41) Since the objective of this Directive, namely facilitating confiscation of property in criminal matters, cannot be sufficiently achieved by the Member States but can rather be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.’

8 Article 2 of that directive, headed ‘Definitions’, provides:

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

…

(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;

…’

9 Article 3 of the directive, headed 'Scope', provides:

'This Directive shall apply to criminal offences covered by:

(a) Convention drawn up on the basis of Article K.3(2)(c) of the Treaty on European Union on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union …;

(b) Council Framework Decision 2000/383/JHA of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the euro [(OJ 2000 L 140, p. 1)];

(c) Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment [(OJ 2001 L 149, p. 1)];

(d) Council Framework Decision 2001/500/JHA of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime [(OJ 2001 L 182, p. 1)];

(e) Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism [(OJ 2002 L 164, p. 3)];

(f) Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector [(OJ 2003 L 192, p. 54)];

(g) Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking [(OJ 2004 L 335, p. 8)];

(h) Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime [(OJ 2008 L 300, p. 42)];

(i) Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [(OJ 2011 L 101, p. 1)];

(j) Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA [(OJ 2011 L 335, p. 1)];

(k) Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA [(OJ 2013 L 218, p. 8)],

as well as other legal instruments if those instruments provide specifically that this Directive applies to the criminal offences harmonised therein.'

10 Article 12 of Directive 2014/42, headed 'Transposition', provides, in paragraph 1:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 4 October 2016. They shall forthwith transmit to the Commission the text of those provisions.'

11 Article 14 of that directive, headed ‘Replacement of Joint Action 98/699/JHA and of certain provisions of Framework Decisions 2001/500/JHA and 2005/212/JHA’, provides as follows:

‘1. Joint Action 98/699/JHA [of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (OJ 1998 L 333, p. 1)], point (a) of Article 1 and Articles 3 and 4 of Framework Decision 2001/500/JHA, and the first four indents of Article 1 and Article 3 of Framework Decision 2005/212/JHA, are replaced by this Directive for the Member States bound by this Directive, without prejudice to the obligations of those Member States relating to the time limits for transposition of those Framework Decisions into national law.

2. For the Member States bound by this Directive, references to Joint Action 98/699/JHA and to the provisions of Framework Decisions 2001/500/JHA and 2005/212/JHA referred to in paragraph 1 shall be construed as references to this Directive.’

Bulgarian law

12 Under Article 37(1) of the Nakazatelen kodeks (Criminal Code; ‘the NK’):

‘The penalties are:

…

3. the confiscation of available assets;

…’

13 It follows from Article 242(1) of the NK that aggravated smuggling is punishable by a custodial sentence of 3 to 10 years and a fine of between 20 000 to 100 000 leva (BGN) (approximately EUR 10 226 to EUR 51 130).

14 Article 242(7) and (8) of the NK reads as follows:

‘(7) … The smuggled property shall be seized for the benefit of the State irrespective of the owner, while if it does not exist or has been transferred, an amount corresponding to its value at domestic retail prices shall be determined.

(8) … The means of transport or container used to transport the smuggled goods shall be seized for the benefit of the State, including where it does not belong to the perpetrator of the criminal offence, unless its value does not correspond to the severity of the offence.’

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

15 At the time of the facts in the main proceedings, OM was employed as a driver by a transport company established in Turkey and carried out international transportation using a tractor unit and trailer belonging to that company.

16 On 11 June 2018, while he was preparing to transport goods between Istanbul (Turkey) and Delmenhorst (Germany), OM agreed to a proposal made to him by a person to transport illegally 2 940 antique coins to Germany in return for payment.

17 On 12 June 2018, having crossed the border between Turkey and Bulgaria, OM was subject to a customs check during which the coins, which had been concealed in the tractor unit, were discovered.

18 The coins, which an archaeological-numismatic expert valuation report valued at BGN 73 500 (approximately EUR 37 600), the tractor unit, the trailer, the ignition key and the registration documents for that vehicle were removed and collected as material evidence of the suspected offence.

19 During the investigation, the managing director of the Turkish company, OM's employer, sought the return of the tractor unit and trailer, stating that that company had no link with the criminal offence and that the return of those assets would not hinder the investigation. That request was refused by the prosecutor in charge of the investigation on the ground that the material evidence was, under Bulgarian law, to be retained until the criminal proceedings were concluded and that their return would hinder the investigation. The managing director sought the annulment of the refusal decision before the Okrazhen sad Haskovo (Regional Court, Haskovo, Bulgaria), which upheld it by its order of 19 October 2018, a ruling which was not open to appeal.

20 By judgment of 22 March 2019, OM was convicted by the Okrazhen sad Haskovo (Regional Court, Haskovo) of aggravated smuggling and received a custodial sentence of three years and a fine of BGN 20 000 (approximately EUR 10 200). The coins and tractor unit were seized for the benefit of the State, in accordance, respectively, with Article 242(7) and (8) of the NK. By contrast, the trailer, which was not directly linked to the commission of the offence, was returned to OM's employer company.

21 OM lodged an appeal against that judgment with the Apelativen sad – Plovdiv (Court of Appeal, Plovdiv, Bulgaria) in so far as it ordered the seizure of the tractor unit, claiming that that seizure was contrary inter alia to the provisions of the FEU Treaty and the Charter.

22 The referring court notes that the seizure for the benefit of the State of the vehicle used to transport the smuggled property, provided for in Article 242(8) of the NK, is, admittedly, mandatory seizure following the commission of the smuggling offence, but does not constitute a penalty, unlike the confiscation of goods belonging to the guilty party, referred to in Article 37(1)(3) of the NK.

23 That being the case, that court has doubts as to the compatibility of Article 242(8) of the NK, which was adopted prior to the accession of the Republic of Bulgaria to the European Union on 1 January 2007, with provisions of EU law, in particular with Article 17(1) and Article 47 of the Charter.

24 More particularly, that court considers that the seizure referred to by that provision, including where the means of transport used to transport the smuggled property does not belong to the perpetrator of the offence, could lead to an imbalance between the interest of the third-party owner who did not take part in and is not in any way linked to the criminal offence, and the interest of the State in seizing that property on the ground that it was used to commit the offence.

25 In that regard, the referring court refers to the judgment of the European Court of Human Rights of 13 October 2015, *Ünsped Paket Servisi SaN. Ve TiC. A. Ş. v. Bulgaria* (CE:ECHR:2015:1013JUD000350308), in which that court held that the seizure, on the basis of Article 242(8) of the NK, of a lorry belonging to a company established in Turkey was contrary to Article 1 of Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, the content of which is identical to that of Article 17(1) of the Charter. That court found that the company that owned the lorry had been deprived of access to justice, since the national procedure had not allowed it to put forward its point of view, with the result that the balance between all the interests was not ensured.

26 In that context, the referring court notes that, according to recital 33 of Directive 2014/42, in the light of the fact that it substantially affects the rights of persons, it is necessary to provide for specific safeguards and judicial remedies in order to guarantee the preservation of their fundamental rights,

that is to say, not only of suspected or accused persons but also of third parties who are not being prosecuted, including the right to be heard for third parties who maintain that they are the owner of the property concerned.

27 In those circumstances, the Apelativen sad Plovdiv (Court of Appeal, Plovdiv) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 17(1) of the [Charter] to be interpreted as meaning that a national provision such as that pursuant to Article 242(8) of the [NK], according to which a means of transport used to commit aggravated smuggling which belongs to a third person who neither knew nor could or should have known that its employee was committing the offence must be confiscated for the benefit of the State, is unlawful on the grounds that it undermines the fair balance between the public interest and the need to protect the right to property?

(2) Is Article 47 of the [Charter] to be interpreted as meaning that a national provision such as that pursuant to Article 242(8) of the [NK], according to which a means of transport owned by a person who is not the person who committed the offence can be confiscated without the owner being guaranteed direct access to the courts to state its case, is unlawful?'

The jurisdiction of the Court

28 The Apelativna prokuratura – Plovdiv (Plovdiv appellate public prosecutor's office, Bulgaria) and the Greek Government claim that the Court of Justice does not have jurisdiction to answer the questions referred for a preliminary ruling, since the national legislation at issue in the main proceedings falls outside the scope of EU law. They claim, inter alia, that the national court invokes no provision of EU law that makes it possible to establish a sufficiently close link between the dispute in the main proceedings and EU law.

29 In that regard, it must be noted that the questions referred for a preliminary ruling expressly concern only provisions of the Charter, that is to say, Article 17, relating to the right to property, and Article 47, relating to the right to an effective remedy and to a fair trial.

30 It should be recalled that the Charter's scope of application, so far as concerns action of the Member States, is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing EU law (judgment of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648, paragraph 25 and the case-law cited).

31 Article 51(1) of the Charter confirms the Court's settled case-law, which states that the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (judgment of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648, paragraph 26 and the case-law cited).

32 Thus, where a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction (judgment of 6 October 2015, *Delvigne*, C-650/13, EU:C:2015:648, paragraph 27 and the case-law cited).

33 Consequently, it is necessary to determine whether a situation such as that at issue in the main proceedings, in which the property of a third party is confiscated for the benefit of the Member State concerned on the ground that it was used in a criminal offence, falls within the scope of EU law.

34 In the present case, in its request for a preliminary ruling, the referring court refers to Directive 2014/42, which imposes obligations on the Member States with a view, as stated in recital 41, to facilitating confiscation of property in criminal matters.

35 However, the offence of smuggling, at issue in the main proceedings, is not one of the offences to which that directive applies by virtue of Article 3 thereof, with the result that the subject matter of the national procedure at issue in the main proceedings falls outside the material scope of that directive.

36 In that regard, it must be stated that Directive 2014/42 partially replaced Framework Decision 2005/212, which concerns, like that directive, the confiscation of crime-related instrumentalities and proceeds. In accordance with recital 9 thereof, that directive seeks to amend and expand the provisions, inter alia, of that framework decision.

37 More specifically, it follows from Article 14(1) of Directive 2014/42 that it replaces only the first four indents of Article 1 and Article 3 of Framework Decision 2005/212 for the Member States bound by that directive, with the consequence that Article 2, 4 and 5 of that framework decision were maintained in force after the adoption of that directive (see, to that effect, judgment of 19 March 2020, '*Agro In 2001*', C-234/18, EU:C:2020:221, paragraph 48).

38 In that regard, it must be noted that Framework Decision 2005/212 provides, in Article 2(1), in more general terms than those contained in Directive 2014/42, that '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'.

39 In the present case, the offence of aggravated smuggling at issue in the main proceedings is punishable by a custodial sentence of between 3 and 10 years, in addition to the possibility of seizure of the means of transport used to transport the smuggled goods, in accordance with Article 242(8) of the NK.

40 It follows that the provisions of Framework Decision 2005/212 necessarily form part of the elements of EU law which, having regard to the subject matter of the dispute, must be taken into consideration by the Court in order for it to give a useful answer to the questions submitted to it. Thus, the legal situation in the main proceedings falls within the scope of EU law and, in particular, of that framework decision.

41 Moreover, that framework decision provides for rules relating to the confiscation 'of instrumentalities and proceeds from criminal offences' and the remedies that must be available to persons affected by a confiscation measure, in Articles 2 and 4 respectively. It follows that, by its questions, which concern the legality of the confiscation of goods belonging to a third party acting in good faith and the remedies that must be open to a third party affected by a confiscation measure, the referring court seeks, in fact, to obtain an interpretation of those provisions of Framework Decision 2005/212, read in the light of Articles 17 and 47 of the Charter.

42 Accordingly, the Court has jurisdiction to reply to the request for a preliminary ruling.

The first question

43 In the light of the foregoing considerations, the referring court asks, in essence, whether Article 2(1) of Framework Decision 2005/212, read in the light of Article 17(1) of the Charter, must be interpreted as precluding national legislation that permits the confiscation of an instrumentality used to commit an aggravated smuggling offence, where that property belongs to a third party acting in good faith.

44 In that regard, it is necessary, first, to note that the concept of 'confiscation' is defined in the fourth indent of Article 1 of Framework Decision 2005/212.

45 However, as is apparent from paragraph 37 of the present judgment, the fourth indent of that Article 1 was replaced by Directive 2014/42 for the Member States bound by that directive.

46 In the present case, since the facts in the main proceedings took place after the deadline for the transposition of Directive 2014/42, which, in accordance with Article 12(1), was set as 4 October 2016, it is necessary, in a case such as that in the main proceedings to refer to that directive for the purposes of the definition of the concept of 'confiscation'.

47 Under Article 2(4) of that directive, that concept of 'confiscation' is defined as the 'final deprivation of property ordered by a court in relation to a criminal offence'.

48 It follows from the wording of that provision that, in that context, it is irrelevant whether or not the confiscation constitutes a penalty under criminal law. Thus, a measure, such as that at issue in the main proceedings, which gives rise to final deprivation of the property seized, ordered by a court in association with a criminal offence, falls within the scope of that concept of 'confiscation'.

49 Next, Article 2(1) of Framework Decision 2005/212 provides that each Member State is to 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.

50 In that regard, it is true that that provision does not expressly designate a person whose goods may be confiscated. It refers merely to the 'instrumentalities' associated with an offence, without it being necessary to specify who holds or owns them.

51 However, Article 2(1) of Framework Decision 2005/212 must be read in the light of recital 3 of that framework decision, from which it follows that it is necessary to take account of the rights of third parties in bona fide. It follows that, in principle, the provisions of that framework decision apply also to the confiscation of goods belonging to third parties, while requiring, inter alia, that their rights be protected where they are acting in good faith.

52 In that context, it is necessary to take into account Article 17(1) of the Charter, which provides, inter alia, that everyone has the right to own his or her lawfully acquired possessions, to use them and dispose of them.

53 It is true that the right to property guaranteed by that provision does not constitute an absolute prerogative. In accordance with Article 52(1) of the Charter, limitations may be placed on the exercise of the rights and freedoms enshrined therein, on condition that those limitations genuinely correspond to objectives of public interest pursued by the European Union and do not constitute, in relation to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of the right so guaranteed (see, to that effect, judgment of 16 July 2020, *Adusbef and Federconsumatori*, C-686/18, EU:C:2020:567, paragraph 85 and the case-law cited).

54 In the present case, the Plovdiv appellate public prosecutor's office, in its written observations, indicated that the aim pursued by the national legislation at issue in the main proceedings consists of preventing, in the general interest, the unlawful importation of goods into the country.

55 Given that the confiscation of property, that is to say, the definitive deprivation of the right of ownership in respect of that property, substantially affects the rights of persons, it must be noted that as regards a third party acting in good faith, who did not know and could not have known that his or

her property was used to commit an offence, such confiscation constitutes, in the light of the objective pursued, a disproportionate and intolerable interference impairing the very substance of his or her right to property.

56 Accordingly, it must be noted that a national rule, such as that at issue in the main proceedings, does not comply with the right to property enshrined in Article 17(1) of the Charter, in so far as it provides that the property of a third party acting in good faith used to commit an aggravated smuggling offence may be the subject of a confiscation measure.

57 In those circumstances, it must be held that, in the context of Article 2(1) of Framework Decision 2005/212, confiscation cannot extend to the property of third parties acting in good faith.

58 In the light of the foregoing considerations, the answer to the first question is that Article 2(1) of Framework Decision 2005/212, read in the light of Article 17(1) of the Charter, must be interpreted as precluding national legislation that permits the confiscation of an instrumentality used to commit an aggravated smuggling offence, where that property belongs to a third party acting in good faith.

The second question

59 By its second question, the referring court asks, in essence, whether Article 4 of Framework Decision 2005/212, read in the light of Article 47 of the Charter, must be interpreted as precluding a national law which permits the confiscation, in the context of criminal proceedings, of property belonging to a person other than the person who committed the criminal offence, without the former being afforded an effective remedy.

60 It must be noted that Article 4 of that framework decision provides that each Member State is to take the necessary measures to ensure that interested parties affected by measures inter alia under Article 2 of that framework decision have effective legal remedies in order to preserve their rights.

61 Having regard to the general nature of the wording of Article 4 of Framework Decision 2005/212, the persons for whom the Member States must guarantee effective remedies are not only those found guilty of an offence but also all other persons affected by the measures provided for in Article 2 of that framework decision, accordingly including third parties.

62 In that regard, it must also be noted that, under the first and second paragraphs of Article 47 of the Charter, everyone whose rights and freedoms guaranteed by the law of the European Union have been violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in that article and inter alia is entitled to a fair hearing.

63 In particular, the right to an effective remedy means that a third party whose property has been confiscated must be entitled to challenge the legality of that measure in order to recover that property where the confiscation is not justified.

64 In the present case, the referring court stressed in its order for reference that a third party whose property has been the subject of a confiscation measure has no direct access to justice under national legislation, with the result that he or she is not able to assert his or her rights effectively.

65 In those circumstances, it must be held that, in a case such as that in the main proceedings, a third party whose property is confiscated is deprived of the right to an effective remedy.

66 Moreover, for the reason set out in paragraph 63 of the present judgment, that finding cannot be undermined by the argument put forward by the Plovdiv appellate public prosecutor's office, according to which, in a situation such as that in the main proceedings, the Zakon za zadalzheniata i dogovorite (Law on obligations and contracts) entitles the owner of the confiscated property to pursue remedies against the convicted person in respect of damage arising as a result of that confiscation.

67 Moreover, the European Court of Human Rights held, in essence, that, in a situation where the State is at the origin of the confiscation and where the national legislation and practice does not provide for a procedure by which the owner can defend his or her rights, that State cannot relieve itself of its responsibility under the European Convention for the Protection of Human Rights and Fundamental Freedoms to provide for such a procedure by asking the person who was not tried for the criminal offence leading to the confiscation to seek recovery of their property from a third party (European Court of Human Rights of 13 October 2015, *Ünsped Paket Servisi SaN. Ve TiC. A. Ş. v. Bulgaria*, CE:ECHR:2015:1013JUD000350308, § 32).

68 In the light of the foregoing considerations, the answer to the second question is that Article 4 of Framework Decision 2005/212, read in the light of Article 47 of the Charter, must be interpreted as precluding a national law which permits the confiscation, in the context of criminal proceedings, of property belonging to a person other than the person who committed the criminal offence, without the former being afforded an effective remedy.

Costs

69 Since these proceedings are, for the parties to the main proceedings, a step in the actions 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 (First Chamber) hereby rules:

1. **Article 2(1) of Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property, read in the light of Article 17(1) of the Charter of Fundamental Rights of the European Union, must be interpreted as precluding a national law which permits the confiscation of an instrumentality used to commit an aggravated smuggling offence where that property belongs to a third party acting in good faith.**

2. **Article 4 of Framework Decision 2005/212/JHA, read in the light of Article 47 of the Charter of Fundamental Rights, must be interpreted as precluding a national law which permits the confiscation, in the context of criminal proceedings, of property belonging to a person other than the person who committed the criminal offence, without the former being afforded an effective remedy.**

[Signatures]