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**Mutual recognition of freezing and confiscation
orders between efficiency and the rule of law**

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Practical obstacles and legal issues arising in the implementation of REG

A CASE from BULGARIA

The law:

1. According to the Confiscation Orders Act the Court shall issue a ruling that:

- a. recognizes the act ...;
- b. refuses recognition or execution of the act;
- c. recognizes and postpones its execution.
- d. terminates the proceedings in the cases referred to in Article 22(3), points (a) and (c) of Regulation (EU) 2018/1805;
- e. suspends the proceedings in the cases referred to in Article 22(3), points (b), (d) and (e) of Regulation (EU) 2018/1805.

According to the Confiscation Orders Act:

Any person concerned, including a bona fide third party, may appeal the decision of the district court on recognition of the confiscation order. It is an open court session, in the presence of a prosecutor, the person concerned and his/her counsellor, and the bona fide third party admitted to participate. The ruling of the court of appeal shall be final.

Insofar as the provisions of the Confiscation Orders Act (regarding the court procedure) do not contain special rules, the corresponding provisions of the Criminal Procedure Code shall apply.

According to the Criminal Procedure Code:

Jurisdiction disputes between courts are decided by the Supreme Court of Cassation (Art. 44, para 1);

A criminal case shall be re-opened where: circumstances or proofs ... which had not been known to the court that issued the judgement and which are of substantial importance to the case or substantial violations have been committed in relation to court rulings (Art. 422)

But: According to the practitioners (there is no specific rule in the CPC) the final court rulings based on the Confiscation Orders Act does not fall into the scope of art. 422 CPC and consequently cannot be re-opened.

Criminal proceedings shall be terminated, where:
... Against the same individual and for the same criminal offence there are pending criminal proceedings, a final verdict, a prosecutorial decree or a final court ruling whereby the case is terminated. (Art. 24, para 1. item 6).

The facts:

In 2020, Sofia city court, through Eurojust, received a request for recognition and execution of an Italian court decision.

The decision, in addition to sentences for the guilty persons, imposed confiscation of money representing proceeds of crime. The money was located in two bank accounts owned by the Bulgarian trading company "N..." EOOD.

The bank accounts had previously been frozen at the request of an Italian court order.

Copies of two Italian court decisions were attached to the certificate:

1. decision No. 1698/2018 on the convicted persons, the crimes (participation in OCG and fraud affecting the financial interests of the EU) and the punishments imposed by the court and
2. additional decision No. 1454/2019 with clarification that the confiscation imposed by the court against three of the convicted includes the value of the money transferred without valid reason to the Bulgarian company "N..." EOOD.

In April 2021, the Sofia City Court (SCC) recognized and accepted for execution the ruling of the Italian court regarding one of the two bank accounts.

During the hearing of the case, lawyers objected to the recognition of the decision with various arguments. One of them is that the woman, owner and manager of "N..." EOOD, was not convicted in this case and did not know about the origin of the money.

The court replied that the executing state cannot and should not check whether the facts described in the confiscation acts and the certificate have been proven.

The lawyers of "N..." EOOD appealed this decision to the SCC.

The Court of Appeal in Sofia started a case that lasted more than a year and a half.

With a decision from February 2023 the Court of Appeal - Sofia revoked the decision of the SCC, refused to recognize and execute the decisions of the Italian court regarding the confiscation of money on the bank accounts of "N..." EOOD and canceled the freezing imposed on the bank account.

In March 2023, a prosecutor from Italy learned about the court's decision and expressed his dissatisfaction with it in a letter to EUROJUST. He requested the resumption of the court proceedings and the issuance of a new court act.

For this purpose, he sent a new Certificate in which he expands the information about the facts established during the court case in Italy. Described in detail the relationship between the convicted persons, their crimes and the money received by "N..." EOOD.

In this period, before receiving the second Certificate in Bulgaria, the seat of the company "N..." EOOD was changed from Sofia to Stara Zagora.

The second certificate was obtained at the Sofia City Prosecutor's Office. The decisions of the courts in Sofia were reviewed and it was proposed to request the cancellation of the final decision of the appeals court through the extraordinary method provided for in the CPC - a decision of the Supreme Court of Cassation to re-open the case.

By law, when violations of the law are found in a finalized criminal case, only the Prosecutor General can ask the Supreme Court to reopen the case.

There is no practice on this type of court cases.

After a careful analysis of the CPC, it was found that the law did not provide for the possibility of requesting a reopening of these proceedings. Therefore, the Prosecutor General refused to request a reopening and proposed that the new Certificate be sent to the court for a new trial.

The prosecutor from the Sofia City Prosecutor's Office did this.

In June 2023, the SGS started a new court case, but sent it to the District Court in the city of Stara Zagora, because the company "N.." EOOD is already registered in that city.

One week later, a judge from the District Court - Stara Zagora, after seeing that the Certificate is based on the court decisions already considered by the Court of Appeal - Sofia, terminated the court case. He decided that the case is in the hypothesis of Art. 24, Para 1, Item 6 of the CPC and the well-known principle "non bis in idem" applies here.

The judge further indicated that the only possibility to reconsider the Italian Republic's request for confiscation is to reopen the closed case, but such a reasoned request can only be made by a prosecutor.

The case was again sent to the Sofia City Prosecutor's Office, and after some correspondence with the Prosecutor General, an opinion was again formed that there is no legal basis for reopening the already concluded court case related to the implementation of the Regulation. The prosecutor in Sofia proposed to the prosecutor in Stara Zagora to appeal the court order to the Court of Appeal.

The prosecutor in Stara Zagora refused, as he considered the court's decision to be correct and returned all the documents to Sofia, including the new Certificate.

In an informal communication, the situation was explained to colleagues from the prosecution in Italy and it was suggested that a third Certificate be sent. A reply was received that a third certificate would not be sent. The answer was in the following sense - "we have done enough, we will not try any more".

After consultations, including with judges in the SCC, in August of this year, the Sofia City Prosecutor's Office submitted the Certificate to the court for the second time.

The Certificate, the two rulings of the Italian court and all additional documents and translations received were accompanied by a detailed motion for reconsideration. The prosecutor advocated the opinion that in fact the judge from the District Court - Stara Zagora did not make a valid decision on the case, because the court ruled in a way that does not fall within the possibilities provided by law (recognize the act and send it to the competent authority; to refuse recognition, etc.).

A new case was opened in the Sofia City Court and again sent to the District Court - Stara Zagora. The judge is instructed to decide the case in a manner that the Regulation and the special law in Bulgaria provides.

The judge raised a dispute about jurisdiction before the Supreme Court of Cassation because he considered that the court in Sofia is competent to decide the case (the bank institution in which the bank account was opened is registered in Sofia).

The Supreme Court of Cassation has determined that the District Court - Stara Zagora is competent and has sent the case there.

A court hearing was held in November which a translation of court decisions and additional documents were requested.

The next hearing is scheduled for the beginning of December.

Conclusions and suggestions:

. The procedure (in the executing country) for recognition and execution of court decisions on freezing and confiscation in some cases (especially in cases of high material interest) can be extremely difficult, delayed and even hindered by "procedural tricks", numerous requests for new evidence and objections for non-compliance procedure in the issuing country.

Conclusions and suggestions:

It is necessary to prevent this through training, consultations, and in some cases – a change in the legislation.

Especially with regard to Bulgaria, the trainings and recommendations for consultations should be directed to the court as the only competent authority under the Regulation.

Conclusions and suggestions:

A clear and detailed description of the issuing country's request is essential to the outcome.

This should be done so that someone who has never seen or heard of the criminal case can understand the connection between the property intended for confiscation and the crime for which specific persons have been convicted.

Conclusions and suggestions:

A meaningful and well-made translation of the certificate and court decisions is also of utmost importance.

Thank you for your attention!

Questions

Additional information (if needed):

The first Certificate is based on Art. 4 of Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders (in Italian and Bulgarian), was accompanied by copies of the two court decisions: the first - entered into force on 01.08.2019, and the second - on 05.12.2019.

Additional information (if needed):

During the hearing of the case before the Court of Appeal - Sofia, the judge requested from the Italian authorities a certified copy, translated into Bulgarian, of decision No. 1698 (the first decision of the court in Italy).

The reason was that in the case there was only a translation of the certificate.

Additional information (if needed):

In the decision canceling the recognition of the execution of the act of confiscation, the court states that:

- evident from this first verdict, the owner "N..." EOOD does not appear as a first and last name in the court decision and its addendum
- the issuing country has not specified facts about the companies that ordered bank transfers to "N..." EOOD
- consequently, it cannot be concluded that these sums were actually transferred to Bulgaria and that they are in a causal relationship with the actions of the defendants.

Additional information (if needed):

The court's conclusion is that the content reflected in the Certificate does not correspond to the judgment sent by Italy and an additional decision (having the value of a judgment), since the court act does not include a provision for the confiscation of property of the Bulgarian legal entity "N ..."
EOOD. In this part, the certificate cannot replace the court act.

Further, in its legal opinions, the court cited decisions of the CJEU (Case C-203/2021 of 10 November 2022 and Case C-505/2020 on the 2014 Directive) for the fact that when there is a decision to confiscate the property of a legal entity resulting from the actions of a natural person, an opportunity must be provided for the same legal entity to participate in the process as a bona fide third party.

The court even commented that the will of the court in Italy was unclear.

The court accepts that all this is equivalent to the absence of a valid act of a national court of another country to be recognized and this is an absolute ground for refusal.