

## ACT N° 58/1993

### Facts

The defendants were under investigation for possible involvement in migrant smuggling ventures. They were alleged to transport, by land, irregular migrants from inland Greece towards Krystallopigi, at the Greek-Albanian border. On 30 September 1993, the defendants were detained.

The Public Prosecutor appointed the escrow custodian of the vehicle used in the smuggling journeys. The owner of the vehicle applied to be appointed escrow custodian of said item.

The case clarifies which authority holds jurisdiction *ratione materiae* to decide on such claims.

### Elements of success

- Consideration of legitimate expectations of interested parties
- Teleological and systemic legal interpretation

### Challenges

- Treatment of third-parties property used in illegal activities
- Clear definition of national judicial authorities' competences

### Background

In October 1993, the Public Prosecutor prompted the opening of investigations by the competent investigative judge. The vehicle used in the smuggling ventures was confiscated during the preliminary investigation.

### Key issues

- ❖ Jurisdiction (appointment of escrow custodian for items confiscated during preliminary investigation)
- ❖ Confiscation

### Investigation

N/A

### Reasoning

Vehicles used in migrant smuggling ventures are always to be confiscated. The Public Prosecutor in charge of the case is responsible for determining the return of confiscated property when the case is dismissed following an investigation.

The Prosecutor is in charge of major tasks throughout the preliminary investigations, e.g. deciding that charges will not be brought. If he or she is entitled do "*the major, why should he lack the power for the minor*". Deciding on the request to appoint an escrow custodian for the vehicle confiscated – the "*minor*" – falls within the jurisdiction *ratione materiae* of the Prosecutor with the Court of First Instance adjudicating the case. This is so even when the preliminary investigation has not yet been concluded.

Regarding the nomination of an escrow custodian in the instant case: (i) it is likely that – following investigations – the conclusion would be that no crime of migrant smuggling occurred, (ii) the appointment of the applicant and owner of the vehicle as the escrow custodian would not hinder the discovery of the truth in view of the specifics of the case, (iii) the immobility of the vehicle and the lack of maintenance could cause significant damage to it and its owner.

## **Verdict/Decision**

The Court of First Instance appointed the applicant as the escrow custodian of the vehicle. He was to keep the vehicle at safe and promptly present it to authorities upon request, until the end of the preliminary investigation and the final ruling on confiscation.

## **Opinion**

This is a landmark case insofar as it clearly determines the jurisdiction *ratione materiae* in Greece for the appointment of escrow custodians re items confiscated during the preliminary investigation. \*

## **Notes**

\* The case further provides important guidance on the constitutive elements of the crime of migrant smuggling under Greek law.