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ECLI:EU:C:2023:275

Provisional text

JUDGMENT OF THE COURT (Eighth Chamber)

30 March 2023 (\*)

(Reference for a preliminary ruling – Article 267 TFEU – The second paragraph of Article 47 and Article 48(1) of the Charter of Fundamental Rights of the European Union – Right to a fair trial – Right to the presumption of innocence – Account of the factual context in a request for a preliminary ruling in criminal matters – Establishment of the accuracy of certain facts in order to be able to make an admissible request for a preliminary ruling to the Court – Compliance with the procedural safeguards provided for under national law for judgments on the merits)

In Case C-269/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 21 April 2022, received at the Court on 21 April 2022, in the proceedings against

**IP,**

**DD,**

**ZI,**

**SS,**

**HYA**

the other party to the proceedings being:

**Spetsializirana prokuratura,**

THE COURT (Eighth Chamber),

composed of M. Safjan (Rapporteur), President of the Chamber, N. Piçarra and N. Jääskinen,  
Judges,

Advocate General: A.M. Collins,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- IP, by H. Georgiev, advokat,
- the Greek Government, by K. Boskovits, A. Magrippi and E. Tsaousi, acting as Agents,
- the European Commission, by F. Ronkes Agerbeek, M. Wasmeier and I. Zaloguín, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 267 TFEU and of the second paragraph of Article 47 and Article 48(1) of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in criminal proceedings brought against IP, DD, ZI, SS and HYA for participation in an organised criminal group.

## **Legal context**

### ***Bulgarian law***

3 The *nakazatelno protsesualen kodeks* (Code of Criminal Procedure), in the version applicable to the dispute in the main proceedings, provides that all judgments on the merits in criminal matters must be given with due regard for a number of procedural safeguards. In particular, Articles 247 to 253 of that code require that a proper charge be brought by the prosecutor, while Articles 271 to 310 of that code provide that all evidence must be collected with the participation of the defence, that the parties must be heard, with the accused having the last word, and that the judgment must be given after a secret deliberation.

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

4 On 19 June 2020, the *Spetsializirana prokuratura* (Specialised Public Prosecutor's Office, Bulgaria) accused IP, DD, ZI, SS and HYA of participating in an organised criminal group for the purpose of enrichment, bringing third-country nationals across the Bulgarian borders and illegally assisting them to enter Bulgarian territory and receiving or giving bribes in connection with that activity. The accused include three officers of the Sofia (Bulgaria) airport border police.

5 The Specialised Public Prosecutor's Office submits that the third-country nationals concerned were in Cyprus on student visas and travelled from Cyprus to Bulgaria by plane. According to it, the three border police officers carried out checks when those nationals arrived at Sofia airport and allowed them to enter into the country in breach of their official duties and, in particular, the duties arising from Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March

2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1).

6 The referring court explains that it has not yet determined whether the submissions of the Specialised Public Prosecutor's Office are supported by the evidence in the file. While there is a certain likelihood that those assertions are well founded, that court considers that it must, after gathering the evidence, hear the parties and establish the facts in order to be able to determine whether, as the Specialised Public Prosecutor's Office claims, Regulation 2016/399 may have been infringed. Should it conclude, at the end of that examination, that that regulation is applicable, the referring court is of the view that it would then be useful to ask the Court to interpret the provisions of that regulation and of the FEU Treaty.

7 However, since it is concerned that, if it makes a request for a preliminary ruling to the Court of Justice after having thus determined the factual context, it must, under Bulgarian law, decline jurisdiction in the case, failing which its decision on the merits of the case will be annulled, the referring court has referred a question to the Court of Justice for a preliminary ruling (Case C-609/21) seeking, in essence, to determine whether EU law precludes such a national rule.

8 By order of 25 March 2022, *IP and Others (Establishment of the accuracy of the facts in the main proceedings)* (C-609/21, not published, EU:C:2022:232), the Court has held that Article 267 TFEU and subparagraph (a) of the first paragraph of Article 94 of the Rules of Procedure of the Court of Justice, read in the light of Article 4(3) TEU and of the second paragraph of Article 47 of the Charter, must be interpreted as precluding a national rule which requires courts hearing criminal cases, when they make factual findings in the context of a request for a preliminary ruling made to the Court, to decline jurisdiction on pain of annulment of the decision to be given on the merits of the case. The Court added that such a rule must be disregarded by those courts and by any authority empowered to apply it.

9 Following that order of the Court, the referring court asks whether, by establishing, in the context of a request for a preliminary ruling made to the Court, that the accused person has committed certain acts, it infringes the right to the presumption of innocence referred to in Article 48(1) of the Charter and whether its decision on the merits following the Court's reply might infringe the right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter.

10 While noting that the right to the presumption of innocence and the right to a fair trial, enshrined in those provisions of the Charter, correspond to the identical rights referred to in Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), the referring court explains that its questions are based in particular on the case-law of the European Court of Human Rights relating to that Article 6, case-law which it must comply with because the Republic of Bulgaria is a party to the ECHR. In its view, it follows from that case-law that both those rights are infringed where, in ruling on matters other than the merits, in particular procedural matters, a court takes a view or expresses a preliminary view or a preconceived idea on the merits.

11 The referring court specifies, however, that, in order to establish the facts which it considers essential in order to make an admissible request for a preliminary ruling, it intends to apply the same procedural safeguards as those provided for by the Code of Criminal Procedure for judgments on the merits.

12 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘Do the second paragraph of Article 47 of the Charter, which establishes the requirement of a fair trial, and Article 48(1) of the Charter, which establishes the presumption of innocence, preclude a request for a preliminary ruling under Article 267 TFEU in which certain acts of the accused persons are presumed to be established, where, before submitting the request for a preliminary ruling, the referring court respected all the procedural safeguards required for a decision on the merits?’

13 By letter of 5 August 2022, the Sofiyski gradski sad (Sofia City Court, Bulgaria) informed the Court that, following a legislative amendment which entered into force on 27 July 2022, the Spetsializiran nakazatelen sad (Specialised Criminal Court) was dissolved and that certain criminal cases brought before that court, including the case in the main proceedings, were transferred to it as from that date.

### **Consideration of the question referred**

14 By its question, the referring court asks, in essence, whether Article 267 TFEU, read in the light of the second paragraph of Article 47 and of Article 48(1) of the Charter, must be interpreted as precluding a national court or tribunal in criminal matters, before any judgment on the merits, from establishing, with due regard for the procedural safeguards provided for by national law, the accuracy of certain facts in order to be able to make an admissible request for a preliminary ruling to the Court of Justice.

15 In that regard, it must be borne in mind that, by setting out, in their request for a preliminary ruling, the factual and legal context of the main proceedings, the referring courts and tribunals are merely complying with the requirements of Article 267 TFEU and of Article 94 of the Rules of Procedure and thus responding to the requirement of cooperation that is inherent in the preliminary ruling mechanism, without it being possible to consider that there is, in itself, a breach of either the right to a fair trial enshrined in the second paragraph of Article 47 of the Charter or of the right to the presumption of innocence guaranteed by Article 48(1) thereof (see, to that effect, judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraphs 22 and 23).

16 The same conclusion must be reached where, in order not to render inadmissible a request for a preliminary ruling which it intends to submit to the Court before any judgment on the merits, a referring court or tribunal in criminal matters considers that it must first establish the accuracy of certain facts, even though that would not have been necessary at that stage of the proceedings if it had not decided to make a reference for a preliminary ruling.

17 The circumstance that a referring court or tribunal must establish the accuracy of certain facts at the stage of a reference for a preliminary ruling does not, in itself, entail an infringement of the right to a fair trial or of the right to the presumption of innocence, provided that, as is apparent in the present case from the explanations given by the referring court, the court or tribunal concerned is not prevented from applying, at that stage, all the procedural safeguards provided for by its national law in such a way as to ensure due regard being given to both the right to a fair trial and the right to the presumption of innocence.

18 That assessment is not called into question by the case-law of the European Court of Human Rights on Article 6 ECHR, mentioned by the referring court.

19 In that regard, it must be borne in mind that, as is apparent from the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the first and second paragraphs of Article 47 of the Charter, which enshrine the right to an effective remedy and to a fair trial, correspond to the right to a fair trial as derived, *inter alia*, from Article 6(1) ECHR, while Article 48(1) of the Charter, relating to the presumption of innocence, corresponds to Article 6(2) and (3) ECHR. It follows, in accordance with Article 52(3) of the Charter, that it is necessary to take account of Article 6 ECHR for the purposes of interpreting Articles 47 and 48 of the Charter, as a minimum threshold of protection (see, to that effect, judgments of 5 September 2019, *AH and Others (Presumption of innocence)*, C-377/18, EU:C:2019:670, paragraph 41 and the case-law cited, and of 4 December 2019, *H v Council*, C-413/18 P, not published, EU:C:2019:1044, paragraph 45 and the case-law cited).

20 As the referring court acknowledges, the case-law of the European Court of Human Rights referred to in its request for a preliminary ruling relates to situations in which the European Court of Human Rights has found a violation of Article 6 ECHR on the ground that judges who had to rule on matters other than the merits, such as procedural or jurisdiction matters, had, in disregard of the right to a fair trial or the right to the presumption of innocence, expressed a preliminary view or a preconceived idea on the merits, in particular as to the accuracy of certain acts alleged against the accused person or that person's guilt.

21 However, it is clear from the information provided by the referring court that it does not intend in the present case, for the purposes of establishing the accuracy of the facts in the main proceedings which it considers essential in order to be able to make an admissible request for a preliminary ruling, to express a preliminary view or a preconceived idea on the merits of the case, but rather it to rule on those facts by applying all the procedural safeguards provided for by national law for judgments on the merits.

22 In the light of the foregoing, the answer to the question referred is that Article 267 TFEU, read in the light of the second paragraph of Article 47 and of Article 48(1) of the Charter, must be interpreted as not precluding a national court or tribunal in criminal matters, before any judgment on the merits, from establishing, with due regard for the procedural safeguards provided for by national law, the accuracy of certain facts in order to be able to make an admissible request for a preliminary ruling to the Court of Justice.

### **Costs**

23 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 (Eighth Chamber) hereby rules:

**Article 267 TFEU, read in the light of the second paragraph of Article 47 and of Article 48(1) of the Charter of Fundamental Rights of the European Union,**

**must be interpreted as not precluding a national court or tribunal in criminal matters, before any judgment on the merits, from establishing, with due regard for the procedural safeguards provided for by national law, the accuracy of certain facts in order to be able to make an admissible request for a preliminary ruling to the Court of Justice.**

[Signatures]

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\* Language of the case: Bulgarian.

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