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JUDGMENT OF THE COURT (Grand Chamber)

5 July 2016 (*)

(Reference for a preliminary ruling — Article 267 TFEU — Article 94 of the Rules of Procedure of the Court — Content of a request for a preliminary ruling — National rule providing that the national court is to be disqualified because it stated a provisional opinion in the request for a preliminary ruling when setting out the factual and legal context — Charter of Fundamental Rights of the European Union — Second paragraph of Article 47 and Article 48(1))

In Case C-614/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 15 December 2014, received at the Court on 31 December 2014, in the criminal proceedings against

Atanas Ognyanov

intervening party:

Sofiyska gradska prokuratura,

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, A. Tizzano, Vice-President, R. Silva de Lapuerta, M. Ilešič, J.L. da Cruz Vilaça, A. Arabadjiev, C. Toader and F. Biltgen, Presidents of Chambers, J.-C. Bonichot, M. Safjan, M. Berger (Rapporteur), E. Jarašiūnas, C.G. Fernlund, C. Vajda and S. Rodin, Judges,

Advocate General: Y. Bot,

Registrar: M. Aleksejev, Administrator,

having regard to the written procedure and further to the hearing on 12 January 2016,

after considering the observations submitted on behalf of:

- the Netherlands Government, by M. Bulterman, C. Schillemans and M. Gijzen, acting as Agents,
- the European Commission, by W. Bogensberger, R. Troosters and V. Soloveytkhik, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 February 2016,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 267 TFEU and Article 94 of the Rules of Procedure of the Court 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 proceedings relating to the recognition of a criminal conviction and the execution, in Bulgaria, of a sentence of imprisonment imposed by a Danish court on Mr Atanas Ognyanov.

Legal context

EU law

3 Article 94 of the Rules of Procedure, headed ‘Content of the request for a preliminary ruling’, provides:

‘In addition to the text of the questions referred to the Court for a preliminary ruling, the request for a preliminary ruling shall contain:

- (a) a summary of the subject-matter of the dispute and the relevant findings of fact as determined by the referring court or tribunal, or, at least, an account of the facts on which the questions are based;
- (b) the tenor of any national provisions applicable in the case and, where appropriate, the relevant national case-law;
- (c) a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the relationship between those provisions and the national legislation applicable to the main proceedings.’

Bulgarian law

4 It is stated in the order for reference that, in accordance with Article 29 of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure; ‘the NPK’), a judge may not take any part in the hearing of a case where, inter alia, there are reasons to believe that judge to be biased. According to the case-law of the Varhoven kasatsionen sad (Supreme Court of Appeal, Bulgaria), if a judge expresses a provisional opinion on the substance of a case before the final judgment is delivered, that constitutes one particular example of bias.

5 In the event of bias, the panel of judges allocated the case are obliged to disqualify themselves, which means, first, that those judges are to undertake no further examination of the case, second, that the case is re-allocated to other judges of the court concerned and, third, that the designated new panel of judges recommences examination of the case at issue *ab initio*.

6 If a judge fails to disqualify himself, continues to examine the case and delivers a final judgment, that judgment will be defective, because its adoption will have taken place in ‘breach of essential procedural rules’. The higher court will set aside that judgment and the case at issue will be re-allocated to another judge for examination anew.

7 The referring court states that Bulgarian case-law adopts a particularly strict interpretation of the criterion of ‘bias’. In that regard, the referring court observes, inter alia, that review of that criterion is undertaken of the courts’ own motion and that even the slightest indication with respect to the facts of the case at issue or their legal classification leads automatically to there being grounds for the disqualification of a judge.

8 It is also stated in the order for reference that the expression by a judge of a provisional opinion entails not only that the judge is disqualified and his or her final judgment set aside, but also that an action for damages will be brought against the judge for a disciplinary offence. In accordance with points 2.3 and 7.4 of the Kodeks za etichno povedenie (National Code of Conduct), a judge is prohibited from making public statements on the outcome of a case for the examination of which he or she is responsible or from stating a provisional opinion. Further, point 7.3 of the National Code of Conduct provides that a judge may state a view on questions of legal principle, but may not refer to specific facts and their legal classification.

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

9 By judgment of 28 November 2012, Mr Ognyanov, a Bulgarian national, was convicted of murder and aggravated theft by Retten i Glostrup (the court of Glostrup, Denmark) and sentenced to a cumulative fifteen years imprisonment. After having served part of his sentence of imprisonment in Denmark, Mr Ognyanov was handed over to the Bulgarian authorities, on 1 October 2013, so that he could serve the remainder of his sentence in Bulgaria.

10 By a request for a preliminary ruling, of 25 November 2014 brought in Case C-554/14, *Ognyanov*, repeated and thereafter supplemented by two requests of 15 December 2014, the Sofiyski gradski sad (Sofia City Court, Bulgaria) referred to the Court various questions on the interpretation of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24).

11 After the lodging of those questions for a preliminary ruling in Case C-554/14, *Ognyanov*, the Sofiyska gradska prokuratura (the Sofia City Prosecutor, Bulgaria), a party to the main proceedings, requested that, inter alia, the panel of judges of the Sofiyski gradski sad (Sofia City Court) that was responsible for the examination of the case at issue should disqualify themselves, on the ground that, by setting out, in paragraphs 2 to 4 of the request for a preliminary ruling, the factual and legal context of that case, that court was expressing a provisional opinion on questions of fact and law before deliberations had begun.

12 The referring court questions the legality, having regard to EU law, of a national rule, such as that at issue in the main proceedings, which obliges a panel of judges in a Bulgarian court to be disqualified because it expressed, in the request for a preliminary ruling addressed to the Court, a provisional opinion, in that it set out the factual and legal context of the case at issue in the main proceedings.

13 In those circumstances the Sofiyski gradski sad (Sofia City Court, Bulgaria) decided to stay the proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

‘1. Does it constitute an infringement of EU law (second paragraph of Article 267 TFEU, in conjunction with Article 94 of the Rules of Procedure of the Court of Justice, Articles 47 and 48 of the Charter... and other applicable provisions) if the court which submitted the request for a preliminary ruling allows the proceedings to continue before it after delivery of the preliminary ruling and delivers a decision on the merits of the case without disqualifying itself? The ground for such disqualification is the expression by that court of a preliminary view on the merits of the case in the request for a preliminary ruling (in that it considered certain facts to have been established and a certain legal provision to be applicable to those facts.

The question is referred on the assumption that all procedural provisions protecting the parties’ rights to adduce evidence and to make submissions were complied with in the determination of the facts and applicable law for the purposes of submitting the request for a preliminary ruling.

2. If the answer to the first question is that it is lawful for the hearing of the case to continue, does it constitute an infringement of EU law if:

(a) the court reproduces in its final decision, without amendment, all the findings set out in its request for a preliminary ruling and declines to take new evidence or to hear the parties in relation to those factual and legal outcomes (with the court, in practice, taking new evidence and hearing the parties only in respect of matters not regarded as having been established in the request for a preliminary ruling).

(b) the court takes new evidence and hears the parties on all relevant issues, including those on which it has already stated its view in the request for a preliminary ruling, and sets out its view in its final decision on the basis of all the evidence adduced and after examining all the parties' arguments, irrespective of whether the evidence was adduced before submission of the request for a preliminary ruling or after delivery of the preliminary ruling, and of whether the arguments were put forward beforehand or afterwards?

3. If the answer to the first question is that it is compatible with EU law for the hearing of the case to continue, is it compatible with EU law if the court decides not to allow the main proceedings to continue before it and to disqualify itself from the case on the ground of bias, it being contrary to national law (which offers a higher level of protection in respect of the interests of the parties and of justice) for the proceedings to be allowed to continue, and where such disqualification is based on the fact that:

(a) before delivering its final decision, the court had expressed a preliminary view on the proceedings in the request for a preliminary ruling, which is permissible under EU law but which is prohibited under national law;

(b) the court's final view would be set out in two legal acts instead of one (on the assumption that the request for a preliminary ruling constitutes a final, rather than a preliminary, view), which is permissible under EU law but which is prohibited under national law?

Consideration of the questions referred for a preliminary ruling

The first question

14 By its first question, the referring court seeks, in essence, to ascertain whether Article 267 TFEU and Article 94 of the Rules of Procedure, read in the light of the second paragraph of Article 47 and Article 48(1) of the Charter, must be interpreted as precluding a national rule being interpreted in such a way that it obliges a referring court to disqualify itself from a pending case on the ground that it set out, in its request for a preliminary ruling, the factual and legal context of that case.

15 First, it must be recalled that the preliminary ruling procedure provided for in Article 267 TFEU constitutes the keystone of the European Union judicial system, which, by setting up a dialogue between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, has the object of securing uniform interpretation of EU law, thereby serving to ensure its consistency, its full effect

and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (see Opinion 2/13 of 18 December 2014, EU:C:2014:2454, paragraph 176 and the case-law cited).

16 In accordance with settled case-law, the procedure provided for by Article 267 TFEU is an instrument of cooperation between the Court of Justice and national courts and tribunals, by means of which the former provides the latter with interpretation of such EU law as is necessary for them to give judgment in cases upon which they are called to adjudicate (see orders of 8 September 2011, *Abdallah*, C-144/11, not published, EU:C:2011:565, paragraph 9 and the case-law cited; of 19 March 2015, *Andre*, C-23/15, not published, EU:C:2015:194, paragraph 4 and the case-law cited, and the judgment of 6 October 2015, *Capoda Import-Export*, C-354/14, EU:C:2015:658, paragraph 23).

17 In accordance with equally settled case-law, Article 267 TFEU gives national courts the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them. National courts are, moreover, free to exercise that discretion at whatever stage of the proceedings they consider appropriate (see judgments of 5 October 2010, *Elchinov*, C-173/09, EU:C:2010:581, paragraph 26 and the case-law cited, and of 11 September 2014, *A*, C-112/13, EU:C:2014:2195, paragraph 39 and the case-law cited). The choice of the most appropriate time to refer a question for a preliminary ruling lies within their exclusive jurisdiction (see judgments of 15 March 2012, *Sibilio*, C-157/11, not published, EU:C:2012:148, paragraph 31 and the case-law cited, and of 7 April 2016, *Degano Trasporti*, C-546/14, EU:C:2016:206, paragraph 16).

18 The need to provide an interpretation of EU law which will be of use to the national court means that the national court must define the factual and legal context of the questions it is asking or, at the very least, explain the assumptions of fact on which those questions are based (see orders of 8 September 2011, *Abdallah*, C-144/11, not published, EU:C:2011:565, paragraph 10 and the case-law cited; of 19 March 2015, *Andre*, C-23/15, not published, EU:C:2015:194, paragraph 5 and the case-law cited, and the judgment of 10 March 2016, *Safe Interenvíos*, C-235/14, EU:C:2016:154, paragraph 114).

19 The requirements concerning the content of a request for a preliminary ruling, are expressly set out in Article 94 of the Rules of Procedure, of which the national court should, in the context of the cooperation instituted by Article 267 TFEU, be aware and which it is bound to observe scrupulously (see order of 3 July 2014, *Talasca*, C-19/14, EU:C:2014:2049, paragraph 21).

20 There is moreover no dispute that the information provided in orders for reference serves not only to enable the Court to provide useful answers but also to give the governments of the Member States and other interested parties the opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union, and that it is the Court's duty to ensure that that opportunity is

safeguarded, given that, under that article, only the orders for reference are notified to the interested parties (see order of 8 September 2011, *Abdallah*, C-144/11, not published, EU:C:2011:565, paragraph 11 and the case-law cited, and the judgment of 10 March 2016, *Safe Interenvíos*, C-235/14, EU:C:2016:154, paragraph 116).

21 Last, if the relevant factual and legal context is not stated, that may constitute a ground for the request for a preliminary ruling to be declared to be manifestly inadmissible (see, to that effect, orders of 8 September 2011, *Abdallah*, C-144/11, not published, EU:C:2011:565, paragraph 12; 4 July 2012, *Abdel*, C-75/12, not published, EU:C:2012:412, paragraphs 6 and 7; 19 March 2014, *Grimal*, C-550/13, not published, EU:C:2014:177, paragraph 19, and of 19 March 2015, *Andre*, C-23/15, not published, EU:C:2015:194, paragraphs 8 and 9).

22 In setting out, in its request for a preliminary ruling, the factual and legal context of the main proceedings, a referring court, such as the Sofiyski gradski sad (Sofia City Court), is therefore doing no more than meeting the requirements of Article 267 TFEU and Article 94 of the Rules of Procedure.

23 That being the case, where a referring court, such as the court hearing the main proceedings, presents, in its request for a preliminary ruling, the relevant factual and legal context of the main proceedings, that is a response to the requirement of cooperation that is inherent in the preliminary reference mechanism and cannot, in itself, be a breach of either the right to a fair trial, enshrined in the second paragraph of Article 47 of the Charter, or the right to the presumption of innocence, guaranteed by Article 48(1) of the Charter.

24 In this case, it follows from the combined application of Article 29 of the NPK, as interpreted by the Varhoven kasatsionen sad (Supreme Court of Appeal), and points 2.3., 7.3. and 7.4. of the National Code of Conduct, that the presentation by a Bulgarian judge, in a request for a preliminary ruling, of the factual and legal context of the case at issue in the main proceedings is deemed to be the expression by that judge of a provisional opinion, which entails not only that the judge is disqualified and his final judgment set aside, but also that an action for damages will be brought against him for a disciplinary offence.

25 It follows that one effect of a national rule such as that at issue in the main proceedings is likely to be that a national court may choose to refrain from referring questions for a preliminary ruling to the Court, in order to avoid, on the one hand, being disqualified and exposed to disciplinary penalties or, on the other, lodging requests for preliminary rulings that are inadmissible. Consequently, such a rule is detrimental to the prerogatives granted to national courts and tribunals by Article 267 TFEU and, consequently, to the effectiveness of the cooperation between the Court and the national court and tribunals established by the preliminary ruling mechanism.

26 In the light of all the foregoing, the answer to the first question referred is that Article 267 TFEU and Article 94 of the Rules of Procedure, 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 rule which is interpreted in such a way as to oblige a referring court to disqualify itself from a pending case, on the ground that it set out, in its request for a preliminary ruling, the factual and legal context of that case.

The second question

27 By its second question, the referring court seeks, in essence, to ascertain whether EU law, and in particular Article 267 TFEU, must be interpreted as precluding the possibility, after the delivery of the preliminary ruling, of the referring court making no change to the findings of fact or law made in the request for a preliminary ruling or, on the contrary, the possibility, after that delivery of the preliminary ruling, of the referring court hearing the parties again and undertaking further inquiries, which might lead it to alter those findings of fact or law.

28 In that regard, it must be recalled that, in accordance with settled case-law, Article 267 TFEU requires the referring court to give full effect to the interpretation of EU law provided by the Court (see, to that effect, judgment of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraphs 38 to 40 and the case-law cited).

29 On the other hand, neither that article, nor any other provision of EU law, requires the referring court, after the delivery of the preliminary ruling, to alter the findings of fact or law made in a request for a preliminary ruling. Equally, no provision of EU law prohibits the referring court from altering, after the delivery of the preliminary ruling, its findings in respect of the relevant factual and legal context.

30 In the light of the foregoing, the answer to the second question referred is that EU law, and in particular Article 267 TFEU, must be interpreted as meaning that it does not require the referring court, after the delivery of the preliminary ruling, to hear the parties again and to undertake further inquiries, which might lead it to alter the findings of fact or law made in the request for a preliminary ruling, nor does it prohibit the referring court from doing so, provided that the referring court gives full effect to the interpretation of EU law adopted by the Court.

The third question

31 By its third question, the referring court seeks, in essence, to ascertain whether EU law must be interpreted as precluding the referring court from applying a national rule, such as that at issue in the main proceedings, which is deemed to be contrary to EU law, on the ground that that rule ensures a higher degree of protection of the parties' fundamental rights.

32 In that regard, it must be observed at the outset that the assumption that underlies that question, that the national rule at issue in the main proceedings provides an individual with enhanced protection of his right to a fair trial, within the meaning of the second paragraph of Article 47 of the Charter, cannot be accepted. As was stated in

paragraph 23 of this judgment, the fact that a national court sets out, in the request for a preliminary ruling, in accordance with what is required by Article 267 TFEU and Article 94 of the Rules of Procedure, the factual and legal context of the main proceedings is not, in itself, a breach of that fundamental right. Consequently, the obligation to disqualify itself, imposed by that rule on a referring court which has, in a reference for a preliminary ruling, acted in that way cannot be considered as serving to enhance the protection of that right.

33 That said, it must be recalled that, in accordance with settled case-law, a judgment in which the Court gives a preliminary ruling is binding on the national court, as regards the interpretation or the validity of the acts of the EU institutions in question, for the purposes of the decision to be given in the main proceedings (see judgments of 20 October 2011, *Interedil*, C-396/09, EU:C:2011:671, paragraph 36 and the case-law cited, and of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraph 38).

34 In addition, it must be stated that, in accordance with settled case-law, a national court which is called upon, within the exercise of its jurisdiction, to apply provisions of EU law, is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national law, and it is not necessary for that court to request or to await the prior setting aside of that provision of national law by legislative or other constitutional means (see judgments of 20 October 2011, *Interedil*, C-396/09, EU:C:2011:671, paragraph 38 and the case-law cited; of 4 June 2015, *Kernkraftwerke Lippe-Ems*, C-5/14, EU:C:2015:354, paragraph 32 and the case-law cited, and of 5 April 2016, *PFE*, C-689/13, EU:C:2016:199, paragraph 40 and the case-law cited).

35 Last, it must be added that the requirement to give full effect to EU law includes the obligation on a national court to alter established case-law, where necessary, if that is based on an interpretation of national law that is incompatible with EU law (see, to that effect, judgment of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 33 and the case-law cited).

36 It follows that, in this case, the referring court is obliged to ensure that Article 267 TFEU is given full effect, and if necessary to disapply, of its own motion, Article 29 of the NPK as interpreted by the Varhoven kasatsionen sad (Supreme Court of Appeal), where that interpretation is not compatible with EU law (see, to that effect, judgment of 19 April 2016, *DI*, C-441/14, EU:C:2016:278, paragraph 34).

37 In the light of the foregoing, the answer to the third question referred is that EU law must be interpreted as precluding a referring court from applying a national rule, such as that at issue in the main proceedings, which is deemed to be contrary to EU law.

Costs

38 Since these proceedings are, for the parties to the main proceedings, a step in the action 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 (Grand Chamber) hereby rules:

1. **Article 267 TFEU and Article 94 of the Rules of Procedure of the Court, 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 precluding a national rule which is interpreted in such a way as to oblige the referring court to disqualify itself from a pending case, on the ground that it set out, in its request for a preliminary ruling, the factual and legal context of that case.**
2. **EU law, and in particular Article 267 TFEU, must be interpreted as meaning that it does not require the referring court, after the delivery of the preliminary ruling, to hear the parties again and to undertake further inquiries, which might lead it to alter the findings of fact or law made in the request for a preliminary ruling, nor does it prohibit the referring court from doing so, provided that the referring court gives full effect to the interpretation of EU law adopted by the Court of Justice of the European Union.**
3. **EU law must be interpreted as precluding a referring court from applying a national rule, such as that at issue in the main proceedings, which is deemed to be contrary to EU law.**

[Signatures]

* Language of the case: Bulgarian.
