



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

18 April 2024*

(Reference for a preliminary ruling – Values and objectives of the European Union – Article 2 TEU – Rule of law – Second subparagraph of Article 19(1) TEU – Independent and impartial court – Reorganisation of jurisdiction of courts in a Member State – Abolition of a specialised criminal court – Inadmissibility of the request for a preliminary ruling)

In Case C-634/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 28 September 2022, received at the Court on 10 October 2022, in the criminal proceedings against

OT,

PG,

CR,

VT,

MD,

intervening party:

Sofiyska gradska prokuratura,

THE COURT (Fourth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, O. Spineanu-Matei, J.-C. Bonichot, S. Rodin and L.S. Rossi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Bulgarian.

after considering the observations submitted on behalf of:

- the Polish Government, by B. Majczyna and S. Żyrek, acting as Agents,
- the European Commission, by K. Herrmann, E. Rousseva and P.J.O. Van Nuffel, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 23 November 2023,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), and the principle of the primacy of EU law.
- 2 The request has been made in criminal proceedings brought against five persons for acts classified as organised crime.

Legal context

- 3 Paragraph 43 of the transitional and final provisions of the zakon za izmenenie i dopalnenie na Zakona za sadebnata vlast (Law amending and supplementing the Law on the judiciary) (DV No 32 of 26 April 2022; 'the ZIDZSV') provides:

'The Spetsializiran nakazatelen sad [(Specialised Criminal Court, Bulgaria)], the Apelativen spetsializiran nakazatelen sad [(Specialised Criminal Court of Appeal, Bulgaria)], the Spetsializirana prokuratura [(Specialised Public Prosecutor's Office, Bulgaria)] and the Apelativna spetsializirana prokuratura [(Specialised Appellate Public Prosecutor's Office, Bulgaria)] are abolished with effect from entry into force of this law.'

- 4 Paragraph 44 of those transitional and final provisions states:

'(1) The judges of the Spetsializiran nakazatelen sad [(Specialised Criminal Court)] and of the Apelativen spetsializiran nakazatelen sad [(Specialised Criminal Court of Appeal)] shall be reassigned on the terms and in accordance with the procedure established in Article 194(1) [of the Law on the judiciary].

(2) Within 14 days from promulgation of this law, the persons referred to in subparagraph 1 may make a written submission to the College of Judges of the Supreme Judicial Council indicating that they wish to be reappointed to the judicial post they held before their appointment to the Spetsializiran nakazatelen sad [(Specialised Criminal Court)] or the Apelativen spetsializiran nakazatelen sad [(Specialised Criminal Court of Appeal)], as appropriate.

(3) Within 30 days from expiry of the period referred to in subparagraph 2, the College of Judges of the Supreme Judicial Council shall adopt a resolution on the creation of judicial posts at the courts, corresponding to the posts abolished at the Spetsializiran nakazatelen sad [(Specialised

Criminal Court)) and the Apelativen spetsializiran nakazatelen sad [(Specialised Criminal Court of Appeal)], based on the workload of each court. No more than one quarter of the judges of the abolished Spetsializiran nakazatelen sad [(Specialised Criminal Court)] and no more than one third of the judges of the abolished Apelativen spetsializiran nakazatelen sad [(Specialised Criminal Court of Appeal)] shall be reappointed to the same court.

(4) On expiry of the time limit referred to in subparagraph 3, the College of Judges of the Supreme Judicial Council shall reassign judges from the date on which this law comes into force.

(5) The resolutions of the College of Judges of the Supreme Judicial Council referred to in subparagraph 4 shall be immediately enforceable.’

5 Paragraph 49 of those transitional and final provisions provides:

‘First-instance criminal cases before the Spetsializiran nakazatelen sad [(Specialised Criminal Court)] in which no preliminary hearing has been held prior to this law coming into force shall be referred to the courts with jurisdiction within seven days from the entry into force of this law.’

6 Paragraph 50 of the same transitional and final provisions is worded as follows:

‘(1) From the entry into force of this law, first-instance criminal proceedings before the Spetsializiran nakazatelen sad [(Specialised Criminal Court)] in which a preliminary hearing has been held shall fall within the jurisdiction of the Sofiyski gradski sad [(Sofia City Court)] and shall continue to be heard by the court formation before which that hearing was held.

(2) Judges in those formations who have not been reassigned to the Sofiyski gradski sad [(Sofia City Court)] shall be seconded to participate in the hearing of those cases until the proceedings are completed.

(3) The judges in the formation who have heard first-instance criminal proceedings in which judgment has been delivered shall be seconded to issue the grounds for those judgments, unless they have been reassigned to the Sofiyski gradski sad [(Sofia City Court)].

...’

7 Under paragraph 59 of the transitional and final provisions of the ZIDZSV:

‘(1) The Sofiyski gradski sad [(Sofia City Court)] shall be the successor of the assets, liabilities, rights and obligations of the Spetsializiran nakazatelen sad [(Specialised Criminal Court)].

(2) The Apelativen sad Sofia [(Court of Appeal, Sofia, Bulgaria)] shall be the successor of the assets, liabilities, rights and obligations of the Apelativen spetsializiran nakazatelen sad [(Specialised Criminal Court of Appeal)].’

The main proceedings and the questions referred

- 8 Since 12 July 2019, OT, PG, CR, VT and MD have been prosecuted, initially before the Spetsializiran nakazatelen sad (Specialised Criminal Court) and, following its abolition, before the Sofiyski gradski sad (Sofia City Court), for having participated in a criminal organisation engaged in collusive extortion activities.
- 9 The Spetsializiran nakazatelen sad (Specialised Criminal Court) and the Apelativen spetsializiran nakazatelen sad (Specialised Criminal Court of Appeal) (together, ‘the specialised criminal courts’) were created by the Bulgarian legislature in 2011. Originally, those specialised criminal courts had jurisdiction only to try criminal offences committed by criminal organisations. Their jurisdiction was subsequently extended to ‘criminal offences against the Republic [of Bulgaria]’ and to corruption offences concerning high-ranking public office holders.
- 10 Under the ZIDZSV, the specialised criminal courts were abolished from 28 July 2022.
- 11 The ZIDZSV provides that, from that date, the Sofiyski gradski sad (Sofia City Court) and the Apelativen sad Sofia (Court of Appeal, Sofia) succeeded, respectively, the Spetsializiran nakazatelen sad (Specialised Criminal Court) and the Apelativen spetsializiran nakazatelen sad (Specialised Criminal Court of Appeal).
- 12 It is apparent from the explanatory memorandum of the ZIDZSV that those structural and organisational changes were intended to guarantee the constitutional principle of the independence of the judiciary and the protection of the constitutional rights of citizens, since the specialised criminal courts had not achieved, in their 10 years of activity, the aims which had been set for them when they were created and since the mix of specialisation criteria relating to the subject matter before those courts and to the staff thereof, which establish their jurisdiction, had raised questions as to their independence.
- 13 In accordance with paragraph 50 of the transitional and final provisions of the ZIDZSV, cases, such as those in the main proceedings, in which a preliminary hearing has been held prior to the entry into force of the ZIDZSV, must be completed by the formation which held that hearing, the abolition of the specialised criminal courts notwithstanding. To that end, the Bulgarian legislature provided for the transfer of those proceedings to the Sofiyski gradski sad (Sofia City Court) and the Apelativen sad Sofia (Court of Appeal, Sofia), the amendment of the term of the jury members participating in those proceedings so that they may be regarded as jury members in those courts and the secondment, to those courts, of the judges of the specialised criminal courts who had not been reassigned to them.
- 14 In the present case, the panel of the Sofiyski gradski sad (Sofia City Court), which, henceforth, has jurisdiction to hear the case in the main proceedings, is accordingly composed in the same manner as the panel of the Spetsializiran nakazatelen sad (Specialised Criminal Court), which, prior to the abolition of the latter court, had jurisdiction to hear that case.
- 15 With the foregoing observations in mind, the referring court notes, in the first place, that, on 25 February 2022, during the public debate on the draft law which led to the adoption of the ZIDZSV, OT’s lawyer, in her capacity as a representative of a non-governmental organisation, publicly supported the abolition of the Spetsializiran nakazatelen sad (Specialised Criminal Court) on the ground that that specialised criminal court was not able to guarantee a fair trial.

- 16 However, even after the adoption of the ZIDZSV, no application for disqualification has been submitted by OT. The referring court also does not discern any reason for it to decline hearing the case since it considers that it has no subjective partiality relating to the main proceedings or the parties thereto.
- 17 A public statement such as that of OT's lawyer, however, raises, according to the referring court, a legitimate concern as to its independence and impartiality. The same is true of the grounds put forward by the Bulgarian legislature to explain the abolition of the specialised criminal courts, which call into question the independence of not only the panel which was to hear the criminal proceedings brought against OT, but the whole of the Spetsializiran nakazatelen sad (Specialised Criminal Court).
- 18 In the second place, the referring court expresses its doubts as to the compatibility of those grounds with EU law.
- 19 Accordingly, it notes that, until the adoption of the ZIDZSV, it was common ground that the Spetsializiran nakazatelen sad (Specialised Criminal Court) met the requirements of the second subparagraph of Article 19(1) TEU, the third paragraph of Article 267 TFEU and the second paragraph of Article 47 of the Charter.
- 20 Moreover, according to the referring court, the grounds put forward by the Bulgarian legislature to reach the conclusion that the specialised criminal courts were not independent and did not protect the constitutional rights of citizens were never based on concrete evidence, even though such grounds should have been substantiated adequately.
- 21 In the third and last place, that court asks whether, in the light of the grounds which explained the abolition of the Spetsializiran nakazatelen sad (Specialised Criminal Court), it may continue to hear proceedings before it and, on the assumption that it does not decline to hear the case, what the implications would be for the decisions it adopts.
- 22 In those circumstances, the Sofiyski gradski sad (Sofia City Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:
- ‘(1) Must Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU, in conjunction with Article 47 of the [Charter], be interpreted as meaning that, where a court has been abolished by the [ZIDZSV], but the judges are to continue up to and after [the date of that court's abolition] to deal with those cases before that court in which preliminary hearings have been held, the independence of that court is impaired, given that the abolition of the court is justified on the ground that the constitutional principle of the independence of the judiciary and the protection of the constitutional rights of citizens are thereby safeguarded, and the facts leading to the conclusion that [that principle has been infringed] are not duly set out?
- (2) Must the abovementioned provisions of EU law be interpreted as precluding national provisions such as those of the [ZIDZSV], which result in the complete abolition of an autonomous judicial body in Bulgaria [(Spetsializiran nakazatelen sad (Specialised Criminal Court))] on the ground referred to above and in the transfer of judges (including the judge of the panel hearing the criminal case at hand) from that court to various other courts, but which require those judges to continue to deal with those cases which are pending before the abolished court and which they have already commenced?

- (3) If so, what procedural acts should be undertaken – also in the light of the primacy of EU law – by the members of the national legal service attached to the recently abolished courts in the cases of the abolished court (which, by law, they must complete), having regard also to their obligation to examine closely whether they must recuse themselves from those cases? What consequences would that have for the procedural decisions of the recently abolished court in the cases which must be completed and for the legal acts terminating the proceedings in those cases?’

The jurisdiction of the Court

- 23 The Polish Government, submits, in essence, that issues relating to the judicial organisation of the Member States, such as those raised by the questions referred, fall within the exclusive competence of the Member States and not within the material scope of EU law.
- 24 In that regard, it follows from settled case-law that, although it is true that the organisation of justice in the Member States falls within the competence of those Member States, the fact remains that, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law (judgments of 19 November 2019, *A.K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982, paragraph 75, and of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraph 57 and the case-law cited).
- 25 Moreover, it is clear from the wording of the questions referred that they concern the interpretation not of Bulgarian law but of the provisions of EU law to which they refer.
- 26 It follows that the Court has jurisdiction to rule on the present request for a preliminary ruling.

Admissibility of the request for a preliminary ruling

- 27 The Polish Government takes the view that the main proceedings have no connection with EU law and the questions referred for a preliminary ruling should be declared inadmissible.
- 28 The European Commission, also, is of the view that the questions are inadmissible since the referring court’s doubts are hypothetical in that it does not set out any subjective reason for it to decline hearing the case and since the parties to the main proceedings do not challenge its objective impartiality. In addition, those questions are irrelevant for the purposes of resolving the dispute in the main proceedings, since the structural and organisational changes enacted by the ZIDZSV only concern the Spetsializiran nakazatelen sad (Specialised Criminal Court) and not the referring court.
- 29 According to settled case-law, it is solely for the national court before which the dispute in the main proceedings has been brought, and which must assume responsibility for the subsequent judicial decision, to determine, in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. It follows that questions referred by national courts enjoy a presumption of relevance and that the Court may refuse to rule on those questions only where it is quite obvious that the interpretation sought bears no relation to the actual facts of the dispute in the main proceedings or its purpose, where the problem is hypothetical, or where the

Court does not have before it the factual or legal material necessary to give a useful answer to those questions (see, in particular, judgment of 21 December 2023, *European Superleague Company*, C-333/21, EU:C:2023:1011, paragraph 64 and the case-law cited).

- 30 As is apparent from the actual wording of Article 267 TFEU, the question referred for a preliminary ruling must be ‘necessary’ to enable the referring court to ‘give judgment’ in the case before it (judgment of 24 November 2020, *Openbaar Ministerie (Forgery of documents)*, C-510/19, EU:C:2020:953, paragraph 27 and the case-law cited).
- 31 The Court has thus pointed out that it is apparent from both the wording and the scheme of Article 267 TFEU that a national court or tribunal is not empowered to bring a matter before the Court by way of a reference for a preliminary ruling unless a case is pending before it, in which it is called upon to give a decision which is capable of taking account of the preliminary ruling. In such proceedings, there must therefore be a connecting factor between that dispute and the provisions of EU law whose interpretation is sought, by virtue of which that interpretation is objectively required for the decision to be taken by the referring court (judgment of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraphs 64 and 65 and the case-law cited).
- 32 In the present case, the referring court asks, in essence, whether Article 2, Article 6(1) and (3) and the second subparagraph of Article 19(1) TEU, read in conjunction with Article 47 of the Charter, must be interpreted as precluding the members of a court abolished by a Member State in order to uphold the constitutional principle of the independence of the judiciary and the protection of the constitutional rights of citizens from being able to hear, as members of the court which has succeeded the court abolished in this way, some of the cases which have been brought before them as members of the abolished court.
- 33 The grounds of the order for reference make clear that the questions referred for a preliminary ruling concern, more specifically, the interpretation of the principle of judicial independence, as guaranteed by the provisions of EU law referred to in the previous paragraph.
- 34 In that regard, it should be recalled that, while the distribution or reorganisation of court jurisdiction in a Member State comes, in principle, under the freedom of the Member States guaranteed by Article 4(2) TEU, that distribution or reorganisation must not, in particular, undermine respect for the rule of law set out in Article 2 TEU and the requirements arising, in that regard, from the second subparagraph of Article 19(1) TEU, including those relating to independence, impartiality and the previous establishing by law of the courts and tribunals called up to interpret and apply EU law (judgment of 5 June 2023, *Commission v Poland (Independence and private life of judges)*, C-204/21, EU:C:2023:442, paragraph 263).
- 35 The requirement that courts be independent, which follows from the second subparagraph of Article 19(1) TEU, has two aspects to it. The first aspect, which is external in nature, requires that the court concerned exercise its functions wholly autonomously, without being subject to any hierarchical constraint or subordinated to any other body and without taking orders or instructions from any source whatsoever, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. The second aspect, which is internal in nature, is linked to impartiality and seeks to ensure that an equal distance is maintained from the parties to the proceedings and their respective interests with regard to the subject matter of those proceedings. That aspect requires

objectivity and the absence of any interest in the outcome of the proceedings apart from the strict application of the rule of law (judgment of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 41 and the case-law cited).

- 36 That requirement of judicial independence requires that the rules applicable to transfer without the consent of such judges present, in particular, the necessary guarantees to prevent any risk of that independence being jeopardised by direct or indirect external interventions. Accordingly, it is important that such measures may only be ordered on legitimate grounds, in particular relating to distribution of available resources to ensure the proper administration of justice (see, to that effect, judgment of 6 October 2021, *W.Ž. (Chamber of Extraordinary Control and Public Affairs of the Supreme Court – Appointment)*, C-487/19, EU:C:2021:798, paragraphs 117 and 118).
- 37 In the present case, the Bulgarian legislature decided to abolish the Spetsializiran nakazatelen sad (Specialised Criminal Court) based on imperative reasons relating to the need to ensure the proper administration of justice, without calling into question the individual independence of the members of that court.
- 38 First, it is apparent from the explanatory memorandum of the ZIDZSV, as referred to in paragraph 15 of the order for reference, that it is the concentration of highly sensitive cases to be dealt with by the Spetsializiran nakazatelen sad (Specialised Criminal Court) which risked exposing that court to ineffectiveness and undue pressure. Secondly, it follows from the relevant provisions of Bulgarian law that the judges who comprised that court were regarded by the Bulgarian legislature as being sufficiently independent and impartial to continue dealing with cases, in the Sofiyski gradski sad (Sofia City Court), in which a preliminary hearing had taken place before the Spetsializiran nakazatelen sad (Specialised Criminal Court).
- 39 Moreover, as has been noted in paragraph 16 above, the parties to the main proceedings have not challenged the independence or impartiality of the referring court and the latter does not doubt its subjective impartiality.
- 40 In those circumstances, while it is true that every court is obliged to verify that it constitutes an independent and impartial tribunal previously established by law, within the meaning, in particular, of the second subparagraph of Article 19(1) TEU, where a serious doubt arises on that point (judgment of 9 January 2024, *G. and Others (Appointment of judges to the ordinary courts in Poland)*, C-181/21 and C-269/21, EU:C:2024:1, paragraph 68 and the case-law cited), the fact remains that the request for a preliminary ruling does not indicate the reasons for which such a doubt would exist in the present case.
- 41 Accordingly, an interpretation of the provisions of EU law which give rise to the requirements relating to the independence and impartiality of courts and tribunals called up to interpret and apply EU law does not appear necessary for the purposes of resolving the dispute in the main proceedings.
- 42 It follows that the request for a preliminary ruling is inadmissible.

Costs

- 43 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 (Fourth Chamber) hereby rules:

The request for a preliminary ruling from the Sofiyski gradski sad (Sofia City Court, Bulgaria) made by decision of 28 September 2022 is inadmissible.

[Signatures]