



Reports of Cases

ORDER OF THE COURT (First Chamber)

12 February 2019*

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — Directive (EU) 2016/343 — Article 4 — Public references to guilt — Pre-trial detention decision — Remedies — Procedure for reviewing the lawfulness of that decision — Observance of the presumption of innocence — Article 267 TFEU — Article 47, second paragraph, of the Charter of Fundamental Rights of the European Union — Right to have a case heard within a reasonable time. — National legislation restricting the powers of the national courts to make a request to the Court of Justice for a preliminary ruling or obliging them to adjudicate without waiting for the answer to that request — Disciplinary sanctions for failure to comply with that legislation)

In Case C-8/19 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 27 December 2018, received at the Court on 7 January 2019, in the criminal proceedings against

RH,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader (Rapporteur), A. Rosas, L. Bay Larsen and M. Safjan, Judges,

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having regard to the referring court's request of 27 December 2018, received at the Court on 7 January 2019, that the reference for a preliminary ruling be dealt with under the urgent procedure, pursuant to Article 107 of the Rules of Procedure of the Court,

having regard to the decision of 16 January 2019 of the First Chamber granting that request,

makes the following

Order

- 1 This request for a preliminary ruling concerns the interpretation of Article 267 TFEU, first and second paragraphs of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), and Article 4(1) of Directive (EU) 2016/343 of the European Parliament and of the Council of

* Language of the case: Bulgarian.

9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1), read together with recital 16 thereof.

- 2 The request has been made in criminal proceedings against RH concerning the continuation of his pre-trial detention.

Legal context

The European Convention on the Protection of Human Rights

- 3 Under the heading ‘Right to liberty and security’, Article 5 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (‘the Convention’), provides:

‘1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

- (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

...

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.

...’

- 4 Article 6 of the Convention, entitled ‘Right to a fair trial’, states in paragraph 1:

‘In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...’

European Union law

- 5 Recital 16 of Directive 2016/343 is worded as follows:

‘The presumption of innocence would be violated if public statements made by public authorities, or judicial decisions other than those on guilt, referred to a suspect or an accused person as being guilty, for as long as that person has not been proved guilty according to law. Such statements and judicial decisions should not reflect an opinion that that person is guilty. This should be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, such as the indictment, and without prejudice to judicial decisions as a result of which a suspended sentence takes effect, provided that the rights of the defence are respected. This should also be without prejudice to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and are based on suspicion or on elements of incriminating evidence, such as decisions on

pre-trial detention, provided that such decisions do not refer to the suspect or accused person as being guilty. Before taking a preliminary decision of a procedural nature the competent authority might first have to verify that there are sufficient elements of incriminating evidence against the suspect or accused person to justify the decision concerned, and the decision could contain reference to those elements.'

- 6 Article 4(1) of the same directive, that article being headed 'Public references to guilt', states:

'Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence.'

- 7 Article 6 of the directive, entitled 'Burden of proof', reads as follows:

'1. Member States shall ensure that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. This shall be without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national law.

2. Member States shall ensure that any doubt as to the question of guilt is to benefit the suspect or accused person, including where the court assesses whether the person concerned should be acquitted.'

Bulgarian law

- 8 Pursuant to Article 22 of the Nakazatelno protsesualen kodeks (Criminal Procedure Code, 'the NPK'), all criminal cases must be examined and adjudicated upon within a reasonable time, especially if the accused person is in detention.
- 9 According to Article 56(1) and Article 63(1) of the NPK, a pre-trial detention decision may be adopted and extended where there are reasonable grounds for suspecting that the accused person has committed a criminal offence.
- 10 Under Article 65(4) of the NPK, if the defendant challenges, before a court, the finding that all the legal conditions for the extension of his period in custody are satisfied, including where there are reasonable grounds for suspecting that he has committed the offence concerned, the court is required to respond to his arguments and to determine whether or not those grounds still exist.
- 11 According to Article 489(2) of the NPK, when a reference is made for a preliminary ruling, although the proceedings before the referring court are stayed, the parties may apply to amend the pre-trial detention decision and the court is required to adjudicate on that application with a decision on the substance.

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

- 12 RH is suspected of having been part of a criminal gang organised in order to commit murders, a crime sanctioned by Article 321(3) of the Nakazatelen kodeks (Criminal Code), read together with Article 321(2) thereof. That offence is punishable with a custodial sentence of 3 to 10 years.

- 13 On 22 October 2018, a pre-trial detention decision was made in respect of RH, the courts at first instance and on appeal holding that there were reasonable grounds for suspecting that he had committed the offence with which he was charged.
- 14 On 20 December 2018, RH's lawyer applied to the referring court seeking an order for his client be released, challenging the reasonable grounds for suspecting his involvement in the commission of that offence, under Articles 56(1) and 63(1) of the NPK.
- 15 As far as concerns the legality of the pre-trial detention decision, the referring court states that the question of RH's release depends solely on the existence of reasonable grounds for suspecting that he committed the offence concerned.
- 16 For the purpose of adjudicating on that matter, the referring court raises difficulties of two kinds. First, in its examination of the existence of reasonable grounds for suspecting that RH committed the offence at issue, that court indicates experiencing considerable difficulties in the formulation of its decision so that RH is not presented as guilty, while at the same time responding to the objections put forward by his defence counsel.
- 17 It is clear from the most recent national case-law that, when examining the legality of a pre-trial detention decision, and in order to determine whether there are reasonable grounds to believe that the suspect or the accused person has committed the alleged acts, it must first carry out a 'prima facie' examination of whether the charge is made out.
- 18 In that connection, the referring court explains that the interpretation of the national legislation on pre-trial detention has already been the subject of a request for a preliminary ruling in the case which gave rise to the judgment of 19 September 2018, *Milev* (C-310/18 PPU, EU:C:2018:732). In that case, following the preliminary ruling and the stay of proceedings, the accused person twice requested the re-examination of the legality of his detention on the same grounds as those put forward in the context of the order for reference.
- 19 Second, the referring court asks whether, by making the present request for a preliminary ruling and staying the proceedings relating to the dispute before it, it is complying with EU law, including the obligation to adjudicate within a reasonable time. Although Article 489(2) of the NPK does not expressly provide that that court must adjudicate on a request to amend a pre-trial detention decision, the new case-law interprets that provision as meaning that a request for a preliminary ruling is impossible.
- 20 According to the referring court, the court dealing with the dispute which gave rise to the judgment of 19 September 2018, *Milev* (C-310/18 PPU, EU:C:2018:732), had made a request for a preliminary ruling and stayed the proceedings in spite of the binding instructions of the higher court which resulted in disciplinary proceedings before the Visshia sadeben savet (Supreme Judicial Council, Bulgaria) for failing to comply with the obligation to adjudicate within a reasonable time.
- 21 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:
- '(1) Is an interpretation of national law, namely Article 489(2) of the NPK, which requires the referring court to adjudicate immediately on the legality of pre-trial detention in criminal proceedings instead of waiting for an answer from the Court of Justice when the referring court has made a request for a preliminary ruling concerning the legality of that detention, consistent with Article 267 TFEU and the second paragraph of Article 47 of the Charter?

If the first question is answered in the negative:

- (2) (a) Taking account of the final sentence of recital 16 of Directive 2016/343, must the national court interpret its national law as meaning that, before issuing a decision extending a pre-trial detention, it must “verify that there are sufficient elements of incriminating evidence against the suspect or accused person to justify the decision concerned”?
- (b) If the accused person’s defence counsel challenges the existence of “sufficient elements of incriminating evidence”, with full and well founded arguments, in the context of the judicial review of the extension of the pre-trial detention, is the national court required to give a response, in accordance with the requirement of an effective remedy provided for in the first paragraph of Article 47 of the Charter?
- (c) Does the national court infringe Article 4 [of Directive 2016/343], read together with Article 3 [thereof], as interpreted in the judgment [of 19 September 2018, *Milev* (C-310/18 PPU, EU:C:2018:732)], if it justifies its decision on the extension of the pre-trial detention in accordance with the case-law of the European Court of Human Rights relating to Article 5(1)(c) of the Convention and clearly identifies the existence of evidence in support of the charge which, by nature “would satisfy an objective observer that the person concerned might have committed an offence”, and Article 5(4) of the Convention, in particular, by giving a decision on the objections of the accused person’s defence counsel on the legality of the pre-trial detention which is effective and based on the facts?

Urgent preliminary ruling procedure

- 22 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court.
- 23 In that connection, it should be observed that the present reference for a preliminary ruling concerns the interpretation of Directive 2016/343, which comes under Title V of Part Three of the FEU Treaty on the area of freedom, security and justice. It is therefore amenable to being dealt with under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Court’s Rules of Procedure.
- 24 As regards the criterion relating to urgency, it is necessary, in accordance with the settled case-law of the Court, to take into account the fact that the person concerned in the case in the main proceedings is currently deprived of his liberty and that the question as to whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings (judgment of 6 December 2018, *IK (Execution of an additional sentence)*, C-551/18 PPU, EU:C:2018:991, paragraph 30 and the case-law cited).
- 25 As stated in paragraphs 12 to 14 in the present order, in the dispute in the main proceedings, RH is suspected of having been part of a criminal gang organised in order to commit murders and a pre-trial detention decision was taken against him on 22 October 2018. On 20 December 2018, RH’s lawyer brought an action before the referring court seeking the release of his client and challenging the ‘reasonable grounds for suspecting’ that he had committed the offense at issue.
- 26 It follows that RH’s continued pre-trial detention depends on the decision of the Court, since its answer to the questions referred by the referring court may have an immediate effect on the continuation of his pre-trial detention.
- 27 In those circumstances, on 16 January 2019 the First Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court’s request that the present reference be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

- 28 Pursuant to Article 99 of its Rules of Procedure, where the answer to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, give its decision by reasoned order.
- 29 It is appropriate to apply that provision in the context of the present reference for a preliminary ruling.

The first question

- 30 By its first question, the referring court asks essentially whether Article 267 TFEU and the second paragraph of Article 47 of the Charter must be interpreted as meaning that they preclude national legislation, as interpreted by the national case-law, which has the effect that the national court is required to adjudicate on the legality of a pre-trial detention decision without the possibility to make a request for a preliminary ruling to the Court of Justice or to wait for its reply.
- 31 According to the referring court, the aim of that legislation is to avoid infringements of the right of the suspect or accused person to a review of his application concerning the legality of that pre-trial detention decision within a reasonable time, the infringement of which exposes the members of that court to disciplinary sanctions.
- 32 First, it must be stated that the right of accused persons to have their case heard within a reasonable time is enshrined in Article 6(1) of the Convention and in the second paragraph of Article 47 of the Charter with respect to the trial procedure. In criminal law, that right must be respected not only during the trial procedure, but also during the first stage of the preliminary investigation, from the moment when the person concerned becomes an accused (see, to that effect, judgment of 5 June 2018, *Kolev and Others*, C-612/15, EU:C:2018:392, paragraphs 70 and 71 and the case-law cited).
- 33 With that in mind, it must be recalled that, in accordance with the fourth paragraph of Article 267 TFEU, if a question is raised in a case pending before a national court with regard to a person in custody, the Court must act with the minimum of delay.
- 34 In that connection, the urgent preliminary ruling procedure, established by Article 23a of the Statute of the Court of Justice of the European Union, constitutes one of the methods for implementing the right of all persons to have his case heard within a reasonable time.
- 35 It follows that procedures such as those laid down in Article 23a of the Statute of the Court of Justice of the European Union specifically aim to ensure compliance with the right which is enshrined in Article 47, second paragraph, of the Charter.
- 36 Second, as regards the possibility to make a request for a preliminary ruling or to wait for the Court's reply, it must be recalled that Article 267 TFEU provides specifically, in the second paragraph thereof, that a national court may submit questions for a preliminary ruling to it if it considers that a decision on the question is necessary to enable it to give judgment.
- 37 A reference for a preliminary ruling is based on a dialogue between one court and another, the initiation of which depends entirely on the national court's assessment as to whether that reference is appropriate and necessary (judgments of 16 December 2008, *Cartesio*, C-210/06, EU:C:2008:723, paragraph 91 and the case-law cited, and of 1 February 2017, *Tolley*, C-430/15, EU:C:2017:74, paragraph 31 and the case-law cited).

- 38 Therefore, national courts have the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions of interpretation or validity of EU law provisions necessitating a decision on their part (see, to that effect, judgment of 22 June 2010, *Melki and Abdeli*, C-188/10 and C-189/10, EU:C:2010:363, paragraph 41 and the case-law cited).
- 39 More specifically, the national courts are free to exercise that discretion at whatever stage of the proceedings they consider appropriate. The choice of the most appropriate time to refer a question for a preliminary ruling lies within their exclusive jurisdiction (judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 17 and the case-law cited).
- 40 Furthermore, the Court has already held that the jurisdiction conferred by Article 267 TFEU on any national court or tribunal to make a reference to the Court for a preliminary ruling cannot be called into question by the application of rules of national law which permit an appellate court to vary the order for reference, to set aside the reference and to order the referring court to resume the domestic law proceedings (see, to that effect, judgment of 16 December 2008, *Cartesio*, C-210/06, EU:C:2008:723, paragraphs 95 and 98).
- 41 As regards the need for the referring court to wait for the Court's reply to the request for a preliminary ruling or the possibility, in circumstances such as those at issue in the main proceedings, to adjudicate on an application for release submitted during the period in which the Court examines the request for a preliminary ruling, it is important to state from the outset that there is nothing to prevent the referring court from releasing the suspect or the accused person, in particular if the evidence available to it supports such a finding.
- 42 Furthermore, Article 100(1) of the Rules of Procedure, which state that the referring court has the possibility to withdraw its question until notice of the date of delivery of the judgment has been served on the parties should be taken into account.
- 43 In this context, according to consistent case-law, a national court seised of a dispute governed by EU law must be able to grant interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under EU law. The effectiveness of the system established by Article 267 TFEU would be impaired if a national court, having stayed proceedings pending the reply by the Court of Justice to the question referred to it for a preliminary ruling, were not able to grant interim relief until it delivered its judgment following the reply given by the Court of Justice (see to that effect, judgment of 19 June 1990, *Factortame and Others*, C-213/89, EU:C:1990:257, paragraphs 21 and 22).
- 44 For its part, the Court may itself, at any time, declare that the conditions of its jurisdiction are no longer fulfilled, as is clear from Article 100(2) of its Rules of Procedure.
- 45 Thus, on the basis of settled case-law, it is clear 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 request 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 (order of 5 June 2014, *Antonio Gramsci Shipping and Others*, C-350/13 EU:C:2014:1516, paragraph 10 and the case-law cited).
- 46 Third, with regard to the risk of disciplinary sanctions for disobeying the mandatory instructions of a higher court mentioned by the referring court and, as regards its independence, the Court of Justice has already held that it is essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism under Article 267 TFEU, in that that mechanism may be activated only by a body responsible for applying EU law which satisfies, inter alia, that criterion of independence (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the legal system) (LM)*, C-216/18 PPU, EU:C:2018:586, paragraph 54 and the case-law cited).

- 47 In that connection, like guarantees regarding removal from office of members of the court concerned, or their receipt of a level of remuneration commensurate with the importance of the functions that they carry out, the requirement of independence also means that the disciplinary regime governing those who have the task of adjudicating in a dispute must contain the necessary guarantees in order to prevent any risk of its being used as a system of political control of the content of judicial decisions (judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the legal system)* ('LM'), C-216/18 PPU, EU:C:2018:586, paragraphs 64 and 67 and the case-law cited). Not being exposed to disciplinary sanctions for exercising a choice, such as sending a request for a preliminary ruling to the Court or choosing to wait for the reply to such a request before adjudicating on the substance of a dispute before them, which is exclusively within their jurisdiction, constitutes a guarantee essential to judicial independence (see, to that effect, judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraphs 17 and 25 and the case-law cited).
- 48 It follows that the answer to the first question is that Article 267 TFEU and Article 47, second paragraph, of the Charter must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which has the result that the national court is obliged to adjudicate on the legality of a pre-trial detention decision without the opportunity to make a request for a preliminary ruling to the Court of Justice or to wait for its reply.

The second question

- 49 By its second question, the referring court asks essentially whether Article 4 of Directive 2016/343, read together with recital 16 thereof, must be interpreted as meaning that the conditions relating to the presumption of innocence require that, where the competent court examines the existence of reasonable grounds for believing that the suspect or accused person has committed the offence alleged, in order to adjudicate on the legality of a pre-trial detention decision, that court must weigh the elements of inculpatory and exculpatory evidence presented to it and it must give grounds for its decision, not only indicating the evidence relied on, but also ruling on the objections of the defence counsel of the person concerned.
- 50 Although the referring court was aware of the interpretation given by the Court in the judgment of 19 September 2018, *Milev* (C-310/18 PPU, EU:C:2018:732), since it expressly refers to that judgment, that court considers that the explanations of the Court of Justice are not sufficient to answer the questions referred.
- 51 It must be recalled that, in that judgment, the Court held that Article 3 and Article 4(1) of Directive 2016/343 must be interpreted as meaning that they do not preclude the adoption of preliminary decisions of a procedural nature, such as a decision taken by a judicial authority that pre-trial detention should continue, which are based on suspicion or on incriminating evidence, provided that such decisions do not refer to the person in custody as being guilty and that that directive does not govern the circumstances in which decisions on pre-trial detention may be adopted.
- 52 The referring court's questions fall within the wider context of the notion of 'reasonable suspicion', within the meaning of Article 5(1)(c) of the Convention, and appear to be based specifically on the last sentence of recital 16 of Directive 2016/343, which states that 'before taking a preliminary decision of a procedural nature the competent authority might first have to verify that there are sufficient elements of incriminating evidence against the suspect or accused person to justify the decision concerned, and the decision could contain reference to those elements'.
- 53 In the present case, recital 16 of Directive 2016/343 corresponds to Article 4 thereof, in that the former aims to set out the objectives of the latter so that the last sentence of recital 16 must be read in the light of that recital in its entirety and Article 4 thereof.

- 54 In that connection, on one hand, Article 4 of Directive 2016/343, entitled ‘Public references to guilt’, and the first to the fourth sentences of recital 16 thereof focus on the fact that public statements made by public authorities, and judicial decisions, other than those on guilt, must not refer to that person as being guilty. Article 4(1), second sentence, of Directive 2016/343 also expressly states that that provision ‘shall be without prejudice to ... preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence’.
- 55 On the other hand, although the first and second sentences of recital 16 of Directive 2016/343 merely state the need to preserve the presumption of innocence in public statements, the third and fourth sentences thereof repeat the idea that the caution with regard to public statements is without prejudice to acts of the prosecution or to preliminary decisions of a procedural nature, such as decisions on pre-trial detention.
- 56 Furthermore, Article 6 of Directive 2016/343, entitled ‘Burden of proof’, specifically states in paragraph 1, second sentence, thereof that that provision applies to any obligation on the judge or the competent court to seek both elements of inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national law.
- 57 Therefore, if, as a result of an examination of the elements of incriminating and exculpatory evidence, a national court reaches the conclusion that there are reasonable grounds for suspecting that a person has committed the acts of which he is accused and takes a preliminary decision to that effect, those actions do not amount to presenting the suspect or accused person as being guilty of those charges, within the meaning of Article 4 of Directive 2016/343.
- 58 It is clear from Article 4(1), second sentence, of that directive that that provision applies without prejudice to preliminary decisions of a procedural nature which are taken by the judicial authorities and the fourth sentence of recital 16 of that directive includes, among those preliminary decisions, those relating to pre-trial detention (see, to that effect, judgment of 19 September 2018, *Milev*, C-310/18 PPU, EU:C:2018:732, paragraph 44).
- 59 In any event, it must be recalled that Directive 2016/343 cannot be interpreted, in the light of the minimal degree of harmonisation pursued therein, as being a complete and exhaustive instrument intended to lay down all the conditions for the adoption of decisions on pre-trial detention, whether as regards the rules governing examination of various forms of evidence or the extent of the statement of reasons for such a decision (judgment of 19 September 2018, *Milev*, C-310/18 PPU, EU:C:2018:732, paragraph 47).
- 60 Having regard to the foregoing considerations, the answer to the second question is that Articles 4 and 6 of Directive 2016/343, read together with recital 16 thereof, must be interpreted as meaning that the requirements deriving from the presumption of innocence do not preclude, where the competent court examines the reasonable grounds for believing that the suspect or the accused person has committed the offence with which he is charged, in order to give a ruling on the legality of a pre-trial detention decision, that court from comparing the elements of incriminating and exculpatory evidence presented to it and giving reasons for its decision, not only stating the evidence relied on, but also ruling on the objections of the defence counsel of the person concerned, provided that that decision does not present the person detained as being guilty.

Costs

- 61 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.

On those grounds, the Court (First Chamber) hereby rules:

1. **Article 267 TFEU and Article 47, second paragraph, of the Charter of Fundamental Rights of the European Union must be interpreted as precluding national legislation, such as that at issue in the main proceedings which has the result that the national court is obliged to adjudicate on the legality of a pre-trial detention decision without the opportunity to make a request for a preliminary ruling to the Court of Justice or to wait for its reply.**
2. **Articles 4 and 6 of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, read together with recital 16 thereof, must be interpreted as meaning that the requirements deriving from the presumption of innocence do not preclude, where the competent court examines the reasonable grounds for believing that the suspect or the accused person has committed the offence with which he is charged, in order to give a ruling on the legality of a pre-trial detention decision, that court from comparing the elements of incriminating and exculpatory evidence presented to it and giving reasons for its decision, not only stating the evidence relied on, but also ruling on the objections of the defence counsel of the person concerned, provided that that decision does not present the person detained as being guilty.**

[Signatures]