Reports of Cases

JUDGMENT OF THE COURT (Third Chamber)

1 August 2025 *

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Directive (EU) 2016/343 – Article 6 – Burden of proof that the accused person is guilty – Second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union – Right of access to an independent and impartial tribunal – Charge withdrawn in part by the public prosecutor's office during the hearing – Obligation for the court to rule on the elements of the charge not maintained at the hearing)

In Case C-404/24 [Dimnev], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 10 June 2024, received at the Court on 10 June 2024, in criminal proceedings against

KP,

other party:

Sofiyska gradska prokuratura,

THE COURT (Third Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, S. Rodin, N. Piçarra, O. Spineanu-Matei and N. Fenger, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– KP, by D.L. Kamenova, advokat,

– the Netherlands Government, by M. Bulterman and C. Schillemans, acting as Agents,

– the European Commission, by M. Wasmeier and I. Zaloguin, acting as Agents,

* Language of the case: Bulgarian.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

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 6(1) 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 (OJ 2016 L 65, p. 1) and of the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in the context of criminal proceedings brought against KP for possession and distribution of narcotic substances.

Legal context

European Union law

3 Recitals 22 and 23 of Directive 2016/343 state:

'(22) The burden of proof for establishing the guilt of suspects and accused persons is on the prosecution, and any doubt should benefit the suspect or accused person. The presumption of innocence would be infringed if the burden of proof were shifted from the prosecution to the defence, without prejudice to any *ex officio* fact-finding powers of the court, to the independence of the judiciary when assessing the guilt of the suspect or accused person, and to the use of presumptions of fact or law concerning the criminal liability of a suspect or accused person. Such presumptions should be confined within reasonable limits, taking into account the importance of what is at stake and maintaining the rights of the defence, and the means employed should be reasonably proportionate to the legitimate aim pursued. Such presumptions should be rebuttable and in any event, should be used only where the rights of the defence are respected.

(23) In various Member States not only the prosecution, but also judges and competent courts are charged with seeking both inculpatory and exculpatory evidence. Member States which do not have an adversarial system should be able to maintain their current system provided that it complies with this Directive and with other relevant provisions of Union and international law.'

4 Article 3 of that directive, entitled 'Presumption of innocence', is worded as follows:

'Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.'

5 Article 6 of that directive, entitled 'Burden of proof', provides:

'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

6 Under Article 14(1) of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure), in the version applicable to the main proceedings ('the NPK'):

'The court … shall decide on the basis of its own firm conviction …'

7 Article 27(1) of the NPK provides:

'After the public prosecutor has lodged the indictment, … the court shall conduct the proceedings and decide on all questions relating to the case.'

8 Article 46 of the NPK provides:

'(1) The public prosecutor shall bring and pursue prosecutions for criminal offences liable to public prosecution.

(2) In fulfilment of the tasks referred to in paragraph 1, the public prosecutor:

…

3. shall participate in court proceedings as the State prosecutor;

…'

9 Article 246 of the NPK states:

'(1) The public prosecutor shall draw up an indictment if he or she is satisfied that the necessary evidence exists … to bring a prosecution before the court …

(2) The factual part of the indictment shall set out … the criminal offence which the accused person has committed …

(3) The final part of the indictment shall contain: … the legal classification of the act …

…'

10 Article 293 of the NPK is worded as follows:

'The statement by the public prosecutor that the criminal proceedings are to be terminated or that a judgment of acquittal is to be given does not release the court from its obligation to decide on the basis of its own firm conviction.'

11 Under Article 301(1) of the NPK:

‘When giving judgment, the court shall examine and rule on the following questions:

1. whether an act has been committed, whether it was committed by the defendant, and whether it was committed culpably;

2. whether that act constitutes a criminal offence and how it is to be classified in law;

…’

The main proceedings and the question referred

12 The Sofiyska gradska prokuratura (Sofia City Public Prosecutor’s Office, Bulgaria) brought charges against KP for selling to a third person, on 21 May 2022, a sachet containing 0.67 g of marijuana, and for the possession, in two different places, for the purposes of distribution, of two other sachets containing 1.61 g and 0.5 g of marijuana.

13 In the indictment, those three acts were classified by that public prosecutor’s office, under Article 354a(1) of the Nakazatelen kodeks (Criminal Code), as distribution of a narcotic substance, in relation to the first act, and possession of a narcotic substance for the purposes of distribution, in relation to the two other acts. Those three offences were combined into one offence, classified as ‘repeated’, provided for in Article 26(1) of the Criminal Code, which is punishable by a term of imprisonment of two to eight years and a fine of 5 000 to 20 000 leva (BGN) (approximately EUR 2 500 to 10 000).

14 The Sofiyski gradski sad (Sofia City Court, Bulgaria), before which the case was brought and which is the referring court, conducted a judicial investigation and heard the parties at the hearing in compliance with, according to that court, the adversarial principle and the rights of the defence. In that context, KP stated that he had the three sachets of narcotic substances in his possession for personal use and did not sell such substances.

15 During the hearing, after the evidence-gathering stage, the public prosecutor took the view that KP had the three sachets of marijuana in his possession for personal use. The public prosecutor therefore withdrew certain elements of the charge, namely the sale of the first sachet to a third person and the intention to distribute in respect of the two other sachets. Consequently, the public prosecutor requested that the defendant be acquitted as regards those elements and convicted of the offence set out in Article 354a(3) of the Criminal Code, namely possession of narcotic substances, punishable by a term of imprisonment of one to six years and a fine of BGN 2 000 to 10 000 (approximately EUR 1 000 to 5 000). KP’s lawyer, for his part, requested that KP be acquitted on the basis that significant procedural errors had been committed during the gathering of evidence at the pre-trial stage of the criminal proceedings.

16 The referring court shares the public prosecutor’s view as regards the defendant’s conduct in connection with the second and third sachet of marijuana, but is of the opinion, on the basis of its own analysis of the evidence gathered, that KP’s conduct in connection with the first sachet corresponds to the offence set out in Article 354a(1) of the Criminal Code, namely the

distribution of narcotic substances, since KP handed over that sachet to a third person, after he had bought it by mutual agreement and by sharing the costs thereof with that person. Accordingly, that court takes the view that a conviction must be handed down for that offence.

17 The referring court states that the Bulgarian legislation, and more specifically Article 293 of the NPK, allows for such a conviction, even against the view of the public prosecutor expressed during the hearing. The public prosecutor sets out, in the indictment lodged with the criminal court and which the public prosecutor may no longer withdraw, the factual and legal context of that charge, on the basis of which that court must rule and from which it cannot depart by ruling, inter alia, on facts which are not set out in the indictment. The criminal court must therefore give a ruling on the substance of the indictment on the basis of its own firm conviction, without being bound by the arguments of the parties, where appropriate by taking of its own motion all of the necessary measures in order to establish the facts referred to in that indictment.

18 In that context, the referring court asks whether the first sentence of Article 6(1) of Directive 2016/343, according to which 'the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution', requires the public prosecutor not only to present evidence in support of the charge, but also to assert before the criminal court that guilt has been proved. According to that court, it is doubtful that the public prosecutor can satisfy the burden of proof incumbent upon him or her where he or she no longer submits, during the hearing, that the defendant is guilty.

19 The referring court is of the view that, in those circumstances, proof of that person's guilt necessarily lies with the court. Consequently, the referring court is uncertain whether the criminal court may find on its own initiative, in the *ex officio* examination of the evidence, to which the second sentence of Article 6(1) and recitals 22 and 23 of Directive 2016/343 refer, that guilt has been proved.

20 Furthermore, the referring court states that, in addition to that directive, Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8) is applicable to the situation in the main proceedings, with the result that that situation comes within the scope of the Charter as defined in Article 51(1) thereof.

21 Accordingly, since the requirements of an 'impartial tribunal', within the meaning of the second paragraph of Article 47 of the Charter, must be met, the referring court is uncertain whether it is possible to find a tribunal impartial which, departing from the joint position of the public prosecutor and the defence, proves by itself the guilt of the defendant, thereby substituting itself for the public prosecutor as regards certain elements of the charge.

22 In that regard, the referring court takes the view that the situation at issue in the main proceedings is different from that analysed in the judgment of 9 November 2023, *BK (Reclassification of the offence)* (C-175/22, EU:C:2023:844, paragraphs 55 to 57), in which the Court of Justice held that there was an impartial tribunal. The referring court points out that, in the case in the main proceedings, the public prosecutor clearly stated that he did not maintain certain elements of the charge, including certain factual elements, whereas, in the case which gave rise to that judgment, only the reclassification of the acts was at issue, in relation to which the public prosecutor had not made submissions.

23 Lastly, according to the referring court, the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), must also be taken into account both as 'international law', referred to in recital 23 of Directive 2016/343, and pursuant to Article 52(3) of the Charter.

24 The European Court of Human Rights held, in its judgments of 20 September 2016, *Karelin v. Russia* (CE:ECHR:2016:0920JUD000092608), and of 8 October 2019, *Korneyeva v. Russia* (CE:ECHR:2019:1008JUD007205117), that a tribunal is not impartial where the public prosecutor was absent from the hearings in which new evidence was examined. In that first judgment and in the judgment of 6 March 2018, *Mikhaylova v. Ukraine* (CE:ECHR:2018:0306JUD001064408), the European Court of Human Rights also held that a tribunal is not impartial where it convicts a person in the absence of the public prosecutor and thus bears the burden of proving the guilt of the accused person. It follows from this that, a fortiori, a tribunal assumes the public prosecutor's function of pursuing the charge where it convicts that person despite the fact that the public prosecutor, present at the hearing, has withdrawn certain elements of the charge.

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

'Does Article 6(1), read in conjunction with recitals 22 and 23, of Directive [2016/343], read in conjunction with the second paragraph of Article 47 of the Charter, preclude a national law whereby a statement by the public prosecutor that he [or she] does not support the charge does not release the court from the duty to give judgment on the substance of the case, with the result that it hands down a conviction in respect of part of the unsupported charge?'

Consideration of the question referred

26 By its question, the referring court asks, in essence, whether Article 6(1) of Directive 2016/343 and the second paragraph of Article 47 of the Charter must be interpreted as precluding national legislation pursuant to which a criminal court is required to rule on the indictment on the basis of its own firm conviction, even though the public prosecutor, after submitting evidence at the hearing which, according to that criminal court, makes it possible to convict the accused person of the offences set out in that indictment, requests, as regards some of the acts referred to in that indictment, that that person be acquitted or convicted of a less serious offence.

27 It must be recalled, in the first place, that Directive 2016/343 is concerned solely with laying down common minimum rules and, therefore, does not provide for an exhaustive harmonisation of criminal procedure (judgment of 8 June 2023, *VB (Information for a person convicted* in absentia), C-430/22 and C-468/22, EU:C:2023:458, paragraph 29 and the case-law cited). In the light of the limited scope of the harmonisation carried out by that directive, the issues which are not governed by it fall within the scope of national law (see, to that effect, judgment of 4 July 2024, *FP and Others (Trial by videoconference)*, C-760/22, EU:C:2024:574, paragraph 28 and the case-law cited).

28 The aim of Article 6 of that directive is to govern the allocation of the burden of proof in the adoption of judicial decisions on guilt (see, to that effect, judgment of 28 November 2019, *Spetsializirana prokuratura*, C-653/19 PPU, EU:C:2019:1024, paragraph 33).

29 In accordance with the first sentence of Article 6(1) of Directive 2016/343, the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. The Court has previously held that Article 6(1) of that directive precludes, as is apparent from recital 22 of that directive, the burden of that proof from being transferred from the prosecution to the defence (see, to that effect, judgment of 8 December 2022, *HYA and Others (Impossibility of questioning prosecution witnesses)*, C-348/21, EU:C:2022:965, paragraph 32).

30 It follows that, pursuant to the first sentence of Article 6(1) of Directive 2016/343, the prosecuting authority must gather evidence in support of the charge and submit it before the competent court.

31 As is apparent from the second sentence of Article 6(1) of Directive 2016/343, the obligation arising from the first sentence of Article 6(1) is without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence.

32 Furthermore, as is clear from recital 22 of Directive 2016/343, the finding that the presumption of innocence would be infringed if the burden of proof were shifted from the prosecution to the defence is without prejudice to any *ex officio* fact-finding powers of the court, to the independence of the judiciary when assessing the guilt of the suspect or accused person, and to the use of presumptions of fact or law concerning the criminal liability of a suspect or accused person.

33 It follows that the obligation on the prosecution, under Article 6(1) of Directive 2016/343, to adduce evidence of the guilt of the accused person is not such as to preclude national legislation from providing that it is for the judge or the competent court independently to assess the guilt of the accused person after having, where appropriate, themselves sought inculpatory and exculpatory evidence.

34 That is all the more so where, as in the present case, the judge or the competent court assesses the guilt of the accused person, independently of the assessment made in that regard by the public prosecutor, solely on the basis of the evidence submitted by the public prosecutor and the defence.

35 It follows from the foregoing that Article 6(1) of Directive 2016/343 does not preclude such national legislation, even where the public prosecutor, after submitting such evidence at the hearing, requests, in respect of some of the acts set out in the indictment, that the accused person be acquitted or convicted of a less serious offence.

36 In the second place, it must be borne in mind that, in accordance with Article 51(1) of the Charter, when the Member States implement EU law, they must respect the rights guaranteed by the Charter.

37 In that regard, the Court has held that the presumption of innocence, to which recital 22 and Article 6 of Directive 2016/343 refer, presupposes that the judge is free of any bias and any prejudice when examining the criminal liability of the accused. The independence and impartiality of judges are therefore essential conditions for guaranteeing the presumption of innocence (see, to that effect, judgment of 16 November 2021, *Prokuratura Rejonowa w Mińsku Mazowieckim and Others*, C-748/19 to C-754/19, EU:C:2021:931, paragraph 88).

38 The right of every person to be heard by an independent and impartial tribunal previously established by law is one of the requirements inherent in the fundamental right to a fair trial guaranteed by the second paragraph of Article 47 of the Charter (see, to that effect, judgment of 29 July 2024, *Breian*, C-318/24 PPU, EU:C:2024:658, paragraph 80).

39 It is therefore necessary to determine whether the requirements of independence and impartiality laid down in the second paragraph of Article 47 of the Charter preclude national legislation which allows a criminal court, at the end of the criminal trial, to convict an accused person for an offence set out in the indictment, even where the public prosecutor, after submitting the evidence gathered, requests that the person be acquitted or convicted of a less serious offence.

40 In accordance with settled case-law, the requirement that courts be independent has two aspects to it. The first aspect, which is external, 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, being thus protected against external interventions or pressure liable to impair the independent judgement of its members and to influence their decisions (judgment of 19 December 2024, *Vivacom Bulgaria*, C-369/23, EU:C:2024:1043, paragraph 30 and the case-law cited).

41 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 19 December 2024, *Vivacom Bulgaria*, C-369/23, EU:C:2024:1043, paragraph 31 and the case-law cited).

42 Thus, the guarantees of independence and impartiality required under EU law presuppose rules that are such as to dispel any reasonable doubt, in the minds of individuals, in particular as to the neutrality of the body in question with respect to the interests before it (judgment of 19 December 2024, *Vivacom Bulgaria*, C-369/23, EU:C:2024:1043, paragraph 32 and the case-law cited).

43 It cannot be stated that national legislation which requires a criminal court to rule on the indictment on the basis of its own firm conviction, without being bound by the assessments of the guilt of the accused person made by the public prosecutor at the hearing, is contrary to those requirements. Such legislation, which seeks to ensure that criminal law is applied in full and that perpetrators of offences are punished, is not such as to call into question the equal distance of that court from the parties to the proceedings and their respective interests with regard to the subject matter of the proceedings or to create a reasonable doubt in the minds of individuals in that regard.

44 It should be noted that, in so far as the Charter sets out rights corresponding to rights guaranteed under the ECHR, Article 52(3) of the Charter is intended to ensure the necessary consistency between the rights contained in the Charter and the corresponding rights guaranteed under the ECHR, without thereby adversely affecting the autonomy of EU law. According to the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), the second paragraph of Article 47 of the Charter corresponds to Article 6(1) ECHR. The Court must therefore ensure that its interpretation in the present case safeguards a level of protection which

does not fall below the level of protection established in Article 6(1) ECHR, as interpreted by the European Court of Human Rights (judgment of 19 December 2024, *Vivacom Bulgaria*, C-369/23, EU:C:2024:1043, paragraph 28 and the case-law cited).

45 The request for a preliminary ruling refers to the case-law of the European Court of Human Rights pursuant to which the impartiality requirement arising from Article 6(1) ECHR precludes a criminal court from bearing the burden of supporting the accusation by handing down, where appropriate after gathering new evidence on its own initiative, a conviction when the public prosecutor was absent from the hearings (ECtHR, 20 September 2016, *Karelin v. Russia*, CE:ECHR:2016:0920JUD000092608, §§ 73 and 76, and ECtHR, 6 March 2018, *Mikhaylova v. Ukraine*, CE:ECHR:2018:0306JUD001064408, § 64).

46 However, that case-law is not relevant in the present case. The question referred for a preliminary ruling does not concern the gathering, at the hearing, of new evidence on the initiative of the trial court in the absence of the public prosecutor or the holding of a hearing also in the absence of the public prosecutor, circumstances to which that case-law relates, but rather the obligation of that court to rule on the indictment on the basis of its own firm conviction in a situation where the public prosecutor took part in the hearing, the only particularity of that situation being the fact that, even though all the evidence has been gathered, the public prosecutor has requested, as regards certain acts referred to in the indictment, that the accused person be acquitted or convicted of a less serious offence.

47 In the light of all the foregoing considerations, the answer to the question referred is that Article 6(1) of Directive 2016/343 and the second paragraph of Article 47 of the Charter must be interpreted as not precluding national legislation pursuant to which a criminal court is required to rule on the indictment on the basis of its own firm conviction, even though the public prosecutor, after submitting evidence at the hearing which, according to that criminal court, makes it possible to convict the accused person of the offences set out in that indictment, requests, as regards some of the acts referred to in that indictment, that that person be acquitted or convicted of a less serious offence.

Costs

48 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 (Third Chamber) hereby rules:

Article 6(1) 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, and the second paragraph of Article 47 of the Charter of Fundamental Rights of the European Union,

must be interpreted as not precluding national legislation pursuant to which a criminal court is required to rule on the indictment on the basis of its own firm conviction, even though the public prosecutor, after submitting evidence at the hearing which, according to that criminal court, makes it possible to convict the accused person of the offences set out

in that indictment, requests, as regards some of the acts referred to in that indictment, that that person be acquitted or convicted of a less serious offence.

[Signatures]