Reports of Cases

ORDER OF THE COURT (Second Chamber)

24 September 2019*

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — Directive (EU) 2016/343 — Article 7(4) — Strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings — Right to remain silent and right not to incriminate oneself — Agreement between the prosecutor and the offender — Approval of such an agreement by the court — Condition — Consent of the other accused persons — Charter of Fundamental Rights of the European Union — Not applicable)

In Case C-467/19 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 19 June 2019, received at the Court on 19 June 2019, in the criminal proceedings against

QR,

interveners:

Spetsializirana prokuratura,

YM,

ZK,

HD,

THE COURT (Second Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz and C. Vajda (Rapporteur), P.G. Xuereb and A. Kumin, Judges,

Advocate General: G. Hogan,

Registrar: A. Calot Escobar,

having regard to the referring court's request of 19 June 2019, received at the Court on 19 June 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 the Second Chamber of 10 July 2019 to grant that request,

makes the following

* Language of the case: Bulgarian.

Order

1 This request for a preliminary ruling concerns the interpretation of Article 7(4) 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), the interpretation of Articles 47 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter') and the interpretation of the principles of effectiveness and equal treatment.

2 The request has been made in criminal proceedings brought against four Bulgarian nationals, QR, YM, ZK and HD, concerning their membership of an organised criminal group.

Legal context

European Union law

The Charter

3 Article 20 of the Charter, headed 'Equality before the law', provides as follows:

'Everyone is equal before the law.'

4 Article 51 of the Charter, entitled 'Field of application', provides as follows:

'1. The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties.

2. The Charter does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union, or modify powers and tasks as defined in the Treaties.'

Directive 2016/343

5 Recital 9 of Directive 2016/343 states:

'The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down common minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.'

6 Article 1 of that directive, entitled 'Subject matter', provides as follows:

'This Directive lays down common minimum rules concerning:

(a) certain aspects of the presumption of innocence in criminal proceedings;

(b) the right to be present at the trial in criminal proceedings.'

7 Article 2 of that directive, entitled 'Scope', provides as follows:

'This Directive applies to natural persons who are suspects or accused persons in criminal proceedings. It applies at all stages of the criminal proceedings, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive.'

8 Article 7 of that Directive, entitled 'Right to remain silent and right not to incriminate oneself', provides, in paragraph 4 thereof:

'Member States may allow their judicial authorities to take into account, when sentencing, cooperative behaviour of suspects and accused persons.'

Bulgarian law

9 Article 381 of the Nakazatelno-protsesualen kodeks (Bulgarian Code of Criminal Procedure) ('NPK'), entitled 'Agreement on a negotiated sentence made in the course of the preliminary stage of the proceedings' provides, in paragraphs 1 to 6 thereof, that, once the investigation is finished, where the accused person admits his guilt, he may conclude an agreement on the imposition of a negotiated sentence in writing with the prosecutor through his lawyer. By such an agreement, the accused person pleads guilty, waives the right to ordinary criminal proceedings and consents to a specific penalty being imposed on him. The penalty thus imposed is always a lesser penalty than that to which the accused person would have been sentenced at the end of ordinary proceedings.

10 Under Article 381(7) of the NPK:

'Where the proceedings concern several persons …, the agreement may be concluded by some of those persons …'

11 Under Article 382 of the NPK, entitled 'Decision of the court on the agreement':

'1. The agreement shall be submitted by the prosecutor before the competent court of first instance immediately after having been drawn up, at the same time as the case.

…

5. It is open to the court to propose amendments to the agreement. Those amendments shall be examined with the prosecutor and the lawyer. The accused person shall be heard last.

6. The contents of the final agreement, which shall be signed by the prosecutor, the lawyer and the accused person, shall be added to the file before the court.

7. The court shall approve the agreement in so far as it is not contrary to the law or to accepted principles of morality.

8. Where the court does not approve the agreement, it shall refer the case back to the prosecutor. In that case, the admission of guilt of the accused person … shall have no probative value. …'

12 Article 383 of the NPK, entitled 'Consequences of an agreement on a negotiated sentence' provides that the agreement approved by the court has the force of a judgment which has become final.

13 Under Article 384 of the NPK, entitled 'Agreement on a negotiated sentence made in the course of the judicial stage of the proceedings':

'1. … the court may approve an agreement on the imposition of a negotiated sentence after the judicial stage of the proceedings has been opened …

…

3. In such cases, the agreement on the imposition of a negotiated sentence shall be approved only once the consent of all the parties has been obtained.'

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

14 It is apparent from the order for reference that the Spetsializirana prokuratura (Specialised Prosecuting Authority, Bulgaria) brought criminal charges against four persons, namely QR, YM, ZK and HD, and that it laid an indictment before the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria).

15 QR is accused of having led an organised criminal group with the objective of committing the criminal offences of usury and extortion. The other three people are accused of having participated in that organised criminal group.

16 QR is also accused of having committed four different cases of extortion. The first case was committed together with HD, the second together with ZK and HD, the third on his own, and the fourth together with YM and ZK. It has been claimed, in respect of those four cases, that the extortion was committed on behalf of the organised criminal group in question.

17 QR has admitted his guilt in respect of all those charges. His lawyer and the prosecutor have concluded a written agreement under which a lesser sentence will be imposed on him than that provided for by law. QR having consented to that agreement, the prosecutor, QR and his lawyer have signed it.

18 YM and his lawyer have not consented to the conclusion of that agreement, and oppose it. ZK and his lawyer considered that there was no point in giving or refusing consent to the conclusion of that agreement, given that YM's opposition prevents the conclusion of the agreement in question. HD and his lawyer have not made any statement in that regard.

19 In accordance with the national procedural rules, the agreement in question was submitted for approval to the referring court. That court explains that such an agreement, where it is concluded during the judicial stage of criminal proceedings and in a situation in which several persons are accused, can be approved by the competent court only after the consent of all the parties. In this connection, it states that that requirement was interpreted literally in some decisions of the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria) to the effect that it is necessary, in order for such an agreement to be approved, to obtain the consent of all the persons accused in the criminal proceedings concerned.

20 The referring court considers that the fact that an accused person gives his consent to the conclusion, by a coaccused, of an agreement on the imposition of a negotiated sentence increases the probability that the proceedings against that accused person will end in a guilty verdict. First, the conclusion of such an agreement by a coaccused would make the latter a witness in the proceedings, who may make statements prejudicial to the other accused persons. Secondly, according to part of the national case law, such an agreement is considered to constitute a judicial act against all the accused persons in which a final decision on the substance of the case is given.

21 However, the referring court raises the issue of whether the requirement to obtain the consent of all the accused persons is consistent with Article 7(4) of Directive 2016/343, Article 47, first and second paragraphs, of the Charter and Article 52(1) thereof, and the principles of effectiveness and equal treatment.

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

'Is case-law such as that at issue, which concerns the national law regarding the approval by the court of an agreement on the imposition of a negotiated sentence concluded between the prosecution and the defence, which provides for the consent of the other persons charged as a condition for the approval of such an agreement, and that that consent is required only during the judicial stage of the proceedings, consistent with Article 7(4) of Directive 2016/343, with Article 47 and Article 52 of the Charter, and with the principles of effectiveness and equality?'

The urgent preliminary ruling procedure

23 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.

24 In support of its request, it stated, inter alia, that QR has been on remand in custody and that retaining him in custody depends on the answer to the question referred, inasmuch as it cannot, in the absence of an answer from the Court of Justice, rule on the agreement at issue in the main proceedings which provides for a reduced prison sentence.

25 In that connection, it should be pointed out, first, 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.

26 Second, as regards the criterion relating to urgency, it is necessary, according to the consistent case-law of the Court, to take into consideration the fact that the person involved in the main proceedings is currently deprived of his liberty and that the question as to whether he remains in custody depends on the outcome of the dispute in the main proceedings (judgment of 27 May 2019, *OG and PI (Public Prosecutor's Office in Lübeck and in Zwickau)*, C-508/18 and C-82/19 PPU, EU:C:2019:456, paragraph 38 and the case-law cited). In the present case, it is apparent from the information in the file before the Court that QR is deprived of his liberty and that the question as to whether he remains in custody depends on the outcome of the dispute in the main proceedings.

27 In those circumstances, on 10 July 2019 the Second Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to accede to the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the question referred

28 Pursuant to Article 99 of its Rules of Procedure, where the answer to a question referred 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.

30 By its question, the referring court asks, in essence, whether Article 7(4) of Directive 2016/343, the first and second paragraphs of Article 47 of the Charter and Article 52(1) thereof, the principle of effectiveness and the principle of equal treatment enshrined in Article 20 of the Charter must be interpreted as precluding the approval, by a court, of an agreement on the imposition of a negotiated sentence, such as the agreement at issue in the main proceedings, concluded between a person accused on the basis of his membership of a criminal group and the prosecutor, from being subject to the condition that the other persons accused on the basis of their membership of that criminal group must give their consent to the conclusion of that agreement.

31 It must be observed in this connection that, under Article 2 of Directive 2016/343, that directive applies to natural persons who are suspects or accused persons in criminal proceedings. It applies at all stages of the criminal proceedings, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive. It is clear from the order for reference that the four accused persons in the case in the main proceedings are accused in the context of criminal proceedings and that a final decision to determine whether they are guilty of the criminal offence concerned has not yet been adopted.

32 In that context, it must be recalled that the purpose of Directive 2016/343 is, as is clear from recital 9 and Article 1 thereof, to lay down common minimum rules applicable to criminal proceedings concerning certain aspects of the presumption of innocence and the right to be present at the trial (judgment of 5 September 2019, *AH and Others (Presumption of innocence)*, C-377/18, EU:C:2019:670, paragraph 38 and the case-law cited).

33 Thus, Article 7 of Directive 2016/343 lays down certain common rules governing the right to remain silent and the right not to incriminate oneself. It is in that context that Article 7(4) states that Member States may allow their judicial authorities to take into account, when sentencing, cooperative behaviour of suspects and accused persons.

34 That latter provision is thus restricted to reserving to the Member States, in the context of the right to remain silent and the right not to incriminate oneself, the option to allow their judicial authorities, when sentencing, to take into account the cooperation of the accused persons. Therefore, since that provision does not impose any obligation on the Member States to guarantee that those authorities take that cooperation into account, it does not confer any right on an accused person to receive a reduced penalty in the event that they cooperate with the judicial authorities, for example through the conclusion of an agreement with the prosecutor in which that person admits his guilt.

35 In addition, Article 7(4) of Directive 2016/343 does not state the procedure and conditions governing, where applicable, the possibility for the judicial authorities to take into account, when sentencing, cooperative behaviour of accused persons, that procedure and those conditions being solely a matter of national law.

36 It follows that Article 7(4) of Directive 2016/343 does not govern the issue of whether or not the approval of an agreement on the imposition of a negotiated sentence may be rendered subject to a consent requirement, such as that at issue in the main proceedings.

37 As regards the provisions of the Charter mentioned by the referring court, it must be observed that the Charter is not applicable in the case in the main proceedings.

38 According to Article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing EU law. Under Article 51(2), the Charter does not extend the field of application of EU law beyond the powers of the European Union and does not ‘establish any new

power or task for the Union, or modify powers and tasks as defined in the Treaties'. Accordingly, the Court is called upon to interpret, in the light of the Charter, the law of the European Union within the limits of the powers which are conferred on it (judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 32 and the case-law cited).

39 As is apparent from the explanations relating to Article 51 of the Charter, which must be given due regard pursuant to Article 52(7) thereof, the concept of 'implementation' provided for in Article 51 thereof confirms the case-law of the Court as to the applicability of the fundamental rights of the European Union as general principles of the EU law developed before the Charter entered into force, according to which the requirement to respect fundamental rights guaranteed in the legal order of the European Union is binding on the Member States only when they are acting within the scope of EU law (judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 33 and the case-law cited).

40 In that regard, it should be borne in mind that the concept of 'implementing Union law', as referred to in Article 51 of the Charter, presupposes a degree of connection between the measure of EU law and the national measure at issue which goes beyond the matters covered being closely related or one of those matters having an indirect impact on the other (judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 34 and the case-law cited).

41 The Court has found, in particular, that fundamental European-Union rights could not be applied in relation to national legislation because the provisions of EU law in the area concerned did not impose any specific obligation on Member States with regard to the situation at issue in the main proceedings (judgment of 10 July 2014, *Julián Hernández and Others*, C-198/13, EU:C:2014:2055, paragraph 35 and the case-law cited).

42 In the present case, as is apparent from paragraph 34 above, EU law does not impose any obligation on the Member States to allow their judicial authorities, when sentencing, to take into account cooperative behaviour of suspects and accused persons, inter alia though the conclusion of an agreement with the prosecutor in which a person admits his guilt in exchange for a reduced sentence.

43 Consequently, a consent requirement, such as that at issue in the main proceedings, to which the approval of an agreement on the imposition of a negotiated sentence is rendered subject, cannot be regarded as implementing Union law within the meaning of Article 51(1) of the Charter.

44 As regards the principle of effectiveness, it is sufficient to state, as is apparent from paragraph 34 above, that EU law does not confer on an accused person the right to conclude an agreement with the prosecutor in exchange for a reduced sentence, such as the agreement at issue in the main proceedings. Accordingly, the principle of effectiveness does not apply to a consent requirement such as that at issue in the main proceedings, upon which the approval of such an agreement is conditional.

45 In those circumstances, the answer to the question referred is that Article 7(4) of Directive 2016/343 must be interpreted as meaning that it does not govern the issue of whether or not the approval, by a court, of an agreement on the imposition of a negotiated sentence, such as the agreement at issue in the main proceedings, concluded between a person accused, on the basis of his alleged membership of a criminal group, and the prosecutor, may be rendered subject to the condition that the other persons accused, on the basis of their membership of that criminal group, must give their consent to the conclusion of that agreement.

Costs

46 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 (Second Chamber) hereby rules:

Article 7(4) 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 must be interpreted as meaning that it does not govern the issue of whether or not the approval, by a court, of an agreement on the imposition of a negotiated sentence, such as the agreement at issue in the main proceedings, concluded between a person accused, on the basis of his alleged membership of a criminal group, and the prosecutor, may be rendered subject to the condition that the other persons accused, on the basis of their membership of that criminal group, must give their consent to the conclusion of that agreement.

[Signatures]