Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

11 July 2024 *

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Fight against organised crime – Framework Decision 2008/841/JHA – Right to an effective remedy and to a fair trial – Articles 47 and 52 of the Charter of Fundamental Rights of the European Union – Second subparagraph of Article 19(1) TEU – Excessive length of the pre-trial stage of the criminal proceedings – Substantive infringements of procedural rules, but which are capable of being remedied, affecting the indictment – Right of the accused person to have the criminal proceedings against him or her brought to an end)

In Case C-265/23 [Volieva], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Okrazhen sad Sliven (Provincial Court, Sliven, Bulgaria), made by decision of 12 April 2023, received at the Court on 25 April 2023, in the criminal proceedings against

DM,

AV,

WO,

AQ,

intervening party:

Okrazhna prokuratura – Sliven,

THE COURT (Sixth Chamber),

composed of T. von Danwitz, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, acting as Judge of the Sixth Chamber, and P.G. Xuereb, Judge,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* 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.

after considering the observations submitted on behalf of:

– DM, by KS and ZY,

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

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 4 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ 2008 L 300, p. 42), read in conjunction with the second subparagraph of Article 19(1) TEU and Articles 47 and 52 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in criminal proceedings brought against DM and other natural persons, on charges of participation in an organised criminal group and corruption.

Legal context

European Union law

3 Article 4 of Framework Decision 2008/841, entitled 'Special circumstances', provides:

'Each Member State may take the necessary measures to ensure that the penalties referred to in Article 3 may be reduced or that the offender may be exempted from penalties if he, for example:

(a) renounces criminal activity; and

(b) provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to:
   (i) prevent, end or mitigate the effects of the offence;
   (ii) identify or bring to justice the other offenders;
   (iii) find evidence;
   (iv) deprive the criminal organisation of illicit resources or of the proceeds of its criminal activities; or
   (v) prevent further offences referred to in Article 2 from being committed.'

Bulgarian law

4 In the version in force from 29 April 2006 to 28 May 2010, Article 334 of the Nakazatelno protsesualen kodeks (Code of Criminal Procedure; 'the NPK'), entitled 'Powers of the appeal court', provided, in paragraph 4 thereof, that the appeal court could annul the verdict and bring the criminal proceedings to an end, inter alia where the court of first instance had not exercised the powers conferred on it by Article 369(4) of the NPK.

5 In the version in force from 29 April 2006 to 28 May 2010, Article 368 of the NPK, entitled 'Request from the accused person to the court', was worded as follows:

'(1) If more than two years have elapsed in the pre-trial proceedings since a person was charged with a serious criminal offence and more than one year in other cases, the accused person may request that the case be examined by the court.

(2) In the cases referred to in paragraph 1, the accused person shall lodge an application with the competent court of first instance, which shall hear the case the case without delay.'

6 In the version in force from 29 April 2006 to 28 May 2010, Article 369 of the NPK, entitled 'Examination of the case', provided:

'(1) The court shall decide on the application in a single-judge formation within seven days and, where it finds that the conditions referred to in Article 368(1) are met, it shall refer the case back to the public prosecutor, giving him or her the opportunity to submit it to the court for examination within two months by lodging an indictment or a proposal to exempt the offender from criminal liability and to impose on him or her an administrative penalty, or an agreement to negotiate a sentence, or to discontinue the criminal proceedings and to inform the court accordingly.

(2) If, on expiry of the two-month period, the prosecutor has not exercised the powers conferred on him or her under paragraph 1, or if the court has not approved the agreement to negotiate a sentence, the court shall hear the case and bring the criminal proceedings to an end by an order made *in camera* in a single-judge formation. After the order has been made, the criminal proceedings shall continue against the joint perpetrators and concerning the other offences in respect of which the person is charged.

(3) Where the prosecutor has exercised his or her powers under paragraph 1, but substantial infringements of procedural rules have been committed in the course of the investigation, the court, sitting *in camera* in a single-judge formation, shall bring the proceedings to an end and refer the case back to the prosecutor to remedy the infringements and for the case to be brought before the court within one month.

(4) If the prosecutor fails to refer the matter to the court within the time limit referred to in paragraph 3, or if the substantive infringements of the procedural rules are not remedied, or if new infringements are committed, the court, sitting *in camera* in a single-judge formation, shall bring the criminal proceedings to an end by way of order.

(5) The acts of the court referred to in paragraphs 2 and 4 shall be final.'

7 With effect from 28 May 2010, the Bulgarian legislature removed, in Article 334(4) of the NPK, the possibility for the appeal court to annul the verdict and to bring the criminal proceedings to an end if the court of first instance had not exercised the powers conferred on it by Article 369(4) of that code. The national legislature at law also repealed the provisions of Chapter 26 of that code, namely Articles 368 and 369 thereof, while specifying that proceedings already pending would be completed in the manner provided for previously.

8 In the version in force from 13 August 2013 to 5 November 2017, Article 334(4) of the NPK again provided, in the same way as in the version in force from 29 April 2006 to 28 May 2010, that the appeal court could set aside the verdict and bring the criminal proceedings to an end, in particular where the court of first instance had not exercised the powers conferred on it by Article 369(4) of the NPK.

9 In the version in force from 13 August 2013 to 5 November 2017, the NPK also included a Chapter 26, which included Articles 368 and 369 of that code. The first article was worded in the same terms as in the version of that code in force from 29 April 2006 to 28 May 2010. The same applied to Article 369 of the same code, the sole difference being that the time limit set out in paragraph 1 of the latter article was extended to three months instead of two.

10 In the version in force from 5 November 2017, Article 334(4) of the NPK no longer provides that the appeal court may set aside the judgment and bring the criminal proceedings to an end where, before the court of first instance, the substantial infringements of procedural rules are not remedied or where new infringements are committed.

11 In the version in force from 5 November 2017, Article 368 of the NPK, entitled 'Acceleration of the pre-trial proceedings', is worded as follows:

'(1) If more than two years have elapsed in the pre-trial proceedings since a person was charged with a serious criminal offence and more than six months in other cases, the accused, the victim or the injured legal person may request that the investigation of the case be expedited. Those time limits shall not include the time during which the case was pending before the court or stayed pursuant to Article 25.

(2) The request referred to in paragraph 1 shall be made through the prosecutor, who shall forward the case without delay to the court.

(3) The court shall decide *in camera*, in a single-judge formation, within 15 days.'

12 In the version in force from 5 November 2017, Article 369 of the NPK, entitled 'Decision of the court. Measures to accelerate criminal proceedings' provides:

'(1) The court shall decide by assessing the factual and legal complexity of the case, any delays in the gathering, verification and evaluation of the evidence and means of evidence, and the reasons for these delays.

(2) Where the court finds that there has been an unjustified delay, it shall fix an appropriate time limit for taking the action. The order is final.

(3) New requests for acceleration may be made after the expiry of the period referred to in paragraph 2.'

13 In the same version of the NPK, those last two articles still fall within Chapter 26 of that code.

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

14 On 5 July 2013, five individuals, including DM, were charged with participation in an organised criminal group, under Article 321(3) of the Nakazatelen Kodeks (Criminal Code), and for corruption, under Article 301(1) of that code.

15 On 31 August 2015, on account of the excessive length of the pre-trial proceedings, DM lodged an application with the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) requesting that the case be examined by that court in accordance with Article 368(1) of the NPK, in the version in force from 13 August 2013 to 5 November 2017.

16 By order of 30 September 2015, that court, on the basis of Article 369(1) of the NPK, in the version in force from 13 August 2013 to 5 November 2017, referred the criminal case to the Spetsializirana prokuratura (Specialised Public Prosecutor's Office, Bulgaria), setting it a three-month time limit for lodging an indictment or a proposal to exempt the offender from criminal liability and to impose on her an administrative penalty, or an agreement to negotiate a sentence, or to discontinue the criminal proceedings and inform the court thereof.

17 On 8 January 2016, the Specialised Public Prosecutor's Office referred the case to the Spetsializiran nakazatelen sad (Specialised Criminal Court) by bringing before it an indictment against four defendants, including DM, for the criminal offences referred to in paragraph 14 above.

18 By order of 3 February 2016, the Judge-Rapporteur brought the proceedings to an end on account of substantial procedural infringements capable of being remedied and referred the case back to the Specialised Prosecutor's Office for it to remedy those infringements.

19 The prosecutor drew up a new indictment within one month and submitted it to the Spetsializiran nakazatelen sad (Specialised Criminal Court) on 22 March 2016.

20 In the course of the proceedings before that court, DM requested that, pursuant to the third situation in Article 369(4) of the NPK, in the version in force from 13 August 2013 to 5 November 2017, the criminal proceedings brought against her be discontinued on account of new infringements of the procedural rules committed during the criminal investigation. According to DM, the indictment was not set out clearly and precisely so that the defendant could understand it, organise her defence effectively and produce relevant evidence.

21 However, on 27 June 2016, the Spetsializiran nakazatelen sad (Specialised Criminal Court) dismissed that application, finding that the indictment complied with the legal requirements of precision and clarity laid down in Article 246 of the NPK.

22 By verdict of 19 November 2019, the Spetsializiran nakazatelen sad (Specialised Criminal Court) found DM guilty of the criminal offences with which she was charged and imposed on her a custodial sentence and a fine and deprived her of the rights attached to her office.

23 On appeal, the Apelativen spetsializiran nakazatelen sad (Specialised Criminal Court of Appeal, Bulgaria), by judgment of 9 November 2020, set aside the verdict in its entirety on the grounds of substantial infringements of the procedural rules capable of being remedied, namely the failure of

the indictment of 22 March 2016 to comply with the legal requirements of clarity and precision set out in Article 246 of the NPK, and referred the case back to the Spetsializiran nakazatelen sad (Specialised Criminal Court).

24 On 3 February 2021, that court, in turn, referred the case back to the Public Prosecutor's Office for it to remedy the substantial infringements of the procedural rules made during the criminal investigation concerning the preparation of the indictment.

25 On 7 July 2022, the Specialised Public Prosecutor's Office submitted a new indictment against DM and the other three defendants.

26 Following legislative amendments and procedural issues, the case was ultimately assigned to the Okrazhen sad Sliven (Provincial Court, Sliven, Bulgaria), which is the referring court.

27 That court notes that, with effect from 5 November 2017, the possibility of bringing the criminal proceedings to an end in the event of the excessive length of the criminal investigation and in the event of repeated substantial infringements of the procedural rules capable of being remedied has been removed. Thus, the Apelativen spetsializiran nakazatelen sad (Specialised Criminal Court of Appeal), which annulled the verdict of the court of first instance on 9 November 2020, precisely because of the infringements committed in the drafting of the indictment of 22 March 2016 and the fact that that document did not comply with the legal requirements of precision and clarity, laid down in Article 246 of the NPK, could not bring the criminal proceedings against DM to an end.

28 If the court of first instance had correctly applied Article 369(4), third situation, of the NPK, in the version in force from 13 August 2013 to 5 November 2017, the criminal proceedings against DM would have had to have been brought to an end in 2016.

29 In that regard, the referring court considers that, in the light of the case-law of the Konstitusionen sad (Constitutional Court, Bulgaria), according to which the prohibition of the retroactivity of the law is infringed where the new legal assessment of the consequences of a right already acquired, albeit within a different legal framework, leads to the revocation of rights, or where adverse consequences will ensue in situations already established, it is unconstitutional, in the light of the principle of the rule of law, that the legislature subsequently imposes adverse consequences on individuals who have acquired rights and acted in accordance with the existing legal framework.

30 That case-law is applicable in the present case, precisely because of the substantial differences in the relevant provisions of the NPK before and after 5 November 2017. Since 22 March 2016, DM has acquired, under the NPK, in the version in force from 13 August 2013 to 5 November 2017, the right to have the criminal proceedings against her brought to an end pursuant to the third situation provided for in Article 369(4) of that code. It is not relevant, for the purposes of exercising that right, that, as a result of a judicial error, the right arose nearly five years later, under another law which does not govern ongoing cases and which, in that sense, has adverse consequences for them. As is clear from the foregoing, this would be contrary to the constitutional principles in force in Bulgaria.

31 According to the referring court, Articles 368 and 369 of the NPK, in the version in force from 13 August 2013 to 5 November 2017, introduced the power granted to the Member States, in Article 4 of Framework Decision 2008/841, to exempt the offender from the penalty in certain

circumstances, in the present case, on account of the inaction of the investigating authorities or substantial infringements of procedural rules committed during the criminal investigation, in the case of offences linked to organised crime.

32 In the view of that court, the wording of Articles 368 and 369 of the NPK, in the version in force from 5 November 2017, to the extent that it is substantially different from that which resulted from the earlier version of that code, without, however, laying down transitional provisions as regards pending proceedings initiated under that earlier version, has the effect of eliminating the possibility, for an accused person, of enjoying the acquired right to have the criminal proceedings to which he or she is subject brought to an end, which is contrary to EU law.

33 Those provisions of the NPK are, according to the referring court, contrary to Article 4 of Framework Decision 2008/841, since they prevent the application, in Bulgaria, of measures which ensure that, in certain circumstances, the perpetrator of an offence linked to organised crime may be exempted from a penalty, after such measures have been adopted and accused persons have acquired the right to benefit therefrom. They are also contrary to the second subparagraph of Article 19(1) TEU, in so far as they deprive the persons charged with offences covered by Framework Decision 2008/841 of the legal remedy available to them for a decision on their case within a reasonable time. Lastly, they are contrary to Article 52 of the Charter, read in conjunction with Article 47 thereof, in so far as they restrict the application of an effective remedy provided for by national law in the implementation of an EU framework decision, thus calling into question the fairness of the criminal proceedings as a whole.

34 In those circumstances, the Okrazhen sad Sliven (Provincial Court, Sliven) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) In criminal cases concerning offences falling within the scope of EU law, must Article 52 [of the Charter, read] in conjunction with Article 47 [thereof,] Article 4 of [Framework Decision 2008/841] and [the second subparagraph of Article 19(1) TEU], be interpreted as precluding national legislation such as that [at issue in the main proceedings], which abrogates the right of an accused person to have the criminal proceedings against him or her discontinued, where that right arose under a law providing for such a possibility but, as a result of a judicial error, was established only after that law had been repealed?

(2) What effective remedies, within the meaning of Article 47 of the [Charter], should be available to such an accused person, and, in particular, is a national court required to discontinue entirely the criminal proceedings against such an accused person if a formation of the court previously seised had failed to do so, even though the relevant conditions were satisfied under the national law then in force?’

Consideration of the questions referred

The first question

35 By its first question, the referring court asks, in essence, whether Framework Decision 2008/841, and in particular Article 4 thereof, read in conjunction with Articles 47 and 52 of the Charter, and with the second subparagraph of Article 19(1) TEU, must be interpreted as precluding national legislation which removes, in the course of criminal proceedings brought against an accused

person, the right of that accused person to have those proceedings brought to an end where substantial infringements of procedural rules affecting the indictment, but which are capable of being remedied, have not been remedied.

36 In that regard, it should be borne in mind that the Charter's scope is defined in Article 51(1) thereof, according to which, so far as action by the Member States is concerned, the provisions of the Charter are addressed to those Member States only when they are implementing EU law (judgment of 19 November 2019, *TSN and AKT*, C-609/17 and C-610/17, EU:C:2019:981, paragraph 42).

37 It is therefore necessary to verify whether such national legislation must be regarded as implementing Framework Decision 2008/841, within the meaning of Article 51(1) of the Charter, and whether, consequently, Article 47 of the Charter should apply to situations such as that at issue in the main proceedings (see, by analogy, judgment of 19 November 2019, *TSN and AKT*, C-609/17 and C-610/17, EU:C:2019:981, paragraph 45).

38 As is apparent from recitals 1 and 3 of Framework Decision 2008/841, that framework decision is based on a combined approach to cross-border problems such as organised crime and should encompass offences typically committed in a criminal organisation and, moreover, provide for the imposition of penalties corresponding to the seriousness of those offences, on natural and legal persons who committed them or are responsible for their commission.

39 Pursuant to Articles 2 and 3 of that framework decision, each Member State is to take the measures necessary to ensure that, inter alia, conduct linked to a criminal organisation and consisting of the active participation by any person, with intent and with knowledge of either the aim and general activity of the criminal organisation or its intention to commit the offences in question, takes part in the organisation's criminal activities, including the provision of information or material means, the recruitment of new members and all forms of financing of its activities, knowing that such participation will contribute to the achievement of the organisation's criminal activities. In that regard, each Member State is to take the necessary measures to ensure that such an offence is punishable by a maximum term of imprisonment of between at least two years and five years.

40 Article 4 of that framework decision provides that each Member State may take the necessary measures to ensure that the penalties referred to in Article 3 thereof may be reduced or that the offender may benefit from an exemption from penalties if he or she, for example, renounces criminal activity and provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them to prevent, end or mitigate the effects of the offence; identify or bring to justice the other offenders; find evidence; deprive the criminal organisation of illicit resources or the proceeds of its criminal activities; or prevent further offences referred to in Article 2 of that framework decision from being committed.

41 National legislation which provides for the right of an accused person to have criminal proceedings brought to an end against him or her where substantial infringements of procedural rules affecting the indictment, but which are capable of being remedied, have not been remedied, does not fall within the scope of Article 4 of Framework Decision 2008/841 or of other provisions of that framework decision. Such national legislation provides that the criminal proceedings against the accused person are, in certain circumstances, to be brought to an end, whereas Article 4 of that framework decision states that Member States may provide that, in certain circumstances, the offender can benefit from a reduction or exemption from penalties.

42 Thus, Article 4 of Framework Decision 2008/841 presupposes that the person to whom the benefit of a reduction or exemption from penalties may be granted is the perpetrator of the offence, whereas that national legislation concerns only an accused person who is entitled, under certain conditions, to have the criminal proceedings against him or her brought to an end.

43 Accordingly, national legislation which has the effect of abolishing that right also cannot fall within the scope of Article 4 of Framework Decision 2008/841 or of any other provisions of that framework decision.

44 It follows from the foregoing considerations that, since the legislation at issue in the main proceedings cannot be regarded as implementing Framework Decision 2008/841, within the meaning of Article 51(1) of the Charter, neither Article 47 of the Charter nor any other provision of the Charter is applicable to a situation such as that at issue in the main proceedings.

45 As regards the second subparagraph of Article 19(1) TEU, it should be borne in mind that that provision states that Member States are to provide remedies sufficient to ensure effective legal protection in the fields covered by EU law.

46 In preliminary ruling proceedings, there must be a connecting factor between the dispute pending before the referring court 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 that court (see, to that effect, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraphs 47 and 48).

47 In the present case, as is apparent from paragraphs 43 and 44 above, the dispute in the main proceedings has no connecting factor with the provisions of EU law whose interpretation is sought. In particular, that dispute has no connection with the second subparagraph of Article 19(1) TEU, to which the first question relates. Accordingly, the referring court is not required to apply that provision in order to determine the substantive solution to be given to that dispute (see, by analogy, judgment of 26 March 2020, *Miasto Łowicz and Prokurator Generalny*, C-558/18 and C-563/18, EU:C:2020:234, paragraph 49).

48 In the light of all the foregoing considerations, the answer to the first question is that Framework Decision 2008/841, and in particular Article 4 thereof, read in conjunction with Articles 47 and 52 of the Charter, and with the second subparagraph of Article 19(1) TEU, must be interpreted as not precluding national legislation which removes, in the course of criminal proceedings brought against an accused person, the right of that person to have those proceedings brought to an end where substantial infringements of procedural rules affecting the indictment, but which are capable of being remedied, have not been remedied.

The second question

49 Having regard to the answer given to the first question, there is no need to answer the second question.

Costs

50 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 (Sixth Chamber) hereby rules:

Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime and, in particular, Article 4 thereof, read in conjunction with Articles 47 and 52 of the Charter of Fundamental Rights of the European Union, and with the second subparagraph of Article 19(1) TEU,

must be interpreted as not precluding national legislation which removes, in the course of criminal proceedings brought against an accused person, the right of that person to have those proceedings brought to an end where substantial infringements of procedural rules affecting the indictment, but which are capable of being remedied, have not been remedied.

[Signatures]