Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

7 May 2024 * [i]

(Reference for a preliminary ruling – Admissibility – Article 267 TFEU – Concept of 'court or tribunal' – National arbitration committee competent to combat doping in sport – Criteria – Independence of the body making the reference – Principle of effective judicial protection – Inadmissibility of the request for a preliminary ruling)

In Case C-115/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Unabhängige Schiedskommission Wien (Independent Arbitration Committee, Vienna, Austria), made by decision of 21 December 2021, received at the Court on 17 February 2022, in the proceedings

SO

interested parties:

Nationale Anti-Doping Agentur Austria GmbH (NADA),

Österreichischer Leichtathletikverband (ÖLV),

World Anti-Doping Agency (WADA),

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, A. Prechal, K. Jürimäe, C. Lycourgos, T. von Danwitz, F. Biltgen, Z. Csehi and O. Spineanu-Matei, Presidents of Chambers, J.-C. Bonichot, S. Rodin, J. Passer (Rapporteur), D. Gratsias, M.L. Arastey Sahún and M. Gavalec, Judges,

Advocate General: T. Ćapeta,

Registrar: D. Dittert,

having regard to the written procedure and further to the hearing on 2 May 2023,

after considering the observations submitted on behalf of:

– SO, by J. Öhlböck, Rechtsanwalt,

* Language of the case: German.

– Nationale Anti-Doping Agentur Austria GmbH (NADA), by A. Sammer, acting as Agent, and by P. Lohberger and A. Schütz, Rechtsanwälte,

– the World Anti-Doping Agency (WADA), by D.P. Cooper, Solicitor, and by A.-S. Oberschelp de Meneses, avocate, K. Van Quathem, B. Van Vooren, advocaten, and L. Waty, avocat,

– the Belgian Government, by P. Cottin and J.-C. Halleux, acting as Agents,

– the French Government, by R. Bénard and A.-L. Desjonquères, acting as Agents,

– the Latvian Government, by E. Bardiņš, J. Davidoviča and K. Pommere, acting as Agents,

– the Luxembourg Government, by A. Germeaux and T. Schell, acting as Agents,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by A. Bouchagiar, M. Heller and H. Kranenborg, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 September 2023,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5(1)(a) and (c), Article 6(3), and Articles 9 and 10 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ 2016 L 119, p. 1, and corrigendum OJ 2018 L 127, p. 2; 'the GDPR').

2 The request has been made in arbitration proceedings between SO, a competitive athlete, and Nationale Anti-Doping Agentur Austria GmbH (NADA) (National Anti-Doping Agency) concerning NADA's decision to publish the sanctions imposed on SO for infringing the national anti-doping legislation.

Legal context

The IAAF rules

3 The International Association of Athletics Federations (IAAF) adopted the IAAF Competition Rules 2014-2015, Rule 32.2(b) and (f) of which, like Articles 2.2 and 2.6 of the IAAF Anti-Doping Rules of 2017, prohibit the 'use or attempted use … of a prohibited substance or a prohibited method' and the 'possession of a prohibited substance or prohibited method'.

European Union law

4 Article 5 of the GDPR sets out the principles relating to the processing of personal data, whereas Article 6 of that regulation lays down the conditions under which such processing is lawful. Articles 9 and 10 of that regulation contain rules for the processing relating to special categories of personal data and for the processing of personal data relating to criminal convictions and offences.

5 Article 77 of that regulation, entitled 'Right to lodge a complaint with a supervisory authority', provides, in paragraph 1 thereof:

'Without prejudice to any other administrative or judicial remedy, every data subject shall have the right to lodge a complaint with a supervisory authority, in particular in the Member State of his or her habitual residence, place of work or place of the alleged infringement if the data subject considers that the processing of personal data relating to him or her infringes this Regulation.'

6 Article 78 of that regulation, entitled 'Right to an effective judicial remedy against a supervisory authority', provides, in paragraph 1 thereof:

'Without prejudice to any other administrative or non-judicial remedy, each natural or legal person shall have the right to an effective judicial remedy against a legally binding decision of a supervisory authority concerning them.'

7 Article 79 of that regulation, entitled 'Right to an effective judicial remedy against a controller or processor', provides, in paragraph 1 thereof:

'Without prejudice to any available administrative or non-judicial remedy, including the right to lodge a complaint with a supervisory authority pursuant to Article 77, each data subject shall have the right to an effective judicial remedy where he or she considers that his or her rights under this Regulation have been infringed as a result of the processing of his or her personal data in non-compliance with this Regulation.'

Austrian law

The ADBG

8 Paragraph 5 of the Anti-Doping-Bundesgesetz 2021 (2021 Federal Law on Anti-Doping) of 23 December 2020 (BGBl. I, 152/2020; 'the ADBG'), entitled 'Unabhängige Dopingkontrolleinrichtung [(Independent Anti-Doping Agency, Austria)]', provides, in subparagraph 1 thereof, that the tasks of that agency include, inter alia, submitting requests for examination, in accordance with Paragraph 18 of the ADBG, to the Österreichische Anti-Doping Rechtskommission (Austrian Anti-Doping Legal Committee; 'the ÖADR'), where it considers that the ADBG has been infringed, and acting as a party to the procedures before the ÖADR and the Unabhängige Schiedskommission (Independent Arbitration Committee, Austria; 'the USK'), in accordance with Paragraph 20(2) and Paragraph 23(2) of the ADBG.

9 Paragraph 5(5) of the ADBG provides:

'In order to perform the tasks of the Independent Anti-Doping Agency, a non-profit-making limited liability company bearing the name [NADA] shall be set up … In its capacity as controller pursuant to Article 4(7) of the GDPR, [NADA] shall process personal data.'

10 Paragraph 6 of the ADBG, entitled 'Provisions pertaining to data protection law', provides, in subparagraph 1 thereof:

'The Independent Anti-Doping Agency is empowered, in its capacity as controller pursuant to Article 4(7) of the GDPR, in so far as it is necessary for the performance of its tasks under [the ADBG] and for the implementation of [the ADBG], in particular in the context of the tasks of [the ÖADR] and [the USK], to process personal data. …'

11 Paragraph 7 of the ADBG, entitled '[The ÖADR]', provides, in subparagraph 1 thereof, inter alia, that the ÖADR must conduct disciplinary proceedings for the competent federal sports federation concerned pursuant to the anti-doping rules in force of the competent international sports federation (anti-doping procedures). Under Paragraph 7(7) of the ADBG, the ÖADR is established at the Independent Anti-Doping Agency. Paragraph 7(8) of the ADBG provides that Paragraph 6 thereof applies *mutatis mutandis*.

12 Paragraph 8 of the ADBG, entitled '[The USK]', provides:

'(1) The [USK] is a committee independent of State bodies, private individuals and the Independent Anti-Doping Agency. Members of the USK must not have been involved either in the investigation of an athlete or another person, in the decision whether to submit a request for examination in respect of an athlete or another person, or in the decision, subject to their review, of the ÖADR itself. Without prejudice to Paragraph 23(10)(1) and (2), it shall be established at the Independent Anti-Doping Agency in order to review the decisions of the ÖADR in anti-doping procedures.

(2) The USK shall consist, subject to compliance with the requirement that at least 50% of the members must be women, of a chairperson and seven members with the following qualifications:

1. the chairperson and his or her deputy must have passed the judicial office examination or the lawyers' examination;

2. two members must have a degree in law and experience in the conduct of formal investigation procedures;

3. two members must be experts in analytical chemistry or toxicology;

4. two members must be experts in sports medicine.

In each case, the chairperson or his or her deputy shall appoint, from among the members of the USK, at least one member with a law degree and experience in the conduct of formal investigation procedures, at least one expert in analytical chemistry or toxicology and at least one member as an expert in sports medicine, for the conduct of the procedure.

(3) The chairperson and the members referred to in subparagraph 2(1) to (4) shall be appointed for a term of four years by the [Bundesminister für Kunst, Kultur, öffentlichen Dienst und Sport

(Federal Minister for Arts, Culture, Civil Service and Sport, Austria)]. From among the members, one member shall be appointed as deputy to the chairperson. Mandates may be renewed and revoked early on serious grounds. The chairperson and members may resign at any time. If the chairperson or a member resigns early, a new person shall be appointed for the remainder of the relevant mandate. The USK shall decide by a majority of votes and a quorum shall be reached when the chairperson and at least two members are present. In the event of a tie, the chairperson shall have the casting vote. The USK may also take decisions by way of the written circulation procedure where, due to the clear factual circumstances, it is not necessary to discuss the matter in a meeting and neither the chairperson nor a member objects to a decision being taken according to those arrangements. Paragraph 5(3) applies to the USK.

…

(6) Paragraph 6 [of the ADBG] applies *mutatis mutandis*.'

13 Paragraph 20 of the ADBG, entitled 'Procedures before [the ÖADR]', provides, in essence, that the ÖADR is competent to conduct anti-doping procedures following requests for examination made by the Independent Anti-Doping Agency and to adopt decisions at first instance in the event of an infringement of the anti-doping rules of the competent international sports federation.

14 Paragraph 21 of the ADBG provides, in subparagraph 3 thereof:

'The ÖADR must, no later than 20 days after the decision has become final, inform [the federal sports organisation], sports organisations, athletes, other persons and organisers of competitions, as well as the general public, of security measures imposed (for example, suspensions) and decisions taken in anti-doping procedures, indicating the name of the data subject, the duration of the ban and the reasons for it, without allowing conclusions to be drawn regarding the data subject's data concerning health. That information may be omitted in the case of particularly vulnerable persons, recreational athletes and persons who have contributed significantly to the detection of potential anti-doping infringements by disclosing information or other indications. In the case of recreational athletes, the information must be disclosed for public health reasons where an infringement of the anti-doping rules pursuant to Paragraph 1(2)(3) or Paragraph 1(2)(9) to (11) has been established.'

15 Paragraph 23 of the ADBG, entitled 'Procedure before [the USK]', provides, in subparagraph 1 thereof:

'The parties under subparagraph 2 may apply to the USK for a review of decisions under Paragraph 20 within four weeks of notification. The decision is to be reviewed by the USK in terms of its legality and, if it is found to be unlawful, may be annulled without substitution or may be amended in any way. The request for review does not have a suspensive effect on the decision under Paragraph 20, unless such an effect is decided by the USK.'

16 Paragraph 23(2) of the ADBG provides that the Independent Anti-Doping Agency is to be a party to the procedure before the USK.

17 Under Paragraph 23(3) of the ADBG, Paragraph 580(1) and (2), Paragraph 588(2), Paragraph 592(1) and (2), Paragraphs 594, 595, 597 to 602, and 604, Paragraph 606(1) to (5), Paragraph 608(1) and (2) and Paragraph 610 of the Zivilprozessordnung (Code of Civil Procedure; 'the ZPO') apply *mutatis mutandis* to the procedure before the USK. The USK must

conduct the procedure in accordance with the applicable anti-doping rules of the competent international sports federation. In addition, the parties to that procedure may request that it be public in nature.

18 Paragraph 23(4) of the ADBG provides:

'Within six weeks of receipt of the request for examination, the USK is required to either reach a decision or organise a hearing. After the oral procedure, the final decision must be adopted in writing and duly reasoned within four weeks. The procedure must be conducted within six months of receipt of the request for examination, it being understood that delays caused by the party under subparagraph 2(1) must be included in that time limit. In the event of a tie, the chairperson shall have the casting vote. The decisions are to be issued in writing and are to be duly reasoned. Notwithstanding the arbitral award of the USK, [the World Anti-Doping Agency (WADA)], the International Olympic Committee, the International Paralympic Committee and the relevant competent international sports federation may lodge an appeal against the decision of the USK to the [Court of Arbitration for Sport ('the CAS'), established in Lausanne (Switzerland)]. In cases related to the participation in an international competition or involving international athletes, decisions may be challenged directly before the CAS. In order to resolve civil law disputes, proceedings before civil courts may be initiated after all legal remedies have been exhausted in anti-doping procedures.'

19 Paragraph 23 of the ADBG provides, in subparagraph 14 thereof:

'The USK must inform [the federal sports federation], sports organisations, athletes, other persons and organisers of competitions as well as the general public of its decisions, indicating the name of the data subject, the duration of the ban and the reasons for it, without, however, allowing conclusions to be drawn regarding the data subject's data concerning health. That information may be omitted in the case of particularly vulnerable persons, recreational athletes and persons who have contributed significantly to the detection of potential anti-doping infringements by disclosing information or other indications. In the case of recreational athletes, the information must be disclosed for public health reasons where an infringement of the anti-doping rules pursuant to Paragraph 1(2)(3) or Paragraph 1(2)(9) to (11) has been established.'

Rules of Procedure of the Independent Arbitration Committee under the 2021 Federal Law on Anti-Doping

20 The Verfahrensordnung der Unabhängigen Schiedskommission nach dem Anti-Doping-Bundesgesetz 2021 (Rules of Procedure of the Independent Arbitration Committee under the 2021 Federal Law on Anti-Doping) of 1 January 2021 provides, in Point 1(3) thereof, that the members of the USK are independent in the performance of their duties. Point 5 of those rules lays down the grounds on which it is possible to argue that one or more of those members are biased and the inferences to be drawn from that.

21 Point 9(1) of those rules states that the parties to the procedure may make use of all the means of proof that are provided for in the ZPO.

The ZPO

22 Paragraph 597 of the ZPO, in the version of 23 December 2020 (BGBl. I, 148/2020), which governs arbitration proceedings, concerns the rules relating to the request for arbitration and to the answer, while Paragraph 598 provides for the possibility of holding a hearing and Paragraph 599, in particular, sets out the rules on the taking of evidence before the arbitral tribunal.

23 Paragraph 607 of the ZPO provides, in essence, that an award by an arbitration tribunal has the effect, as between the parties, of a judicial decision having the force of *res judicata*.

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

24 SO was a competitive athlete from 1998 to 2015. She has also been an official of an association which is a member of the athletics federation of Vienna (Austria).

25 In 2021, on the basis of the results of an investigation conducted by the Bundeskriminalamt (Federal Criminal Police Office, Austria), NADA submitted a request for the examination of SO's case to the ÖADR, since it considered that SO had infringed the anti-doping rules.

26 By a decision of 31 May 2021, the ÖADR found that SO had infringed Rule 32.2(b) and (f) of the IAAF Competition Rules 2014-2015 and Articles 2.2 and 2.6 of the IAAF Anti-Doping Rules of 2017 ('the contested decision'). More specifically, the ÖADR found that, between May 2015 and April 2017, SO had possessed substances whose use by professional athletes subject to IAAF's competition rules had been prohibited by WADA for that period, namely erythropoietin (also known as EPO), Genotropin (Omnitrope) and testosterone (Androgel), and that SO had used them at least in part in 2015.

27 On the basis of those findings, in the contested decision, the ÖADR declared invalid all the results that SO had achieved between 10 May 2015 and the date of entry into force of that decision and revoked all her entry fees and/or prize money. In addition, it banned SO from participating in sporting competitions of any kind for a period of four years, with effect from 31 May 2021.

28 In the procedure before the ÖADR, SO had requested that the contested decision not be communicated to the general public in accordance with Paragraph 21(3) of the ADBG, in particular that her name or other individual characteristics not be disclosed or published. The ÖADR rejected that request in the contested decision.

29 SO applied to the USK for a review, requesting that the contested decision be amended so that the general public would not be informed, by way of publication of her full name on a freely accessible website, of the anti-doping infringements committed by her and of the sanction imposed.

30 By a decision of 21 December 2021, the USK confirmed the annulment of all results achieved by SO in competition, including the revocation of all her titles, medals, prizes, entry fees and prize money as from 10 May 2015, and her suspension from all (national and international) competitions for a period of four years as from 31 May 2021.

31 However, the USK decided to issue a separate decision on the request that it refrain from publishing the anti-doping infringements committed by SO and the ensuing sanctions, reserving its decision in that regard.

32 In those circumstances the USK decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does the information that a certain person has committed a specific [anti-]doping violation, as a result of which that person has been banned from taking part in (national and international) competitions, constitute “data concerning health” within the meaning of Article 9 of [the GDPR]?

(2) Does [the GDPR] – particularly in the light of the second subparagraph of Article 6(3) thereof – preclude a national provision that provides for the disclosure of the name of the persons concerned by the decision of [the USK], the duration of the ban and the reasons for it, without it being possible to infer the health data of the person concerned? Is it relevant that disclosure of that information to the general public can only be omitted under the national provision if the person concerned is a recreational athlete, a minor or a person who has contributed significantly to the detection of potential anti-doping violations by disclosing information or other indications?

(3) Does [the GDPR] – particularly in the light of the principles in Article 5(1)(a) and (c) thereof – in any case prior to the disclosure, require a balancing of interests between the personal interests of the person concerned that will be affected by the disclosure, on the one hand, and the interest of the general public in being informed of the anti-doping violation committed by an athlete, on the other?

(4) Does the disclosure of the information that a certain person has committed a specific [anti-]doping violation, as a result of which that person has been banned from taking part in (national and international) competitions, constitute the processing of personal data relating to criminal convictions and offences within the meaning of Article 10 of [the GDPR]?

(5) If [the fourth question] is answered in the affirmative: Is [the USK] established under Paragraph 8 of the [ADBG] an official authority within the meaning of Article 10 of [the GDPR]?’

Admissibility of the request for a preliminary ruling

33 The procedure provided for by Article 267 TFEU is a means of cooperation between the Court of Justice and national courts, by which the Court provides the national courts with the points of interpretation of European Union law which they need in order to decide the disputes before them (judgment of 9 March 2010, *ERG and Others*, C-378/08, EU:C:2010:126, paragraph 72, and order of 9 January 2024, *Bravchev*, C-338/23, EU:C:2024:4, paragraph 18).

34 It follows that, in order to be entitled to make a reference to the Court in preliminary ruling proceedings, the body making the reference must be capable of being classified as a ‘court or tribunal’ within the meaning of Article 267 TFEU, which it is for the Court to determine on the basis of the request for a preliminary ruling (orders of 13 December 2018, *Holunga*, C-370/18, EU:C:2018:1011, paragraph 13, and of 19 May 2022, *Frontera Capital*, C-722/21, EU:C:2022:412, paragraph 11).

35 According to the Court's settled case-law, in order to determine whether the body in question that is making a reference is a 'court or tribunal' within the meaning of Article 267 TFEU, which is a question governed by EU law alone, the Court takes account of a number of factors, such as, inter alia, whether the body is established by law, whether it is permanent, whether its jurisdiction is compulsory, whether its procedure is *inter partes*, whether it applies rules of law and whether it is independent (see, to that effect, judgments of 30 June 1966, *Vaassen-Göbbels*, 61/65, EU:C:1966:39, p. 273; of 3 May 2022, *CityRail*, C-453/20, EU:C:2022:341, paragraph 41; and of 21 December 2023, *Krajowa Rada Sądownictwa (Continued holding of a judicial office)*, C-718/21, EU:C:2023:1015, paragraph 40).

36 It is also clear from the Court's settled case-law that a national court may refer a question to the Court only if there is a case pending before it and if it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature. Accordingly, it is appropriate to determine whether a body may refer a case to the Court on the basis of criteria relating both to the constitution of that body and to its function (see, to that effect, judgment of 3 May 2022, *CityRail*, C-453/20, EU:C:2022:341, paragraphs 42 and 43 and the case-law cited).

37 As regards the criteria relating to a body's constitution, it is apparent from the information in the file submitted to the Court, and in particular the provisions of the ADBG, that the USK fulfils the criteria relating to whether it is established by law, whether it is permanent, whether its jurisdiction is compulsory and whether the proceedings before it are *inter partes*.

38 However, the question arises as to whether the USK fulfils the criterion of independence.

39 As regards that criterion, it must be pointed out that the independence of the national courts, which is essential to effective judicial protection, is inherent in the task of adjudication (see, to that effect, judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, paragraphs 41 and 42). It is thus essential to the proper working of the judicial cooperation system embodied by the preliminary ruling mechanism established by Article 267 TFEU in that, in accordance with the Court's settled case-law, that mechanism may be activated only by a body which satisfies, inter alia, that criterion of independence (see, to that effect, judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 56 and the case-law cited).

40 The concept of 'independence' has two aspects (see, to that effect, judgments of 19 September 2006, *Wilson*, C-506/04, EU:C:2006:587, paragraphs 49 and 50, and of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 57).

41 The first aspect, which is external, requires that the body 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 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 57 and the case-law cited).

42 In that regard, it should be noted that the irremovability of the members of the body concerned constitutes a guarantee that is essential to judicial independence in that it serves to protect the person of those who have the task of adjudicating in a dispute (judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 58 and the case-law cited).

43 More specifically, the principle of irremovability, the cardinal importance of which is to be emphasised, requires, in particular, that judges may remain in post provided that they have not reached the obligatory retirement age or until the expiry of their mandate, where that mandate is for a fixed term. While it is not absolute, there can be no exceptions to that principle unless they are warranted by legitimate and compelling grounds, subject to the principle of proportionality. Thus it is widely accepted that judges may be dismissed if they are deemed unfit for the purposes of carrying out their duties on account of incapacity or a serious breach of their obligations, provided the appropriate procedures are followed (see, to that effect, judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 59 and the case-law cited).

44 The guarantee of irremovability of the members of a court or tribunal thus requires that dismissals of members of the body concerned should be determined by specific rules, by means of express legislative provisions offering safeguards that go beyond those provided for by the general rules of administrative law and employment law which apply in the event of an unlawful dismissal (see, to that effect, judgments of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 60, and of 26 January 2023, *Construct*, C-403/21, EU:C:2023:47, paragraph 44).

45 The second aspect of the concept of 'independence', which is internal, is linked to 'impartiality' and seeks to ensure a level playing field for 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 (see, to that effect, judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 61 and the case-law cited).

46 Thus, according to the settled case-law of the Court, the concept of 'independence' implies above all that the body in question acts as a third party in relation to the authority which adopted the contested decision (see, to that effect, judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 62 and the case-law cited).

47 Those guarantees of independence and impartiality require rules, particularly as regards the composition of the body and the appointment, length of service and the grounds for abstention, rejection and dismissal of its members, in order to dismiss any reasonable doubt in the minds of individuals as to the imperviousness of that body to external factors and its neutrality with respect to the interests before it (judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 63 and the case-law cited).

48 In that respect, as regards the USK, it should be noted that Point 1(3) and Point 5 of its Rules of Procedure under the 2021 Federal Law on Anti-Doping state that its members are independent in the performance of their duties and that they are subject to the principle of impartiality.

49 Nevertheless, under Paragraph 8(3) of the ADBG, the members of the USK are appointed by the Federal Minister for Arts, Culture, Civil Service and Sport for a renewable term of four years, which may be revoked early 'on serious grounds', without that concept being defined in the national legislation.

50 In particular, the irremovability of USK members is not guaranteed by any specific rule.

51 In this, the situation of the members of the USK differs, for example, from that of the referring body in the case that gave rise to the judgment of 6 October 2015, *Consorci Sanitari del Maresme* (C-203/14, EU:C:2015:664), in the sense that, as is apparent from paragraphs 11 and 20 of that judgment, the members of that body have the benefit of a guarantee of irremovability throughout their mandate, exceptions to which are permitted only on the grounds expressly set out by the legislation governing the working of that body.

52 Furthermore, the decision to remove the members of the USK is a matter solely for the Federal Minister for Arts, Culture, Civil Service and Sport, namely a member of the executive, without precise criteria or precise guarantees having been established in advance.

53 It follows that the applicable national legislation does not ensure that the members of the USK are protected from external pressure, be it direct or indirect, that is liable to cast doubt on their independence, with the result that that body does not satisfy the external aspect of the requirement for a court or tribunal to be independent.

54 It follows from all the foregoing that the USK cannot be classified as a 'court or tribunal' within the meaning of Article 267 TFEU.

55 However, that fact does not relieve it of the obligation to ensure that EU law is applied when adopting its decisions and to disapply, if necessary, national provisions which appear to be contrary to provisions of EU law that have direct effect, since these are obligations that fall on all competent national authorities, not only on judicial authorities (judgment of 21 January 2020, *Banco de Santander*, C-274/14, EU:C:2020:17, paragraph 78 and the case-law cited).

56 Furthermore, it should be noted that it is apparent from the file before the Court and from the information provided by NADA at the hearing that SO lodged a complaint with the Österreichische Datenschutzbehörde (Austrian Data Protection Authority) concerning a breach of that protection, pursuant to Article 77(1) of the GDPR. That body adopted a rejection decision, which is the subject of a challenge before the Bundesverwaltungsgericht (Federal Administrative Court, Austria) pursuant to Article 78(1) of the GDPR (see, to that effect, judgment of 7 December 2023, *SCHUFA Holding (Discharge from remaining debts)*, C-26/22 and C-64/22, EU:C:2023:958, paragraphs 52 and 70). Those proceedings were stayed pending an answer from the Court to the questions referred in the present case.

57 It follows from the foregoing that the present request for a preliminary ruling is inadmissible.

Costs

58 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring body, the decision on costs is a matter for that body. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

The request for a preliminary ruling from the Unabhängige Schiedskommission Wien (Independent Arbitration Committee, Vienna, Austria), made by decision of 21 December 2021, is inadmissible.

[Signatures]

[i] The wording of paragraphs 2, 9, 10, 13, 14, 19, 29 and 31 of this document has been amended since it was first put online.