Reports of Cases

ORDER OF THE PRESIDENT OF THE COURT

6 May 2014*

((Expedited procedure)

In Case C-181/14,

REQUEST for a preliminary ruling under Article 267 TFEU from the Bundesgerichtshof (Germany), made by decision of 8 April 2014, received at the Court on 14 April 2014, in the criminal proceedings against

G,

THE PRESIDENT OF THE COURT,

having regard to the proposal of Mr J. Malenovský, Judge-Rapporteur,

after hearing the Advocate General, Y. Bot,

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of Article 1(2)(b) of Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ 2001 L 311, p. 67), as amended by Directive 2004/27/EC of the European Parliament and of the Council of 31 March 2004 (OJ 2004 L 136, p. 34; 'Directive 2001/83').

2 The request has been made in criminal proceedings brought against G, in which he is accused of having sold herbal mixes containing in particular various synthetic cannabinoids which did not, at the material time, come within the scope of the German Law on Narcotics (Betäubungsmittelgesetz).

3 At first instance, G was sentenced by the Landgericht Itzehoe (Itzehoe Regional Court) (Germany) to four and a half years' imprisonment and a fine of EUR 200 000. That court took the view that the sale of those mixes constituted marketing of unsafe medicinal products within the meaning of Paragraphs 5(1) and 4(17) of the German Law on Medicinal Products (Arzneimittelgesetz) and that, on that basis, G had committed an offence under Paragraph 95(1)(1) of that law.

4 G appealed on a point of law ('Revision') to the referring court.

* Language of the case: German.

5 Accordingly, the Bundesgerichtshof decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Is Article 1(2)(b) of Directive 2001/83 … to be interpreted as meaning that substances or combinations of substances, within the meaning of that provision, which merely modify — that is, do not restore or correct — human physiological functions are to be regarded as medicinal products only if they are of therapeutic benefit or at any rate bring about a modification of bodily functions along positive lines? Consequently, do substances or combinations of substances which are consumed solely for their — intoxication-inducing — psychoactive effects, and in the process also have an effect which at least poses a risk to health, fall under the definition of "medicinal product" contained in the directive?'

6 By separate document of 8 April 2014, the referring court asked the Court of Justice to apply the urgent preliminary ruling procedure, pursuant to Article 107 of the Rules of Procedure of the Court.

7 In support of its request, the referring court has stated that if the Court were to answer the question referred in the affirmative, no criminal liability could be found against G in respect of the facts of which he has been found guilty, so that he would have been wrongfully detained.

8 By decision of 15 April 2014, the Third Chamber of the Court decided that it was not necessary to act on the referring court's request to deal with the matter under the urgent preliminary ruling procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and in Article 107 of the Rules of Procedure, on the ground that Directive 2001/83, of which the interpretation is requested, was adopted on the basis of Article 95 EC, now Article 114 TFEU, which forms part of Title VII of Part Three of the FEU Treaty. The urgent preliminary ruling procedure is reserved for those references for a preliminary ruling which raise one or more questions in the fields referred to in Title V of Part Three of the Treaty.

9 However, in accordance with Article 105(1) of the Rules of Procedure, exceptionally, of his own motion, the President of the Court may, where the nature of the case requires that it be dealt with within a short time, after hearing the Judge-Rapporteur and the Advocate General, decide that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure provided for in Article 23a of the Statute of the Court and Article 105(1) of the Rules of Procedure.

10 In the present case, it is apparent from the order for reference that G's continued detention depends solely on the answer to be given to the question referred by the referring court. The fourth paragraph of Article 267 TFEU provides that, if the case pending before the national court concerns a person in custody, the Court of Justice is to act with the minimum of delay.

11 In those circumstances, it must be held that the nature of the present case justifies its being dealt with within a short time.

12 Accordingly, it is appropriate to order *ex officio* that Case C-181/14 be dealt with under the expedited procedure.

On those grounds, the President of the Court hereby orders, of his own motion:

Case C-181/14 shall be dealt with under the expedited procedure provided for in Article 23a of the Statute of the Court of Justice of the European Union and in Article 105(1) of the Rules of Procedure of the Court.

[Signatures]