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Provisional text

JUDGMENT OF THE COURT (Ninth Chamber)

17 May 2023 (\*)

(Reference for a preliminary ruling – Statute of the Court of Justice of the European Union – Article 23, first paragraph – Stay of the main proceedings by a national court which has submitted a request for a preliminary ruling to the Court of Justice under Article 267 TFEU – Possibility of a partial stay of proceedings)

In Case C-176/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 8 March 2022, received at the Court on the same day, in the criminal proceedings against

**BK,**

**ZhP,**

intervening parties:

**Spetsializirana prokuratura,**

THE COURT (Ninth Chamber),

composed of L.S. Rossi, President of the Chamber, C. Lycourgos (Rapporteur), President of the Fourth Chamber, and O. Spineanu-Matei, Judge,

Advocate General: T. Čapeta,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Bulgarian Government, by T. Mitova and E. Petranova, acting as Agents,
- the European Commission, by F. Erlbacher, E. Rousseva and M. Wasmeier, 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 23 of the Statute of the Court of Justice of the European Union.

2 The request has been made in criminal proceedings brought against BK and ZhP for acts classified as corruption.

## **Legal context**

### ***European Union law***

3 The first paragraph of Article 23 of the Statute of the Court of Justice of the European Union provides:

‘In the cases governed by Article 267 [TFEU], the decision of the court or tribunal of a Member State which suspends its proceedings and refers a case to the Court of Justice shall be notified to the Court by the court or tribunal concerned. The decision shall then be notified by the Registrar of the Court to the parties, to the Member States and to the [European] Commission, and to the institution, body, office or agency of the [European] Union which adopted the act the validity or interpretation of which is in dispute.’

### ***Bulgarian law***

4 It is apparent from the request for a preliminary ruling that, under the procedural rules applicable in the main proceedings, the criminal proceedings are stayed when a national court submits to the Court of Justice a request for a preliminary ruling.

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

5 On 26 February 2021, the Spetsializirana prokuratura (Specialised Public Prosecutor’s Office, Bulgaria) brought charges against BK and ZhP before the referring court for an alleged act of corruption committed by them in their capacities as police investigators.

6 BK objects to the legal classification of corruption given by the prosecution. As regards its power to reclassify the offence at issue without informing the person prosecuted in advance, the referring court made a request for a preliminary ruling to the Court of Justice concerning the interpretation of Article 6(3) and (4) of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1) and of Article 47(2) of the Charter of Fundamental Rights of the European Union. That request was made in case C-175/22.

7 Furthermore, BK and ZhP criticised the manner in which they were arrested and the discovery of marked money in ZhP's office. BK and ZhP were arrested at their office building, where the corridors were equipped with video cameras, which recorded part of the arrest as well as that discovery.

8 The referring court points out that, until the time of submission of the present reference for a preliminary ruling, some of the persons involved in the arrest were examined and some of the video recordings in question were reviewed. However, the court emphasises that it must examine at least three more people and have the other part of the video recordings reviewed, as well as the material produced by a hidden video camera and microphone.

9 That court states that, from a technical perspective, there is nothing to prevent it from continuing to examine the case before it and to gather evidence to determine the correctness and content of the alleged facts. According to the court, those elements are not connected to the questions it submitted for a preliminary ruling in Case C-175/22. Once that evidence has been obtained, the referring court can stay the main proceedings in its entirety until it receives the Court's response to those questions. Once that response has been received, it could then resume the proceedings, making appropriate reference, where necessary, to the possible legal reclassification that may be required in the present case, and, after hearing the parties to the proceedings, give its decision on the merits.

10 However, that court asks whether, in the light of Article 23 of the Statute of the Court of Justice of the European Union, it can continue to hear the case in the main proceedings, in particular in order to continue to gather evidence, after bringing the matter before the Court of Justice for a preliminary ruling in Case C-175/22.

11 The referring court takes the view that making a request for a preliminary ruling inevitably leads to a stay of the decision of the national court on the question referred in the context of that reference for a preliminary ruling. That said, it contends that the proceedings can continue on aspects not covered by the reference, provided that a decision cannot be given on the merits until the response of the Court on the question referred has been received.

12 That approach would limit the amount of time lost as a result of the stay of proceedings, thus ensuring that the case is heard within a reasonable time, in accordance with the second paragraph of Article 47 of the Charter of Fundamental Rights.

13 The national court's principal task is to rule on the case before it; EU law governs the issue of the stay of the main proceedings only to the extent that that stay is necessary to ensure the effectiveness of the decision of the Court.

14 The referring court points out that it has stayed the main proceedings in their entirety pending the Court's response to the question raised in the present case.

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

'Is Article 23 of the Statute of the Court of Justice [of the European Union] to be interpreted as imposing an obligation on a national court that has made a request for a preliminary ruling under Article 267 [TFEU] to stay the main proceedings in their entirety, or is it sufficient to stay only that part of the main proceedings that relates to the question referred for a preliminary ruling?'

16 By letter of 5 August 2022, the Sofiyski gradski sad (Sofia City Court, Bulgaria) informed the Court that, following a legislative amendment which entered into force on 27 July 2022, the Spetsializiran nakazatelen sad (Specialised Criminal Court) had been dissolved and that certain criminal cases before that court, including the case in the main proceedings, had been transferred to the Sofiyski gradski sad (Sofia City Court) as from that date.

### **Admissibility of the request for a preliminary ruling**

17 The Bulgarian Government submits that the request for a preliminary ruling is inadmissible on the ground that the referring court has not provided the Court with the necessary factual and legal factors for it to be able to give an interpretation of EU law that is useful to that court.

18 In particular, the Bulgarian Government states that Article 488 of the Code of Criminal Procedure, which is not referred to in the request for a preliminary ruling, specifically concerns the stay of criminal proceedings where a request for a preliminary ruling is made to the Court in a case such as that in the main proceedings. Under that article, and subject to verification by the national court where appropriate, the main proceedings are stayed in their entirety, but may be resumed before the Court rules on the present request, if this is necessary to collect and retain evidence.

19 In that connection, it should be borne in mind that questions on the interpretation of EU law referred by a national court in the factual and legislative context which that national court is responsible for defining, the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of EU law that is sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 15 December 2022, *Veejaam and Espo*, C-470/20, EU:C:2022:981, paragraph 51 and the case-law cited).

20 In that connection, under Article 94(b) of the Rules of Procedure of the Court of Justice, in addition to the text of the questions submitted to the Court for a preliminary ruling, the request for a preliminary ruling must contain the tenor of any national provisions likely to be applicable in the present case and, where appropriate, the relevant national case-law. That requirement is also reflected in paragraphs 15 and 16 of the recommendations of the Court of Justice of the European Union to national courts and tribunals in relation to the initiation of preliminary ruling proceedings (OJ 2019 C 380, p. 1).

21 In this case, as noted in paragraph 9 of the present judgment, the referring court explains what powers it has under the applicable procedural law. Furthermore, the wording of the question referred is such that it can be usefully answered without reference to national law.

22 It follows that the request for a preliminary ruling is admissible.

### **Consideration of the question referred**

23 By its question, the national court asks, in essence, whether Article 23 of the Statute of the Court of Justice of the European Union must be interpreted as precluding a national court which has made a request for a preliminary ruling under Article 267 TFEU from staying the main proceedings only with regard to the aspects of those proceedings that are likely to be affected by the Court's response to that request.

24 In that connection, it should be remembered that in the absence of EU rules on the matter, it is for the national legal order of each Member State to establish, in accordance with the principle of procedural autonomy, procedural rules for actions intended to safeguard the rights that individuals derive from EU law (see, to that effect, judgments of 16 December 1976, *Rewe-Zentralfinanz and Rewe-Zentral*, C-33/76, EU:C:1976:188, paragraph 5, and of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, paragraph 52 and the case-law cited).

25 Nevertheless, that principle must be applied in compliance with the principles of equivalence and effectiveness, in order to preserve the effectiveness of the applicable provisions of EU law (see, to that effect, judgment of 3 June 2021, *Bankia*, C-910/19, EU:C:2021:433, paragraph 45 and the case-law cited). In particular, under the principle of effectiveness, the Member States cannot exercise their procedural autonomy in a manner that would make it impossible in practice or excessively difficult to exercise the rights conferred by EU law (see, to that effect, judgments of 9 November 1983, *San Giorgio*, 199/82, EU:C:1983:318, paragraph 14, and of 24 November 2022, *Varhoven administrativen sad (Repeal of the disputed provision)*, C-289/21, EU:C:2022:920, paragraph 33 and the case-law cited).

26 Regarding the preliminary ruling procedure, it should be recalled that Article 267 TFEU sets up a dialogue between one court and another, specifically between the Court of Justice and the courts and tribunals of the Member States, which has the object of securing uniformity in the interpretation of EU law, thereby serving to ensure its consistency, its full effect and its autonomy as well as, ultimately, the particular nature of the law established by the Treaties (see, to that effect, judgment of 29 March 2022, *Getin Noble Bank*, C-132/20, EU:C:2022:235, paragraph 71 and the case-law cited).

27 It is settled case-law that a judgment delivered in the context of that procedure is binding on the national court as regards the interpretation of EU law for the purposes of resolving the dispute before it (see, to that effect, inter alia, judgments of 3 February 1977, *Benedetti*, 52/76, EU:C:1977:16, paragraph 26, and of 22 February 2022, *RS (Effect of the decisions of a constitutional court)*, C-430/21, EU:C:2022:99, paragraph 74).

28 The preservation of the effectiveness of that procedure is not made impossible in practice or excessively difficult by a national rule which makes it possible, between the date on which a request for a preliminary ruling is made to the Court and the date of the order or judgment by which the Court answers that request, to continue the main proceedings in order to carry out procedural steps, which the referring court considers necessary and which concern aspects unrelated to the questions referred for a preliminary ruling, namely procedural steps which are not such as to prevent the referring court from complying, in the main proceedings, with that order or that judgment.

29 This conclusion is supported by the fact that it is for the referring court to assess at what stage of the proceedings it is appropriate to make such a request to the Court (see, to that effect, judgments of 27 June 1991, *Mecanarte*, C-348/89, EU:C:1991:278, paragraph 49, and of 7 April 2016, *Degano Trasporti*, C-546/14, EU:C:2016:206, paragraphs 16 and 17).

30 Accordingly, because a request for a preliminary ruling may be made to the Court even at an early stage of the main proceedings, it must be open to the referring court, pending the Court's response to that request, to continue those proceedings for procedural steps which it considers necessary and which are unrelated to the questions referred for a preliminary ruling.

31 It should be borne in mind that that reasoning was implicitly followed in the judgment of 21 December 2021, *Euro Box Promotion and Others* (C-357/19, C-379/19, C-547/19, C-811/19 and

C-840/19, EU:C:2021:1034). In paragraph 80 of that judgment, the Court noted that, after the request for a preliminary ruling at issue in one of the cases which gave rise to that judgment had been submitted to it, the referring court's decision to stay the proceedings had been set aside and the main proceedings had resumed in relation to the issues other than those referred to in that request. In paragraph 141 of that judgment, the Court held that that request was admissible, without finding it necessary to examine a possible infringement of Article 23 of the Statute of the Court of Justice of the European Union.

32 In the light of all the foregoing considerations, the answer to the question raised is that Article 23 of the Statute of the Court of Justice of the European Union must be interpreted as not precluding a national court which has made a request for a preliminary ruling under Article 267 TFEU from staying the main proceedings only with regard to the aspects of those proceedings that are likely to be affected by the Court's response to that request.

### **Costs**

33 Since these proceedings are, for the parties to the main proceedings, a step in the action 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 (Ninth Chamber) hereby rules:

**Article 23 of the Statute of the Court of Justice of the European Union must be interpreted as not precluding a national court which has made a request for a preliminary ruling under Article 267 TFEU from staying the main proceedings only with regard to the aspects of those proceedings that are likely to be affected by the Court's response to that request.**

[Signatures]

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\* Language of the case: Bulgarian.