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Provisional text

JUDGMENT OF THE COURT (First Chamber)

28 November 2019 (*)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Judicial cooperation in criminal matters — Directive (EU) 2016/343 — Strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings — Article 6 — Burden of proof — Continuation of the detention on remand pending trial of an accused person)

In Case C-653/19 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 4 September 2019, received at the Court on 4 September 2019, in the criminal proceedings against

DK

Interested party:

Spetsializirana prokuratura,

THE COURT (First Chamber),

composed of J.-C. Bonichot, President of the Chamber, M. Safjan, L. Bay Larsen (Rapporteur), C. Toader and N. Jääskinen, Judges,

Advocate General: G. Pitruzzella,

Registrar: M. Aleksejev, Head of Unit,

having regard to the written procedure and further to the hearing on 7 November 2019,

after considering the observations submitted on behalf of:

- DK, by D. Gochev, I. Angelov and I. Yotov, advokati,
- the European Commission, by R. Troosters and Y. Marinova, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 19 November 2019,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 6 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) and of Articles 6 and 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in criminal proceedings against DK concerning the continuation of his detention on remand pending trial.

Legal context

European Union law

3 Recitals 16 and 22 of Directive 2016/343 are worded as follows:

‘(16) The presumption of innocence would be violated if public statements made by public authorities, or judicial decisions other than those on guilt, referred to a suspect or an accused person as being guilty, for as long as that person has not been proved guilty according to law. ... This should ... be without prejudice to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and are based on suspicion or on elements of incriminating evidence, such as decisions on pre-trial detention, provided that such decisions do not refer to the suspect or accused person as being guilty. ...

...

(22) The burden of proof for establishing the guilt of suspects and accused persons is on the prosecution, and any doubt should benefit the suspect or accused person. The presumption of innocence would be infringed if the burden of proof were shifted from the prosecution to the defence, without prejudice to any ex officio fact-finding powers of the court, to the independence of the judiciary when assessing the guilt of the suspect or accused person, and to the use of presumptions of fact or law concerning the criminal liability of a suspect or accused person. ...’

4 Article 2 of that directive, entitled ‘Scope’, provides:

‘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.’

5 Article 3 of that directive, entitled ‘Presumption of innocence’, is worded as follows:

‘Member States shall ensure that suspects and accused persons are presumed innocent until proved guilty according to law.’

6 Article 4 of that directive, entitled ‘Public references to guilt’, provides, in paragraph 1 thereof:

‘Member States shall take the necessary measures to ensure that, for as long as a suspect or an accused person has not been proved guilty according to law, public statements made by public authorities, and judicial decisions, other than those on guilt, do not refer to that person as being guilty. This shall be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, and to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and which are based on suspicion or incriminating evidence.’

7 Article 6 of Directive 2016/343, entitled ‘Burden of proof’, reads as follows:

‘1. Member States shall ensure that the burden of proof for establishing the guilt of suspects and accused persons is on the prosecution. This shall be without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence, and to the right of the defence to submit evidence in accordance with the applicable national law.

2. Member States shall ensure that any doubt as to the question of guilt is to benefit the suspect or accused person, including where the court assesses whether the person concerned should be acquitted.’

Bulgarian law

8 Article 270 of the Nakazatelnoprotsesualen kodeks (Code of Criminal Procedure) provides:

‘(1) The question of the commutation of the coercive measure may be raised at any point in the trial procedure. In the event of a change in circumstances, a new application concerning the coercive measure may be made before the court having jurisdiction.

(2) The court shall rule by way of order in open court.’

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

9 DK is accused of belonging to an organised criminal group and of having committed a murder.

10 In the context of the criminal proceedings initiated against him in relation to those charges, DK was remanded in custody on 11 June 2016.

11 On 9 November 2017, the person concerned was referred to the Spetsializiran nakazatalen sad (Specialised Criminal Court, Bulgaria) to stand trial.

12 From 5 February 2018, DK made seven applications to be released, all of which were dismissed, either at first instance or on appeal, on the ground that the arguments he presented were not sufficiently convincing in the light of the requirements of the national law.

13 At a hearing before the Spetsializiran nakazatelen sad (Specialised Criminal Court) on 4 September 2019, DK made a new application to be released.

14 The referring court states that it is apparent from the Bulgarian law that, after a person held in detention on remand pending trial is referred to a court, that court must first review the merits of that detention. If that court rules that that detention is lawful, the detention continues for an indefinite period and is not subsequently re-examined of the court's own motion. The release of the person held in detention cannot be granted unless that person makes an application to that end and proves the existence of new circumstances justifying his release.

15 The Spetsializiran nakazatelen sad (Specialised Criminal Court) considers that, in the light of the requirements of the Bulgarian law as interpreted by national case-law, it is unlikely that DK will succeed in furnishing such evidence and thus in establishing that there has been a change of circumstances such as to justify his release.

16 However, that court doubts whether the Bulgarian law is compatible with Article 6 and recital 22 of Directive 2016/343, in so far as those provisions could be interpreted as placing the burden of proof as regards the merits of the continuation of the accused person's detention on remand pending trial on the prosecution and as not allowing presumptions in favour of those merits unless those presumptions are reasonably proportionate to the aim pursued and take into consideration the rights of the defence.

17 Moreover, according to the referring court, the rights guaranteed in Articles 6 and 47 of the Charter must be taken into account. As regards, in particular, Article 6, which corresponds to Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, it follows in particular from the judgment of the European Court of Human Rights of 27 August 2019, *Magnitskiy and Others v. Russia* (CE:ECHR:2019:0827JUD003263109) that establishing a presumption in favour of the lawfulness of keeping an accused person in detention is contrary to Article 5(3) of that convention.

18 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 a national law that, during the trial stage of criminal proceedings, requires a change in circumstances as a condition for granting the defence's application for the release of the accused person from detention, consistent with Article 6 and recital 22 of Directive 2016/343 and with Articles 6 and 47 of the [Charter]?’

The urgent procedure

19 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 of Justice.

20 In support of that request, the referring court states that DK has been held in detention on remand pending trial since 11 June 2016 and that the assessment of his application for release depends on the answer to the question whether EU law precludes an allocation of the burden of proof as provided for in the Bulgarian law applicable in that respect.

21 In that regard, it must be stated, in the first place, 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. That reference can therefore be dealt with under the urgent preliminary ruling procedure.

22 In the second place, as regards the criterion relating to urgency, it is necessary, according to the 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 may continue to be held in custody depends on the outcome of the dispute in the main proceedings (judgments of 28 July 2016, *JZ*, C-294/16 PPU, EU:C:2016:610, paragraph 29, and of 19 September 2018, *Milev*, C-310/18 PPU, EU:C:2018:732, paragraph 35).

23 In the present case, it is apparent from the request for a preliminary ruling and the reply of the referring court of 13 September 2019 to a request for information from the Court as well as from the additional information which the referring court provided to the Court on 25 and 27 September 2019 that DK is currently deprived of his liberty, that the referring court will have to give judgment on whether DK should continue to be held in detention on remand pending trial on the basis of the Court's decision and that the Court's answer to the question put by the referring court could have an immediate effect on the assessment of the application for release made by DK.

24 In those circumstances, on 1 October 2019, the First Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to grant the referring court's request that the present reference be dealt with under the urgent preliminary ruling procedure.

Consideration of the question referred

25 By its question, the referring court asks, in essence, whether Article 6 of Directive 2016/343, read in the light of recital 22 of that directive, and Articles 6 and 47 of the Charter preclude a national law that makes the release of a person held in detention on remand pending trial conditional on that person establishing the existence of new circumstances justifying that release.

26 Article 2 of Directive 2016/343 states that it applies to natural persons who are suspects or accused persons in criminal proceedings, 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.

27 Thus, that directive applies in a situation such as that in the main proceedings, where a national court must rule on the lawfulness of the continuation of the detention on remand pending trial of a person accused of having committed a criminal offence (see, to that effect, judgment of 19 September 2018, *Milev*, C-310/18 PPU, EU:C:2018:732, paragraph 40).

28 However, it is important to recall that, in the light of the minimal degree of harmonisation pursued by that directive, it cannot be interpreted as being a complete and exhaustive instrument intended to lay down all the conditions for the adoption of decisions on detention on remand pending trial (judgment of 19 September 2018, *Milev*, C-310/18 PPU, EU:C:2018:732, paragraph 47, and order of 12 February 2019, *RH*, C-8/19 PPU, EU:C:2019:110, paragraph 59).

29 Admittedly, Articles 3 and 4 of that directive require that a decision that detention on remand pending trial should continue, taken by a judicial authority, does not refer to the person as being

guilty (see, to that effect, judgment of 19 September 2018, *Milev*, C-310/18 PPU, EU:C:2018:732, paragraphs 43 and 44, and order of 12 February 2019, *RH*, C-8/19 PPU, EU:C:2019:110, paragraph 51).

30 By contrast, it is apparent from the case-law of the Court that the degree of certainty that the court called upon to adopt that decision must have concerning the perpetrator of the offence, the rules governing examination of various forms of evidence, and the extent of the statement of reasons that that court is required to provide in response to arguments made before it are not governed by Directive 2016/343 and fall solely within the remit of national law (see, to that effect, judgment of 19 September 2018, *Milev*, C-310/18 PPU, EU:C:2018:732, paragraph 48).

31 Article 6(1) of that directive governs the allocation of ‘the burden of proof for establishing the guilt of suspects and accused persons’. Article 6(2) of that directive requires that ‘any doubt as to the question of guilt is to benefit the suspect or accused person’.

32 In that regard, it follows from Article 4 of Directive 2016/343 that that directive distinguishes between judicial decisions on guilt, which necessarily occur at the conclusion of the criminal proceedings, and other procedural acts, such as acts of the prosecution and preliminary decisions of a procedural nature.

33 The reference to establishing ‘guilt’ in Article 6(1) and (2) of Directive 2016/343 must therefore be construed as meaning that the aim of that provision is to govern the allocation of the burden of proof only in the adoption of judicial decisions on guilt.

34 That interpretation is borne out, as noted by the Advocate General in point 31 of his Opinion, by a comparison of recitals 16 and 22 of Directive 2016/343. On the one hand, recital 16 concerns the safeguarding of the presumption of innocence by acts governed by Article 4 of that directive, that is to say public statements by the authorities and procedural acts adopted before the suspect has been proved guilty according to law. That recital specifically refers to the regime applicable to preliminary procedural decisions. On the other hand, recital 22, which concerns the allocation of the burden of proof, governed by Article 6 of that directive, does not make reference to such decisions but refers exclusively to the process allowing the guilt of the suspect to be established.

35 A judicial decision having as its sole purpose the potential continued detention on remand pending trial of an accused person seeks only to resolve the question whether that person must be released or not, in the light of all the relevant circumstances, without establishing whether that person is guilty of having committed the offence with which he is charged.

36 Further, it is apparent from the case-law referred to in paragraph 29 of the present judgment that Articles 3 and 4 of Directive 2016/343 preclude such a decision from referring to the accused person as being guilty.

37 Thus, that decision cannot be considered a judicial decision on the guilt of the accused person for the purposes of that directive.

38 Consequently, it must be held that Article 6 of that directive does not apply to the procedure leading to the adoption of such a decision, so that the allocation of the burden of proof in the context of that procedure is solely within the remit of national law.

39 That conclusion cannot be called into question by paragraph 56 of the order of 12 February 2019, *RH* (C-8/19 PPU, EU:C:2019:110). Even though, in that paragraph, the Court mentioned

Article 6 of Directive 2016/343, it is apparent from paragraph 57 of that order that in doing so, the Court sought only to refer to the context surrounding Article 4 of that directive, in order to establish that the kind of reasoning required by the national law in the case which gave rise to that order cannot amount to referring to the accused person as being guilty, for the purposes of Article 4, without, however, concluding that Article 6 of that directive applies in a procedure leading to the adoption of a decision to remand in custody.

40 Further, as regards Articles 6 and 47 of the Charter, it is important to recall that, under Article 51(1) of the Charter, the provisions of the Charter are addressed to Member States only when they are implementing EU law.

41 Since the allocation of the burden of proof within the context of a procedure such as that in the main proceedings is not governed by EU law, the provisions of the Charter, including Articles 6 and 47 thereof, do not apply to national rules making that allocation (see, by analogy, judgment of 7 March 2017, *X and X*, C-638/16 PPU, EU:C:2017:173, paragraph 45 and the case-law cited).

42 In the light of all the foregoing considerations, the answer to the question referred is that Article 6 of Directive 2016/343 and Articles 6 and 47 of the Charter do not apply to a national law that makes the release of a person held in detention on remand pending trial conditional on that person establishing the existence of new circumstances justifying that release.

Costs

43 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

Article 6 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, and Articles 6 and 47 of the Charter of Fundamental Rights of the European Union do not apply to a national law that makes the release of a person held in detention on remand pending trial conditional on that person establishing the existence of new circumstances justifying that release.

[Signatures]

* Language of the case: Bulgarian.