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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

28 November 2024 (*)

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Criminal offences and penalties in the field of illicit drug trafficking and the fight against organised crime – Possibility to reduce applicable penalties – Scope – Framework Decision 2004/757/JHA – Articles 4 and 5 – Framework Decision 2008/841/JHA – Articles 3 and 4 – National legislation not implementing EU law – Article 51(1) of the Charter of Fundamental Rights of the European Union – Effective judicial protection – Second subparagraph of Article 19(1) TEU – Criminal proceedings against several persons – Agreement for settlement of the case provided for in national law – Approval by an ad hoc court – Consent of the other defendants)

In Case C432/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 28 June 2022, received at the Court on 28 June 2022, in the criminal proceedings against

PT,

intervening party:

Spetsializirana prokuratura,

THE COURT (Third Chamber),

composed of K. Jürimäe, President of the Second Chamber, acting as President of the Third Chamber, N. Jääskinen and N. Piçarra (Rapporteur), Judges,

Advocate General: P. Pikamäe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

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

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

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5 of Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking (OJ 2004 L 335, p. 8); (ii) 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); (iii) the second subparagraph of Article 19(1) TEU; and (iv) 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 PT and other persons prosecuted for directing, and/or participating in, an organised criminal group.

Legal context

European Union law

Treaty on European Union

3 The second subparagraph of Article 19(1) TEU provides:

'Member States shall provide remedies sufficient to ensure effective legal protection in the fields covered by Union law.'

Framework Decision 2004/757

4 Article 4 of Framework Decision 2004/757, entitled 'Penalties', provides, in paragraph 1:

'Each Member State shall take the measures necessary to ensure that the offences defined in Articles 2 and 3 are punishable by effective, proportionate and dissuasive criminal penalties.

Each Member State shall take the necessary measures to ensure that the offences referred to in Article 2 are punishable by criminal penalties of a maximum of at least between one and three years of imprisonment.'

5 Article 5 of that framework decision, entitled 'Particular circumstances', provides:

'Notwithstanding Article 4, each Member State may take the necessary measures to ensure that the penalties referred to in Article 4 may be reduced if the offender:

(a) renounces criminal activity relating to trafficking in drugs and precursors, 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 or mitigate the effects of the offence,

(ii) identify or bring to justice the other offenders,

(iii) find evidence, or

(iv) prevent further offences referred to in Articles 2 and 3.'

Framework Decision 2008/841

6 Article 3 of Framework Decision 2008/841, entitled 'Penalties', provides, in paragraph 1(a):

'Each Member State shall take the necessary measures to ensure that:

(a) the offence referred to in Article 2(a) is punishable by a maximum term of imprisonment of at least between two and five years;

…'

7 Article 4 of that framework decision, 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

The NK

8 Article 55(1) of the Nakazatelen kodeks (Criminal Code) in the version applicable to the case in the main proceedings ('the NK') provides:

'Where there are exceptional or numerous extenuating circumstances, when the most lenient penalty provided by law proves disproportionate, the court:

1. shall impose a penalty below the minimum tariff;

…'

9 Article 321 of the NK provides:

'…

(2) Participation in an [organised criminal group] is punishable by a term of imprisonment of between one and six years.

(3) Where the [organised criminal] group is armed or formed for the purposes of enrichment or to commit the offences referred to in … Article 354a, paragraphs 1 and 2 … the penalties are as follows:

…

2. for the offences referred to in paragraph 2: a term of imprisonment of between three to ten years.

…'

10 Under Article 354a(1) of the NK:

‘Producing, processing, acquiring or possessing, without lawful authorisation, narcotics or analogues thereof for the purposes of distribution or distributing narcotics or analogues therefore, shall be subject, in the case of highly dangerous narcotics or analogues thereof, to a term of imprisonment of between two and eight years and a fine of 5 000 and 20 000 [Bulgarian lev (BGN); (approximately EUR 2 260 to 10 230)] and, in the case of dangerous narcotics or analogues thereof, to a term of imprisonment of between one and six years and a fine of between BGN 2 000 and BGN 10 000 [(approximately EUR 1 020 and EUR 5 115)]. …’

The NPK

11 Article 381 of the Nakazatelno protsesualen kodeks (Code of Criminal Procedure), in the version applicable to the case in the main proceedings (‘the NPK’), entitled ‘Agreement for settlement of the case in a pre-trial procedure’, provides:

‘(1) At the end of the investigation, on the proposal of the prosecutor or the lawyer, an agreement may be drawn up between them to settle the case. …

…

(4) The agreement may determine the penalty under the conditions referred to in Article 55 of the NK, even in the absence of exceptional or numerous extenuating circumstances.

(5) The agreement shall be in written form and include a consensus on the following questions:

1. Was an act committed, was it committed by the accused person and was it wrongful, does the act constitute a criminal offence and what is its legal classification?

2. What should the nature and level of the penalty be?

…

(6) The agreement shall be signed by the prosecutor and the lawyer. The accused person shall sign the agreement if he or she accepts it, after declaring that he or she waives the right to have his or her case tried according to the ordinary procedure.

(7) Where the proceedings are directed against several persons or concern several offences, the agreement may be concluded by some of those persons or for some of those offences.

…’

12 Article 383 of the NPK, entitled ‘The consequences of the agreement for settlement of the case’, provides, in paragraph 1 thereof:

‘The agreement approved by the court has the force of a conviction that has become final.’

13 Under Article 384 of the NPK, entitled ‘Agreement for settlement of the case in the course of judicial proceedings’:

‘(1) In accordance with the conditions and detailed rules set out in this chapter, the court of first instance may approve an agreement for settlement of the case negotiated after the opening of the judicial proceedings, but before the conclusion of the judicial investigation phase.

…

(3) In such cases, the agreement [for settlement of the case] shall be approved only once the consent of all the parties [to the proceedings] has been obtained.'

14 Article 384a of the NPK, entitled 'Decision on an agreement entered into with one of the accused or for one of the offences', provides:

'(1) When, after the opening of the judicial proceedings, but before the conclusion of the judicial investigation phase, an agreement has been entered into with one of the defendants or for one of the offences, the court shall stay the proceedings.

(2) Another court formation shall give a ruling on the agreement entered into …

(3) The formation of the court referred to in paragraph 1 shall continue to examine the case after a ruling has been given on the agreement.'

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

15 On 25 March 2020, the Spetsializirana prokuratura (Specialised Public Prosecutor's Office, Bulgaria), brought charges against 41 persons, including SD and PT before the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), the referring court, for directing, and/or participating in, a criminal organisation which sought to enrich itself through the distribution of drugs. PT is charged with having participated in that criminal group and for possession of drugs with intent to distribute, under Article 321(2) and (3)(2) and Article 354a(1) of the NK.

16 On 19 August 2020, the case was referred back to the Spetsializirana prokuratura (Specialised Public Prosecutor's Office) in order to remedy the procedural errors in the indictment.

17 On 26 August 2020, during the pre-trial procedure, the public prosecutor and SD's defence counsel entered into an agreement under which SD would receive a more lenient penalty than that provided for by law, since he had pleaded guilty to all of the charges against him. That agreement mentioned the full names and national identity number of 40 other persons subject to prosecution, whose consent had not been requested with a view to approving the agreement. That agreement was approved on 1 September 2020 by a court formation other than that which initially heard the case.

18 On 28 August 2020, the Spetsializirana prokuratura (Specialised Public Prosecutor's Office) filed a corrected version of the abovementioned indictment and the trial phase of the proceedings was commenced.

19 On 17 November 2020, the public prosecutor and PT's defence counsel entered into an agreement for settlement of the case under which that defendant, having pleaded guilty to the charges against him, would receive a three-year custodial sentence, suspended for five years. That agreement was amended to omit the names and national identity numbers of the other defendants, in the light of the judgment of 5 September 2019, *AH and Others (Presumption of innocence)* (C377/18, EU:C:2019:670). The corrected version of that agreement remained dated 17 November 2020.

20 On 18 January 2021, the referring court, in accordance with Article 384a of the NPK, sent the agreement for settlement of the case referred to in the preceding paragraph to the President of that court with a view to designating another court formation to rule on that agreement. On 21 January 2021, the formation of the court thus designated refused to approve that agreement, on the ground that certain defendants had not given their consent, which is required under Article 384(3) of the NPK.

21 On 10 May 2022, the public prosecutor and PT's defence counsel entered into a new agreement for settlement of the case, the content of which was identical, and asked the referring court to rule on that agreement without seeking the consent of the other defendants.

22 On 18 May 2022, the formation of the court designated pursuant to Article 384a of the NPK refused to approve the agreement for settlement of the case referred to in the preceding paragraph, on the ground that that approval required the consent of the 39 other defendants, in accordance with Article 384(3) of the NPK.

23 In the light of that refusal, the public prosecutor, PT and his defence counsel, confirmed, on that same date, that they wished to enter into an agreement for settlement of the case and that it would be the referring court before which all of the evidence had been adduced which would approve that agreement, without seeking the consent of the other defendants. Nevertheless, the public prosecutor expressed doubts as to the impartiality of the referring court to proceed with the case against the other persons were it to approve the agreement entered into. For his part, PT claims that the impossibility for him to conclude such an agreement breaches his rights under the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR').

24 As regards the admissibility of the request for a preliminary ruling, the referring court observes that the case pending before it concerns criminal offences falling with the scope of Framework Decision 2004/757 and Framework Decision 2008/841 and, therefore, in the 'fields covered by Union law' within the meaning of the second subparagraph of Article 19(1) TEU. Since, according to that court, pursuant to the first subparagraph of Article 4(1) of Framework Decision 2004/757, those offences must be punishable by effective, proportionate and dissuasive criminal penalties, the criminal proceedings in which those provisions are applied are subject to the requirements arising from the second subparagraph of Article 19(1) TEU and the first and second paragraphs of Article 47 of the Charter. That court considers, moreover, that the rules laid down in national law for entering into an agreement for the settlement of the case constitute 'implementing Union law' within the meaning of Article 51(1) of the Charter, in this case of Article 5 of Framework Decision 2004/757 and of Article 4 of Framework Decision 2008/841.

25 In those circumstances, the referring court raises, in the first place, the question of the compatibility of Article 384a of the NPK with the second subparagraph of Article 19(1) TEU and the first and second paragraphs of Article 47 of the Charter, on the ground that, in the context of criminal proceedings brought against several persons, that provision of Bulgarian law requires a court formation other than that hearing the case to rule on the agreement for settlement of the case entered into by one of the defendants during the trial phase of those proceedings. That court states that the purpose of Article 384a of the NPK is to allow the formation of the court before which the substantive case has been brought to continue the proceedings against the other defendants without the risk of losing its objectivity and impartiality. The referring court takes the view, however, that the right to effective judicial protection would be infringed were the evidence adduced before the formation of the court before which the case was initially brought to be assessed by another court formation.

26 In the second place, the referring court is unsure as to the compatibility of Article 384(3) of the NPK with Article 5 of Framework Decision 2004/757, Article 4 of Framework Decision 2008/841, the second subparagraph of Article 19(1) TEU and Articles 47 and 52 of the Charter, on the ground that, when an agreement for settlement of the case is entered into by one of the defendants during the trial phase of criminal proceedings brought against several persons, that provision of Bulgarian law requires the unanimous consent of the other defendants in order for such an agreement to be approved, which is not the case during the pre-trial phase of those proceedings.

27 According to the referring court, by entering into and obtaining judicial approval for an agreement for settlement of the case, the defendant achieves the final result he or she is seeking, namely the imposition of a more lenient sentence than that which would have been imposed on him or her if that case had been dealt with in ordinary proceedings. In those circumstances, the requirement for the unanimous consent of the other defendants would undermine the fairness of the proceedings, for the purposes of the second

paragraph of Article 47 of the Charter, and also restrict access to a 'remedy' within the meaning of the second subparagraph of Article 19(1) TEU, in breach of the principle of proportionality referred to in Article 52 of the Charter.

28 In the third place, the referring court asks whether, if it were to approve the agreement for settlement of the case concerning PT, it would be required, in accordance with the order of 28 May 2020, *UL and VM* (C709/18, EU:C:2020:411), to decline to examine the charges brought against the other defendants, in order to guarantee them their right to an impartial tribunal, provided for in the second paragraph of Article 47 of the Charter.

29 That court notes that the answers which the Court will provide to its questions will enable it, in essence, to determine whether it may, or indeed must, itself approve, as PT has requested, the agreement for settlement of the case entered into by PT, without the consent of the other defendants.

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

'(1) In the context of criminal proceedings concerning charges brought for offences coming within the scope of EU law, is it compatible with the [second subparagraph] of Article 19(1) TEU and the first and second paragraphs of Article 47 of the Charter for a national law to impose a requirement under which a court other than the one hearing the case and before which all the evidence has been taken is to examine the substance of an agreement entered into between the public prosecutor and an accused person, whereby the reason behind that requirement is the fact that there are other co-accused persons who have not entered into an agreement?

(2) Is a national law under which an agreement discontinuing criminal proceedings is to be approved only with the consent of all other co-accused persons and their defence counsel compatible with Article 5 of Framework Decision 2004/757, Article 4 of Framework Decision 2008/841, the [second subparagraph] of Article 19(1) TEU and Article 52 of the Charter, in conjunction with Article 47 thereof?

(3) Does the second paragraph of Article 47 of the Charter require a court, after having examined and approved an agreement, to decline to examine the charges against the other co-accused persons where it has ruled on that agreement in such a manner that it does not make any statement as to their involvement or express an opinion as to their guilt?'

31 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) was dissolved and that certain criminal cases brought before that latter court, including the case in the main proceedings, had been transferred to it as from that date.

The jurisdiction of the Court

32 As a preliminary point, it should be borne in mind that it is for the Court to examine the conditions in which the case was referred to it by the national court, in order to assess whether it has jurisdiction or whether the request submitted to it is admissible (see, to that effect, judgments of 4 July 2006, *Adeneler and Others*, C212/04, EU:C:2006:443, paragraph 42, and of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 29).

Applicability of the Charter

33 Under Article 51(1) thereof, the provisions of the Charter are addressed to the Member States only when they are implementing EU law. Article 51(2) states that the provisions of the Charter do not extend in any way the powers of the European Union as defined in the Treaties.

34 Those provisions confirm the Court's settled case-law, according to which the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations. Consequently, in the context of a reference for a preliminary ruling under Article 267 TFEU, the Court may interpret EU law only within the limits of the powers conferred upon it (see, to that effect, judgment of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraphs 30 and 31 and the case-law cited).

35 The concept of 'implementing Union law', within the meaning of Article 51(1) of the Charter, presupposes a degree of connection between an act of EU law and the national measure in question, above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other (see, to that effect, judgments of 6 March 2014, *Siragusa*, C206/13, EU:C:2014:126, paragraph 24, and of 29 July 2024, *protectus*, C185/23, EU:C:2024:657, paragraph 42).

36 The Court has already held that fundamental EU rights could not be applied in relation to national legislation because the provisions of EU law in the area concerned did not impose any specific obligation on Member States with regard to the situation at issue in the main proceedings (see, to that effect, judgments of 6 March 2014, *Siragusa*, C206/13, EU:C:2014:126, paragraph 26, and of 10 July 2014, *Julián Hernández and Others*, C198/13, EU:C:2014:2055, paragraph 35).

37 It is in the light of those considerations that it must be determined whether, as the referring court maintains, the Bulgarian legislation governing the agreement for settlement of the case implements EU law, within the meaning of Article 51(1) of the Charter, and whether, therefore, the Court has jurisdiction to interpret the provisions of the Charter referred to by the referring court.

38 In the first place, in so far as that court considers that that national legislation amounts to an implementation of Article 5 of Framework Decision 2004/757, read in conjunction with Article 4(1) thereof, and of Article 4 of Framework Decision 2008/841, read in conjunction with Article 3 thereof, it should be noted that those provisions of EU law appear in acts adopted on the basis of Article 31(1) EU, the provisions of which have been reproduced in the first subparagraph of Article 83(1) TFEU. Article 4(1) and Article 3 contain minimum provisions on penalties applicable to criminal offences in the areas of crime covered by the respective scopes of those two framework decisions, namely illicit drug trafficking and organised crime.

39 As the Advocate General observed, in essence, in points 32 and 33 of his Opinion, their implementation implies that the Member States must adopt legislative measures falling within the scope of substantive criminal law, such as Article 321 and Article 354a(1) of the NK. By contrast, in the field of criminal procedural law, within which the provisions of Bulgarian law applicable to the agreement for settlement of the case, in essence, fall, namely those of Article 384(3) and Article 384a of the NPK, no EU legislative act concerning that type of agreement has been adopted on the basis of Article 31 EU or Article 82 TFEU, which defines the competence of the European Union in the field of criminal procedural law.

40 It follows that the relationship between the provisions of substantive criminal law of the European Union referred to in paragraph 38 above and the provisions of Bulgarian criminal procedural law governing the agreement for settlement of the case at issue in the main proceedings does not go above and beyond the fact of the former provisions being closely related to, or having an indirect impact on, the latter provisions. In those circumstances, a degree of connection, within the meaning of the case-law referred to in paragraph 35 above, cannot be established between them.

41 In the second place, Article 5 of Framework Decision 2004/757 and Article 4 of Framework Decision 2008/841, entitled 'Particular circumstances' and 'Special circumstances', merely provide that Member States may take the necessary measures to ensure that the penalties referred to in those framework decisions may be reduced if the offender renounces criminal activity in the areas covered by those

framework decisions and provides the administrative or judicial authorities with information which they would not otherwise have been able to obtain, helping them, inter alia, to identify or bring to justice the other offenders or find evidence. Those provisions of EU law do not specify the detailed rules or the conditions governing the conclusion of an agreement for settlement of the case, nor do they require the Member States to legislate in that area, contrary to what is required by the case-law referred to in paragraph 36 above in order for a degree of connection to be established between those provisions of EU law and those of Bulgarian law governing the agreement for settlement of the case.

42 It is apparent from the foregoing that the provisions of the NPK concerning the conclusion and approval of an agreement for settlement of the case, in particular Article 384(3) and Article 384a of the NPK, do not constitute 'implementation', for the purposes of Article 51(1) of the Charter, of the provisions of Framework Decisions 2004/757 and 2008/841.

43 Therefore, the Court does not have jurisdiction to answer the questions referred for a preliminary ruling in so far as they concern Article 5 of Framework Decision 2004/757, Article 4 of Framework Decision 2008/841, the first and second paragraphs of Article 47 and Article 52 of the Charter.

The second subparagraph of Article 19(1) TEU

44 In accordance with the second subparagraph of Article 19(1) TEU, Member States are to provide remedies sufficient to ensure effective legal protection for individual parties in the fields covered by EU law. It is therefore for the Member States to establish a system of legal remedies and procedures ensuring effective judicial review in those fields (judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C64/16, EU:C:2018:117, paragraph 34, and of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 34 and the case-law cited).

45 As regards the scope *ratione materiae* of the second subparagraph of Article 19(1) TEU, that provision refers to 'the fields covered by Union law', irrespective of whether the Member States are implementing Union law (see, to that effect, judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C64/16, EU:C:2018:117, paragraph 29, and of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 35 and the case-law cited).

46 The second subparagraph of Article 19(1) TEU is intended, inter alia, to apply to any national body which can rule, as a court or tribunal, on questions concerning the interpretation or application of EU law and which therefore fall within the fields covered by that law (see, to that effect, judgments of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C64/16, EU:C:2018:117, paragraph 40, and of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 36 and the case-law cited).

47 This is true of the referring court, which is called upon, in the present case, to rule on questions relating to the interpretation and application of Framework Decisions 2004/757 and 2008/841, which were transposed into the Bulgarian legal order by provisions of the NK, with the result that that court must meet the requirements of effective judicial protection arising from the second subparagraph of Article 19(1) TEU.

48 In those circumstances, the Court has jurisdiction to interpret the second subparagraph of Article 19(1) TEU in the present case.

Consideration of the questions referred

The first question

49 By its first question, the referring court asks, in essence, whether the second subparagraph of Article 19(1) TEU must be interpreted as precluding a provision of national law which confers on an ad hoc court, and not on the court responsible for the case, jurisdiction to rule on an agreement for settlement of

the case entered into by a defendant and the public prosecutor during the trial stage of criminal proceedings, where other defendants are also prosecuted in the same proceedings.

50 Although the organisation of justice in the Member States, in particular, the establishment, composition, powers and functioning of national courts, falls within the competence of those States, the fact remains that, when exercising that competence, the Member States are required to comply with their obligations deriving from EU law and, in particular, from Article 19 TEU (judgment of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 44 and the case-law cited).

51 The principle of effective judicial protection referred to in the second subparagraph of Article 19(1) TEU is a general principle of EU law which has been enshrined, inter alia, in the second paragraph of Article 47 of the Charter. The latter provision must, therefore, be duly taken into consideration for the purpose of interpreting the second subparagraph of Article 19(1) (see, to that effect, judgment of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraphs 45 and the case-law cited).

52 Furthermore, in accordance with the first sentence of Article 52(3) of the Charter, the rights contained therein have the same meaning and scope as the corresponding rights guaranteed by the ECHR. In accordance with the second sentence of that provision, this does not preclude EU law from providing more extensive protection. According to the Explanations relating to the Charter (OJ 2007 C 303, p. 17), the second paragraph of Article 47 of the Charter corresponds to Article 6(1) ECHR. The Court must, accordingly, ensure that its interpretation in the present case ensures a level of protection which does not disregard that guaranteed by Article 6(1) ECHR, as interpreted by the European Court of Human Rights (see, to that effect, judgment of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraphs 46 and the case-law cited).

53 Every Member State must, in accordance with the second subparagraph of Article 19(1) TEU, ensure that the bodies which are called upon, as 'courts or tribunals' within the meaning of EU law, to rule on questions relating to the interpretation or application of EU law and which thus come within its judicial system in the fields covered by EU law, meet the requirements of effective judicial protection, including that of independence (see to that effect, judgments of 21 December 2021, *Euro Box Promotion and Others*, C357/19, C379/19, C547/19, C811/19 and C840/19, EU:C:2021:1034, paragraphs 220 and 224, and of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraph 47).

54 Furthermore, the Court has already stated that the second subparagraph of Article 19(1) TEU, which imposes on Member States a clear and precise obligation as to the result to be achieved and which is not subject to any conditions, in particular as regards the independence and impartiality of the courts called upon to interpret and apply EU law, has direct effect, which means that any provision, case-law or national practice contrary to that provision of EU law, as interpreted by the Court, must be disapplied (judgment of 5 June 2023, *Commission* v *Poland (Independence and private life of judges)*, C204/21, EU:C:2023:442, paragraph 78 and the case-law cited).

55 There are two aspects to that requirement of independence. The first, which is external in nature, requires that the court 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, thus being protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions. The second aspect, which is internal in nature, is linked to 'impartiality' and seeks to ensure that an equal distance is maintained from 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 (judgment of 11 July 2024, *Hann-Invest and Others*, C554/21, C622/21 and C727/21, EU:C:2024:594, paragraphs 50 and 51 and the case-law cited).

56 In the present case, it is apparent from the request for a preliminary ruling that the public prosecutor informed the referring court of his doubts as to the impartiality of the formation of the court responsible for the case in the main proceedings to continue the proceedings concerning the other defendants, if it were to approve the agreement for settlement of the case concerning PT.

57 As the Advocate General observed, in essence, in point 66 of his Opinion, where, as in the present case, several persons are prosecuted for their participation in the same organised criminal group and one of them enters into, during the trial stage of those proceedings, an agreement in which that person accepts his or her guilt, the designation of an ad hoc court in order to rule on that agreement constitutes a measure of administration of justice which it is open to the Member States to provide for; and this, in order to ensure, or even reinforce, compliance with the requirements of independence and impartiality of the formation of the court which will have to try the defendants who have not pleaded guilty, requirements which follow from the second subparagraph of Article 19(1) TEU.

58 In its judgment of 25 November 2021, *Mucha v. Slovakia* (CE:ECHR:2021:1125JUD006370319, §§ 62 to 64 and 66), the European Court of Human Rights found that there had been a breach of Article 6(1) ECHR concerning the principle of impartiality and the presumption of innocence, in a situation where the same court had ruled, first, on the plea bargaining agreements concerning eight persons prosecuted on the basis that they had participated in a criminal group and, second, on the merits of the charge against another person prosecuted on the basis that that person had participated in the same criminal group, since the judgments approving those agreements contained a specific and individual reference to the acts of which that latter person was accused and had therefore infringed his right to be presumed innocent until his guilt has been legally established. The European Court of Human Rights concluded from this that the doubts concerning the impartiality of the domestic court were objectively justified.

59 On the other hand, the referring court considers that, in criminal proceedings in which several persons are prosecuted, the designation of an ad hoc court to rule on an agreement for settlement of the case is liable to infringe the principle of immediacy of criminal proceedings.

60 That principle means that those who have the responsibility for deciding the guilt or innocence of an accused ought, in principle, to hear witnesses in person and assess their credibility, since an important aspect of fair criminal proceedings is the ability for the accused to be confronted with the witnesses in the presence of the judge who ultimately decides the case (see, to that effect, judgment of 29 July 2019, *Gambino and Hyka*, C38/18, EU:C:2019:628, paragraphs 42 and 43).

61 In the present case, as the Advocate General observed, in essence, in point 73 of his Opinion, the designation of an ad hoc court to rule on an agreement for settlement of the case, such as that at issue in the main proceedings, is not such as to undermine the principle of immediacy of criminal proceedings. Indeed, where a defendant chooses to plead guilty, voluntarily and with full knowledge of that of which he or she is accused and of the legal effects associated with that choice, he or she waives, as is apparent from Article 381(6) of the NPK, ‘the right to have his or her case tried according to the ordinary procedure’ and certain rights deriving therefrom.

62 In light of the foregoing, the answer to the first question is that the second subparagraph of Article 19(1) TEU must be interpreted as not precluding a provision of national law which confers on an ad hoc court, and not on the court responsible for the case, jurisdiction to rule on an agreement for settlement of the case entered into by a defendant and the public prosecutor during the trial stage of criminal proceedings, where other defendants are also prosecuted in the same proceedings.

The second question

Admissibility

63 The European Commission submits, in its written observations, that the statement of reasons for the request for a preliminary ruling relating to the second question, in so far as it concerns the interpretation of the second subparagraph of Article 19(1) TEU, is 'very terse' and does not satisfy the requirements of Article 94 of the Rules of Procedure of the Court of Justice.

64 In accordance with settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and 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 for a preliminary ruling referred from a national court only where it is quite obvious that the interpretation of EU law sought bears no relation to the actual facts of the main action or its purpose, 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 (see, to that effect, judgments of 15 December 1995, *Bosman*, C415/93, EU:C:1995:463, paragraph 61, and of 8 November 2022, *Staatssecretaris van Justitie en Veiligheid (Ex officio review of detention)*, C704/20 and C39/21, EU:C:2022:858, paragraph 61).

65 Since the request for a preliminary ruling serves as the basis for the preliminary ruling procedure before the Court under Article 267 TFEU, it is essential that the national court should, in that request, expand on its definition of the factual and legislative context of the dispute in the main proceedings and give at the very least some explanation of the reasons for the choice of the EU law provisions which it seeks to have interpreted and of the link it establishes between those provisions and the national law applicable to the proceedings pending before it. Those cumulative requirements are expressly set out in Article 94 of the Rules of Procedure (see, to that effect, judgment of 4 June 2020, *C.F. (Tax inspection)*, C430/19, EU:C:2020:429, paragraph 23, and the case-law cited).

66 In the present case, the referring court sets out, to the required legal standard, the circumstances of the case in the main proceedings and describes, in detail, the applicable national provisions. It also states the reasons why it has doubts as to the compatibility, in particular, of Article 384(3) of the NPK with the second subparagraph of Article 19(1) TEU. That court takes the view that the requirement for the consent of all the other defendants for the approval of an agreement for settlement of the case entered into by one of those defendants, during the trial stage of criminal proceedings brought against a number of persons, 'unduly' restricts the 'remedy' which, in its view, such an agreement constitutes for that defendant, in so far as, by entering into and obtaining approval of that agreement, that defendant 'achieves the final result he or she is seeking, namely to obtain a more lenient penalty than that which would have been imposed on him or her if the case had been dealt with in ordinary proceedings'. According to that court, such a restriction is liable to prejudice 'the fairness of the proceedings'.

67 It follows that, contrary to what is claimed by the Commission, as regards the second question referred, the request for a preliminary ruling meets the requirements laid down in Article 94 of the Rules of Procedure, and it is, therefore, admissible in so far as it concerns the interpretation of the second subparagraph of Article 19(1) TEU.

Substance

68 By its second question, the referring court asks, in essence, whether the second subparagraph of Article 19(1) TEU must be interpreted as precluding a provision of national law which, in criminal proceedings brought against several defendants on the basis that they had participated in the same organised criminal group, makes the judicial approval of an agreement for settlement of the case, entered into by one of the defendants and the public prosecutor during the trial stage of those proceedings, subject to the consent of all the other defendants.

69 As stated by the referring court, in the case in the main proceedings, such a requirement 'serves the interests of some of the other [defendants] against whom PT could testify as a witness after approval of the agreement concerning him'. Furthermore, that court stated, in response to a request for clarification from the Court of Justice made pursuant to Article 101(1) of its Rules of Procedure, that the court responsible for trying the other defendants 'is bound' by the content of the agreement for settlement of the case entered into by one of the defendants.

70 From that point of view, the requirement for the consent of the other defendants falls within the scope of the right to a fair trial and their rights of defence. Respect for those rights is one of the elements forming an integral part of the fundamental principle of effective judicial protection referred to in the second subparagraph of Article 19(1) TEU, like the concept of 'fair trial' referred to in Article 6 ECHR (see, to that effect, judgment of 15 July 2021, *Commission* v *Poland (Disciplinary regime for judges)*, C791/19, EU:C:2021:596, paragraph 203).

71 That fundamental principle of EU law is infringed if a judicial decision is based on facts and documents of which the parties themselves, or one of them, have not been able to take cognisance and in relation to which they have not therefore been able to formulate an opinion (see, to that effect, judgments of 22 March 1961, *Snupat* v *High Authority*, 42/59 and 49/59, EU:C:1961:5, p. 84, and of 17 November 2022, *Harman International Industries*, C175/21, EU:C:2022:895, paragraph 63). In addition, the principles of fair trial require that in appropriate cases the interests of the defence are balanced against those of witnesses or victims called upon to testify (judgment of 29 July 2019, *Gambino and Hyka*, C38/18, EU:C:2019:628, paragraph 41).

72 In the light of the foregoing, the principle of respect for the rights of the defence cannot be interpreted as precluding provisions of national law, such as Article 384(3) of the NPK, the purpose of which is to guarantee those rights for the defendants who, since they have not pleaded guilty, must be tried in subsequent criminal proceedings, taking into account not only the information concerning them that may be included in the agreement for settlement of the case entered into by the defendant who pleaded guilty, but also the statements which that defendant may make, as a witness, before the court which will have to rule on the criminal liability of the other accused persons.

73 In light of the foregoing considerations, the answer to the second question is that the second subparagraph of Article 19(1) TEU must be interpreted as not precluding a provision of national law which, in criminal proceedings brought against several defendants on the basis that they had participated in the same organised criminal group, makes the judicial approval of an agreement for settlement of the case, entered into by one of the defendants and the public prosecutor during the trial stage of those proceedings, subject to the consent of all the other defendants.

The third question

74 As is apparent from paragraph 42 above, the Court does not have jurisdiction to answer the third question, since it relates exclusively to the interpretation of Article 47 of the Charter.

Costs

75 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 (Third Chamber) hereby rules:

1. **The second subparagraph of Article 19(1) TEU must be interpreted as not precluding a provision of national law which confers on an ad hoc court, and not on the court responsible for the case, jurisdiction**

to rule on an agreement for settlement of the case entered into by a defendant and the public prosecutor during the trial stage of criminal proceedings, where other defendants are also prosecuted in the same proceedings.

2. **The second subparagraph of Article 19(1) TEU must be interpreted as not precluding a provision of national law which, in criminal proceedings brought against several defendants on the basis that they had participated in the same organised criminal group, makes the judicial approval of an agreement for settlement of the case, entered into by one of the defendants and the public prosecutor during the trial stage of those proceedings, subject to the consent of all the other defendants.**

[Signatures]

* Language of the case: Bulgarian.