

Case C-16/24 [Sinalov] ⁱ**Summary of the request for a preliminary ruling under Article 98(1) of the Rules of Procedure of the Court of Justice****Date lodged:**

11 January 2024

Referring court:

Sofiyski gradski sad (Sofia City Court, Bulgaria)

Date of the decision to refer:

11 January 2024

Criminal proceedings against:

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Subject matter of the main proceedings

Jurisdictional dispute between a national judge and his head of court management concerning the manner in which the principle applicable in the Member State of random selection when allocating cases is to be applied. Adherence to the principle of the independence of the judiciary as an expression of the rule of law, if the random case allocation system is interpreted and applied such that a national judge is not permitted to assess autonomously whether he has jurisdiction to handle a criminal case allocated to him by the head of court management, with the consequence that, after said judge referred the case directly to another judge at the same court for reasons of jurisdiction without the consent of the head of court management and the other judge accepted the case for handling and found it necessary, similarly without the consent of the head of court management, to hear the parties to the case on the issue of his jurisdiction to handle the case, a

ⁱ The present case is designated by a fictitious name which does not correspond to the actual name of a party to the proceedings.

disciplinary procedure was initiated against the two national judges on the grounds that they had damaged the reputation of the judiciary and breached their official duties

Subject matter and legal basis of the reference

Interpretation of EU law under Article 267 TFEU

Question referred for a preliminary ruling

Is it compatible with Article 19([1] subparagraph 2] TEU and Article 47 of the Charter to interpret a national law envisaging, as a principle for administration of justice, random selection among judges in order to determine which one of them is to handle and rule on a criminal case, to the effect that, in the event of doubts as to whether the principle has been breached in a case already allocated by the head of court management, these doubts are to be resolved

1. as a court matter and the court handling the case – including after hearing the parties and in the appeal proceedings – shall rule thereon, or
2. as an administrative matter and only the head of court management has the power to make this assessment,

and furthermore to interpret such a national law to the effect that, if the judge to whom the case has been allocated is of the view that, in accordance with the aforementioned principle, another judge should handle the case and refers the case to this judge and the second judge who has received the case decides first to hear the parties in adversarial proceedings and then to make a decision autonomously as to the issue of his own jurisdiction, these two judges are committing a disciplinary offence in that their conduct is damaging to the reputation of the judiciary and is in breach of their official duties?

Provisions of European Union law and case-law relied on

Treaty on European Union (‘TEU’), in particular Article 19(1) subparagraph 2;

Charter of Fundamental Rights of the European Union (‘the Charter’), in particular Article 47;

Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ 2008 L 300, p. 42);

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);

Judgment of 15 July 2021, *Commission v Poland (Disciplinary regime applicable to judges)*, C-791/19, EU:C:2021:596;

Judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311;

Judgment of 19 November 2019, *A. K. and Others (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982;

Judgment of 2 March 2021, *A.B. and Others (Appointment of judges to the Supreme Court – Actions)*, C-824/18, EU:C:2021:153;

Judgment of 5 November 2019, *Commission v Poland (Independence of ordinary courts)*, C-192/18, EU:C:2019:924;

Judgment of 24 June 2019, *Commission v Poland (Independence of the Supreme Court)*, C-619/18, EU:C:2019:531.

National laws and regulations

Nakazatelno-protsesualen kodeks (Code of Criminal Procedure), in particular Article 42(2), Article 44(1) and Article 258

Zakon za sadebnata vlast (Law on the judiciary, ‘ZSV’), in particular Article 9(1), Article 86, Article 109, Article 307(2), Article 308, Article 327 and Article 360b(1) and (6)

Brief summary of the facts and proceedings

- 1 Criminal proceedings against four individuals on account of involvement in an organised crime group with the criminal purpose of committing tax offences – non-payment of value added tax – had been pending at the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) since 30 October 2014. The alleged offences took place between January 2008 and 27 March 2012.
- 2 The case was allocated to Judge Ivo Hinov following a computer-based random selection process among all judges. The hearing was carried out by a chamber with two lay judges. Due to the death of one of the lay judges in 2021 and taking into account the principle of immutability of the adjudicating panel, Judge Ivo Hinov (‘Judge I. H.’) ordered on 19 October 2021 the restart of the hearing.
- 3 On 27 July 2022, the Spetsializiran nakazatelen sad (Specialised Criminal Court) was dissolved and the case referred to the Sofiyski gradski sad (Sofia City Court, Bulgaria, ‘SGS’) for reasons of jurisdiction. Judge I. H. was again engaged as a judge at this court, where he currently works in this capacity.

- 4 On 4 August 2022, the head of court management for the criminal division of the SGS used the mechanism for allocating cases among all judges of the court in application of the principle of random selection. The case was allocated to Judge Hristinka Koleva ('Judge H. K.'). Without debating the legal issues of the case, she determined on 27 September 2023 that Judge I. H. had jurisdiction to handle the case in this matter. She therefore referred the case to this judge for handling.
- 5 On 3 October 2023, Judge I. H. issued a judicial decision ordering that a public session be held to hear the parties – in particular on the issue of whether the principle of random allocation had been adhered to. The parties expressed the opinion that Judge H. K. had committed an error of law because a judge was not able to refer a case to another judge for handling. Their view is that the case should have been referred to the head of court management, who would have to carry out a new random selection in order to allocate the case.
- 6 By order of 23 November 2023, Judge I. H. stated that random selection had been established by the legislator as the principle for organisation of justice and that every court had the power to scrutinise its own jurisdiction. He is therefore of the view that the matter is a court issue (i.e. a matter that – including in the appeal proceedings – is to be decided by the court) and not an administrative matter (i.e. a matter that is to be decided by the head of court management).
- 7 During appeal proceedings against the decisions of this judge, the competent appellate court held that only the head of court management had the power to assess whether the principle of random selection had been adhered to during the original allocation of the case.
- 8 By administrative order of 22 December 2023, the head of court management initiated a disciplinary procedure against Judge H. K. and Judge I. H.. Judge H. K. is accused in fact of failing to refer the case to the head of court management for reallocation (and also of failing to suspend proceedings and failing to recuse herself), while Judge I. H. is accused of accepting a case for handling, which had not been allocated to him properly as required by the ZSV. In law, the conduct of the two judges was categorised as 'an act damaging the reputation of the judiciary that constitutes a breach of official duties'.

Main arguments of the judge and his head of court management

- 9 **Judge I. H.**, whose chamber is the referring court that lodged the request for a preliminary ruling with the Court of Justice,¹ is of the view that, by means of the president of the SGS holding him disciplinarily liable, his right to freely assess his jurisdiction to handle a case as part of his general powers as a judge has been

¹ Translator's note: The original request for a preliminary ruling dated 11 January 2024 was submitted by the judge as an individual in his capacity as chair of the chamber. By order of 15 January 2024, which was submitted to the Court of Justice on 17 January 2024, the entire chamber, i.e. the judge and the two lay judges, confirmed his decision.

infringed. To his mind, at least two main questions arise in this connection. First, whether the referring court must acknowledge that it does not, in practice, have jurisdiction to rule on this matter, which would mean conceding that only the head of court management would be able to carry out this assessment. Second, whether the actions taken to date by the referring court for the purpose of assessing his own jurisdiction actually constitute a disciplinary offence and therefore provide grounds for recusal since the judge concerned brought the standing of the judiciary into disrepute by carrying out judicial acts in a particular case and is not able to handle the case further.

- 10 The referring court outlines the nature and the practical implications of the principle of random selection when allocating cases. It points out that the new system was introduced in order to limit the top-down arbitrariness when allocating cases, over which the president of the court traditionally held a monopoly. Random selection takes place when a case is pending at court. It takes two different forms. Random allocation can take place (i) ‘automatically’ (by means of equal electronic allocation in accordance with the order in which cases are received) – in this instance, the case is allocated among all judges, of the criminal division of the SGS in the present case. This approach applies to the court’s first dealings with a case. Random allocation can also take the form of (ii) ‘selection of a particular judge’, i.e. a ‘manual allocation’. The second approach is used primarily in instances where the case was initially allocated to a particular judge who subsequently refers it to another body (e.g. to the public prosecutor in order to rectify a procedural error, or to another court that he deems to have jurisdiction) and the same case is then returned back to the court. In this instance, the case is allocated directly to the same judge.
- 11 In the view of the referring court, national law does not address, however, the issue of who has jurisdiction to assess whether the head of court management has exercised his power, to adhere to the principle of random selection, properly. In specific terms, the matter at issue here is whether he correctly allocated the case in accordance with the first option among all judges or whether he should have allocated the case in accordance with the second option, i.e. to a particular judge. The referring court takes the view that two positions are possible in this respect.
- 12 Taking the first position, the fact that the national legislator established random selection as a principle for organising the administration of justice makes it a key element in the legality of court proceedings. Therefore, the general principle would apply that the judge to whom the case is allocated has the power to assess his own jurisdiction, including the issue of whether the principle of random selection was adhered to during allocation of the case. In accordance with this position, the principle of random allocation is implemented in two stages. In the first stage, it is implemented by the head of court management, who allocates the case to a particular judge and in so doing applies one of the two forms of the allocation mechanism at his discretion. This is done in an administrative procedure without involvement of the parties. In the second stage, the judge to whom a case has been allocated performs an autonomous assessment which is

carried out as part of the court proceedings with all associated guarantees – hearing of the parties and supervision by higher-level instances.

- 13 The second position means that the task of checking adherence to the principle falls solely to the head of court management. If the judge to whom the case was allocated is of the view that the case has been allocated to him incorrectly, he would first have to inform the head of court management who would have to assess whether a new allocation should be carried out. This is the view held by the appellate court and the head of court management at SGS, who initiated the disciplinary procedure against Judge I. H. and Judge H. K. **The head of court management** is of the view that he alone has the power to make this assessment and therefore Judge H. K. should have referred the matter to him together with corresponding reasoning, so that he could then have made a decision on jurisdiction for a new allocation. Accordingly, Judge I. H. should have forwarded the case, after having received it from Judge H. K., directly to the head of court management for the head of court management to make an assessment on it, instead of deciding for himself whether he had the power to handle the case without the consent of the head of court management at the court concerned.
- 14 The referring court emphasises, however, that it is not clear on the basis of national law whether the head of court management has directorial power over the judge when assessing the jurisdiction of the judge to handle and rule on a particular aspect of the case – adherence to the principle of random selection.

Brief summary of the basis for the reference

- 15 The referring court firstly points out that the case in the main proceedings concerns the establishment of guilt or innocence of individuals charged with involvement in an organised crime group and evasion of value added tax. If found guilty, the penalty would have to be determined in accordance with Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime and 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. As secondary legislation applies to the case in the main proceedings, Article 19(1) subparagraph 2 TEU and Article 47 of the Charter are applicable. The case in the main proceedings is to be handled by a court that, for the purpose of EU law, is independent.
- 16 In the view of the referring court, this primarily means that the judge is independent when exercising his right of assessment in relation to his own jurisdiction to handle a case (jurisdiction given the application of the principle of random selection). It must therefore be examined whether this independence is compromised if the assessment can only be made by the head of court management at the court concerned and if the view of the adjudicating panel concerned that he has such jurisdiction himself is regarded as a disciplinary offence by the head of court management.

- 17 In this connection, the referring court points out that, in the view of the Court of Justice, although the organisation of justice is a matter of national law, such organisation must ensure the independence of the judiciary in order to guarantee the protection of the rule of law as a value of utmost importance. This also applies to the design of regulations for carrying out disciplinary procedures against judges.
- 18 The referring court points out that the Court of Justice proceeds on the basis that the independence of the judiciary in itself applies in relation to the legislature and the executive. In the present case, the question of the independence of the judge arises, however, in light of his relationships with the head of court management, and only concerning one aspect of the case, namely the assessment of whether the principle of random selection, already undertaken by the head of court management, has been applied properly.
- 19 It should, however, be pointed out that it is the task of the head of court management to create the necessary conditions for justice enforcement, but that he does not himself administer justice. Therefore the president of the court concerned, as part of the court system, when exercising his powers to allocate cases, is exercising only executive powers and not judicial powers. The powers are clearly delimited: Judicial powers are exercised by the judge (in relation to the case being handled by him) and executive powers are exercised by the head of court management (in relation to the court that he manages).
- 20 In addition, according to case-law of the Court of Justice, an element of independence of the court is its imperviousness to external factors. This question arises in the main proceedings in so far as an external factor – the head of court management – insists that only he can make a decision as to which judge should handle the case in accordance with the principle of random selection.
- 21 The Court of Justice also points out that the requirement of independence presupposes that the judge exercises his functions wholly autonomously, without being subordinated to any other body and without taking orders or instructions from any source whatsoever, so that it is thus protected against external interventions or pressure liable to impair the independent judgment of its members and to influence their decisions.
- 22 In the main proceedings, the head of court management rejected the assertion that a judge was able to assess his own jurisdiction, taking the view that he, the head of court management, holds a monopoly on this issue and his decision is to be binding for the judge. In the view of the referring court, this is a form of external pressure, in so far as a matter concerning the application of a principle for administration of justice is involved. The head of court management is, however, in relation to this administration of justice, an external person.
- 23 In the view of the referring court, the case-law of the Court of Justice transferred to the present case shall be understood to the effect that the requirement for

judicial independence applies from the point in time at which a judge has been assigned to handle and rule on a specific case. From this moment onwards, his independence becomes a value, from this moment onwards he can no longer be put under pressure concerning the decisions that he makes when handling and ruling on the case. This also applies to decisions that concern his own jurisdictions.

- 24 In the main proceedings, Judge H. K. was originally entrusted with handling the case in the main proceedings properly by the head of court management. The view that she continues to be under his control, without being in the position to herself determine the question of her jurisdiction to handle and rule on the case in accordance with the principle of random allocation, but instead would have to ask him for a new allocation of case cannot be accepted. This is because, if the right of Judge H. K. to autonomously assess her own jurisdiction to handle the case is acknowledged, this also means acknowledgment of her right to autonomously refer the case to Judge I. H. in so far as she was of the view that he should handle the case. It is therefore necessary to acknowledge the right of Judge I. H. to assess, after receiving the case, whether he has jurisdiction to handle the case under the principle of random selection, including the right to decide to hear the parties before reaching a conclusion, and to do so specifically without handing this decision to the head of court management.
- 25 If, however, the view of the head of court management was accepted, this would mean that the judge who is to handle and rule on a particular case would be completely dependent on the will of the head of court management as regards one particular aspect, namely his own jurisdiction to handle and rule on the case, without himself being able to make such an assessment. In the view of the referring court, this would consequently result in a court which – particularly in this respect (assessment of jurisdiction to handle and rule on a case given the principle of random selection) – would be dependent on the head of court management.
- 26 The referring court further questions whether the disciplinary procedure initiated against Judge I. H. is damaging to the public's trust in the functioning and the independence of the judiciary. In this connection it should be pointed out that, in the view of the Court of Justice, the disciplinary procedure against a judge may not be used for the purpose of controlling the content of the judicial decision he makes and that the rules on disciplinary liability must be designed so as to prevent the judge being exposed to the risk that his disciplinary liability is triggered solely on the basis of his decision.
- 27 In the view of the referring court, these conditions have not been met in the main proceedings, in so far as the disciplinary procedures against Judge H. K. and Judge I. H. concern the content of the judicial decisions they made, which are available in writing. The actual purpose is to reproach them as the content of their decisions was not as it should have been in the view of the head of court management. As regards a disciplinary procedure that concerns the content of a

judicial decision, the Court of Justice has found that disciplinary liability can only be triggered in ‘entirely exceptional situations’. These are ‘serious and totally inexcusable forms of conduct on the part of judges ... for example in violating deliberately and in bad faith, or as a result of particularly serious and gross negligence, the national and EU law with which they are supposed to ensure compliance, or acting arbitrarily or denying justice’.

- 28 The referring court concludes that the decision of the two judges to assess their own jurisdiction to handling the main proceedings cannot be regarded as such an exceptionally serious breach of the law. The matter is about disputed exercise of powers. The two judges were of the view that a particular power (assessment of own jurisdiction given the principle of random selection) could only be exercised by the judge, not by the head of court management. The head of court management not only took the view that it was he alone who had this power, but also that the judges had committed a disciplinary offence because they had challenged his power. Furthermore, it should be pointed out that the two judges provided proper reasoning for their judicial decisions in this respect. The head of court management, however, failed to address this fact and did not consider whether there was a mere error in applying the law. Instead, he has used the disciplinary procedure to protect his monopoly over the issue of proper application of the principle of random allocation.
- 29 Finally, the referring court emphasises that the requirement for independence of the judiciary is not an end in itself. Rather, it safeguards the right of the parties to a defence, the obvious form of which is the right to a fair hearing. The action of Judge I. H. that triggered his disciplinary liability aimed to give the parties an opportunity to comment on whether the principle of random selection – in the original allocation by the head of court management and in the referral of the case by Judge H. K. to Judge I. H. – was adhered to. By acting as he did, the parties were, in reality, offered an effective defence in the determination of this issue, as their opinions were taken into account. If, however, this issue had been handed over to the head of court management as an administrative matter, the head of court management would have made the decision on the basis of his personal assessment and without hearing the parties.
- 30 In summary, the referring court is of the view that it must be determined in the present case whether the principle of independence of the judiciary, as an expression of the rule of law, is safeguarded. It is the view of this court that the vigour of rights that citizens derive from EU law can only be safeguarded if they are protected by an independent court. And this independence should arise once the case is allocated. From this point onwards, the judge must have full responsibility for his decision. His errors must be corrected by the parties by means of appeal proceedings or by higher instances – ex officio. If the head of court management can exercise control over this after the case has been allocated, and specifically only in one aspect of the case (in this instance adherence to the principle of random selection), the court cannot be assumed to be fully independent.