

CJEU: EU Law Does Not Govern the Procedure for Reviewing Pre-Trial Detention Decisions



euclid

European Law Forum: Prevention • Investigation • Prosecution

News

Thomas Wahl

Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence does not govern the rules on how to examine evidence for confirming or maintaining pre-trial detention. The CJEU reiterated this position as already stated in its judgment of 19 September 2018 in case C-310/18 PPU (*"Milev II"*, see [euclid 3/2018](#), p. 155).

In the case at issue (C-8/19 PPU, *"RH"*), the referring Bulgarian Specialised Criminal Court had difficulties in formulating reasonable grounds for upholding pre-trial detention against RH (who was suspected of being part of a criminal gang organized in order to commit murders) on account of the Directive's aim that a person should not be presented as guilty. Furthermore, the referring court raised the question of compatibility of Bulgarian case law with EU law because the possibility to make preliminary ruling references to the CJEU is limited due to the obligation to adjudicate a criminal case within a reasonable time.

The CJEU first examined the latter question and stressed that national legislation is not acceptable if it results in the national court's obligation to adjudicate on the legality of a pre-trial detention decision without the opportunity to make a request for a preliminary ruling to the CJEU or to wait for its reply. In this context, the CJEU refers to the urgent procedure before the Court which constitutes an implementation of the right of all persons to have their case heard within a reasonable time. In addition, the CJEU stresses that judges cannot be exposed to disciplinary sanctions for exercising their choice to send a request for a preliminary ruling to the CJEU or not. This choice is an important element of judicial independence.

As to the material question, by referring to its judgment in *Milev II*, the CJEU clarifies that Directive 2016/343 in Arts. 4 and 6 as well as Recital 16 widely exempts pre-trial detention from its scope. Therefore, secondary EU law does not include rules on how to review the legality of pre-trial detention, i.e., to which extent a national court is obliged to compare the elements of incriminating and exculpatory evidence presented to it and to provide reasoning *via-à-vis* the objections of the defence counsel. However, that decision may not present the person detained as being guilty.

AUTHOR

Thomas Wahl

Senior Researcher
Max Planck Institute for the
Study of Crime, Security and
Law

ISSN: 1862-6947

<https://euclid.eu>



About euclid

euclid is the leading journal which regularly informs about current developments in European criminal and "criminative" law.

All news items are freely accessible at: <https://euclid.eu/news/>

Stay informed by emailing to eucrim-subscribe@csl.mpg.de to receive alerts for new releases of issues.
The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



**Co-funded by
the European Union**