

CJEU: Scope of EU's Procedural Rights Directives in Procedures Ordering Committal to Psychiatric Hospital

Thomas Wahl

On 19 September 2019, the CJEU delivered a judgment dealing with the applicability and interpretation of the procedural rights directives in a situation where the judicial authorities of a Member State ordered a person be committed to a psychiatric hospital. The case (*C-467/18 – criminal proceedings against “EP”*) was brought to the CJEU by a Bulgarian court, which voiced doubts as to whether the Bulgarian provisions governing compulsory admission of mentally ill persons to a medical facility are in conformity with the rights guaranteed in Directive 2012/13 (right to information), Directive 2013/38 (access to a lawyer), Directive 2016/343 (presumption of innocence), and the Charter of Fundamental Rights of the EU.

The referring court has to deal with the legality of the procedure against “EP” who killed his mother in a state of paranoid schizophrenia and was ordered to adopt compulsory medical measures by means of a special procedure defined in the Bulgarian code of criminal procedure.

First, the CJEU dealt with the question of the applicability of Directive 2012/13 and Directive 2013/48. By above all referring to the wording of the provisions on the applicability of the Directives (Articles 2 of each) and on the interpretation of the fundamental right to liberty and security (as enshrined in Art. 6 CFR, Art. 5 ECHR), the CJEU concluded that the Directives’ scope covers judicial proceedings in which an order may be made for the committal to a psychiatric hospital of a person who, at the conclusion of earlier criminal proceedings, was found to be the perpetrator of acts constituting a criminal offence. As a consequence, this person must also be informed of his/her rights as soon as possible, at the latest before his/her first official questioning by the police.

Second, the CJEU ruled on the review powers of the national court. In this context, the CJEU considers national legislation not to be in line with EU law (right to an effective remedy) if the court is not able to rule on the respect of procedural safeguards in the proceedings that took place prior to those before the court.

Third, the CJEU clarified, however, that Directive 2016/343 on the presumption of innocence does not apply if the order for the committal to a psychiatric hospital was based on law aiming at preventing danger, such as the Bulgarian Health Law. As a consequence, EU law is not the yardstick to assess whether the rights enshrined in the Directives were upheld in such preventive procedures.

However, Art. 3 of Directive 2016/343 is applicable if the judicial proceedings for the committal to a psychiatric hospital and thus the deprivation of liberty do not pursue merely therapeutic, but also safety

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purposes. Therefore, the public prosecutor's office has the burden of proof that the person whose admission is sought is the perpetrator of acts deemed to constitute such a danger.

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