

CASE STUDY – No Lawyer for those who cannot be held criminally liable? – Continuous Training

Facts of the Case

On 26 August 2015, after the discovery of a body in a street in the town of Medkovets (Bulgaria), police officers attended the home of Mr. Enim, the deceased's son. He admitted to having killed his mother. Informed of Mr. Enim's mental disorder by witnesses, the police officers took him to the emergency unit of a psychiatric hospital. Furthermore, witnesses also informed the police that Mr Enim and his family were destitute and living on state-provided assistance.

By decision of 12 September 2015, the Rayonen sad Lom (District Court, Lom, Bulgaria) ordered that Mr. Enim be admitted to a psychiatric hospital for a period of 6 months. That decision, taken on the basis of the Health Law, was renewed continuously until the date of the order for reference.

The forensic psychiatry expert report assigned to two hospital psychiatrists concluded that Mr. Enim was suffering from paranoid schizophrenia.

By order of 7 July 2016, the Public Prosecutor's Office in Montana (Bulgaria) suspended the criminal proceedings on the grounds that Mr. Enim was suffering from a mental illness. Taking the view that he was unable to participate in the proceedings, the Public Prosecutor's Office did not serve that order on him.

On 29 December 2017, the Apelativna prokuratura Sofia (Public Prosecutor's Office, Sofia, Bulgaria) ordered criminal proceedings to be resumed and made provision for the continuation of Mr. Enim's committal under the Health Law.

On 1 March 2018 an order was made closing the criminal proceedings initiated against him. The Public Prosecutor's Office concluded that compulsory medical measures should be ordered on the ground that Mr. Enim had intentionally committed an offence in a state of mental disorder such that he could not be held to be criminally responsible. That order was served on his sister. As no appeal was brought within the prescribed period, that order became final on 10 March 2018.

The Rayonna prokuratura Lom (Public Prosecutor's Office, Lom, Bulgaria) brought an



application before the referring court, the Rayonen sad Lukovit (District Court, Lukovit, Bulgaria), for Mr. Enim's committal to a psychiatric hospital under Article 427 et seq. of the Code of Criminal Procedure.

Mr. Enim was never questioned during the investigation and he was not notified of the criminal procedure initiated against him. As he was not considered to be the subject of criminal proceedings, he was not given access to a lawyer. He had no recourse to a judicial remedy against the findings of law or fact of the Public Prosecutor's Office.

Legal Framework

The article 427 et seq. of the Code of Criminal Procedure and the special criminal procedure allow the committal to a psychiatric hospital of a person representing a danger to society.

These articles do not enable a court to verify whether, during the initial investigation, the person considered to be the perpetrator of the acts was granted the minimum procedural guarantees for the exercise of his rights of defence.

Questions

1. Which procedural rights, as established in EU law, could be applicable in this case?
2. At which stage(s) of the proceedings should Mr Enim have been able to exercise his procedural rights? What effect would the exercise of his rights have on his situation?
3. What is your opinion on the decision to impose compulsory medical measures being served on Mr Enim's sister instead of Mr Enim himself or his legal representative in terms of the exercise of his procedural rights, including his right to an effective remedy?
4. Is national law in line with the requirements of procedural rights guarantees stemming from EU law?
5. How would the case be decided according to your national legislation?

In answering the above questions, please take into account Mr. Enim's vulnerability as a person suffering from a mental disability.



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