

## Background Info - No Lawyer for those who cannot be held criminally liable?

### *Findings of the Court/ Important Aspects to be addressed*

**Reference case:** Case C-467/18 EP,

<http://curia.europa.eu/juris/liste.jsf?language=en&num=C-467/18>

**Applicable EU law:** Directives on access to a lawyer, legal aid, provision of information, presumption of innocence, article 6 ECHR, 47 CFREU.

**In guiding trainees please take into account the following:**

#### Relevant issues:

- Mr Enim was taken into police custody in order for him to be admitted to the hospital – Access to a lawyer, provision of information, legal aid.
- In relation to both the decision to suspend the proceedings, and the decision to resume them: Access to a lawyer, effective participation to the proceedings (right to be heard), provision of information, legal aid.
- In relation to the right to be present at one's trial as established in the presumption of innocence directive, consider the stage of the proceedings and the Court's judgement.
- Effective participation in the proceedings and right to an effective remedy (appeal) in relation to the serving of the decision on Mr Enim's sister.
- For initial training: the nature of involuntary commitment to a psychiatric facility in terms of the right to personal liberty.

#### Relevant passages of the CJEU case C-467/18 EP:

Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings, and Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, must be interpreted as applying to judicial proceedings, such as those provided



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for by the national legislation at issue in the main proceedings, which authorise, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons who, in a state of insanity, have committed acts representing a danger to society. Directive 2012/13 must be interpreted as meaning that persons suspected of having committed a criminal offence must be informed as soon as possible of their rights from the moment when they are subject to suspicions which justify, in circumstances other than an emergency, the restriction of their liberty by the competent authorities by means of coercive measures and, at the latest, before they are first officially questioned by the police.

Article 47 of the Charter of Fundamental Rights of the European Union, Article 8(2) of Directive 2012/13 and Article 12 of Directive 2013/48 must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which provides for judicial proceedings authorising, on therapeutic and safety grounds, the committal to a psychiatric hospital of persons who, in a state of insanity, have committed acts representing a danger to society, where that legislation does not enable the court with jurisdiction to verify that the procedural rights covered by those directives were respected in proceedings prior to those before that court, which were not subject to such judicial review.

Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings, and Article 51(1) of the Charter of Fundamental Rights must be interpreted as meaning that neither that directive nor that provision of the Charter of Fundamental Rights applies to judicial proceedings for the committal to a psychiatric hospital for therapeutic purposes, such as those provided for in Article 155 et seq. of the Zakon za zdravstvo (Health Law), at issue in the main proceedings, on the ground that there is a risk that, in view of his state of health, the person concerned represents a danger to himself or others.

The principle of the presumption of innocence referred to in Article 3 of Directive 2016/343 must be interpreted as requiring, in judicial proceedings for the committal to a psychiatric hospital, on therapeutic and safety grounds, of persons who, in a state of insanity, have committed acts representing a danger to society, such as that at issue



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in the main proceedings, that the Public Prosecutor's Office provides proof that the person whose committal is sought is the perpetrator of acts deemed to constitute such a danger.

## Follow-up question for trainees:

What do you think of the CJEU's finding that the case falls outside the scope of application of the directive on the presumption of innocence and, specifically, the right to be present at the trial?

## Guidance for facilitators

- The facilitator distributes the Case Studies to participants divided into in groups.
- The participants should read the facts of the case, the background info and discuss the questions.
- After the participants have discussed the questions, the facilitator should present the findings of the court, eventually ask the follow-up question.
- The participants should discuss the findings and the follow-up question(s).
- The results of the working group will subsequently be presented in the plenum.

**Note: Before starting, the participants should appoint one note taker and one person to present the results of their working group to the plenum.**



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