

BACKGROUND INFO CASE STUDY – IN CUSTODY FOREVER

Case

Case C-310/18 PPU – Milev,

<http://curia.europa.eu/juris/document/document.jsf?docid=205876&mode=lst&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=5542988>

Legislative Framework

Directive 2016/343/EU on the presumption of innocence.

Article 3: Suspects or accused persons are presumed innocent until proved guilty according to law

Article 4(1): For as long as a suspect or an accused person has not been proved guilty according to law, judicial decisions in particular, other than those on guilt, do not refer to that person as being guilty.

Art. 4(1) however does not apply “to preliminary decisions of a procedural nature, which are taken by judicial authorities and which are based on suspicion or on incriminating evidence.”

Recital 16: ‘The presumption of innocence would be violated if public statements made by public authorities, or judicial decisions other than those on guilt, referred to a suspect or an accused person as being guilty, for as long as that person has not been proved guilty according to law. Such statements and judicial decisions should not reflect an opinion that that person is guilty. This should be without prejudice to acts of the prosecution which aim to prove the guilt of the suspect or accused person, such as the indictment, and without prejudice to judicial decisions as a result of which a suspended sentence takes effect, provided that the rights of the defence are respected. This should also be without prejudice to preliminary decisions of a procedural nature, which are taken by judicial or other competent authorities and are based on suspicion or on elements of incriminating evidence, such as decisions on pre-trial detention, provided that such decisions do not refer to the suspect or accused person as being guilty. Before taking a preliminary decision of a procedural nature the competent authority might first have to verify that there are sufficient elements of incriminating evidence against the suspect or accused person to justify the decision concerned, and the decision could contain reference to those elements.’

Findings of the Court

The CJEU referred to Recital 16 of the Directive that wants to make sure that before taking a preliminary decision of a procedural nature, the judicial authorities might first have to verify that there is sufficient incriminating evidence against the suspect or accused person to justify the decision concerned, and the decision could contain reference to that evidence - and concluded that the Directive only requires pre-trial court decisions not to refer to the person in custody as being guilty.

According to the CJEU, it does not govern the circumstances under which such a decision on pre-trial detention may be adopted. The posed questions concerning the degree of certainty that a court must



Breaking THE BARRIERS

TRANSNATIONAL PARTICIPATORY
JUDICIAL TRAINING ON PROCEDURAL RIGHTS

have, the rules governing the examination of evidence, and the extent of the statement of reasons fall solely within the remit of national law.

Guidance for facilitators

- The facilitator distributes the Case Studies to participants divided into in groups of 3 to 4.
- The participants should read the facts of the case, the background info (inf provided) 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.



This document was funded by the European Union's Justice Programme (2014-2020). Its content represents the views of the authors only and is their sole responsibility. The European Commission does not accept any responsibility for use that may be made of the information it contains.

