

CASE STUDY – IN CUSTODY FOREVER?

Facts of the Case

In the course of an investigation of a robbery with violence, committed in 2008, of a shop in Sofia (Bulgaria), Mr. Morton was suspected of being one of the perpetrators. He was not, however, charged. On 31 July 2009 that investigation was suspended, since no suspects had been identified. Two other criminal cases are pending against Mr. Morton.

In the first of those cases, which concerns a bank robbery with violence, a Bulgarian court refused to place Mr. Morton in pre-trial detention (remand him in custody), on the ground that the statements of the main prosecution witness, Mr. BP, were not credible. A judicial decision as to the substance of that case has yet to be made.

In the second case, which concerns the control of a criminal organisation set up to commit robberies with violence, in the context of which Mr. BP is again the main prosecution witness, the referring court states that Mr. Morton was detained from 24 November 2013 to 9 January 2018, when he was acquitted of all charges against him on the ground that the statements of Mr. BP were not deemed credible by the Bulgarian court. Mr. Morton was not, however, released.

On 11 January 2018 the case concerning the robbery with violence committed in 2008 was reopened. Mr. BP was again heard as a witness. On the same date, Mr. Morton was arrested with a view to being brought before the court responsible for deciding whether to remand him in custody pending trial.

At first instance, the prosecution's application that Mr. Morton should be remanded in custody was upheld on the ground that, 'prima facie', the statements made by the witness, Mr. BP, were credible. At second instance, the decision to remand him in custody was confirmed on the basis of the detailed statements made by Mr. BP and on the ground that the witness could be held criminally liable for perjury. According to the referring court, the two judicial bodies seised examined Mr. BP's statements separately, and did not compare them to other evidence that exculpated Mr. Morton. Moreover, it is stated that the courts concerned failed to rule on the arguments made in that connection by Mr. Morton's lawyer.



Breaking THE BARRIERS

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When reviewing whether pre-trial detention should continue, the court of first instance, holding that a detailed analysis of the evidence was not required, examined only the statements given by Mr. BP. That court also held that the pre-trial detention of Mr. Morton could continue on the basis of incriminating evidence that possessed less value. The court of second instance upheld that assessment, having examined, very generally, the witness statements, and found that the evidence, ‘albeit summary, ... [supported] the argument that [the accused] should be charged ... and that it [was] not refuted by other evidence’.

During the second review of the pre-trial detention, the court of second instance held that, pursuant to national law, the statements and evidence in the case file ought to be subject to a very general, rather than in-depth, examination, in the context of which it was sufficient to find that there was a general likelihood and a suspicion that Mr. Morton had been involved in the commission of the criminal offence in question.

Legal Framework

National law prohibits the court, during the trial stage of the case, to rule, in the court’s review of a remand in custody pending trial, on whether there are reasonable grounds to suspect that the accused has committed the offences of which he is accused.

Questions

- Are the decisions of the court in line with the requirements of procedural rights guarantees stemming from EU law (Directives as well as Charter Rights) and/or the ECHR?
- Which rights’ guarantees would have to be referred to in this case?
- Is national law in line with the Directives/ECHR case law?
- How would the case be decided according to your national legislation?



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