Neutral Citation Number: [2012] IEHC 224

THE HIGH COURT

[2012 No. 488 J.R.]

IN THE MATTER OF ARTICLE 40.4.2 OF THE CONSTITUTION

BETWEEN/

X.Y.

APPLICANT

AND

CLINICAL DIRECTOR OF ST. PATRICK'S UNIVERSITY HOSPITAL AND DOCTOR A.B.

RESPONDENTS

JUDGMENT of Mr. Justice Hogan delivered on the 8th June, 2012

1. The applicant, whom I shall describe as Ms. Y., is presently involuntarily detained in St. Patrick's University Hospital pursuant to the provisions of the Mental Health Act 2001 ("the Act of 2001").She was detained on 24th May, 2012, in circumstances I will presently describe.

2. On 31st May, 2012, she commenced judicial review proceedings in which she also sought an inquiry pursuant to Article 40.4.2 of the Constitution. I will assume for present purposes that the applicant is in fact permitted to commence Article 40.4.2 proceedings in this fashion. At all events, on 31st May, 2012, Cross J. made an order under Article 40.4.2 directing the respondents to produce Ms. Y. before the Court and to certify in writing the grounds for her detention. Following a short adjournment that hearing commenced before me on 5th June 2012 and this is accordingly my judgment on the Article 40.4.2 application. I am making no order or expressing any view in relation to any other aspect of these proceedings.

3. Ms. Y is a woman in her early 50s who is married with several teenage children. Dr. B. is a general practitioner who contends that Ms. Y. became his patient in July 2011, although this is denied by Ms. Y. (I am concealing Dr. B.'s identity in order to ensure that Ms. Y.'s identity is not inadvertently compromised). It is not, however, disputed but that Dr. B. had two consultations (each lasting for an hour or longer) with Ms. Y in July, 2011 and August, 2011.

4. According to Dr. B.'s evidence - which has not been controverted - Ms. Y told him in July, 2011 that she had had a religious conversion and that apparently as a result of this Ms. Y. has come to believe that she had been gifted with special gifts from the Holy Spirit. This included the gift of healing, speaking in tongues and witnessing the Divine Presence on an altar following a funeral. Ms. Y. also discussed topics such as the threat posed by the Devil and various other demons.

5. Dr. B. formed the view at the time that Ms. Y was distinctly unwell and suffering from paranoia and delusions. This was firmly denied by Ms. Y. who maintains that she is merely a Christian charismatic with strong religious beliefs. Dr. B. made an arrangement for Ms. Y. to meet a prominent psychiatrist, but she failed to keep this appointment.

6. Matters came to a head in early May, 2012 when members of the applicant's family expressed deep concern to Dr. B. about her behaviour. She had come to believe many unpleasant things about her husband and her own siblings. Her family further informed Dr. B. that Ms. Y. was up and about at night and sleeping by day and that there was considerable tension within the house. They contended that she had become obsessional about religious matters, including putting salt down her son's bed to ward off evil spirits. She also insisted that she could use her special gifts to ensure that certain well known soccer and rugby teams met success in both the Premiership in the UK and in the Heineken Cup respectively.

7. Dr. B. met the applicant when she was visiting a hospital on 15th May. She expressed concern that the hospital and its nurses were engaged in malign activities and this re-inforced Dr. B.'s concerns. Following a discussion later that evening between Dr. B. and the other family members, it was agreed that a sibling would make the application under s. 9(1) of the Act of 2001 for a recommendation to Dr. B. that Ms. Y be involuntarily admitted. Ms. Y's husband informed him that Ms. Y. would be attending a graduation Mass at a particular educational institution on 20th May, as her son's class had just completed sixth year in secondary school.

8. Dr. B. then explained what happened next in his own affidavit:-

> "...on 20th May, 2012, the applicant's husband advised me that the applicant would be at a graduation Mass [at her son's school]. I arrived at the car park at 11.30am to await her arrival. The applicant arrived at 11.55am. I saw her in the car park. I had already formed the opinion from my previous assessment that the applicant had a major psychiatric illness. I was aware that I had to see the applicant in order to be clinically appropriate and legally compliant.
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> I confirm that I did not speak to the applicant. I simply examined her through observations. I remained of the belief that the applicant had a major mental illness which required treatment at an approved centre and I thought it appropriate to make the recommendation on Form 5. I saw nothing on the morning of 20th May, 2012, to change my mind from my previous assessment.
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> I did not believe that there was anything to be gained from speaking to her or informing her on the 20th May, 2012, that I was observing here. I felt that I would upset the applicant and inflame the situation."

9. Dr. B. then completed the requisite form and made the appropriate recommendation under s. 10(2) of the 2001 Act. The applicant was then transported on 24th May, 2012, to St. Patrick's Hospital. She was received at the Hospital at 18.25 and was immediately assessed by Dr. Kiran Santal, a psychiatric registrar. Dr Santal concluded that Ms. B. was suffering from paranoid and psychotic

delusions. Ms. B. was then examined on the following day by Dr. Seamus O'Ceallaigh, a consultant psychiatrist. He concluded that Ms. Y. was suffering "from an acute episode of psychosis with grandiose and persecutory features." He concluded that Ms. Y. was suffering from a mental disorder within the meaning of the 2001 Act and he made an admission order at 15.00 under s.14 of the 2001 Act.

10. The Mental Health Tribunal is presently due to review the applicant's detention pursuant to s. 18 of the 2001 Act on 13th June, 2012. On 31st May the independent consultant psychiatrist appointed by the Tribunal in accordance with s. 17(1) of the Act of 2001 examined Ms. Y. On the following day, Dr. O'Ceallaigh was also interviewed by the independent consultant psychiatrist in the manner envisaged by s. 17(1)(c)(ii) of the Act of 2001.

11. As we shall presently see, the present case turns on the meaning of the word "examination" in the Act of 2001. But before considering this issue, it is necessary first to examine two preliminary issues. First, should these proceedings have been heard *in camera*? Second, is it appropriate that Dr. B. should have been named as a respondent to the Article 40.4.2 proceedings?

Should these proceedings have been heard in camera?
12. At the commencement of the application, counsel for Ms. Y., Ms. O'Hanlon S.C., applied to have the proceedings heard in camera. Of course, Article 34.1 of the Constitution requires that justice be administered in public "save in such special and limited cases as may be prescribed by law." The "law" in question refers to an express statutory enactment, save perhaps in quite exceptional cases where the constitutional rights of one of the litigants (or perhaps even a third party) would be infringed: see, *e.g., Independent Newspapers Ltd. v. Anderson* [2006] 3 I.R. 341 and *Doe v. Revenue Commissioners* [2008] IEHC 5, [2008] 3 I.R. 328.

13. In this regard, Ms. O'Hanlon SC sought to invoke the provisions of s. 45(1)(a) of the Courts (Supplemental Provisions) Act 1961 which provides that:

> "(1) Justice may be administered otherwise than in public in any of the following cases:
>
> (a) applications of an urgent nature for relief by way of habeas corpus, bail, prohibition or injunction ....."

14. While in all strictness the old common law (and, indeed, the old statute law) of *habeas corpus* has probably not survived the enactment of the Constitution (*cf* here *The State (Walsh) v. Lennon* [1942] I.R. 112, 122, per Gavan Duffy J. and Re *Zwann* [1981] I.R. 395, 404 per O'Higgins C.J.), the reference to *"habeas corpus"* in s. 45(1)(a) of the Act of 1961 must be understood as including an application under Article 40.4.2. Ms. O'Hanlon S.C. contended that as this application was urgent - as it certainly was - this *in itself* justified an *in camera* sitting. For my part, I do not believe that the sub-section can or should be read this way. By definition, every application by way of Article 40.4.2 is urgent since, after all, the court is required "forthwith" to inquire into the legality of the detention. If Ms. O'Hanlon S.C.'s interpretation was correct, it would mean that every application under Article 40.4.2 could- and perhaps even should - be heard otherwise than in open court.

15. As Walsh J. pointed out in *Re R. Ltd*. [1989] I.R.126, the open administration of justice is a vital component of a democratic state. This constitutional value is especially important in the case of Article 40.4.2, since it is vital that the complaints of those detained - whether justified are not- are ventilated in public. Moreover, as I observed in *DX v. Judge Buttimer* [2012] IEHC 175, Article 34.1 reflects the Constitution's preference for the open administration of justice, so that any exceptions to that rule must be capable of objective justification and must be proportionate in themselves: *cf* here by analogy the comments of Denham C.J. in *The People (Director of Public Prosecutions) v. Kavanagh* [2012] IECCA 65 in relation to any exceptions to Article 40.5.

16. In my view, the interpretation of s. 45(1)(a) advanced by Ms. O'Hanlon SC would have to be rejected as unconstitutional. The mere fact that proceedings were urgent could not *in itself* objectively justify this derogation from Article 34.1 or otherwise bring the case within the category of "special and limited cases prescribed by law". Rather, the reference here to "urgent" must be understood in its context as referring to the timing of application, perhaps particularly where the application is made out of hours to a judge at his or her private residence where permitting access to the public would neither be feasible or practicable.

17. Of course, it must here be acknowledged that this application presents questions of medical confidentiality and the protection of constitutional rights such as marital privacy and the autonomy of the family. The protection of the identity of the applicant would also serve an important constitutional value reflected in the Preamble to the Constitution, namely, the assurance of the dignity of the individual. It is, however, possible to balance these competing constitutional values in a proportionate way by making an order pursuant to the provisions of s. 27(1) of the Civil Law (Miscellaneous Provisions) Act 2008 ("the Act of 2008") which simply restricted the media from publishing the identity of the applicant or anything that would or might tend to identify her while otherwise continuing the hearing in open court. While I appreciate that I am required by s. 27 to be satisfied that the person in question has a medical condition, the disclosure of which might cause embarrassment to that person, I am also conscious that Ms. Y. maintains that she is perfectly sane and that her detention is manifestly illegal.

18. Of course, if I were to interpret s. 27 of the Act of 2008 absolutely literally, it would mean that I would have to consider and adjudicate upon the merits of the competing arguments regarding Ms. Y.'s mental state. Yet I rather think that I can read this section - designed as it was to protect important values such as medical confidentiality, privacy and personal dignity - more liberally so as to include the case of a person presently in involuntary detention for psychiatric treatment who is considered to be mentally unwell by her treating physicians, even if she herself stoutly maintains the contrary. Naturally, this conclusion is in no sense designed to adjudicate on the competing merits of the arguments regarding Ms. Y.'s present mental state.

19. It was for those reasons that I determined that the application should be heard in open court, while protecting important values such as medical confidentiality, family privacy and personal dignity by means of the making of an order under s. 27 of the 2008 Act which restricted the publication of personal details which might identify the applicant.

Should Dr B. have been named as a co-respondent to the proceedings?
20. Shortly after the application commenced, counsel for Dr. B., Mr. McQuade, applied to have Dr. B. dismissed from the proceedings insofar as he was made a respondent. The starting point of this objection is, as Mr. McQuade points out, the very language of Article 40.4.2 of the Constitution which refers to the "person in whose custody such person is detained". Article 40.4.2 contemplates that the detainer will have an opportunity of justifying the detention. It further provides that this Court must release the applicant from the custody of the detainer unless it is satisfied that the detention is accordant with law.

21. It follows that the detainer only is the proper respondent to an Article 40.4.2.appication. It is, of course, true that there may be cases where is a doubt as to whether the detainer still has custody of the applicant or whether he has genuinely ceased to have such custody: *cf Barnardo v. Ford* [1892] A.C. 326 and the general discussion of this question by Davitt P. in *The State (Quinn) v.*

Ryan [1965] I.R. 70 at 80-88. Moreover, as Davitt P. pointed out in *Quinn*, it must be recalled that Article 40.4.2 lies juxtaposed with other constitutional provisions in Article 40 designed to protect fundamental rights and that unless these provisions are not "mere platitudes", they must be interpreted in a fashion which gives them life and reality: see [1965] I.R. 70, 89.

22. All of this means that the remedy provided by Article 40.4.2 cannot - in principle, at any rate - be defeated by some technical pleading on the part of a detainer who at all times continues to have the power of constructive detention of an applicant. In such circumstances, it would be necessary for the detainer to show, as Davitt P. put it in *Quinn* ([1965 I.R. 70, 88):

> "a real and absolute impossibility of producing or procuring the production of, the body of the person named in the writ. Until such impossibility had been shown there would always be room for doubt whether the person to whom the writ had been directed had really parted with all control of the person named in the writ."

23. In the present case, however, there is absolutely no doubt but that Dr. B. is not the detainer of the applicant and there is agreement that she remains in the custody of the Clinical Director of St. Patrick's Institution. In these circumstances, it seems to me that there is no justification for naming Dr. B. as a respondent and, pursuant to the Court's jurisdiction under 0. 15, r. 14, I will accordingly strike out Dr. B. from the Article 40.4.2 proceedings insofar as he has been named as a respondent.

24. There are, of course, many cases where the presence of a third party is in practice essential to the proper conduct of the Article 40.4.2 inquiry. One not infrequently encounters cases where the actual detainer is the governor of a prison, but where the real issue is whether or not a particular District Judge or Circuit Court Judge has acted *ultra vires* or whether, for example, a particular prosecution has gone amiss in some way or another In this regard, I would observe that the court's function under Article 40.4.2 is quite separate from most other types of civil proceedings in that it is plainly inquisitorial in nature. The court must of its own motion inquire in to the circumstances of the detention. Thus, there may well be circumstances where the court would require the presence of a third party and to hear evidence from that third party in order to ensure that it could fairly and properly conduct the inquiry.

25. Furthermore, there may well be other circumstances where, in essence, allegations are made against a third party other than the detainer and where, in the interests of fair procedures, the protection of that person's good name (as protected by Article 40.3.2) and a fair and effective inquiry, that third party would be entitled to be present and heard on the return to the Article 40.4.2 inquiry, assuming, of course, that he or she elects to do so: *cf* here the comments of Geoghegan J. in *Re Maguire's Application* [1996] 3 I.R. 1, 6 where he envisaged that there might be circumstances where such third party representation in Article 40.4.2 proceedings might be necessary in the interests of fair proceedings, although, of course, he did not have to decide the point.

26. In the present case Ms. Y. has alleged that Dr. B. set the entire involuntary admission procedure in train in a manner which she says was unjustified. It is essential that Dr. B. be given an opportunity to be heard in respect of this matter, not only as a matter of fair procedures, but also to effectuate his constitutional right to a good name. It follows, therefore, that Dr. B. has an entitlement to be heard as of right and to be legally represented in the Article 40.4.2 proceedings. He is not, however, entitled to be heard *qua* respondent, but simply as notice party with an interest in the matter.

27. I will accordingly make an order striking out Dr. B. as a respondent and I will instead join him to the Article 40.4.2 proceedings as a notice party. For completeness, I note that Dr. B elected to participate in the proceedings as a notice party.

Whether the detention of the applicant is lawful

28. I turn now to the central question which I am required to consider, namely, whether the detention of the applicant is currently lawful. In this context it may be observed that I have no jurisdiction to determine the medical merits of Ms. Y.'s mental state. This is a matter which will shortly be adjudicated upon by the Mental Health Tribunal. My task is rather to determine whether the applicant is in lawful detention.

29. The definition of the word "examination" in the Act of 2001 is at the heart of the present application. Section 2(1) of the Act of 2001 defines "examination" as meaning in relation to a "recommendation, admission order or a renewal order" a:-

> "personal examination carried out by a registered medical practitioner or a consultant psychiatrist of the process and content of thought, the mood and the behaviour of the person concerned".

30. The meaning of the word "examination" in a mental health context was previously considered by the Supreme Court in *0'Reilly v. Moroney*, judgment delivered the 16th November, 1993. This was not an Article 40 application, but the case rather arose out of an application by the plaintiff to seek leave, pursuant to the provisions of s. 260 of the Mental Treatment Act 1945, to institute civil proceedings against a medical doctor for negligence, breach of duty, assault, battery and false imprisonment and trespass to the person. The former s. 260 provided that leave should not be granted to commence civil proceedings unless the High Court was satisfied that:-

> "There are substantial grounds for contending that the person against whom the proceedings are to be brought acted in bad faith or without reasonable care."

31. In *0'Reilly* the claim against the doctor was he had provided the requisite certificate for the purposes of the Act of 1945 in circumstances where he had not properly conducted an examination of the plaintiff in the manner required by s. 184 of the 1945 Act and had thus acted "without reasonable care". It is important to recall that - in contrast to the position under the Act of 2001 - the word "examination" was not defined by the Act of 1945.

32. In that case the plaintiffs husband and her father had both gone to see the defendant general practitioner at his surgery late one evening. They both expressed deep concern about the behaviour of the plaintiff, albeit that she was not Dr. Moroney's patient. Dr. Moroney was, however, the general practitioner of both the plaintiffs husband and his children. Both the plaintiffs husband and father expressed considerable concern and anxiety, not least because the plaintiff had apparently threatened to kill herself earlier that day. While Dr. Moroney was anxious to arrange a psychiatric consultation for Ms. O'Reilly on the following day, it was impressed on him that the matter was urgent and that it could not wait. Dr. Moroney finally agreed to call to the family home later that evening where the husband agreed to arrange admission for him in order to interview the former's wife. Dr. Moroney then saw the husband knocking at the door and was it was opened by his wife who, on seeing him, became very agitated and violent.

33. It is clear from the majority judgment of Egan J. that the plaintiff shouted and flayed her arms and her legs, while uttering expletives in the process and saying she did not care about the couple's children. Egan J. then observed:-

> "Dr. Moroney came to the conclusion that she was in 'an extremely disturbed mental state, very agitated, acutely anxious

> and very hysterical'. He decided that there was a probability or possibility at least of her being a danger to herself that night. He decided not to try to interview her as he was afraid it might aggravate the situation. He stated that he had been told earlier that evening that she had threatened to assault her husband with a hay fork. He made no effort, therefore, to interview her but went to the house of the mother of the husband where he signed the certificate."

34. In delivering the majority judgment of the Supreme Court dismissing the plaintiff's appeal against the refusal of the grant of leave pursuant to s. 260, Egan J. observed:-

> "There is no definition of the word 'examine' in the section and the fact that Dr. Moroney himself agreed that there was no physical examination or interview does not conclude the matter. Here was a case where the doctor had evidence which he considered to be reliable to the effect that the plaintiff had threatened suicide and needed treatment so urgently that it might be unsafe to leave it until the following day. This was followed by what he actually saw outside the plaintiff's house where she was shouting and screaming, kicking out at her husband. This observation having regard to what he had been told constituted a form of 'examination' in my opinion and justified the doctor in pursuing the course which he did."

35. It is perhaps unnecessary here to consider whether *0'Reilly* would be decided differently today in view of the new statutory requirement that the examination constitute a "personal examination". Certainly, it was plainly thereby the intention of the Oireachtas to ensure that the safeguards for patients or prospective patients be appreciably improved. Even then, some allowance may have to made for the exigencies of the situation, such as happened in *Z. v. Khattak* [2008] IEHC 262 where Peart J. held- albeit with understandable reluctance and unease - that an informal conversation between a registered medical practitioner of some experience and a patient at the rear of a Garda station constituted an "examination" for this purpose.

36. The critical question, therefore, is whether Ms. Y. was subjected to an "examination" by a consultant psychiatrist within the meaning of s. 14(1) of the Act of 2001. Dr. O'Ceallaigh, a consultant psychiatrist, has deposed to the fact that he examined her on the following day and that he made an admission order pursuant to s. 14(2) in the early afternoon. As we have already noted, he concluded that the applicant was "suffering from an acute episode of psychosis with grandiose and persecutory features." His medical notes record that Ms. Y. had "spiritual preoccupations" and was convinced that there were "spiritual demons" in her son's school. He further observed that her judgment was "severely impaired".

37. For my part, however, I find it well nigh impossible to find that there was not an examination in the sense envisaged by the definition of this term in s. 2(1) conducted by Dr. O'Ceallaigh. Ms. Y. was interviewed by a consultant psychiatrist and his clinical assessment obviously traversed matters such as the process and content of thought, mood and behaviour. This is borne out by his medical notes and his clinical conclusions.

38. I agree that the question of whether Dr. B. conducted an examination in this sense is more finely balanced. In this regard it must be recalled that the registered medical practitioner must conduct the examination within 24 hours of the receipt of the application for the involuntary detention of the patient: see s.10(2). Accordingly, neither the consultations of July and August, 2011 nor the conversation of 15th May, 2012, can be reckoned for this purpose, precisely because such examinations did not take place within the 24 hour period stipulated by the sub-section. It follows that only the events which constitute an "examination" by Dr. B. for this particular purpose are those which he made by way of observation of Ms. Y. on 20th May.

39. It is true that the definition of examination in s. 2(1) as requiring a personal examination might be thought to require a face to face meeting between the doctor and the patient. At the same time, the fact that s. 10(2) envisages that a registered medical practitioner can carry out an examination without informing the patient where the doctor concludes that this "might be prejudicial to the person's mental health, well-being or emotional condition" necessarily suggests that an observation of the patient from a distance can - at least in some circumstances - also constitute a "personal examination" for this purpose, not least where (as here) the registered medical practitioner is very familiar with the patient's clinical presentation.

40. Beyond expressing sympathy in respect of the enormously difficult situation in which Dr. B. found himself, I think it unnecessary to decide this difficult question. Even if it were to be accepted that the Dr. B.'s observations of Ms. Y. on 20th May did not constitute an "examination" in this sense, it is clear that such a failure does not invalidate a subsequent detention under s.14 if this detention is otherwise valid: see the judgment of Feeney J. in the High Court in *L. v. Clinical Director of St. Brendan's Hospital* [2008] IEHC 11 and that of Hardiman J. for the Supreme Court in *L.*, delivered on 15th February, 2008.

41. In *L.* the suggestion was made that the initial arrest under s.13 was invalid, but it was held that even if that were so, this did not affect the validity of the admission order under s. 14. As Feeney J. observed:-

> "Section 14 is not dependent upon how a person arrived at an approved centre, the word used in the section is the word 'received' ...An admissions order is a separate and stand-alone matter. ...The facts herein demonstrate the very limited nature of the alleged wrong. There is no evidence before the Court that the suggested breaches in relation to s.13 were made other than in good faith. In this instance any wrong which might potentially have been done to this applicant is cured by the complete and proper implementation of the provisions in relation to the admissions order. .."

42. The Supreme Court took a similar view on appeal, with Hardiman J. observing that even "assuming the breaches of s. 13 to have occurred, we see no reason to believe that it would invalidate the making of an admission order under s. 14".

43. The reasoning in L. clearly applies by analogy to the present case. If - as I have held - a valid admission order was made by Dr. O'Ceallaigh following an examination of Ms. Y. under s.14, then it is immaterial *so far as the continued validity of the detention under that admission order* is concerned that the requirements of s. 10 were not perfectly complied with by the registered medical practitioner concerned.

44. It remains to observe that I consider that the detention of the applicant amply satisfies the test articulated by the European Court of Human Rights in *Varbanov v. Bulgaria* [2000] ECHR 457, an authority relied on by Ms. O'Hanlon SC. In that case the applicant who had no prior psychiatric history and who had been found to be mentally well in 1993 was detained for a 20 day period by a public prosecutor to await a psychiatric examination. The Court held that the detention in these circumstances amounted to a violation of Article 5(1)(e):-

> "The Court considers that no deprivation of liberty of a person considered to be of unsound mind may be deemed in conformity with Article 5 § 1 (e) of the Convention if it has been ordered without seeking the opinion of a medical expert. Any other approach falls short of the required protection against arbitrariness, inherent in Article 5 of the Convention.

> The particular form and procedure in this respect may vary depending on the circumstances. It may be acceptable, in urgent cases or where a person is arrested because of his violent behaviour, that such an opinion be obtained immediately after the arrest. In all other cases a prior consultation is necessary. Where no other possibility exists, for instance due to a refusal of the person concerned to appear for an examination, at least an assessment by a medical expert on the basis of the file must be sought, failing which it cannot be maintained that the person has reliably been shown to be of unsound mind (see the *X v. the United Kingdom* judgment of 5 November 1981, Series A no. 46).
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> Furthermore, the medical assessment must be based on the actual state of mental health of the person concerned and not solely on past events. A medical opinion cannot be seen as sufficient to justify deprivation of liberty if a significant period of time has elapsed.
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> In the present case the applicant was detained pursuant to a prosecutor's order which had been issued without consulting a medical expert. It is true that the purpose of the applicant's detention was precisely to obtain a medical opinion, in order to assess the need for instituting judicial proceedings with a view to his psychiatric internment.
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> The Court is of the opinion, however, that a prior appraisal by a psychiatrist, at least on the basis of the available documentary evidence, was possible and indispensable. There was no claim that the case involved an emergency. The applicant did not have a history of mental illness and had apparently presented a medical opinion to the effect that he was mentally healthy. In these circumstances, the Court cannot accept that in the absence of an assessment by a psychiatrist the views of a prosecutor and a police officer on the applicant's mental health, which were moreover based on evidence dating from 1993 and 1994, sufficed to justify an order for his arrest, let alone his detention for twenty-five days in August and September 1995.
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> It is also true that when he was arrested the applicant was taken to a psychiatric clinic where he was seen by doctors.
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> However, there is no indication that an opinion as to whether or not the applicant needed to be detained for an examination was sought from the doctors who admitted him to the psychiatric hospital on 31 August 1995. The applicant's detention for an initial period of twenty days, later prolonged, had already been decided by a prosecutor on 27 January 1995, without the involvement of a medical expert.
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> It follows that the applicant was not reliably shown to be of unsound mind.
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> The Court therefore finds that the applicant's detention was not "the lawful detention ...of [a person] of unsound mind" within the meaning of Article 5 § I (e) as it was ordered without seeking a medical opinion."

45. The present case is very a different one. Dr. B. had clearly formed a medical opinion that Ms. Y. was suffering from a psychiatric disorder and this was confirmed by Dr. Santal within minutes of Ms. Y's admission to the Hospital and further confirmed by Dr. O'Ceallaigh following an examination on the following day. Furthermore, procedures are currently in train whereby an independent Tribunal will shortly consider and adjudicate upon Ms. Y.'s mental state. It can therefore be said that in these respects - at the very least- the Act of 2001 contains the guarantees against arbitrary confinement on the supposed ground of psychiatric illness of which the European Court spoke so eloquently in *Varbanov*.

Conclusions

46. In the event, therefore, I find myself coerced to the conclusion that the admission order made by Dr. 0 Ceallaigh was valid and that the validity of that order was not tainted by any possible invalidity attaching to the recommendation made by Dr. B. under s.10. It follows, accordingly, that as I am satisfied for the purposes of Article 40.4.2 that Ms. Y. is presently detained in accordance with law I must, therefore, refuse to order her release.