



An accused person who cannot be located may be tried or convicted *in absentia* but has the right, subsequently, to secure the reopening of the proceedings on the merits of the case in his or her presence

However, that person may be denied that right if he or she deliberately evaded the judicial proceedings by preventing the authorities from informing him or her of the trial

Criminal proceedings were brought in Bulgaria against IR, who was accused of having participated in a criminal organisation with a view to committing tax offences punishable by custodial sentences. A first indictment was served on IR in person and he indicated an address at which he could be contacted. When the judicial stage of the proceedings commenced, he could not, however, be found there, with the result that the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) could not summon him to the hearing. Nor did the lawyer appointed by that court of its own motion enter into contact with him. Furthermore, as the indictment that had been served on IR was vitiated by an irregularity, it was declared void and the proceedings were closed. After a new indictment had been drawn up and the proceedings had been reopened, IR, once again, was sought but could not be located. The referring court finally inferred from this that IR had absconded and that, in those circumstances, the case could be heard in his absence.

However, in order that the person concerned be correctly informed of the procedural safeguards available to him, the referring court enquires as to which case provided for by Directive 2016/343¹ covers the situation of IR who absconded after having been notified of the first indictment and before the commencement of the judicial stage of the criminal proceedings.²

The Court of Justice states in reply that Articles 8 and 9 of Directive 2016/343 must be interpreted as meaning that **an accused person whom the competent national authorities, despite their reasonable efforts, do not succeed in locating and to whom they accordingly have not managed to give the information regarding his or her trial may be tried and, as the case may be, convicted *in absentia*. In that case, that person must nevertheless, in principle, be able, after notification of the conviction, to rely directly on the right, conferred by that directive, to secure the reopening of the proceedings or access to an equivalent legal remedy resulting in a fresh examination, in his or her presence, of the merits of the case.** The Court makes clear, however, that that person **may be denied that right if it is apparent** from precise and objective

¹ 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 (OJ 2016 L 65, p. 1).

² More specifically, Article 8 of Directive 2016/343 deals with the right to be present at one's own trial. Under Article 8(2), Member States may provide that a trial which can result in a decision on the guilt or innocence of the person concerned can be held in his or her absence, provided that he or she has been informed, in due time, of the trial and of the consequences of non-appearance or, having been informed of the trial, is represented by a lawyer mandated by him or her or appointed by the State. Under Article 8(4) of the directive, where Member States provide for the possibility of holding trials in the absence of the person concerned but it is not possible to comply with the conditions laid down in Article 8(2) because he or she cannot be located despite reasonable efforts having been made, Member States may nevertheless provide that a decision can be taken and enforced. In such cases, Member States are to ensure that when the persons concerned are informed of the decision, in particular when they are apprehended, they are also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy, in accordance with Article 9 of the directive. In particular, under Article 9, suspects or accused persons must have the right to a new trial where they were not present at their trial and the conditions laid down in Article 8(2) were not met.

indicia **that he or she** received sufficient information to know that he or she was going to be brought to trial and, **by deliberate acts and with the intention of evading justice, prevented the authorities from informing him or her officially of that trial.**

Findings of the Court

The Court points out, first of all, that Article 8(4) and Article 9 of Directive 2016/343, concerning the field of application and the extent of the right to a new trial, must be regarded as having direct effect. That right is restricted to persons whose trial is conducted *in absentia* even though the conditions laid down in Article 8(2) of the directive are not met. On the other hand, the power given to the Member States by Directive 2016/343 to conduct a trial *in absentia* when the conditions laid down in Article 8(2) are met and to enforce the decision without providing for the right to a new trial is based on the premiss that the person concerned, having been duly informed, has voluntarily and unequivocally foregone exercise of the right to be present at the trial.

That interpretation ensures observance of the aim of Directive 2016/343, which consists in enhancing the right to a fair trial in criminal proceedings, so as to increase the trust of Member States in each other's criminal justice systems, and to ensure that the rights of the defence are respected, while preventing a person who, although informed of a trial, has unequivocally foregone being present at it from being able, after a conviction *in absentia*, to claim a new trial and thereby improperly hinder the effectiveness of the prosecution and the sound administration of justice. As for the information relating to the holding of the trial and to the consequences of non-appearance, the Court states that **it is for the national court concerned to check whether an official document, referring unequivocally to the date and place fixed for the trial and, in the absence of representation by a mandated lawyer, to the consequences of any non-appearance, has been issued for the attention of the person concerned.** It is, in addition, incumbent upon that court to check **whether that document has been served in due time so as to enable the person concerned, if he or she decides to take part in the trial, to prepare his or her defence effectively.**

As regards, more specifically, accused persons who have absconded, the Court holds that **Directive 2016/343 precludes national legislation which rules out the right to a new trial solely on the ground that the person concerned has absconded and the authorities have not succeeded in locating him or her.** It is only where it is apparent from precise and objective indicia that the person concerned, while having been officially informed that he or she is accused of having committed a criminal offence, and therefore aware that he or she is going to be brought to trial, takes deliberate steps to avoid receiving officially the information regarding the date and place of the trial that that person may be deemed to have been informed of the trial and to have voluntarily and unequivocally foregone exercise of the right to be present at it, a situation which is covered by Article 8(2) of Directive 2016/343.³ Such precise and objective indicia may, inter alia, be found to exist where that person has deliberately communicated an incorrect address to the national authorities having competence in criminal matters or is no longer at the address that he or she has communicated. Furthermore, in considering whether the information which has been provided to the person concerned has been sufficient, particular attention is to be paid to the diligence exercised by public authorities in order to inform the person concerned and to the diligence exercised by the latter in order to receive that information.

The Court states, furthermore, that that interpretation upholds the right to a fair trial, laid down in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union and Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

³ Subject to the particular needs of the vulnerable persons referred to in recitals 42 and 43 of Directive 2016/343.

Unofficial document for media use, not binding on the Court of Justice.
The [full text](#) of the judgment is published on the CURIA website on the day of delivery.
Press contact: Jacques René Zammit ☎ (+352) 4303 3355