



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

19 May 2022*

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive (EU) 2016/343 – Article 8 – Right to be present at the trial – Information regarding the holding of the trial – Inability to locate the accused person notwithstanding the reasonable efforts of the competent authorities – Possibility of a trial and a conviction *in absentia* – Article 9 – Right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case)

In Case C-569/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made by decision of 27 October 2020, received at the Court on 30 October 2020, in the criminal proceedings against

IR,

interested party:

Spetsializirana prokuratura,

THE COURT (Fourth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, S. Rodin, J.-C. Bonichot, L.S. Rossi and O. Spineanu-Matei, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the European Commission, by M. Wasmeier and I. Zaloguin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 13 January 2022,

gives the following

* Language of the case: Bulgarian.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Articles 8 and 9 of 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), of Article 4a of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584'), and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').
- 2 The request has been made in criminal proceedings brought against IR relating to acts liable to constitute tax offences punishable by custodial sentences.

Legal context

European Union law

- 3 Recitals 9, 10, 33, 35 to 39, 42, 43 and 47 of Directive 2016/343 state:
 - '(9) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down common minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.
 - (10) By establishing common minimum rules on the protection of procedural rights of suspects and accused persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems ...
 - ...
 - (33) The right to a fair trial is one of the basic principles in a democratic society. The right of suspects and accused persons to be present at the trial is based on that right and should be ensured throughout the Union.
 - ...
 - (35) The right of suspects and accused persons to be present at the trial is not absolute. Under certain conditions, suspects and accused persons should be able, expressly or tacitly, but unequivocally, to waive that right.
 - (36) Under certain circumstances it should be possible for a decision on the guilt or innocence of a suspect or accused person to be handed down even if the person concerned is not present at the trial. This might be the case where the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance and does not, nevertheless, appear. Informing a suspect or accused person of the trial should be understood to mean summoning him or her in person or, by other means, providing that person with official information about the date and place of the trial in a manner that enables him or her to become aware of the trial. Informing the suspect or accused person

of the consequences of non-appearance should, in particular, be understood to mean informing that person that a decision might be handed down if he or she does not appear at the trial.

- (37) It should also be possible to hold a trial which may result in a decision on guilt or innocence in the absence of a suspect or accused person where that person has been informed of the trial and has given a mandate to a lawyer who was appointed by that person or by the State to represent him or her at the trial and who represented the suspect or accused person.
- (38) When considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention should, where appropriate, also be paid to the diligence exercised by public authorities in order to inform the person concerned and to the diligence exercised by the person concerned in order to receive information addressed to him or her.
- (39) Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but the conditions for taking a decision in the absence of a particular suspect or accused person are not met because the suspect or accused person could not be located despite reasonable efforts having been made, for example because the person has fled or absconded, it should nevertheless be possible to take a decision in the absence of the suspect or accused person and to enforce that decision. In that case, Member States should ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they should also be informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy. ...

...

- (42) Member States should ensure that in the implementation of this Directive, in particular with regard to the right to be present at the trial and the right to a new trial, the particular needs of vulnerable persons are taken into account. According to the Commission Recommendation of 27 November 2013 on procedural safeguards for vulnerable persons suspected or accused in criminal proceedings [(OJ 2013 C 378, p. 8)], vulnerable suspects or accused persons should be understood to mean all suspects or accused persons who are not able to understand or effectively participate in criminal proceedings due to their age, their mental or physical condition or any disabilities they may have.
- (43) Children are vulnerable and should be given a specific degree of protection. Therefore, in respect of some of the rights provided for in this Directive, specific procedural safeguards should be established.

...

- (47) This Directive upholds the fundamental rights and principles recognised by the Charter and by the [European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (ECHR)], including the prohibition of torture and inhuman or degrading treatment, the right to liberty and security, respect for private and family life, the right to the integrity of the person, the rights of the child, the integration of persons with disabilities, the right to an effective remedy and the right to a fair trial, the presumption of innocence and the rights of the defence. Regard should be had, in particular, to Article 6 [TEU], according to which the Union recognises the rights,

freedoms and principles set out in the Charter, and according to which fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, are to constitute general principles of Union law.’

4 Article 1 of Directive 2016/343, headed ‘Subject matter’, states:

‘This Directive lays down common minimum rules concerning:

- (a) certain aspects of the presumption of innocence in criminal proceedings;
- (b) the right to be present at the trial in criminal proceedings.’

5 Article 8 of Directive 2016/343, headed ‘Right to be present at the trial’, provides:

‘1. Member States shall ensure that suspects and accused persons have the right to be present at their trial.

2. Member States may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, provided that:

- (a) the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or
- (b) the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person or by the State.

3. A decision which has been taken in accordance with paragraph 2 may be enforced against the person concerned.

4. Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions laid down in paragraph 2 of this Article because a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons 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.

...’

6 Article 9 of Directive 2016/343, headed ‘Right to a new trial’, is worded as follows:

‘Member States shall ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, they have the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision being reversed. In that regard, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.’

Bulgarian law

7 Article 55(1) of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure; ‘the NPK’) provides:

‘... The accused person shall have the following rights: ... to participate in the criminal proceedings ...’

8 Article 94(1) and (3) of the NPK states:

‘1. The participation of a defence counsel in criminal proceedings is mandatory if:

...

8. the case is tried in the absence of the accused person;

...

3. Where the participation of a defence counsel is mandatory, the competent authority shall appoint a lawyer as a defence counsel.’

9 As set out in Article 247b(1) of the NPK, in the version applicable at the time when the request for a preliminary ruling was lodged:

‘... Through service of the indictment, the accused person shall be informed of the date fixed for the preliminary hearing ..., his right to appear in court with a defence counsel of his choice, the possibility of having a defence counsel officially appointed in the cases provided for in Article 94(1) and the fact that the case may be tried and decided in his absence, in accordance with Article 269.’

10 Article 269 of the NPK provides:

‘1. In cases where the accused person has been indicted for a serious criminal offence, his presence at the hearing shall be mandatory.

...

3. Provided that this does not prevent the truth from being ascertained objectively, the case may be tried in the absence of the accused person, if:

(1) he is not to be found at the address indicated by him or he has changed address without notifying the competent authority;

(2) his place of residence in Bulgaria is not known and has not been identified following an extensive search;

...’

11 As set out in Article 423(1) of the NPK, in the version applicable at the time when the request for a preliminary ruling was lodged:

‘... Within six months of becoming aware of a final judgment in criminal proceedings or of the actual transmission of such a judgment to the Republic of Bulgaria by another country, the person convicted

in absentia may request the reopening of the criminal case, relying on the fact that he was not present during the criminal proceedings. The request shall be granted, except, first, in the event that the convicted person has absconded after notification of the charges in the preliminary procedure, with the result that the procedure under Article 247b(1) cannot be carried out, or, secondly, after that procedure was carried out, the convicted person failed to appear at the hearing without a valid reason.’

12 Article 425(1)(1) of the NPK is worded as follows:

‘Where the court finds that the request to reopen the proceedings is well founded, it may overturn the conviction ... and refer the case for a new trial and shall indicate the stage from which the new examination of the case shall begin.’

The dispute in the main proceedings and the questions referred for a preliminary ruling

13 The Spetsializirana prokuratura (Specialised Public Prosecutor’s Office, Bulgaria) brought criminal proceedings against IR, who was accused of having participated in a criminal organisation with a view to committing tax offences punishable by custodial sentences.

14 Initially, an indictment was served on IR in person.

15 Following service, IR indicated the address at which he could be contacted. However, he was not found at that address when the judicial stage of the criminal proceedings commenced, in particular when the referring court, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), made attempts to summon him to the hearing. That court appointed a lawyer of its own motion who did not, however, establish contact with IR.

16 As the indictment that had been served on IR was vitiated by an irregularity, it was declared void and the proceedings were consequently closed. Subsequently, a new indictment was drawn up and the proceedings were reopened. On that occasion, IR was sought once again, including through the members of his family, his former employers, and mobile telephone operators, but he could not be located.

17 The referring court infers from this that IR has absconded. It considers that, in those circumstances, the case can be heard in IR’s absence. It is unsure, however, whether such a situation is covered by Article 8(2) of Directive 2016/343 or by Article 8(4) thereof. It states that it is important for that question to be decided, given that a criminal court giving judgment *in absentia* is required to indicate what type of *in absentia* proceedings are being conducted, in order that the person concerned be correctly informed of the procedural safeguards, in particular as regards the legal remedies available to him or her, in accordance with the provision of Directive 2016/343 within which the proceedings in question essentially fall.

18 According to the referring court, there is uncertainty as to the procedural safeguards which the accused person must enjoy in a situation such as that at issue in the case before it, where, after having been notified of the first indictment and before the commencement of the judicial stage of the criminal proceedings, that person has absconded. The referring court states, furthermore, that it is possible that IR will be found and arrested in the territory of another Member State and surrendered to the Bulgarian authorities pursuant to a European arrest warrant. Therefore, an interpretation not only of Directive 2016/343 but also of Framework Decision 2002/584 is necessary.

19 In those circumstances, the Spetsializiran nakazatelen sad (Specialised Criminal Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Are Article 8(2)(b), in conjunction with recitals 36 to 39, of Directive 2016/343 and Article 4a(1)(b) [of Framework Decision 2002/584], in conjunction with recitals 7 to 10, of Framework Decision 2009/299 to be interpreted as covering a case in which the accused person was informed of the list of charges against him, in its original version, and then, due to the fact that he has fled, objectively cannot be informed of the trial and is defended by a court-appointed lawyer with whom he has no contact?

(2) If this is answered in the negative:

Is a national provision (Article 423(1) and (5) of the NPK), pursuant to which no provision is made for any legal protection against investigative measures carried out *in absentia* and against a conviction handed down *in absentia* where the accused person, after having been informed of the original list of charges, is in hiding and therefore could not be informed of the date and place of the trial or of the consequences of non-appearance, consistent with Article 9, in conjunction with the second sentence of Article 8(4), of Directive 2016/343 and Article 4a(3), in conjunction with Article 4a(1)(d), of Framework Decision [2002/584]?

(3) If this is answered in the negative:

Does Article 9 of Directive 2016/343, in conjunction with Article 47 of the Charter, have direct effect?’

Consideration of the questions referred

Admissibility

20 According to settled case-law, questions on the interpretation of EU law referred by a national court in the factual and legislative context which that court is responsible for defining, and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance. The Court may refuse to rule on a question referred for a preliminary ruling from a national court only where it is quite obvious that the interpretation of EU law sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (judgment of 25 November 2021, *Finanzamt Österreich (Family benefits for development aid worker)*, C-372/20, EU:C:2021:962, paragraph 54 and the case-law cited).

21 As the Advocate General has noted in point 26 of his Opinion, the main proceedings do not concern, either primarily or indirectly, the validity or execution of a European arrest warrant. Whilst it is true that the referring court has pointed out that it is possible that IR will, in the future, be located and arrested in the territory of another Member State and surrendered to the Bulgarian authorities pursuant to such a warrant, it is plain from the material in the file submitted to the Court that this is not the situation in the criminal proceedings that have led to the present reference for a preliminary ruling.

- 22 Accordingly, the factual situation to which the referring court makes reference is hypothetical to that extent.
- 23 It follows that the request for a preliminary ruling is inadmissible in so far as it relates to the interpretation of Framework Decision 2002/584.

Substance

- 24 By its questions, which it is appropriate to examine together, the referring court asks, in essence, whether 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* without being 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.
- 25 It should be noted at the outset that, in accordance with Article 1 thereof, Directive 2016/343 has as its subject matter the laying down of common minimum rules concerning certain aspects of criminal proceedings, including the ‘right to be present at the trial’. As recital 33 of the directive expressly confirms, that right forms an integral part of the fundamental right to a fair trial.
- 26 Article 8(1) of Directive 2016/343 imposes upon the Member States the obligation to ensure that the right to be present at the trial is observed. However, pursuant to Article 8(2) and (4), the Member States may, subject to certain conditions, provide for trials to be held *in absentia*.
- 27 In that context, Article 9 of Directive 2016/343 provides that the Member States must ensure that, where such a trial is conducted even though the conditions laid down in Article 8(2) of the directive are not met, the person concerned has the right ‘to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case ... and which may lead to the original decision being reversed’ (‘right to a new trial’). As Article 8(4) of the directive makes clear, in that case both the right to a new trial and the possibility of challenging the decision taken *in absentia* are to be brought to the attention of the person concerned when he or she is informed of that decision.
- 28 Since Article 8(4) and Article 9 of Directive 2016/343 set out the field of application and the extent of the right to a new trial unconditionally and sufficiently precisely, those provisions must be regarded as having direct effect. Therefore, any person having the right to a new trial may assert that right against the Member State concerned, before the national courts, either where that Member State has failed to transpose the directive into national law within the period prescribed or where it has transposed the directive incorrectly (see, to that effect, judgment of 25 July 2018, *Alheto*, C-585/16, EU:C:2018:584, paragraphs 98 and 99).
- 29 As is, moreover, perfectly clear from those provisions, that right is restricted to persons whose trial is conducted *in absentia* even though the conditions laid down in Article 8(2) of Directive 2016/343 are not met.
- 30 Therefore, where the conditions set out in Article 8(2) are met, the trial conducted *in absentia* may result in a decision which, as provided in Article 8(3), is capable of being enforced, without the Member State in question being obliged to provide for the right to a new trial.

- 31 It follows that a person convicted *in absentia* may be deprived of the right to a new trial only if the conditions laid down in Article 8(2) of Directive 2016/343, the content of which should be explained, are satisfied.
- 32 In accordance with the Court's settled case-law, in interpreting a provision of EU law it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is part (see, to that effect, judgments of 17 November 1983, *Merck*, 292/82, EU:C:1983:335, paragraph 12, and of 28 January 2021, *Spetsializirana prokuratura (Letter of rights)*, C-649/19, EU:C:2021:75, paragraph 42). For that purpose, regard should be had, inter alia, to the recitals of the EU act concerned, since they constitute important elements for the purposes of interpretation, which may clarify the intentions of the author of that act (see, to that effect, judgment of 19 December 2019, *Puppink and Others v Commission*, C-418/18 P, EU:C:2019:1113, paragraph 75).
- 33 As regards the wording of Article 8(2) of Directive 2016/343, it follows therefrom that, in order for the conditions laid down by that provision to be complied with, the person concerned must either have been informed, in due time, of the trial and of the consequences of non-appearance, or simply have been informed of the trial where he or she is, in addition, represented by a mandated lawyer whom he or she appointed or who was appointed by the State.
- 34 As the Advocate General has explained in point 34 of his Opinion, the power given to the Member States by Article 8(2) and (3) of 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, in the situation envisaged in Article 8(2), the person concerned, having been duly informed, has voluntarily and unequivocally foregone exercise of the right to be present at the trial.
- 35 That is borne out by recital 35 of Directive 2016/343, which states that the person concerned may, expressly or tacitly, but unequivocally, waive the right to be present at the trial. That recital, which enables the context of the conditions laid down in Article 8(2) of the directive to be understood, makes it clear that, whilst it is true that the right to be present at the trial is not absolute, the possibility of conducting a trial *in absentia* without there being any need to organise subsequently a new trial at the request of the person concerned remains nevertheless limited to situations in which that person has, of his or her own free will, unequivocally refrained from being present at his or her trial.
- 36 As regards the teleological interpretation of Article 8(2) of Directive 2016/343, it should be noted that the premiss set out in paragraph 34 of the present judgment ensures observance of that directive's aim, which, as recitals 9 and 10 thereof state, 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.
- 37 In the light of that aim, the provisions of Directive 2016/343 that relate to the right to be present at the trial and to the right to a new trial must be interpreted in such a way as to ensure that the rights of the defence are respected, while preventing a person who, although informed of a trial, has foregone, either expressly or tacitly, but unequivocally, 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.

- 38 It is in the light of those textual, contextual and teleological factors that it should be specified below in what circumstances a trial conducted *in absentia* falls within one of the situations envisaged in Article 8(2) of Directive 2016/343, that is to say, a situation in which the person concerned has, tacitly, but unequivocally, foregone exercise of his or her right to be present at the trial, on account of the fact that that person does not appear at it even though he or she must be regarded as having been ‘informed, in due time, of the trial’, and, in addition, either is represented by a mandated lawyer or has been informed of the consequences of non-appearance.
- 39 As to the information regarding the holding of the trial, it is apparent from recital 36 of Directive 2016/343 that the intention of the EU legislature was to regard the person concerned as having been duly informed if he or she has, in due time, been ‘[summoned] in person’ or, ‘by other means [provided] with official information about the date and place of the trial in a manner that enables him or her to become aware of the trial’.
- 40 It is also apparent from that recital that, according to the EU legislature, informing the person concerned of the consequences of non-appearance means, in particular, informing that person, in due time, ‘that a decision might be handed down if he or she does not appear at the trial’.
- 41 Consequently, it is for the national court which is led to examine whether the conditions set out in Article 8(2) of Directive 2016/343 are met 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.
- 42 It is, in addition, incumbent upon that court to check whether that document has been served in due time, that is to say, on a date sufficiently distant from the date set for the trial, 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.
- 43 For the purpose of those checks, the national court will be able to take as a basis the detailed rules governing summoning to trial that are laid down by national law. It should be recalled, in that regard, that Directive 2016/343 is concerned solely with laying down common minimum rules and therefore does not carry out exhaustive harmonisation of criminal procedure (see, to that effect, *inter alia*, judgments of 28 November 2019, *Spetsializirana prokuratura*, C-653/19 PPU, EU:C:2019:1024, paragraph 28, and of 13 February 2020, *Spetsializirana prokuratura (Hearing in the absence of the accused person)*, C-688/18, EU:C:2020:94, paragraph 30). That said, detailed rules of that kind laid down by national law cannot undermine that directive’s aim of safeguarding the fairness of the proceedings and thus of enabling the person concerned to be present at the trial, which entails the ability to prepare his or her defence (see, by analogy, judgment of 23 November 2021, *IS (Illegality of the order for reference)*, C-564/19, EU:C:2021:949, paragraph 128).
- 44 Where the person concerned has not received the official document envisaged in paragraph 41 of the present judgment, he or she may nevertheless, as is apparent from recital 39 of Directive 2016/343, be the subject of a decision – taken *in absentia* – that can be enforced.
- 45 However, as that recital indeed states, the right to a new trial, within the meaning of Article 9 of the directive, must be conferred upon that person if the conditions laid down in Article 8(2) thereof are not met.

- 46 Consequently, accused persons who have absconded fall within the situation envisaged in Article 8(4) of Directive 2016/343 where the conditions set out in Article 8(2) of the directive are not met.
- 47 Directive 2016/343 accordingly 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.
- 48 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, subject however to the particular needs of the vulnerable persons referred to in recitals 42 and 43 of Directive 2016/343, 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. The situation of such a person who 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 in due time by means of the document referred to in paragraph 41 of the present judgment is thus covered by Article 8(2) of that directive.
- 49 Such precise and objective indicia may, for example, 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.
- 50 The interpretation of Article 8(2) of Directive 2016/343 that is provided above is borne out by recital 38 of the directive, according to which, in considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention should be paid to the diligence exercised by public authorities in order to inform the person concerned and to the diligence exercised by the person concerned in order to receive that information.
- 51 That interpretation upholds, moreover, the right to a fair trial, referred to in recital 47 of Directive 2016/343 and as laid down in the second and third paragraphs of Article 47, and Article 48 of the Charter, which, as stated in the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), correspond to Article 6 ECHR (see, to that effect, judgment of 13 February 2020, *Spetsializirana prokuratura (Hearing in the absence of the accused person)*, C-688/18, EU:C:2020:94, paragraphs 34 and 35).
- 52 As is clear from the case-law of the European Court of Human Rights, neither the letter nor the spirit of Article 6 ECHR prevents a person from waiving of his or her own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. A waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate with its importance. Furthermore, it must not run counter to any important public interest (ECtHR, 1 March 2006, *Sejdovic v. Italy*, CE:ECHR:2006:0301JUD005658100, § 86, and ECtHR, 13 March 2018, *Vilches Coronado and Others v. Spain*, CE:ECHR:2018:0313JUD005551714, § 36).
- 53 It is clear, in particular, from that case-law that such a waiver may be found where it is established that the accused person has been informed of the existence of the criminal proceedings against him or her, is aware of the nature and the cause of the accusation, and does not intend to take

part in the trial or wishes to escape prosecution (see, inter alia, ECtHR, 1 March 2006, *Sejdovic v. Italy*, CE:ECHR:2006:0301JUD005658100, § 99, and ECtHR, 23 May 2006, *Kounov v. Bulgaria*, CE:ECHR:2006:0523JUD002437902, § 48). Such an intention may, inter alia, be found where the summons to appear could not be served on account of a change of address which the accused failed to communicate to the competent authorities. In such a case, the person concerned cannot invoke a right to a new trial (see, to that effect, ECtHR, 26 January 2017, *Lena Atanasova v. Bulgaria*, CE:ECHR:2017:0126JUD005200907, § 52).

- 54 In the present instance, it is in the light of the interpretation of Article 8(2) of Directive 2016/343 which results from the foregoing considerations that it is for the referring court – in order to determine whether IR should enjoy the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case – to examine whether he was informed, in due time, of the trial and, if he was not represented by a mandated lawyer, of the consequences of non-appearance, and whether he waived, tacitly, but unequivocally, his right to be present at that trial.
- 55 It should be stated, in that regard, that the examination of the situation at issue in the main proceedings could fall within the case envisaged in Article 8(2)(a) of Directive 2016/343.
- 56 It is apparent from the request for a preliminary ruling that IR's court-appointed lawyer was not at any time in contact with IR, who did not express a view on that lawyer's appointment either. Accordingly, that lawyer might not be regarded as having been 'mandated', within the meaning of Article 8(2)(b) of Directive 2016/343, by IR, a matter which is for the referring court to establish in the light of the conditions laid down by national law. As is apparent from recital 37 of the directive, in order for there to be a 'mandate', within the meaning of the directive, the person concerned must himself or herself in fact have entrusted a lawyer, as the case may be a court-appointed lawyer, with the task of representing him or her.
- 57 It should, finally, be noted that it is apparent from the material in the file submitted to the Court that the initial indictment, served on IR in person, was declared void. The new indictment, upon which the proceedings currently conducted *in absentia* are based, was not served on IR in person as he, without informing the competent authorities, left, for a prima facie indefinite period, the place the address of which he had provided after service of the initial indictment and which he had declared as being the address at which he could be contacted.
- 58 The request for a preliminary ruling does not state whether the nature and cause of the accusation against IR, as set out in the new indictment, including so far as concerns the legal classification of the acts alleged, correspond to those set out in the initial indictment. Nor does it state whether service of a new indictment proved necessary solely because the initial indictment was vitiated by a formal defect. If the referring court were to find that the content of the new indictment corresponds to the initial indictment and that, whilst that new indictment could not be served on IR in person, it was sent and delivered to the address which he had communicated to the authorities responsible for the investigation after receiving the initial indictment, such circumstances could constitute precise and objective indicia enabling it to be held that IR – having, in accordance with Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1), been informed of the nature and cause of the accusation against him and, therefore, of the fact that he was going to be brought to trial – prevented the authorities from informing him officially of that

trial by leaving, with the intention of evading justice, the address that he had communicated to them. It is, however, for the referring court to carry out all the checks in that regard in the light of all the circumstances of the main proceedings.

- 59 It follows from all the foregoing considerations that the answer to the questions referred is 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*, but must in that case, 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. That person may, however, be denied that right if it is apparent from precise and objective 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.

Costs

- 60 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Articles 8 and 9 of 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 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*, but must in that case, 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. That person may, however, be denied that right if it is apparent from precise and objective 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.

[Signatures]