



Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

4 July 2024*

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive (EU) 2016/343 – Right to be present at the trial – Possibility for an accused person to participate in the hearings in his or her trial by videoconference)

In Case C-760/22,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 28 November 2022, received at the Court on 15 December 2022, in criminal proceedings against

FP,

QV,

IN,

YL,

VD,

JE,

OL,

intervening party:

Sofiyska gradska prokuratura,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, L. Bay Larsen (Rapporteur), Vice-President of the Court, T. von Danwitz, P.G. Xuereb and I. Ziemele, Judges,

Advocate General: L. Medina,

Registrar: A. Calot Escobar,

having regard to the written procedure,

* Language of the case: Bulgarian.

after considering the observations submitted on behalf of:

- FP, by H. Georgiev, advokat,
- the Latvian Government, by K. Pommere, acting as Agent,
- the Hungarian Government, by Zs. Biró-Tóth and M.Z. Fehér, acting as Agents,
- the European Commission, by L. Baumgart, M. Wasmeier and I. Zaloguin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 18 April 2024,

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 8(1) 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).
- 2 The request has been made in criminal proceedings brought against FP, QV, IN, YL, VD, JF and OL for participation in a criminal organisation with the aim of enrichment through tax fraud.

Legal context

European Union law

- 3 Recitals 9, 10, 33, 44 and 47 of Directive 2016/343 are worded as follows:
 - ‘(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 and thus to facilitate mutual recognition of decisions in criminal matters. Such common minimum rules may also remove obstacles to the free movement of citizens throughout the territory of the Member States.
- ...
- (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 [European] Union.

...

(44) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy, which is available in the event of a breach of any of the rights laid down in this Directive, should, as far as possible, have the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to protecting the right to a fair trial and the rights of the defence.

...

(47) This Directive upholds the fundamental rights and principles recognised by the Charter [of Fundamental Rights of the European Union (“the Charter”)] and by the [European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 (“the 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 of the Treaty on European Union (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 that directive, entitled ‘Subject matter’, provides:

‘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 that directive entitled ‘Right to be present at the trial’, provides in paragraphs 1 to 3 thereof:

‘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.’

Bulgarian law

- 6 Article 6a(2) of Zakon za merkite i deystviyata po vreme na izvanrednoto polozhenie, obyaveno s reshenie na Narodnoto sabranie 13.03.2020 g. i za preodolyavane na posleditsite (Law on the measures and actions taken during the state of emergency declared by decision of the National Assembly of 13 March 2020 and on the management of the effects), applicable until 31 May 2022, provided:

‘During the state of emergency or the extraordinary situation of the epidemic and for two months after the lifting of that state of emergency or extraordinary situation, public court hearings, including meetings of the Commission for the Protection of Competition and the Commission for Protection from Discrimination, may be conducted remotely if direct virtual participation by the parties in the trial or in the proceedings is ensured. A transcript of the court hearings held shall be produced and published without delay, and the record of the court hearing shall be kept until the time limit for correcting and supplementing the transcript has expired, unless the rules of procedure provide otherwise. The court or, depending on the situation, the Commission for the Protection of Competition or the Commission for Protection from Discrimination shall notify the parties if the court hearing is to be conducted remotely.’

- 7 According to Article 55(1) of the Nakazatelnno protsesualen kodeks (Code of Criminal Procedure; ‘the NPK’), the accused person has, inter alia, the right to participate in the criminal proceedings.

- 8 Article 269(1) of the NPK reads as follows:

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

- 9 Article 115(2) of the NPK states:

‘The accused person shall not be questioned by a delegated judge or by videoconference unless he or she is located outside Bulgaria and this does not prevent the truth from being objectively ascertained.’

- 10 Article 474(1) of the NPK provides:

‘The judicial authority of another State may question an individual who is a witness or expert in criminal proceedings and is located in the Republic of Bulgaria by video- or telephone conference, or conduct questioning with the participation of an accused person, only if this does not run counter to the fundamental principles of Bulgarian law. The accused person may be questioned by videoconference only with his or her consent and after the participating Bulgarian judicial authority and the judicial authorities of the other State have agreed on the manner in which the videoconference is to be conducted.’

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

- 11 The Spetsializirana prokuratura (Specialist Public Prosecutor’s Office, Bulgaria), by lodging a bill of indictment, initiated criminal proceedings before the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria) against seven people, including FP, accused of having participated in a criminal organisation created for the purposes of enrichment and in order to commit tax offences, within the meaning of Article 255 of the Nakazatelen kodeks (Bulgarian Penal Code). Under that penal code, that conduct constitutes a serious criminal offence.

- 12 On 12 October 2021, FP took part, before the Spetsializiran nakazatelen sad (Specialised Criminal Court), in the first public hearing in his case by means of a videoconference. He declared that, if none of the other parties to the proceedings objected, he wished to participate in the trial online since he lived and worked in the United Kingdom. His lawyer, who was physically present in the courtroom, stated that his client was familiar with all the documents of the case. It is also apparent from the request for a preliminary ruling that, at the hearing, any new document could be emailed to FP for his timely inspection and that consultations between himself and his lawyer could be organised confidentially by means of a separate connection.
- 13 At that hearing, the Spetsializiran nakazatelen sad (Specialised Criminal Court), on the basis of Article 6a(2) of the Law referred to in paragraph 6 above, authorised FP to participate in the trial by videoconference, in accordance with the guarantees and conditions that that court had set. FP thus participated in the subsequent hearings by videoconference, with the exception of that of 28 February 2022, at which he was physically present.
- 14 At the hearing of 13 June 2022, FP expressed a wish to continue participating in the proceedings by videoconference. The Spetsializiran nakazatelen sad (Specialised Criminal Court) nevertheless had doubts as to whether that possibility still existed under Bulgarian law, given that Article 6a(2) of that law was applicable only up to and including 31 May 2022. In addition, that court observed that the NPK does not provide for the possibility for accused persons to participate by videoconference in the judicial proceedings except in certain specific cases, none of which is applicable to the present proceedings. That court nevertheless pointed out that the Bulgarian legislation does not explicitly prohibit the use of videoconferencing.
- 15 In view of the absence of a specific legal basis, FP's lawyer suggested that his client could participate at the hearing remotely while being regarded as absent.
- 16 The Spetsializiran nakazatelen sad (Specialised Criminal Court) did not agree to that request. It took the view that treating the accused person as absent was not consistent with his effective participation in the trial. Even though he was not physically present in the courtroom, the accused had been able to see and hear what had taken place there, to make statements, to give explanations, to adduce evidence and to raise pleas.
- 17 Following a legislative amendment which entered into force on 27 July 2022, the Spetsializiran nakazatelen sad (Specialised Criminal Court) was dissolved and competence to hear and determine certain criminal cases brought before the latter court, including the case in the main proceedings, was transferred, as of that date, to the Sofiyski gradski sad (Sofia City Court, Bulgaria), which is the referring court.
- 18 In the absence of a legal basis in national law expressly allowing the use of videoconferencing, the referring court raises the issue of whether the possibility granted to an accused person to participate in the hearings in his or her trial using that technique is compatible with Directive 2016/343, in particular with Article 8(1) of that directive.
- 19 In those circumstances, the Sofiyski gradski sad (Sofia City Court) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Is the right of an accused person to be present at his or her trial, as provided for in Article 8(1) of [Directive 2016/343], read in conjunction with recitals 33 and 44 thereof, infringed if, at his or her express request, he or she takes part in the court hearings being conducted in the criminal case in

question via an online link, in a situation where he or she is defended by a lawyer mandated by him or her and present in the courtroom, and where that link enables him or her to follow the course of the proceedings and to adduce and be given access to evidence, where he or she can be heard without technical hindrances and he or she is guaranteed an effective and confidential means of conferring with his or her lawyer?’

Consideration of the question referred

- 20 By its question, the referring court asks, in essence, whether Article 8(1) of Directive 2016/343 must be interpreted as precluding an accused person from being able, at his or her express request, to participate in the hearings in his or her trial by videoconference.
- 21 Under that provision, Member States are to ensure that suspects and accused persons have the right to be present at their trial.
- 22 It should be recalled in that regard that, according to recital 47 of Directive 2016/343, that directive upholds the fundamental rights and principles recognised by the Charter and the ECHR, including the right to a fair trial, the presumption of innocence and the rights of the defence (judgment of 8 December 2022, *HYA and Others (Impossibility of questioning prosecution witnesses)*, C-348/21, EU:C:2022:965, paragraph 39).
- 23 The purpose of that directive, as stated in recitals 9 and 10 thereof, is to strengthen the right to a fair trial in criminal proceedings (judgment of 15 September 2022, *HN (Trial of an accused person removed from the territory)*, C-420/20, EU:C:2022:679, paragraph 53).
- 24 As is apparent from recital 33 of that directive, the right of suspects or of accused persons to be present at their trial is based on the right to a fair trial, enshrined in Article 6 ECHR, which corresponds, as stated in the explanations relating to the Charter, to the second and third paragraphs of Article 47 of the Charter as well as Article 48 thereof. The Court must, accordingly, ensure that its interpretation of the latter provisions ensures a level of protection which does not disregard that guaranteed by Article 6 ECHR, as interpreted by the European Court of Human Rights (judgment of 8 December 2022, *HYA and Others (Impossibility of questioning prosecution witnesses)*, C-348/21, EU:C:2022:965, paragraph 40 and the case-law cited).
- 25 It is apparent from the case-law of the European Court of Human Rights that the appearance of an accused person is of capital importance in the interests of a fair criminal trial, and the duty to guarantee that person the right to be present in the courtroom being, in that regard, one of the essential requirements of Article 6 ECHR (judgment of 8 December 2022, *HYA and Others (Impossibility of questioning prosecution witnesses)*, C-348/21, EU:C:2022:965, paragraph 41).
- 26 Thus the Court of Justice has held that, under the right laid down in Article 8(1) of Directive 2016/343, an accused person must be able to appear in person at the hearings which are held in connection with his or her trial, without that directive imposing an obligation for any suspect or accused person to be present at his or her trial (see, to that effect, judgments of 15 September 2022, *HN (Trial of an accused person removed from the territory)*, C-420/20, EU:C:2022:679, paragraph 40, and of 8 December 2022, *HYA and Others (Impossibility of questioning prosecution witnesses)*, C-348/21, EU:C:2022:965, paragraphs 34 and 36).

- 27 That being the case, it follows from Article 1 of that directive that its purpose is to lay down common minimum rules concerning certain aspects of the presumption of innocence in criminal proceedings and the right of suspects and accused persons to be present at the trial in those proceedings, and not to carry out exhaustive harmonisation of criminal procedure (see, to that effect, judgment of 15 September 2022, *HN (Trial of an accused person removed from the territory)*, C-420/20, EU:C:2022:679, paragraph 41).
- 28 Accordingly, in the light of the limited scope of the harmonisation carried out by that directive and the fact that Article 8(1) thereof does not govern the issue of whether the Member States may provide that the accused person may, at his or her express request, participate in the hearings in his or her criminal trial by videoconference, such an issue falls within the scope of national law (see, by analogy, judgment of 15 September 2022, *HN (Trial of an accused person removed from the territory)*, C-420/20, EU:C:2022:679, paragraph 42).
- 29 Since Article 8(1) of Directive 2016/343 does not govern that issue, that provision cannot preclude an accused person, who makes an express request to that effect, from being authorised to participate in the hearings in his or her trial by videoconference.
- 30 The fact remains that, as the Advocate General observed in point 64 of her Opinion, where the Member States enable the accused person to exercise the right to be present at his or her trial remotely, the rules they lay down may not undermine the objective pursued by Directive 2016/343, recalled in paragraph 23 above, which is to enhance the right to a fair trial in criminal proceedings. Likewise, those rules must uphold the fundamental rights and principles recognised by the Charter and by the ECHR, including the right to a fair trial, the presumption of innocence and the rights of the defence.
- 31 In that regard, the European Court of Human Rights has held that participation in the proceedings by videoconference is not, as such, incompatible with the notion of a fair and public hearing, but it must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediments, and that effective and confidential communication with a lawyer is provided for (ECtHR, 2 November 2010, *Sakniovskiy v. Russia*, CE:ECHR:2010:1102JUD002127203, § 98).
- 32 Consequently, the answer to the question referred is that Article 8(1) of Directive 2016/343 must be interpreted as not precluding an accused person from being able, at his or her express request, to participate in the hearings in his or her trial by videoconference, provided that the right to a fair trial is guaranteed.

Costs

- 33 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 (First Chamber) hereby rules:

Article 8(1) 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 not

precluding an accused person from being able, at his or her express request, to participate in the hearings in his or her trial by videoconference, provided that the right to a fair trial is guaranteed.

[Signatures]