

CJEU: Accused Person Can Waive Right to be Present at Trial



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News

The CJEU ruled on the conditions under which the non-appearance of accused persons at certain trial hearings for reasons either within or beyond their control is compatible with Union law. The concrete case deals with the provisions of the Bulgarian Criminal Code of Procedure on “trials in absentia” and which was brought to the CJEU by the Spetsializiran nakazatelen sad (Special Court for Criminal Cases, Bulgaria): the CJEU interpreted the right to be present at trial guaranteed by Art. 8 of Directive 2016/343 (for the Directive, see [euclid 1/2016, p. 13](#) and the article by *S. Cras/A. Erbežnik*, [euclid 1/2016, pp. 25-36](#)). In its judgment of 13 February 2020 (*Case C-688/18 – criminal proceedings against TX and UW*), the CJEU did not object to the Bulgarian rules.

The CJEU refers to recital 35 of Directive 2016/343, which states that the right of suspects and accused persons to be present at the trial is not absolute. In fact, under certain conditions, suspects and accused person should be able to, expressly or tacitly, but unequivocally, waive that right. The judges in Luxembourg took up the case law of the ECtHR, according to which such waiver of the right to take part in the hearing must be established unequivocally and be attended by minimum safeguards commensurate with its seriousness. Furthermore, it must not run counter to any important public interest.

In situations where the accused did not appear in hearings for reasons which are beyond his control, a waiver must be flanked with guarantees that procedural steps, which were taken during his non-appearance (e.g. questioning of a witness), can be repeated. This is the case under Bulgarian law.

The CJEU stressed, however, that Directive 2016/343 lays down only common minimum rules applicable to criminal proceedings concerning certain aspects of the presumption of innocence and the right to be present at the trial. In light of the minimal degree of harmonisation, the Directive cannot therefore be understood as a complete and exhaustive instrument.

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