

# CJEU Clarifies Conditions for Trials and Convictions in absentia



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News

In a [judgment of 19 May 2022](#), the CJEU clarified when an accused can be tried in his/her absence and a decision *in absentia* taken against him can be enforced.

The case ([C-569/20](#)) concerns a situation before the Specialised Criminal Court in Bulgaria, in which the defendant (IR), who was indicted for having committed tax offences punishable by custodial sentences, indicated an address at which he could be summoned, but summons failed since he seemingly absconded. After having closed the criminal proceedings due to an irregularity in the first indictment that had been served on IR 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 Specialised Criminal Court had doubts as to whether it can correctly inform the defendant of the procedural safeguards available to him and wondered whether [Directive 2016/343](#) on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings would hamper the next steps of the criminal proceedings. Arts. 8 and 9 of that Directive provide for several situations in which an accused can be tried in his/her absence and a subsequent sentence be enforced or the accused has a right to a new trial.

The judges in Luxembourg replied that Arts. 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 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 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. The CJEU stressed that this interpretation is in line with the rights to a fair trial enshrined in Art. 47 and 48 CFR and Art. 6 ECHR.

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