

ECJ Clarifies Limits of Appellate Reasoning under the Presumption of Innocence

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European Law Forum: Prevention • Investigation • Prosecution

News

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On 30 April 2026, the ECJ delivered its judgment in [Case C-748/24 \(Kotáňák\)](#) concerning the presumption of innocence under Directive 2016/343. The case raised the question of how far an appellate criminal court may go, at a preliminary stage of proceedings, when assessing incriminating evidence, and whether its findings may bind the lower court if they appear to anticipate the accused person's guilt.

Background of the case

The case concerned criminal proceedings in Slovakia against AC for defamation. The accused had allegedly posted several videos online containing false allegations about another person. The court of first instance twice discontinued the proceedings, finding that the conduct described in the indictment did not constitute a criminal offence.

The prosecutor appealed. The appellate court set aside the discontinuance orders and referred the case back to the lower court. In its reasoning, however, the appellate court used strong factual language, stating, among other things, that the evidence showed "beyond doubt" that the accused had used lies and that certain events described by him had never taken place.

The criminal court now competent to decide on the criminal proceedings against AC at first instance was concerned that the statements by the appellate court might breach the presumption of innocence. Under Slovak procedural law, the lower court would normally be bound by the legal views expressed by the appellate court. It therefore asked the ECJ whether such appellate findings were compatible with [Directive 2016/343](#) on the presumption of innocence and what the lower court should do if they were not.

The ECJ's ruling

The ECJ held that Directive 2016/343 does not prevent an appellate criminal court from examining incriminating evidence in detail at a preliminary stage of the proceedings. Nor does the Directive, as such, prevent the appellate court from assessing whether the constituent elements of the alleged offence may be present, even where the accused has not yet had the opportunity to comment on all evidence.

However, the ECJ stressed that the reasoning must not imply guilt before it is legally established. The key question is whether the decision's wording, context, and overall reasoning convey only suspicion or instead a premature finding of guilt. It noted that expressions suggesting that all elements of the offence are already

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Preprint eucrim 2026, Vol. 21(1)

ISSN: 1862-6947

<https://eucrim.eu>



established may indicate a breach of the presumption of innocence, but left the final assessment to the national court.

Looking at the binding effect of appellate court decisions under national law, the ECJ held that, if the lower court finds that the appellate court's rulings are incompatible with the presumption of innocence, it must disregard those rulings, even if national law would normally require it to follow them. This follows from the direct effect of Art. 3 of Directive 2016/343 and the primacy of EU law. However, the lower court need not disregard the appellate decision in its entirety: it may still have to comply with procedural measures ordered by the appellate court, such as continuing the proceedings following remittal.

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The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



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