ECJ Ruled on Right to New Trial if Suspect Absconds

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In its judgment of 17 January 2025 in Case C-644/23 (*IR II* or *Stangalov*), the ECJ explained the extent to which the conditions for conducting proceedings *in absentia* within the meaning of Directive 2016/343 are met. Specifically, the issue is the compatibility of provisions of the Bulgarian Code of Criminal Procedure with Articles 8 and 9 of the Directive. In the underlying proceedings of the reference for preliminary ruling, the ECJ had already ruled in the same case in 2022 (Case C-569/20, *IR* → eucrim 2/2022, 112-113). However, the referring Bulgarian criminal court had a need for further clarification and, in particular, wished to establish whether the continuation of the proceedings against the defendant *in absentia* under the provisions of the Bulgarian Code of Criminal Procedure (NPK) was in line with EU law.

Facts and background of the case

The underlying case concerns the conduct of criminal proceedings against IR for acts that may constitute tax offences punishable by custodial sentences. According to the findings of the referring court, IR received a "notice of charges" in the investigative proceedings under Bulgarian law. This notice contains only a brief statement of the facts and points of law in order to inform a suspect that he is being accused of a particular offence and he is given the opportunity to provide explanations in that regard. Incriminating and exculpatory evidence is not known at this stage, nor is the decision of the public prosecutor to draw up the indictment within the meaning of Article 246 of the NPK and thus bring the criminal case before the competent criminal court. However, the summons to the trial and a copy of the indictment could no longer be served on IR because he had fled. Although a lawyer was officially appointed by the court during the criminal proceedings, he had no contact with the defendant IR.

In light of this, the referring court is primarily concerned with the question of whether the requirements of Art. 8(2) of Directive 2016/343 are met, in particular Art. 8(2)(a), namely whether the suspect or accused person was informed in due time of the trial and of the consequences of non-appearance. If so, a person convicted *in absentia* can be derived of his/her right to a new trial.

The ECJ's reply

The ECJ first of all made it clear in general terms that when determining whether the person was informed of the trial, particular attention must be paid to the diligence exercised by the public authorities in informing the person concerned of the trial and the diligence exercised by the person concerned in receiving the relevant information. Consequently, that person must be presumed to have no right to a new trial if it is apparent from

precise and objective indicia that he or she, 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.

In accordance with the case law of the ECtHR, it is sufficient for the finding that the person concerned has absconded from justice if he or she had learned that his or her criminal case would in all likelihood be brought to court. In the view of the ECJ, it is sufficient for this to have received the notice of charges in the pre-trial stage, as in the present case. By absconding after having received this notice, IR has thus prevented the competent authorities from informing him in person of the final indictment and of the date and place of the trial. This may result in IR being denied a new trial if he is located and arrested to serve his sentence imposed *in absentia*.

However, the ECJ makes an important reservation: the forfeiture of the right to a new trial must be limited to persons who, first, may be presumed, having regard to all the relevant circumstances, to have been informed of their trial and, second, were represented at the trial by a lawyer mandated by them in their absence or, if there was no such representation, were informed in due time that, if they absconded, they risk being tried in their absence.

It is for the referring court to examine whether those conditions have been met under Bulgarian law. Nonetheless, there are doubts as to whether the information on the consequences of non-appearance was provided in good time. At the very least, as in the present case, it cannot be assumed that the court-appointed lawyer was "mandated" if he has no contact with the defendant.

Note: Several proceedings are pending before the ECJ regarding the compatibility of Bulgarian law on *in absentia* proceedings with Directive 2016/343. On 16 January 2025, the ECJ ruled on a somewhat different case concerning *in absentia* proceedings in Bulgaria (Case C-400/23, *VB II* →eucrim news of 29 January 2025). In this case, the Bulgarian court asked on the continuation of *in absentia* proceedings if the requirements of Art. 8(2) of Directive 2016/343 were not met. Here, too, the case was a second referral for a preliminary ruling in a case that had been decided upon previously (Joined Cases C-430/22 and C-468/22, *VB I*).

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