

# ECJ Ruled on Right to Trial Participation via Videoconference

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## News

On 4 July 2024, the Court of Justice of the European Union (ECJ) issued its judgment in Case C-760/22 (*FP and Others*), addressing whether the participation of an accused person in a criminal trial via videoconference at his express request is precluded by EU law, in particular Art. 8(1) of Directive 2016/343 on the presumption of innocence and the right to be present at the trial in criminal proceedings.

### Background of the case

The case arose out of criminal proceedings in Bulgaria, in which several individuals were accused of participating in a criminal organisation involved in tax fraud. One of the defendants participated in the initial trial hearings via videoconference, because he lived and worked in the United Kingdom. Bulgarian law permitted remote participation during the COVID-19 pandemic, but the relevant provision had expired by the time the defendants requested continued participation via videoconference.

The Sofia City Court referred to the ECJ the question of whether allowing to participate in the hearings of the trial via videoconference at the accused person's express request is precluded by Art. 8(1) of Directive 2016/343 which guarantees the right to be present at one's trial.

### The ECJ's decision

The ECJ first noted that the right to be present at trial is a fundamental aspect of a fair trial, as set out in the Directive and corresponding provisions of the European Convention on Human Rights (ECHR). The Court emphasised that the Directive does not fully harmonise all aspects of criminal procedure throughout the EU, but instead sets minimum standards.

Second, the ECJ clarified that, while the Directive guarantees the right to be physically present at trial, it does not explicitly prohibit the use of videoconferencing if the defendant so wishes. Therefore, the Directive does not prevent Member States from allowing participation via videoconference in accordance with national law, provided that the fairness of the trial is maintained.

In their reasoning, the judges in Luxembourg referred to the ECtHR, which has held that videoconferencing can be compatible with the right to a fair trial, provided that the applicant is able to follow the proceedings and be heard without technical hindrance and that effective and confidential communication with a lawyer is provided for.

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## Put in focus

The ECJ concluded that Art. 8(1) of Directive 2016/343 does not preclude an accused person from participating in his or her trial by videoconference if he or she expressly requests to do so, provided that all necessary safeguards are in place to ensure that the trial remains fair. This interpretation allows for flexibility as to the way in which Member States implement the right to be present at trial - taking into account modern technologies while respecting fundamental rights.

The ECJ judgment reinforces the principle that, although EU law sets certain minimum standards for procedural rights, it allows Member States to use different methods, such as videoconferencing, as long as the fundamental rights of the accused are protected.

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