Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

16 January 2025 *

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – Directive (EU) 2016/343 – Article 8 – Right to be present at the trial – Information regarding the holding of the trial and the consequences of non-appearance – Inability to locate the accused person notwithstanding the reasonable efforts of the competent authorities – Possibility of a trial and a decision *in absentia* – Article 9 – Right to a new trial or to another legal remedy which allows a fresh determination of the merits of the case – No such right where the person concerned absconds)

In Case C-644/23 (Stangalov), [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 26 October 2023, received at the Court on 26 October 2023, in the criminal proceedings against

IR,

interested party:

Sofiyska gradska prokuratura,

THE COURT (Fourth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Third Chamber, acting as President of the Fourth Chamber, S. Rodin and O. Spineanu-Matei, Judges,

Advocate General: J. Richard de la Tour,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– the European Commission, by J. Vondung and I. Zaloguin, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

* Language of the case: Bulgarian.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any of the party to the proceedings.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 8 and 9 of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1) and of Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in criminal proceedings brought against IR relating to acts liable to constitute tax offences punishable by custodial sentences.

Legal context

European Union law

3 Recitals 33, 35 to 39, 47 and 48 of Directive 2016/343 state:

'(33) The right to a fair trial is one of the basic principles in a democratic society. The right of suspects and accused persons to be present at the trial is based on that right and should be ensured throughout the [European] Union.

…

(35) The right of suspects and accused persons to be present at the trial is not absolute. Under certain conditions, suspects and accused persons should be able, expressly or tacitly, but unequivocally, to waive that right.

(36) Under certain circumstances it should be possible for a decision on the guilt or innocence of a suspect or accused person to be handed down even if the person concerned is not present at the trial. This might be the case where the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance and does not, nevertheless, appear. Informing a suspect or accused person of the trial should be understood to mean summoning him or her in person or, by other means, providing that person with official information about the date and place of the trial in a manner that enables him or her to become aware of the trial. Informing the suspect or accused person of the consequences of non-appearance should, in particular, be understood to mean informing that person that a decision might be handed down if he or she does not appear at the trial.

(37) It should also be possible to hold a trial which may result in a decision on guilt or innocence in the absence of a suspect or accused person where that person has been informed of the trial and has given a mandate to a lawyer who was appointed by that person or by the State to represent him or her at the trial and who represented the suspect or accused person.

(38) When considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention should, where appropriate, also be paid to the diligence exercised by public authorities in order to inform the person concerned and to the diligence exercised by the person concerned in order to receive information addressed to him or her.

(39) Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but the conditions for taking a decision in the absence of a particular suspect or accused person are not met because the suspect or accused person could not be located despite reasonable efforts having been made, for example because the person has fled or absconded, it should nevertheless be possible to take a decision in the absence of the suspect or accused person and to enforce that decision. In that case, Member States should ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they should also be informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy. …

…

(47) This Directive upholds the fundamental rights and principles recognised by the Charter and by the [European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ("the ECHR")] … Regard should be had, in particular, to Article 6 [TEU], according to which the Union recognises the rights, freedoms and principles set out in the Charter, and according to which fundamental rights, as guaranteed by the ECHR and as they result from the constitutional traditions common to the Member States, are to constitute general principles of Union law.

(48) As this Directive establishes minimum rules, Member States should be able to extend the rights laid down in this Directive in order to provide a higher level of protection. The level of protection provided for by Member States should never fall below the standards provided for by the Charter or by the ECHR, as interpreted by the Court of Justice and by the European Court of Human Rights.'

4 Article 1 of Directive 2016/343, entitled 'Subject matter', provides:

'This Directive lays down common minimum rules concerning:

(a) certain aspects of the presumption of innocence in criminal proceedings;

(b) the right to be present at the trial in criminal proceedings.'

5 Under Article 8 of that directive, entitled 'Right to be present at the trial':

'1. Member States shall ensure that suspects and accused persons have the right to be present at their trial.

2. Member States may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, provided that:

(a) the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or

(b) the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person or by the State.

3. A decision which has been taken in accordance with paragraph 2 may be enforced against the person concerned.

4. Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions laid down in paragraph 2 of this Article because a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy, in accordance with Article 9.

…'

6 Article 9 of Directive 2016/343, entitled 'Right to a new trial', is worded as follows:

'Member States shall ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, they have the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision being reversed. In that regard, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.'

Bulgarian law

7 Article 94(1) and (3) of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure) (DV No 86 of 28 October 2005), in the version applicable to the dispute in the main proceedings ('the NPK'), provides:

'1. The participation of a defence counsel in criminal proceedings is mandatory if … the case is tried in the absence of the accused person;

…

3. Where the participation of a defence counsel is mandatory, the competent authorities shall appoint a lawyer as defence counsel.'

8 Under point 3 of Article 219(3) of the NPK:

'The notice of charges … must specify … the acts with which [the person concerned] is charged and their legal classification.'

9 Article 246(1) of the NPK is worded as follows:

'The prosecutor shall draw up an indictment where he or she is satisfied that the evidence necessary for … bringing the charges before a court has been gathered …'

10 Article 247c(1) of the NPK provides:

‘By order of the judge rapporteur, a copy of the indictment shall be served on the defendant. Through service of the indictment, the defendant shall be informed of the date fixed for the preliminary hearing … and of the fact that the case may be tried and decided in his or her absence, in accordance with Article 269.’

11 Under Article 269 of the NPK:

‘1. Where the defendant has been indicted for a serious criminal offence, his or her presence at trial shall be mandatory.

…

3. Provided that this does not prevent the objective truth from being ascertained, the case may be tried in the absence of the defendant if:

(1) that person is not to be found at the address indicated by him or her or has changed address without notifying the competent authorities;

(2) his or her place of residence in Bulgaria is not known and has not been identified following an extensive search;

…

(4) that person is outside Bulgarian territory and … his or her place of residence is not known.’

12 Article 423(1) of the NPK is worded as follows:

‘Within six months of becoming aware of the final verdict …, the person convicted *in absentia* may request the reopening of the criminal [proceedings] on the ground that he or she did not take part in [those proceedings]. The request shall be granted unless the convicted person absconded following notification of the charges during the pre-trial stage of the proceedings, with the result that the procedure provided for in Article 247c(1) could not be carried out, or, after that procedure was carried out, that person failed to appear at trial without a valid reason.’

The main proceedings and the questions referred

13 In 2016, IR was accused of involvement in an organised criminal gang with a view to the commission of tax offences punishable by custodial sentences.

14 On 19 April 2016, IR was served with the notice of charges relating to those offences, which was issued pursuant to Article 219 of the NPK.

15 Following notification of those charges, which took place during the pre-trial investigation, IR engaged the services of a lawyer mandated by him and provided an address at which he could be reached.

16 On 8 June 2016, the pre-trial investigation was completed and the case was forwarded to the prosecutor.

17 On 9 December 2016, the prosecutor drew up the indictment pursuant to Article 246 of the NPK and brought the case against IR before the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria).

18 Despite attempts by the Spetsializiran nakazatelen sad (Specialised Criminal Court) to summon IR in person in order to have him appear in court, IR could not be located either at the address he had provided or elsewhere. In those circumstances, it was not possible to take the steps provided for in Article 247c(1) of the NPK, including effecting service on IR of a copy of the indictment referred to in Article 246 of the NPK.

19 The court appointed a lawyer to defend IR. That lawyer did not, however, succeed in contacting IR and withdrew from defending him. Subsequent court-appointed lawyers were also unable to establish contact with IR.

20 Upon becoming apparent that the indictment was flawed, it was declared null and void and the proceedings were consequently closed. Subsequently, a new indictment was drawn up pursuant to Article 246 of the NPK and a fresh set of proceedings was initiated. On that occasion, efforts were again made to ascertain IR's whereabouts, including through members of his family, his former employers and mobile telephone operators, but, once again, he could not be located.

21 By decision of 27 October 2020, the Spetsializiran nakazatelen sad (Specialised Criminal Court) then decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Are Article 8(2)(b), in conjunction with recitals 36 to 39, of Directive [2016/343] … to be interpreted as covering a case in which the accused person was informed of the list of charges against him, in its original version, and then, due to the fact that he has fled, objectively cannot be informed of the trial and is defended by a court-appointed lawyer with whom he has no contact?

(2) If this is answered in the negative:

Is a national provision (Article 423 … of the NPK), pursuant to which no provision is made for any legal protection against investigative measures carried out *in absentia* and against a conviction handed down *in absentia* where the accused person, after having been informed of the original list of charges, is in hiding and therefore could not be informed of the date and place of the trial or of the consequences of non-appearance, consistent with Article 9 … of Directive [2016/343] …?

(3) If this is answered in the negative:

Does Article 9 of Directive [2016/343], in conjunction with Article 47 of the Charter, have direct effect?'

22 That request for a preliminary ruling gave rise to the judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)* (C-569/20, EU:C:2022:401), the operative part of which is worded as follows:

'Articles 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, as the case may be, convicted *in absentia*, but must in that case, 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. That person may, however, 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.'

23 The Sofiyski gradski sad (Sofia City Court, Bulgaria) – which, following the abolition of the Spetsializiran nakazatelen sad (Specialised Criminal Court), resumed the criminal proceedings against IR and is therefore the referring court – states that the Bulgarian case-law relating to Article 423 of the NPK has not changed since delivery of the judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)* (C-569/20, EU:C:2022:401). In particular, the Varhoven kasatsionen sad (Supreme Court of Cassation, Bulgaria), which has exclusive jurisdiction to examine requests for a new trial, continues to apply Article 423 of the NPK as meaning that any person who has absconded after receiving the notice of charges referred to in Article 219 of the NPK forfeits the right to a new trial if he or she is convicted *in absentia*.

24 The referring court infers from this that, in the event of IR being convicted *in absentia*, any subsequent request by him seeking a new trial would be unsuccessful.

25 According to that court, IR should, by virtue of his fundamental right to a fair trial recognised in Article 47 of the Charter and reflected in Article 8(4) and Article 9 of Directive 2016/343, be entitled to a new trial.

26 In that connection, the referring court draws attention to the fact that the notice of charges which IR received in person on 19 April 2016 was part of the pre-trial investigation stage, which precedes transmission of the case to the prosecutor. That preliminary indictment contains only a brief statement of the facts and points of law, as a means of informing a suspect that he or she is accused of committing a particular offence and giving him or her the opportunity to provide explanations in that regard.

27 The referring court points out that, when the person concerned receives that preliminary indictment, all the inculpatory and exculpatory evidence is not yet known. It is also not known at the pre-trial investigation stage whether the prosecutor will draw up an indictment as referred to in Article 246 of the NPK and thus bring the case before the court having jurisdiction.

28 It is therefore only upon receipt of the indictment drawn up pursuant to Article 246 of the NPK that the person concerned is first apprised of the fact that a trial will be held. It is also only at that stage that the person concerned is informed of the possibility that the case may be tried in his or her absence.

29 According to the referring court, both Article 423(1) of the NPK and the case-law of the Varhoven kasatsionen sad (Supreme Court of Cassation) relating to that provision are incompatible with Article 8(4) and Article 9 of Directive 2016/343, in so far as they deprive persons who have been tried *in absentia* of the right to a new trial where the conditions laid down in Article 8(2) of that directive have not been met.

30 In those circumstances, the referring court seeks further clarification from the Court on the scope *ratione personae* of the right to a new trial, before potentially convicting IR *in absentia*. If it were indeed to emerge from that clarification that EU law precludes Article 423(1) of the NPK, it would also be necessary to determine whether the referring court may, or must, refuse to give judgment in the trial *in absentia* pending against IR, in order to avoid, at a later stage, a breach of his right to a fair trial.

31 In that regard, the referring court observes that it is in possession of reliable information to the effect that the Varhoven kasatsionen sad (Supreme Court of Cassation) would refuse to recognise IR's right to a new trial. That information is concerned with the fact that that supreme court did not adapt its case-law following delivery of the judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)* (C-569/20, EU:C:2022:401), and has persistently refused to take account of Directive 2016/343.

32 In those circumstances, the Sofiyski gradski sad (Sofia City Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Is Article 9 of Directive 2016/343, read in conjunction with Article 8[(2) and (4)] thereof, compatible with a provision of national law – the first alternative in the second sentence of Article 423(1) of the NPK – under which a defendant who has been convicted *in absentia* has no right to a new trial in his or her presence if he or she absconded after having been informed of the accusation in the most general terms during the pre-trial stage and it was that very absconding which prevented that defendant from being informed of the full charges, the trial initiated pursuant to those charges or the consequences of non-appearance at that trial – and that defendant also has no right to a new trial in his or her presence if he or she is defended by a lawyer appointed of the court's own motion, regardless of the fact that the defendant has no contact with that lawyer?

(2) If the first question is answered in the negative, do Article 8 of Directive 2016/343 and Article 47 of the Charter oblige or allow the referring court to refuse to examine the merits of the charges brought against such a defendant and refuse to deliver a judgment *in absentia* against him or her if that court is convinced, on the basis of reliable information, that the supreme national judicial authority, which has exclusive jurisdiction to decide on an application made by a defendant convicted *in absentia* for a new trial in his or her presence, will not grant such an application in the main proceedings and will not reopen the proceedings, in so far as it will not apply the rule set out in Article 9 of the directive, read in conjunction with Article 8[(2) and (4)] thereof, but will instead apply the national law and thereby deprive the defendant convicted *in absentia* of the right, guaranteed by EU law, to be present in the criminal proceedings?'

Consideration of the questions referred

The first question

33 By its first question, the referring court asks, in essence, whether Articles 8 and 9 of Directive 2016/343 must be interpreted as precluding national legislation under which a person who absconds after receiving a preliminary indictment drawn up against him or her during the pre-trial investigation stage of criminal proceedings, thereby preventing the authorities from informing him or her in person of the final indictment and of the date and place of the trial, who

is defended at that trial by a court-appointed lawyer with whom he or she has no contact, and who, against that background, is convicted *in absentia*, will not, if located and arrested for the purpose of enforcing the sentence, have the right to a new trial.

34 It should be borne in mind that, in accordance with Article 1 thereof, Directive 2016/343 has as its subject matter the laying down of common minimum rules concerning certain aspects of criminal proceedings, including the 'right to be present at the trial'. As recital 33 of that directive expressly confirms, that right forms an integral part of the fundamental right to a fair trial (judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraph 25).

35 Member States may, however, in accordance with Article 8 of Directive 2016/343, provide, in certain circumstances, for a trial to be held *in absentia*, on the understanding that where such a trial is conducted without the conditions laid down in Article 8(2) of the directive being met, the person concerned has – pursuant to Article 8(4) and Article 9 of that directive, which have direct effect – the right 'to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case … and which may lead to the original decision being reversed' ('the right to a new trial') (see, to that effect, judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraphs 26 to 28).

36 It follows that a person convicted *in absentia* may be deprived of the right to a new trial only if the conditions laid down in Article 8(2) of Directive 2016/343 are met (judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraph 31).

37 Therefore, if the person concerned was not informed in due time of the trial, or if, having been informed thereof, he or she was not informed of the consequences of non-appearance and was also not represented at the trial by a mandated lawyer, that person enjoys, as a rule, upon becoming aware of the decision handed down *in absentia*, the right to a new trial. Directive 2016/343 accordingly precludes national legislation which rules out that right solely on the ground that the person concerned has absconded and the authorities have not succeeded in locating him or her (see, to that effect, judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraphs 41 to 47).

38 As is apparent from recital 38 of that directive, it is necessary, when determining whether the person concerned was informed of the trial, to pay particular attention to the diligence exercised by the public authorities in order to inform him or her of the trial and to the diligence exercised by the person concerned in order to receive the information relating thereto. Consequently, it must be held that that person does not enjoy the right to a new trial where 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. Such precise and objective indicia may, for example, be found to exist where that person has deliberately communicated an incorrect address to the national authorities having competence in criminal matters or is no longer at the address that he or she has communicated (judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraphs 48 to 50).

39 In the present case, if it were to transpire that the final indictment drawn up pursuant to Article 246 of the NPK and the document indicating the date and place of the scheduled trial were sent and actually delivered to the address which IR had communicated to the investigating authorities after receiving the preliminary indictment referred to in Article 219 of the NPK, such circumstances could constitute – if the content of that final indictment corresponds, as regards the alleged acts and their legal classification, to the content of that preliminary indictment – precise and objective indicia supporting the finding that IR, having been informed of the charges against him and, therefore, having sufficient information to know that he was going to be brought to trial, prevented the authorities from informing him officially of that trial by leaving, with the intention of evading justice, the address that he had communicated to them (see, to that effect, judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraph 58).

40 That conclusion is not invalidated by the fact that it is not yet certain, at the pre-trial investigation stage of the criminal proceedings, that the preliminary indictment, of which the person concerned has become aware, will be followed by a final indictment and therefore by a trial. First, it follows from the very wording of Articles 8 and 9 of Directive 2016/343 that the common minimum rules established by those articles apply to both 'suspects' and 'accused persons'. Therefore, persons suspected of having committed an offence are covered by those rules, even if they are not yet formally subject to prosecution.

41 Secondly, in the light of the case-law of the European Court of Human Rights, which, as is apparent from recitals 47 and 48 of Directive 2016/343, must be taken into account when interpreting that directive, it is sufficient – in order to find that the person concerned has deliberately evaded justice by absconding despite being in possession of information enabling him or her to ascertain that he or she was going to be brought to trial – for the circumstances of the case to show that the person concerned absconded after learning that his or her case would in all likelihood be brought before a court (ECtHR, 26 January 2017, *Lena Atanasova v. Bulgaria*, CE:ECHR:2017:0126JUD005200907, § 48).

42 Consequently, in such circumstances Member States are entitled to take the view that the dispatch in due time, by the competent authorities, of the official document indicating the date and place of the trial to the address which the person concerned communicated to those authorities during the pre-trial investigation of the case, and the proof that that document was actually delivered to that address, are tantamount to informing that person, who has absconded, of that date and place, in accordance with Article 8(2) of Directive 2016/343. However, that holds true only if those authorities have made reasonable efforts to locate that person and to summon him or her in person or, by other means, provide him or her with official information about the date and place of the trial, as contemplated in recital 36 of that directive. In that situation, the person concerned is deemed to have been informed of that trial and to have voluntarily and unequivocally foregone exercise of the right to be present at it (see, to that effect, judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraph 48).

43 In addition, it must be pointed out that even where the person concerned is thus deemed to have been informed of the trial and to have voluntarily and unequivocally foregone exercise of the right to be present at it, if all the conditions laid down in Article 8(2) of Directive 2016/343 are to be met, it is also necessary for that person to have been informed, in due time, of the consequences of non-appearance, in accordance with Article 8(2)(a) of that directive, or for him or her to be represented by a mandated lawyer, in accordance with Article 8(2)(b) thereof.

44 In the present case, subject to verification by the referring court, it appears that Article 423(1) of the NPK has the effect of depriving persons who have absconded after receiving a preliminary indictment, issued pursuant to Article 219 of the NPK, of the right to a new trial, without Article 423(1) of the NPK requiring an examination of (i) whether, in the light of all the relevant circumstances, in particular those mentioned in paragraphs 39 and 42 above, the person concerned may be regarded as having been informed by the competent authorities of the trial and (ii) whether he or she was informed by those authorities of the consequences of non-appearance or was represented at that trial by a mandated lawyer.

45 It is for the national courts to examine whether Article 423(1) of the NPK may nevertheless be interpreted in such a way as to limit the forfeiture of the right to a new trial provided for therein solely to cases in which all of the conditions laid down in Article 8(2) of Directive 2016/343 are met. If it is not possible to interpret the relevant Bulgarian legislation in compliance with the requirements of EU law, and since, as recalled in paragraph 35 above, Article 8(4) and Article 9 of that directive have direct effect, those courts are required to disapply any national provision which is contrary to those provisions of EU law, without having to request or await the prior setting aside of the provision of national law which is incompatible with the provisions of EU law (see, by analogy, judgment of 21 October 2021, *ZX (Regularisation of the indictment)*, C-282/20, EU:C:2021:874, paragraphs 40 and 41 and the case-law cited).

46 In that situation, the referring court might, as is clear from paragraphs 82 to 85 of the judgment delivered today in Case C-400/23, *VB II*, be called upon to examine itself whether or not the conditions laid down in Article 8(2) of Directive 2016/343 are met in the present case.

47 In that connection, as for whether IR may be deemed to have been informed of the trial and to have voluntarily and unequivocally foregone exercise of his right to be present at it, it will be for the referring court to take account of the guidance given in paragraph 58 of the judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)* (C-569/20, EU:C:2022:401), recalled and clarified in paragraphs 39 and 42 above.

48 As for the remainder, it emerges from the information contained in the request for a preliminary ruling that IR is represented at his trial *in absentia* by a court-appointed lawyer who has no contact with him. In those circumstances, as pointed out in paragraph 56 of the judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)* (C-569/20, EU:C:2022:401), it appears, subject to verification by the referring court, that IR is not represented by a 'mandated lawyer' within the meaning of Article 8(2)(b) of Directive 2016/343. Therefore, the question whether the conditions laid down in Article 8(2) of that directive are met must, in the present case, be examined in the light of Article 8(2)(a).

49 In accordance with Article 8(2)(a) of Directive 2016/343, it will be for the referring court to examine whether IR was informed in good time of the consequences of non-appearance.

50 In that regard, it appears, subject to verification by the referring court, that although it is apparent from Article 247c(1) of the NPK that service of the indictment referred to in Article 246 of the NPK is intended, inter alia, to ensure that the accused person is apprised of the fact that the case may be tried in his or her absence, in particular if that person is not present at the address indicated by him or her or has changed address without informing the competent authorities, no such obligation is provided for as regards the preliminary indictment referred to in Article 219 of the NPK.

51 Were it to be proven that IR was not made aware of the fact that, if he absconded from the investigating authorities or provided them with an incorrect address for the purpose of possible service of an indictment as referred to in Article 246 of the NPK, he risked being tried in his absence, the referring court would have to find that the conditions laid down in Article 8(2) of Directive 2016/343 are not met in the present case.

52 In the light of all the foregoing, the answer to the first question is that Articles 8 and 9 of Directive 2016/343 must be interpreted as not precluding national legislation under which a person who absconds after receiving a preliminary indictment drawn up against him or her during the pre-trial investigation stage of criminal proceedings, thereby preventing the competent authorities from informing him or her in person of the final indictment and of the date and place of the trial, and who, against that background, is convicted *in absentia*, will not, if located and arrested for the purpose of enforcing the sentence, have a right to a new trial, provided that that legislation restricts that forfeiture of the right to a new trial to persons who (i) in the light of all the relevant circumstances, may be regarded as having been informed of the trial and (ii) were represented during the trial *in absentia* by a lawyer mandated by them or, in the absence of such representation, were informed in due time that, if they absconded, they risked being tried in their absence.

The second question

53 By its second question, the referring court asks, in essence, whether, in the light of the refusal of the Varhoven kasatsionen sad (Supreme Court of Cassation) to take account of Directive 2016/343, Article 8 of that directive and Article 47 of the Charter must be interpreted as meaning that a criminal court may, or must, refrain from ruling on the merits of the charges brought against the defendant and from convicting him or her *in absentia*, in order to ensure that a subsequent request for a new trial made by that person is not wrongly dismissed by the relevant supreme court of cassation, which has exclusive jurisdiction to examine requests for a new trial in situations such as that at issue in the main proceedings.

54 As is clear from the case-law cited in paragraph 45 above, if it is not possible to interpret national legislation in a manner consistent with Article 8(4) and Article 9 of Directive 2016/343, the national courts are required to disapply any national provision which is contrary to those provisions of EU law, without having to request or await the prior setting aside of the national provision in question.

55 In that situation, the national courts – including the relevant supreme court of cassation if a request for a new trial has been made – are therefore bound to take account of the common minimum rules laid down in Article 8(4) and Article 9 of Directive 2016/343, which, as recalled in paragraph 35 above, have direct effect.

56 In so far as the referring court states, in its request for a preliminary ruling, that it is patently clear from the case-law of the Varhoven kasatsionen sad (Supreme Court of Cassation) that the latter court refuses to take Directive 2016/343 into account, the referring court is relying – given the central importance of that observation to the second question referred – on the premiss, also set out in the request for a preliminary ruling, that it follows from the judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)* (C-569/20, EU:C:2022:401), that Directive 2016/343 precludes Article 423(1) of the NPK.

57 According to the reasons set out by the referring court, the refusal of the Varhoven kasatsionen sad (Supreme Court of Cassation) to take account of that directive is evidenced by the fact that the latter court has not adapted its case-law since delivery of that judgment of the Court and continues to apply Article 423(1) of the NPK without departing from the wording of that provision on the basis of the common minimum rules laid down in that directive.

58 In its judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)* (C-569/20, EU:C:2022:401), the Court did not rule on whether Directive 2016/343 must be interpreted as precluding a national provision, such as Article 423(1) of the NPK, the effect of which is to deprive persons who have absconded after receiving a preliminary indictment of the right to a new trial. It is only in the present judgment, which contains additional criteria for interpretation over and above those provided in the judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)* (C-569/20, EU:C:2022:401), that the Court offers further guidance to assist the Bulgarian courts in determining whether the specific rules of the procedural system laid down in the NPK are consistent with that directive.

59 In those circumstances, the fact that the Varhoven kasatsionen sad (Supreme Court of Cassation) has, to date, continued to apply Article 423(1) of the NPK, without departing – in deference to the common minimum rules laid down in Directive 2016/343 – from the wording of that provision of the NPK, is not necessarily proof of a refusal to take that directive into account, but may reflect that supreme court's belief, which should be reviewed in the light of the guidance provided in the present judgment of the Court, that that provision of the NPK correctly implements that directive.

60 Accordingly, the referring court's interpretation of the judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)* (C-569/20, EU:C:2022:401), on which it bases its observation that the Varhoven kasatsionen sad (Supreme Court of Cassation) refuses to take Directive 2016/343 into account, is misconceived. Therefore, since the referring court's observation rests on an incorrect premiss, the second question referred for a preliminary ruling is hypothetical and, consequently, inadmissible (see, by analogy, inter alia, judgment of 24 July 2023, *Lin*, C-107/23 PPU, EU:C:2023:606, paragraph 69).

Costs

61 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Articles 8 and 9 of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

must be interpreted as not precluding national legislation under which a person who absconds after receiving a preliminary indictment drawn up against him or her during the pre-trial investigation stage of criminal proceedings, thereby preventing the competent authorities from informing him or her in person of the final indictment and of the date and place of the trial, and who, against that background, is convicted *in absentia*, will not, if located and arrested for the purpose of enforcing the sentence, have a right to a new trial,

provided that that legislation restricts that forfeiture of the right to a new trial to persons who (i) in the light of all the relevant circumstances, may be regarded as having been informed of the trial and (ii) were represented during the trial *in absentia* by a lawyer mandated by them or, in the absence of such representation, were informed in due time that, if they absconded, they risked being tried in their absence.

[Signatures]