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 – Right to be present at the trial – Article 8(2) – Trial resulting in a decision imposing a conviction *in absentia* or a decision of acquittal *in absentia* – Conditions – Article 8(4) – Obligation to inform the person tried *in absentia* of the legal remedies available – Article 9 – 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 – Article 10(1) – Right to an effective remedy – National legislation making the recognition of the right to a new trial subject to the submission of a request to reopen criminal proceedings to a judicial authority before which the person tried *in absentia* must appear)

In Case C-400/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Sofiyski gradski sad (Sofia City Court, Bulgaria), made by decision of 29 June 2023, received at the Court on 29 June 2023, in criminal proceedings against

VB,

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 M. Wasmeier and I. Zaloguin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 July 2024,

* Language of the case: Bulgarian.

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 8(4), Article 9 and Article 10(1) 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).

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

Legal context

European Union law

Directive 2016/343

3 Recitals 9, 10, 12, 33, 39, 44, 47 and 48 of Directive 2016/343 state:

‘(9) The purpose of this Directive is to enhance the right to a fair trial in criminal proceedings by laying down common minimum rules concerning certain aspects of the presumption of innocence and the right to be present at the trial.

(10) By establishing common minimum rules on the protection of procedural rights of suspects and accused persons, this Directive aims to strengthen the trust of Member States in each other’s criminal justice systems …

…

(12) This Directive should apply to natural persons who are suspects or accused persons in criminal proceedings. It should apply from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, and, therefore, even before that person is made aware by the competent authorities of a Member State, by official notification or otherwise, that he or she is a suspect or accused person. This Directive should apply at all stages of the criminal proceedings until the decision on the final determination of whether the suspect or accused person has committed the criminal offence has become definitive. Legal actions and remedies which are available only once that decision has become definitive, including actions before the European Court of Human Rights, should not fall within the scope of this Directive.

…

(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.

…

(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. Such information should be provided in writing. The information may also be provided orally on condition that the fact that the information has been provided is noted in accordance with the recording procedure under national law.

…

(44) The principle of effectiveness of Union law requires that Member States put in place adequate and effective remedies in the event of a breach of a right conferred upon individuals by Union law. An effective remedy, which is available in the event of a breach of any of the rights laid down in this Directive, should, as far as possible, have the effect of placing the suspects or accused persons in the same position in which they would have found themselves had the breach not occurred, with a view to protecting the right to a fair trial and the rights of the defence.

…

(47) This Directive upholds the fundamental rights and principles recognised by the Charter [of Fundamental Rights of the European Union ("the Charter")] and by the [Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ("the ECHR")], including … the right to an effective remedy and the right to a fair trial … 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 … and by the European Court of Human Rights.'

4 Article 1 of that directive, 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 2 of that directive, entitled 'Scope':

'This Directive applies to natural persons who are suspects or accused persons in criminal proceedings. It applies at all stages of the criminal proceedings, from the moment when a person is suspected or accused of having committed a criminal offence, or an alleged criminal offence, until the decision on the final determination of whether that person has committed the criminal offence concerned has become definitive.'

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

'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.

…'

7 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.'

8 Article 10 of that directive, entitled 'Remedies', provides, in paragraph 1 thereof:

'Member States shall ensure that suspects and accused persons have an effective remedy if their rights under this Directive are breached.'

Framework Decision 2002/584

9 Article 4a of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584'), provides:

'1. The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

…

(d) was not personally served with the decision but:
   (i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;

   and
   (ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

…

3. In case a person is surrendered under the conditions of paragraph (1)(d) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.'

Bulgarian law

10 Article 15(2) and (3) of the Nakazatelno-protsesualen kodeks (Code of Criminal Procedure) (DV No 86 of 28 October 2005), in the version applicable to the main proceedings ('the NPK'), provides:

'(2) The accused person and all other persons taking part in the criminal proceedings shall be afforded all procedural means necessary for the defence of their rights and legitimate interests.

(3) The court, the public prosecutor and the investigating authorities shall explain to the persons referred to in paragraph 2 the procedural rights that those persons enjoy as well as ensure that those persons have the possibility of exercising those rights.'

11 Article 423(1) to (4) of the NPK provides:

'(1) 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.

(2) The request may not suspend the enforcement of the verdict, unless the court decides otherwise.

(3) The proceedings relating to the reopening of the criminal [proceedings] shall be discontinued if the person convicted *in absentia* fails to appear at trial without a valid reason.

(4) Where the person convicted *in absentia* has been apprehended for the purposes of the enforcement of the final verdict and the court reopens the criminal proceedings, that court shall rule, in its decision, also on the coercive measure.'

12 Article 424(1) and (2) of the NPK provides:

'(1) The request to reopen criminal [proceedings] in accordance with Article 422(1)(5) shall be examined by the relevant apelativen sad [(court of appeal)], where the decision pursuant to Article 419 has been taken by a rayonen sad [(district court)] or by an okrazhen sad [(provincial court)] acting as an appellate court, with the exception of new verdicts.

(2) Except in the cases referred to in paragraph 1, the request to reopen the criminal [proceedings] shall be examined by the Varhoven kasatsionen sad [(Supreme Court of Cassation, Bulgaria)].'

13 Article 425(2) of the NPK provides:

'In the situations referred to in Article 423(1), the proceedings shall be reopened and the case returned to the stage at which the proceedings *in absentia* began.'

The main proceedings and the questions referred for a preliminary ruling

14 Criminal proceedings have been brought in Bulgaria against VB. He is charged, first, with taking part in an organised criminal group whose purpose is the cultivation and distribution of narcotics as well as the possession of weapons, and second, with having himself been in possession of narcotics and weapons. Those facts constitute criminal offences punishable by custodial sentences.

15 VB has not been formally notified of the charges brought against him. Moreover, he has not been informed either that his case has been brought before a court, or, a fortiori, of the date and place of the trial or of the consequences of his non-appearance. The competent national authorities have not succeeded in locating VB, since he absconded during the pre-trial stage, prior to the police operation to apprehend the suspects. VB was the subject of an investigation in respect of a missing person, including by means of a European arrest warrant, but could not be located.

16 In 2022, the Spetsializiran nakazatelen sad (Specialised Criminal Court, Bulgaria), before which the criminal proceedings against VB were initially brought, made requests for a preliminary ruling in respect of the interpretation of Article 8(4) and Article 9 of Directive 2016/343. Those requests concerned, inter alia, the question whether that directive requires a court imposing a conviction *in absentia*, where the conditions laid down in Article 8(2) of Directive 2016/343 are not satisfied, to make express reference, in the decision imposing the conviction, to the existence of the right to a new trial.

17 By judgment of 8 June 2023, *VB (Information for a person convicted* in absentia) (C-430/22 and C-468/22, EU:C:2023:458; 'the judgment in *VB*'), the Court of Justice answered that question in the negative.

18 According to the Sofiyski gradski sad (Sofia City Court, Bulgaria), which, after the abolition of the Spetsializiran nakazatelen sad (Specialised Criminal Court), resumed the main criminal proceedings, and which is the referring court, the judgment in *VB* could be understood as meaning that the Bulgarian legislation complies with Directive 2016/343 and that no effort on the part of the court convicting a person *in absentia* where the conditions laid down in Article 8(2) of that directive are not satisfied is necessary to ensure that the information referred to in the second sentence of Article 8(4) of that directive is communicated to that person.

19 The referring court states, however, that such a reading of the judgment in *VB* is not self-evident. It considers it necessary to obtain further details on the scope of Directive 2016/343, in order to clarify, in particular, the moment in time when the information referred to in the second sentence of Article 8(4) of that directive must be communicated to the person convicted *in absentia*.

20 The referring court states that it needs those details in order to assess whether it may pursue the main criminal proceedings *in absentia*. Since there is a certain likelihood that VB might be convicted, it is essential to ensure that the information which VB will receive subsequently concerning the conviction and concerning his procedural rights will be sufficient in the light of the common minimum rules laid down by Directive 2016/343.

21 That court wishes, in particular, to ensure that VB will, at the time he is potentially apprehended, be informed not only of the fact that he has been convicted, but also of the procedural rights provided for in Article 9 of Directive 2016/343, to which the second sentence of Article 8(4) thereof refers.

22 Since those provisions of Directive 2016/343 have direct effect, in accordance with paragraph 28 of the judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)* (C-569/20, EU:C:2022:401), and since the Bulgarian courts are required, under Article 15(3) of the NPK, to inform accused persons of their procedural rights, the referring court wishes to know what measures it could or should take in order to ensure compliance with that directive following a conviction imposed *in absentia*.

23 In that regard, the referring court considers, first of all, that the person convicted *in absentia* should have full knowledge of the grounds on which he or she has been convicted. According to the referring court, it is necessary for the Court of Justice to clarify whether that means, in particular, that a copy in full of the decision rendered *in absentia* must be given to the person concerned as soon as he or she is apprehended.

24 As regards, next, the procedural rights of the person convicted *in absentia*, the referring court seeks an interpretation of certain expressions in the second sentence of Article 8(4) and Article 9 of Directive 2016/343, in particular the expressions 'possibility to challenge the decision', 'right to a new trial' and 'another legal remedy'.

25 In that regard, the referring court points out that, in Bulgaria, the time limit for lodging an appeal against a conviction imposed *in absentia* is 15 days and runs without interruption from the date on which that conviction was imposed, even if the person concerned remains impossible to locate. Accordingly, Article 423 of the NPK, relating to a possible reopening of the criminal proceedings, provides for the only legal remedy available against a conviction imposed *in absentia* once it acquires the force of *res judicata* on the 16th day following the day on which it was imposed.

26 The referring court states that Bulgarian law does not provide that the person convicted *in absentia* must be informed of that possibility of making a request to reopen the criminal proceedings.

27 According to the referring court, the request to reopen the criminal proceedings may, moreover, be made only after the verdict handed down *in absentia* has acquired the force of *res judicata* and only the Varhoven kasatsionen sad (Supreme Court of Cassation), whose decision is not open to appeal, has jurisdiction to examine that request. The referring court has doubts as to whether such a procedural system guarantees the effectiveness of the 'right to a new trial or to another legal remedy', within the meaning of the second sentence of Article 8(4) and Article 9 of Directive 2016/343.

28 The referring court states that the effectiveness of that right appears, moreover, to be impaired by the obligation to appear before the court that will examine the request to reopen the criminal proceedings, failing which no further action will be taken on that request. The referring court observes that such a requirement is not part of the common minimum standards laid down by the EU legislature and could, in the light of the case-law of the European Court of Human Rights on Article 6 ECHR, be incompatible with the fundamental right to an effective remedy, as enshrined in Article 47 of the Charter and Article 10(1) of Directive 2016/343.

29 The consequence of the abovementioned factors would be that, in Bulgaria, the 'right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case', within the meaning of Directive 2016/343, is neither communicated nor even recognised at the time the person convicted *in absentia* is informed of the conviction. By contrast, that person may assert that right in proceedings before the Varhoven kasatsionen sad (Supreme Court of Cassation). It is necessary to determine whether such a system is consistent with EU law.

30 The referring court fears, moreover, that, by making the right to a new trial subject to the initiation of proceedings post-dating the moment in time when the verdict handed down *in absentia* acquires the force of *res judicata*, the Bulgarian legislature has created a situation in which the right to a new trial falls outside the scope of Directive 2016/343, as defined in Article 2 of that directive, read in the light of recital 12 thereof.

31 Furthermore, the detailed rules of the Bulgarian procedural system concerned are liable, according to that court, to make the surrender of VB impossible or excessively difficult if he were to be located and apprehended in another Member State. It follows from Article 4a(1)(d) of Framework Decision 2002/584 that the executing judicial authority may not refuse to execute the

European arrest warrant if that warrant indicates that the person concerned will be served without delay, after the surrender, with the verdict handed down *in absentia* and informed of his or her right to a retrial or an appeal. Bulgarian law does not provide for that person being informed in such a manner.

32 The referring court is also uncertain regarding the procedural rules according to which it may itself determine whether the conditions laid down in Article 8(2) of Directive 2016/343 have been satisfied. In particular, it wishes to know whether it falls on it, prior to ruling on that matter in the decision rendered *in absentia*, to hear the lawyer defending the absent person.

33 Lastly, since it cannot, at that stage, be ruled out that VB might be acquitted, the referring court wishes to know whether the rules laid down in Directive 2016/343 are relevant in such a situation. The referring court states that the wording of that directive is not clear in that regard, since it refers to a 'decision' rendered *in absentia* and not specifically to a conviction *in absentia*. Some passages of Article 8 of that directive, such as the words 'decision on the guilt or innocence', suggest that any decision is covered thereby, whereas others, like the words 'in particular when they are apprehended', suggest that only decisions imposing a conviction *in absentia* are concerned.

34 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) (a) Must the second sentence of Article 8(4) of [Directive 2016/343] be interpreted as meaning that a person who is convicted *in absentia*, when the situations provided for in Article 8(2) do not apply, and is given a custodial sentence, must be informed of the decision convicting him or her when he or she is apprehended for the purpose of the execution of the sentence?

(b) What is the content of the requirement that a person be "informed of the decision" pursuant to the second sentence of Article 8(4) of [Directive 2016/343], and does [that requirement] mean that a copy of that decision must be served?

(c) If the answers to [points (a) and (b) of the first question] are in the negative, does the second sentence of Article 8(4) of [Directive 2016/343] preclude a national court from deciding to ensure that a copy of that decision is served?

(2) (a) Is national legislation which – in the event that a criminal charge is examined and a judicial decision convicting [a defendant] is handed down in the absence of that person, without the conditions laid down in Article 8(2) of [Directive 2016/343] being met – lays down no procedures for informing the person convicted *in absentia* of his or her right to a new trial with his or her participation, and, in particular, such information is not provided when the person convicted *in absentia* is [apprehended], compatible with the second sentence of Article 8(4) of [Directive 2016/343]?

(b) Is it relevant that the national legislation – Article 423 of the Code of Criminal Procedure (NPK) – [makes provision for] the person convicted *in absentia*… to be informed of his or her right to a new trial, but only after that person has made a request for that conviction to be overturned and for a new trial to be held with his or her participation, in that he or she is to be provided with the information in the form of a judicial decision in response to that request?

(c) If that is not the case, are the requirements laid down in the second sentence of Article 8(4) and Article 10(1) of [Directive 2016/343] met if the court examining a criminal charge and handing down a decision convicting the [defendant] *in absentia*, when the situations provided for in Article 8(2) of the directive do not apply, sets out in its decision that person's right to a new trial or other legal remedy and requires the persons detaining the convicted person to serve him or her with a copy of that decision?

(d) If that is the case, does the second sentence of Article 8(4) of [Directive 2016/343] preclude a court which hands down a decision convicting [a defendant] *in absentia*, when the situations provided for in Article 8(2) of the directive do not apply, from deciding to set out in its decision that person's right to a new trial or to another legal remedy under Article 9 of the directive, and from requiring the persons detaining the convicted person to serve him or her with a copy of that decision?

(3) What are the first and the last possible points in time at which the court must determine whether the criminal proceedings are being conducted in the absence of the [defendant] without the conditions laid down [in] Article 8(2) of [Directive 2016/343] being met and must take measures to ensure that information is provided in accordance with the second sentence of Article 8(4) of the directive?

(4) Are the views of the prosecution and the defence counsel for the absent [defendant] to be taken into account in the decision referred to in [the third question]?

(5) (a) Does the expression "the possibility to challenge the decision" in the second sentence of Article 8(4) of [Directive 2016/343] refer to a right of appeal within the appeal period or does it refer to the challenging of a judicial decision that has become final?

(b) What should be the content of the information to be provided in accordance with the second sentence of Article 8(4) of [Directive 2016/343] to a person who has been convicted *in absentia*, without the conditions laid down in paragraph 2 being met, about "… the right to a new trial or to another legal remedy, in accordance with Article 9": should it concern the right to obtain such a legal remedy, if he or she challenges his or her conviction *in absentia*, or the right to make … a request [to that end], the merits of which are to be assessed at a later stage?

(6) What is meant by the expression "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 the first sentence of Article 9 of [Directive 2016/343]?

(7) Is a provision of national law – Article 423(3) of the NPK – which requires the appearance in person of the person convicted *in absentia* as a prerequisite for consideration of his or her request for a new trial and for its approval compatible with Article 8(4) and Article 9 of [Directive 2016/343]?

(8) Are the second sentence of Article 8(4) and Article 9 of Directive 2016/343 applicable to persons who are acquitted?'

Consideration of the questions referred

Points (a) and (b) of the first question, points (a) and (b) of the second question, and the third and fifth to seventh questions

35 By points (a) and (b) of the first question, points (a) and (b) of the second question, and the third and fifth to seventh questions, which it is appropriate to consider together, the referring court asks, in essence, whether the second sentence of Article 8(4) of Directive 2016/343, read in conjunction with Article 9 thereof, must be interpreted as meaning that:

– a person convicted *in absentia* and given a custodial sentence where the conditions laid down in Article 8(2) of that directive were not satisfied must, at the time he or she is apprehended with a view to that sentence being executed, be informed, first, of the decision rendered *in absentia*, by receiving, in particular, a copy in full of that decision, and second, of the legal remedies available; and

– that directive precludes, after the expiry of the time limit laid down for lodging an appeal against the decision rendered *in absentia*, the only legal remedy available to the person concerned from being the submission, to a court that is different from that which rendered that decision and on condition of that person appearing before that court, of a request to reopen the criminal proceedings.

36 It must 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 the 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).

37 Article 8(1) of Directive 2016/343 imposes upon the Member States the obligation to ensure that the right to be present at the trial is observed. However, pursuant to Article 8(2) and (4), the Member States may, subject to certain conditions, provide for trials to be held *in absentia* (judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraph 26).

38 Article 8(2) and (4) provides, in essence, that suspects and accused persons who have not been informed of the trial or who, while having been informed of the trial, have not been informed of the consequences of non-appearance, and who are also not represented by a mandated lawyer, may be the subject of a decision that is rendered *in absentia* and enforceable, but must, when they are informed of that decision, 'in particular when they are apprehended', also be informed of all the legal remedies available to them in respect of that decision.

39 Under the second sentence of Article 8(4) of Directive 2016/343, persons who have been the subject of a decision rendered *in absentia* where the conditions laid down in Article 8(2) of that directive were not satisfied must be 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'.

40 The scope of the second sentence of Article 8(4) must be interpreted taking into account the wording and context in which that provision occurs as well as the objectives pursued by the rules of which it is part (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 32 and the case-law cited).

41 As regards the wording of that provision, it should be noted, first, that it is apparent from the words 'in particular when they are apprehended' that, even though it cannot be ruled out that a person convicted *in absentia* and given a custodial sentence may be informed of that conviction without being apprehended with a view to that sentence being executed, that person must, in the event that he or she is apprehended, be informed, at the time he or she is apprehended, of the existence of that conviction if that information has not been provided to him or her before.

42 Second, it is apparent also from the wording of the second sentence of Article 8(4) of Directive 2016/343 that, where the person concerned is informed that he or she has been convicted *in absentia*, that person, in the situation referred to in that provision, that is to say, where a decision has been rendered *in absentia* without the conditions laid down in Article 8(2) of that directive being satisfied, must also be informed 'of the possibility to challenge the decision and of [his or her] right to a new trial or to another legal remedy, in accordance with Article 9 [of that directive]'.

43 Two corroborating conclusions may be drawn from that wording. First, the reference to the possibility of challenging the decision rendered *in absentia*, which is presented as a separate procedural element independent of the 'right to a new trial or to another legal remedy', indicates that Member States have the possibility of providing for proceedings which precede a new trial or the exercise of another legal remedy as provided for in Article 9 of Directive 2016/343. Such proceedings may seek to establish that the conditions laid down in Article 8(2) of that directive were not satisfied and that, consequently, a new trial must be held or 'another legal remedy' exercised.

44 Second, it follows from the use of the coordinating conjunction 'or', in the phrase 'right to a new trial or to another legal remedy', that Member States have the choice of providing for the reopening of criminal proceedings in the form of a new trial or of providing for 'another legal remedy', which, in accordance with Article 9 of that directive, must be equivalent to a new trial, inasmuch as it must allow a fresh determination of the merits of the case, including examination of new evidence, and must be able to lead to the original decision being reversed (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 59).

45 Third, it is apparent from the wording of the second sentence of Article 8(4) of Directive 2016/343 that the EU legislature has refrained from specifying the manner in which the information relating to the 'right to a new trial or to another legal remedy' is to be provided (the judgment in *VB*, paragraph 27). In particular, that provision does not state that that information must be set out in the decision rendered *in absentia*. Nor does it appear that the court rendering that decision is required, under that directive, to specify, in that decision or in an order annexed thereto, which authority must communicate that information and the manner in which it must do so.

46 Directive 2016/343 does not therefore preclude a Member State from establishing a procedural system that does not automatically lead to the reopening of criminal proceedings but requires persons convicted *in absentia* who are interested in such a reopening to submit a request to that end to another court, separate from that which rendered the decision *in absentia*, in order for that other court to ascertain that the condition governing the right to a new trial is satisfied, that is to

say, that the conditions laid down in Article 8(2) of that directive were not satisfied. Such a system is compatible with that directive provided that, first, the proceedings relating to the request for that reopening do in fact allow a new trial to be held in all cases where it is established, after verification, that the conditions laid down in Article 8(2) of that directive were not satisfied, and second, the person convicted *in absentia*, when he or she is informed of the conviction, is also informed of the existence of those proceedings.

47 The outcome of the examination of the wording of the second sentence of Article 8(4) of Directive 2016/343, as set out in paragraph 46 above, is borne out by the context in which that provision occurs.

48 In that regard, it should be noted that an interpretation of that provision according to which the right to a new trial must necessarily, without further examination, be recognised vis-à-vis the person convicted *in absentia* as soon as that person has been informed of the conviction would be irreconcilable with Article 4a of Framework Decision 2002/584. That article has, concerning the issue of a European arrest warrant, a functional link with the second sentence of Article 8(4) of Directive 2016/343 and is thus a relevant contextual element for the interpretation thereof. Article 4a of Framework Decision 2002/584 provides, in paragraph 1(d)(ii) and paragraph 3 thereof, for the possibility of establishing proceedings relating to a request for a retrial. That possibility would thus be deprived of practical effect if the Member States were required to recognise the right to a new trial as soon as the person concerned has been informed that he or she has been convicted *in absentia*.

49 An interpretation of the second sentence of Article 8(4) of Directive 2016/343 to the effect that that provision requires the immediate recognition of the right to a new trial would not, moreover, take due account of the context of minimum harmonisation in which that provision occurs. Since Directive 2016/343 provides only minimum details of the legal remedies which must be available when a decision is rendered *in absentia* without the conditions laid down in Article 8(2) of that directive being satisfied, it is, in accordance with the principle of procedural autonomy, for the domestic legal order of each Member State to determine those legal remedies.

50 It follows that EU law leaves a margin of discretion to the Member States to organise their procedural law, it being understood, however, that the procedural rules introduced by the national legislature must not be less favourable for the exercise, by individuals, of the rights conferred by EU law than it is for the exercise of the rights conferred by national law (principle of equivalence); nor may they be organised in such a way as to make it in practice impossible or excessively difficult to exercise the rights conferred by EU law (principle of effectiveness) (see, to that effect, inter alia, judgment of 23 November 2023, *Provident Polska*, C-321/22, EU:C:2023:911, paragraph 61 and the case-law cited).

51 The outcome of the examination of the wording of the second sentence of Article 8(4) of Directive 2016/343 is also compatible with the aim of that directive.

52 That directive's aim consists, as recitals 9 and 10 thereof state, in enhancing the right to a fair trial in criminal proceedings, so as to increase the trust of Member States in each other's criminal justice systems (judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraph 36).

53 The interpretation of the second sentence of Article 8(4) of Directive 2016/343 to the effect that that provision does not preclude a procedural system which consists not in informing the person convicted *in absentia*, when that person becomes aware of the conviction, of a right to a new trial, but in informing him or her of the possibility of requesting a new trial before a court that will ascertain whether the condition for a new trial is satisfied, that is to say, that the conditions laid down in Article 8(2) thereof were not satisfied, is capable of contributing to the attainment of the objective relating to enhancing the right to a fair trial, provided that that procedural system satisfies the conditions referred to in paragraph 46 above, that is to say, in particular, that it necessarily leads to a new trial where the conditions laid down in Article 8(2) were not satisfied, without the court having jurisdiction to examine the request for such a trial being able to refuse that it be held on the basis of criteria other than those laid down in Article 8(2).

54 In the present case, it will be for the referring court to assess whether, in the light of the foregoing clarifications, the procedural system established by the Bulgarian legislature is compatible with Directive 2016/343. That said, the Court of Justice may provide some useful indications for the purposes of that assessment (see, by analogy, judgment of 5 May 2022, *BV*, C-570/20, EU:C:2022:348, paragraph 44 and the case-law cited).

55 It appears, on the basis of the information set out in the request for a preliminary ruling, that, in situations such as that at issue in the main proceedings, the Bulgarian legislation confers on the Varhoven kasatsionen sad (Supreme Court of Cassation) exclusive jurisdiction to consider requests for the reopening of criminal proceedings, which constitute, in essence, requests for a new trial. Persons convicted *in absentia* in that Member State may make such a request within six months of becoming aware of the decision rendered *in absentia*, that time limit exceeding that within which an appeal may be brought against that decision.

56 In that regard, it must be stated, first of all, that, where a new trial is held following proceedings relating to a request to reopen criminal proceedings, only the decision rendered at the end of that new trial is, once it acquires the force of *res judicata*, the decision on the final determination of whether that person has committed a criminal offence, within the meaning of Article 2 of Directive 2016/343, read in the light of recital 12 thereof. It follows that proceedings relating to a request to reopen criminal proceedings, as provided for under Bulgarian law, form part of the stages of criminal proceedings to which that directive applies.

57 Next, it is apparent from paragraphs 46 and 50 above that the establishment of such proceedings relating to the reopening of criminal proceedings, which do not, in themselves, involve a new trial, but which are liable to lead to such a trial, does not conflict with Directive 2016/343, provided that those proceedings meet all the requirements stemming from the principle of effectiveness and observe, moreover, the principle of equivalence.

58 As regards the principle of equivalence, it appears, subject to verification by the referring court, that the proceedings relating to a request to reopen criminal proceedings provided for in Article 423 of the NPK are accessible, on the same terms, to all persons convicted *in absentia*. In those circumstances, it may be considered that the principle of equivalence has been observed.

59 As regards the principle of effectiveness, it is important, in the first place, to guarantee that the proceedings relating to the request to reopen criminal proceedings lead to the recognition of the right to a new trial in all cases where the conditions laid down in Article 8(2) of that directive were not satisfied. 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 satisfied (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 31).

60 As is apparent from paragraph 44 of the judgment delivered today in Case C-644/23, *Stangalov*, it appears, subject to verification by the referring court, that a request to reopen criminal proceedings such as that established by the Bulgarian legislature in the present case does not offer such a guarantee.

61 In order to observe the principle of effectiveness, it will be for the referring court to ascertain, in the second place, whether Bulgarian procedural law guarantees that the person convicted *in absentia* receives, at the time he or she is informed of that conviction or shortly thereafter, a copy in full of the decision rendered *in absentia* and information as regards his or her procedural rights, including as regards the possibility of making a request to reopen the criminal proceedings and as regards the court before which and the time limit within which that request must be made.

62 In the request for a preliminary ruling, the referring court observes that Bulgarian law does not contain any provision which specifically requires that such information be communicated to persons convicted *in absentia*.

63 In the third place, any proceedings relating to a request for a new trial must be organised in such a way that that request is dealt with all due speed, so that it is determined as soon as possible whether the trial *in absentia* took place without the conditions laid down in Article 8(2) of Directive 2016/343 having been satisfied. As is apparent from Article 8(4) and from Article 9 of that directive, the very existence of the right to a new trial depends on the finding that those conditions were not satisfied. Where a Member State establishes a procedural system under which it has not yet been determined, at the time the person concerned is informed of his or her conviction *in absentia*, if that conviction was imposed without those conditions having been satisfied, it is for that Member State, if the principle of effectiveness is not to be undermined, to ensure that that examination takes place shortly after the submission of the request for a new trial.

64 That requirement of speed is all the more important since Article 8(4) of Directive 2016/343 states, similar to recital 39 thereof, that decisions rendered *in absentia* without the conditions laid down in Article 8(2) of that directive being satisfied can be enforceable. In the light of that possibility of enforcing penalties imposed *in absentia*, it is necessary, in order to preserve the effectiveness of requests for a new trial, for the processing of those requests to be accompanied by an assessment of the need to keep the person making the request in detention, such an obligation being, moreover, referred to in Article 4a(3) of Framework Decision 2002/584.

65 In the present case, Article 423(2) and (4) of the NPK appears to provide for such an examination, the result of which, however, is set out only in the decision relating to the reopening of the criminal proceedings. In the context of such an organisation of the national procedural law, the adoption with the utmost speed of the decision relating to that request for a reopening is essential in order for the principle of effectiveness to be observed.

66 The principle of effectiveness requires, in the fourth place, that the person concerned be able to express his or her views, in person or through a lawyer, on the question whether the trial *in absentia* took place without the conditions laid down in Article 8(2) of Directive 2016/343 having been satisfied. As the Advocate General noted in points 44 to 47 of his Opinion, the observations submitted by both the prosecution and the defence counsel may have a decisive influence on the

assessment of that issue and thus be decisive for the outcome of the proceedings relating to the request for a new trial. Accordingly, in the absence of a possibility for the person convicted *in absentia* to present his or her case in that regard, the fundamental right to a fair trial and, thus, the effectiveness of the proceedings relating to the request for a new trial, the objective of which is precisely to ensure respect for that fundamental right, would be undermined.

67 That said, as the Advocate General noted in points 60 to 62 of his Opinion, that possibility for the person convicted *in absentia* to submit his or her observations for the purpose of assessing whether or not the conditions laid down in Article 8(2) of Directive 2016/343 were satisfied cannot be understood as meaning that there is an obligation on the part of the person concerned to appear in person before the court examining that request.

68 In that regard, it must be borne in mind that, as stated in paragraph 41 above, it cannot be ruled out that a person convicted *in absentia* may have become aware of that conviction without having been apprehended. In such circumstances, the obligation for the person concerned to appear in person before the court to which he or she submitted a request for a new trial amounts, as held by the European Court of Human Rights, the case-law of which must, as follows from recitals 47 and 48 of Directive 2016/343, be taken into account (see, to that effect, judgment of 4 July 2024, *FP and Others (Trial by videoconference)*, C-760/22, EU:C:2024:574, paragraphs 22 to 24), to obliging a person still at liberty to surrender to custody in order to secure the right to a new trial, which would be incompatible with the fundamental right to a fair trial (ECtHR, 14 December 1999, *Khalfaoui v. France*, CE:ECHR:1999:1214JUD003479197, § 49, and ECtHR, 13 February 2001, *Krombach v. France*, CE:ECHR:2001:0213JUD002973196, § 87).

69 According to the request for a preliminary ruling, it is apparent from Article 423(3) of the NPK that, in the event of the person concerned not appearing in person before the Varhoven kasatsionen sad (Supreme Court of Cassation), the request to reopen the criminal proceedings made by that person will be rejected without further action being taken, unless there is a 'valid reason' to justify that failure to appear in person. It must be stated that such an obligation to appear in person is liable to make it excessively difficult to exercise the 'right to a new trial or to another legal remedy, in accordance with Article 9 [of Directive 2016/343]', referred to in Article 8(4) of that directive.

70 Following its examination of the compatibility of Article 423 of the NPK with Directive 2016/343 in the light of the various requirements arising from the principle of effectiveness, it will, lastly, be for the referring court and any other national court having jurisdiction, in the event that the existence of shortcomings in the national legislation is confirmed in that respect, to assess whether it is nevertheless possible to interpret that legislation and, in particular, Article 423 of the NPK, in such a way as to make it possible to meet those requirements.

71 It is thus for the national courts, as set out in paragraph 45 of the judgment delivered today in Case C-644/23, *Stangalov*, to examine whether Article 423(1) of the NPK can 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 the conditions laid down in Article 8(2) of Directive 2016/343 were satisfied.

72 It will also be for those national courts to examine whether provisions of Bulgarian procedural law, such as Article 15 of the NPK, read in conjunction with more specific provisions, can be interpreted as meaning that it necessarily follows from that law that persons convicted *in absentia*

must, at the time they are informed of a conviction imposed on them *in absentia* or shortly thereafter, be informed of their procedural rights, in particular of the possibility of making a request to reopen the criminal proceedings.

73 Those national courts will, moreover, be able to examine whether the exception, laid down in Article 423(3) of the NPK, relating to the existence of a 'valid reason' can be interpreted in such a way as to ensure that requests to reopen criminal proceedings are examined where the person making the request does not appear in person but defends his or her case through a lawyer.

74 If it is impossible to interpret the Bulgarian legislation in conformity with the requirements of EU law, those national courts will be required to disapply any provision of national law that is contrary to the second sentence of Article 8(4) and to Article 9 of Directive 2016/343, which have direct effect (judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraph 28), without it being necessary for those courts to request or await the prior setting aside of the legislative provision that is incompatible with that directive (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).

75 In the light of all of the foregoing, the answer to points (a) and (b) of the first question, points (a) and (b) of the second question, and the third and fifth to seventh questions, is that the second sentence of Article 8(4) of Directive 2016/343, read in conjunction with Article 9 thereof,

must be interpreted as meaning that:

– in a situation where a person is convicted *in absentia* and is given a custodial sentence where the conditions laid down in Article 8(2) of that directive were not satisfied, those provisions do not preclude, after the expiry of the time limit laid down for lodging an appeal against the decision rendered *in absentia*, the only available legal remedy from being the submission, to a court that is different from that which rendered that decision, of a request for a new trial, provided that those proceedings observe the principles of equivalence and effectiveness. That condition requires, inter alia, that the proceedings relating to the request for a new trial allow in fact such a trial to be held in all cases where it is established, after verification, that the conditions laid down in Article 8(2) of that directive were not satisfied. By contrast, that condition is not satisfied where the person requesting a new trial is required to appear in person before the court having jurisdiction, failing which his or her request will be rejected without further action being taken;

– in a Member State whose legislation provides for such proceedings relating to a request for a new trial, the second sentence of Article 8(4), read in conjunction with Article 9, requires that the person convicted *in absentia* receive, at the time he or she is informed of that conviction or shortly thereafter, a copy in full of the decision rendered *in absentia* as well as easily understandable information relating, first, to the fact that he or she is entitled to a new trial if the conditions laid down in Article 8(2) of that directive were not satisfied, and second, to the proceedings allowing him or her to request such a trial.

Point (c) of the first question

76 In the light of the answer given to points (a) and (b) of the first question, points (a) and (b) of the second question, and the third and fifth to seventh questions, there is no need to answer point (c) of the first question, since it is asked by the referring court only in the event of a negative answer to points (a) and (b) of that question.

Points (c) and (d) of the second question, and the fourth question

77 By points (c) and (d) of the second question, the referring court asks, in essence, whether the second sentence of Article 8(4) of Directive 2016/343, read in conjunction with Article 9 and Article 10(1) thereof, must be interpreted as meaning that the requirements imposed by that directive are met where the court adjudicating *in absentia* itself examines whether the conditions laid down in Article 8(2) of that directive are satisfied and states, where appropriate, in the decision rendered *in absentia*, a copy in full of which is to be provided to the person concerned once that person is apprehended, that he or she is entitled to a new trial.

78 By the fourth question, the referring court asks also, in essence, whether it is necessary, in the context of a system in which the court conducting the trial *in absentia* examines whether the conditions laid down in Article 8(2) of Directive 2016/343 are satisfied, to hear, on that matter, both the prosecution and the defence counsel for the accused person, who is, in that situation, absent.

79 As is apparent from the request for a preliminary ruling, such a procedural system is not in force in Bulgaria, since the legislature of that Member State has established a system under which the Varhoven kasatsionen sad (Supreme Court of Cassation) has exclusive jurisdiction to examine requests for a new trial and, in that context, to ascertain whether the conditions laid down in Article 8(2) of Directive 2016/343 were satisfied. The referring court states that, because of the characteristics of that procedural system and notwithstanding its conviction that those conditions were not satisfied in the present case, it is not for it to adjudicate in that regard.

80 As follows, moreover, from the answer to points (a) and (b) of the first question, points (a) and (b) of the second question, and the third and fifth to seventh questions, Directive 2016/343 does not preclude a procedural system which confers jurisdiction to examine whether the conditions laid down in Article 8(2) of that directive were satisfied not on the court conducting a trial *in absentia* but on a separate court.

81 That said, as is also apparent from that answer, it is important that such a system does not conflict with the principle of equivalence or with the principle of effectiveness.

82 It is apparent from paragraphs 60, 62 and 69 above that the procedural rules in force in Bulgaria could conflict with the principle of effectiveness and, consequently, be incompatible with EU law. The referring court could, therefore, be faced with a situation in which the national legislation concerned does not ensure compliance with the 'right to a new trial or to another legal remedy', within the meaning of the second sentence of Article 8(4) and Article 9 of Directive 2016/343, which have direct effect (judgment of 19 May 2022, *Spetsializirana prokuratura (Trial of an absconded accused person)*, C-569/20, EU:C:2022:401, paragraph 28).

83 In accordance with the case-law referred to in paragraph 74 above, if it is impossible to interpret the Bulgarian legislation in conformity with the requirements of EU law, the referring court is required to disapply any provision of national law that is contrary to the second sentence of Article 8(4) and to Article 9 of Directive 2016/343, without it being necessary for that court to request or await the prior setting aside of the legislative provision that is incompatible with that directive.

84 In those circumstances, the answer to points (c) and (d) of the second question and the fourth question, which it is appropriate to examine together, may be decisive for the remainder of the main criminal proceedings.

85 Although Directive 2016/343 cannot be interpreted as requiring a court adjudicating *in absentia* to rule, in its decision, on the right to a new trial (the judgment in *VB*, paragraph 31), it leaves a broad discretion to the Member States as regards its implementation and cannot therefore be interpreted as prohibiting that court from examining, during a trial conducted *in absentia*, whether the conditions laid down in Article 8(2) of that directive are satisfied and, where those conditions are not satisfied, from stating in its decision that the person concerned is entitled to a new trial.

86 Since, as stated in paragraph 66 above, the observations made by both the prosecution and the defence counsel may have a decisive influence on the assessment of whether the conditions laid down in Article 8(2) of Directive 2016/343 are satisfied, it is important, in the examination carried out in that regard by the court conducting a trial *in absentia*, that that court hear the lawyer who represents the person concerned, since that person is, in that situation, absent.

87 In the light of the foregoing, the answer to points (c) and (d) of the second question and to the fourth question is that the second sentence of Article 8(4) of Directive 2016/343, read in conjunction with Article 9 and Article 10(1) thereof, must be interpreted as meaning that the requirements imposed by that directive are met where the court conducting a trial *in absentia* itself examines, after hearing both the prosecution and defence counsel on that matter, whether the conditions laid down in Article 8(2) of that directive are satisfied and, where they are not satisfied, states, in the decision rendered *in absentia*, a copy in full of which is to be provided to the person concerned at the time that person is informed of that decision or shortly thereafter, that he or she is entitled to a new trial.

The eighth question

88 By the eighth question, the referring court asks, in essence, whether the second sentence of Article 8(4) and Article 9 of Directive 2016/343 must be interpreted as applying not only in the event of a conviction *in absentia*, but also in the event of an acquittal *in absentia*.

89 According to that court, it cannot be ruled out that VB might be acquitted. That court therefore wishes to know, before continuing the trial *in absentia* against VB and ruling on his guilt or innocence, whether the right to a fair trial would be adequately protected in the event of an acquittal *in absentia*.

90 In that regard, it should be noted, as the Advocate General observed in points 33 and 34 of his Opinion, that the right to a fair trial, of which the right to be present at the trial is an essential element, applies in any criminal proceedings which may give rise to a decision finding that the accused person is innocent or guilty. In the light of recitals 47 and 48 of Directive 2016/343, from

which it follows that it is important to take into account, in the interpretation of that directive, the case-law of the European Court of Human Rights relating to Article 6 ECHR, the answer to the eighth question must be based on the case-law of that court, according to which an accused person has the fundamental right to be present at his or her trial in all circumstances, even if the final outcome is favourable to him or her (ECtHR, 15 December 2005, *Vanyan v. Russia*, CE:ECHR:2005:1215JUD005320399, §§ 20 to 25 and 67).

91 That broad scope of application of the right to be present at the trial is, moreover, highlighted by the very wording of Article 8(2) of Directive 2016/343, which refers to the 'decision on the guilt or innocence of a suspect or accused person'.

92 The consequence of that wording of Article 8(2) of Directive 2016/343 is that the term 'decision' appearing in Article 8(4) and Article 9 of that directive refers to any decision, resulting from criminal proceedings, relating to the guilt or innocence of the accused person.

93 The scope of Article 8(4) and Article 9 of that directive cannot be separated from that of Article 8(2) of that directive, since the fact of the conditions laid down in Article 8(2) not being satisfied is precisely the basis for the 'right to a new trial or to another legal remedy', referred to in Article 8(4) and Article 9.

94 That interpretation is not invalidated by the presence, in Article 8(4) of Directive 2016/343, of the words 'when they are apprehended'. Those words are accompanied by the expression 'in particular', from which it follows that a person being apprehended is not the only situation covered by that provision.

95 Accordingly, the answer to the eighth question is that the second sentence of Article 8(4) and Article 9 of Directive 2016/343 must be interpreted as applying not only in the event of a conviction *in absentia*, but also in the event of an acquittal *in absentia*.

Costs

96 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:

1. **The second sentence of Article 8(4) 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, read in conjunction with Article 9 thereof,**

   must be interpreted as meaning that:

   – **in a situation where a person is convicted *in absentia* and is given a custodial sentence where the conditions laid down in Article 8(2) of that directive were not satisfied, those provisions do not preclude, after the expiry of the time limit laid down for lodging an appeal against the decision rendered *in absentia*, the only available legal remedy from being the submission, to a court that is different from that which rendered that**

decision, of a request for a new trial, provided that those proceedings observe the principles of equivalence and effectiveness. That condition requires, inter alia, that the proceedings relating to the request for a new trial allow in fact such a trial to be held in all cases where it is established, after verification, that the conditions laid down in Article 8(2) of that directive were not satisfied. By contrast, that condition is not satisfied where the person requesting a new trial is required to appear in person before the court having jurisdiction, failing which his or her request will be rejected without further action being taken;

– **in a Member State whose legislation provides for such proceedings relating to a request for a new trial, the second sentence of Article 8(4), read in conjunction with Article 9, requires that the person convicted *in absentia* receive, at the time he or she is informed of that conviction or shortly thereafter, a copy in full of the decision rendered *in absentia* as well as easily understandable information relating, first, to the fact that he or she is entitled to a new trial if the conditions laid down in Article 8(2) of that directive were not satisfied, and second, to the proceedings allowing him or her to request such a trial.**

2. **The second sentence of Article 8(4) of Directive 2016/343, read in conjunction with Article 9 and Article 10(1) thereof,**

   must be interpreted as meaning that the requirements imposed by that directive are met where the court conducting a trial *in absentia* itself examines, after hearing both the prosecution and defence counsel on that matter, whether the conditions laid down in Article 8(2) of that directive are satisfied and, where they are not satisfied, states, in the decision rendered *in absentia*, a copy in full of which is to be provided to the person concerned at the time that person is informed of that decision or shortly thereafter, that he or she is entitled to a new trial.

3. **The second sentence of Article 8(4) and Article 9 of Directive 2016/343**

   must be interpreted as applying not only in the event of a conviction *in absentia*, but also in the event of an acquittal *in absentia*.

[Signatures]