Fair Trials

European standards framework: presence at trial, trial in absentia, and remedies.



About Fair Trials

Fair Trials International is a Brussels-based human rights NGO, which exists to build respect for legal and procedural rights in criminal justice systems. Through legal research, advocacy, strategic litigation and cooperation with criminal defence practitioners, civil society organisations and policymakers, Fair Trials works to ensure that fair trial rights are respected in law and in practice. Fair Trials also coordinates the Legal Experts Advisory Panel (LEAP), a European network of over 200 criminal justice professionals and experts.

About the Absent Rights Project

Absent Rights is a Fair Trials-led project funded by the European Commission that examines the implementation of the right to be present at trial and the right to a retrial, particularly in the context of cross-border judicial cooperation. Through comparative legal research, analysis of national case law and engagement with legal practitioners, the project aims to identify gaps in the protection of these rights and develop recommendations to strengthen procedural safeguards across EU Member States.

Contact information

Chryssa Mela

Director

chrysa.mela@fairtrials.net

Alex Tinsley

Senior Legal Consultant

a.tinsley@fairtrials.net

This project is co-funded by the European Union's Justice programme

European standards framework: presence at trial, trial in absentia, and remedies

Overview	5
Context	5
About this document	6
High-level summary	7
I – ECHR standards	9
The general principles	9
Principles broken down	14
The right to participate at the hearing	14
The first-instance trial	14
Appeal proceedings, in general	14
Sentencing-related appeal contexts	15
Other types of proceedings	16
Waiver	18
Knowledge of proceedings and charges	18
Safeguards commensurate to importance	19

Reasonable foresight of the consequences	20
Legal representation: further aspects	22
Address changes / leaving the country	22
Impediments to attendance, extent of Applicant's contribution	23
Fresh determination (remedy)	24
Trial by videoconference	25
II – ICCPR standards	27
General principles	27
Specific issues	29
Right to be present	29
State's obligation to inform	29
Waiver?	29
Trial by video-link	30
Removal from the courtroom	31
III – The Directive and other EU law	31
Key provisions of the Directive	31
The core: presence, absence, and remedy	31
Right to presence	32
Article 8(2)(a)/(b) conditions (waiver)	33

Article 8(2) cover scenarios of unequivocal waiver of presence	33
In all cases: information as to the trial	34
Plus (EITHER) notice as to the consequences of non-appearance	34
Plus (OR) representation by a mandated lawyer	35
Deemed information (e.g. for an absconder)	36
State's obligation of reasonable efforts	37
Reasonable diligence: cross-border situations	37
There must be a genuine waiver	38
Trial by videoconference	38
Article 9 - Right to a new trial	39
Gateway proceedings: permissible but must be effective	39
Nature of the new trial remedy	41
The Charter: what dimension it adds	42
The EAW FD	43
What is a 'trial' at which presence must be assured?	44
Full merits / full jurisdiction appeals	44
Sentence accumulation etc.	45

Conversion of non-to custodial sentence	46
Activiation of a suspended sentence	46
The LU and PH Principle	47
The EIO DIrective: videoconference	48
The current law	48
The proposed Remote Participation Order	48

Overview

1. This document is the main output of Work Package 2 of the Absent Rights project. It sets out relevant international standards on trials in absentia to provide the core legal backbone for the remainder activities in the project, including national research and the final report.

2. It covers:
   a. Article 6 of the European Convention on Human Rights (**ECHR**), as interpreted by the European Court of Human Rights (**ECtHR**) (citations in yellow).
   b. Articles 8 and 9 of Directive 2016/343 (the **Directive**), the Charter of Fundamental Rights, and other EU law including Article 4a of Framework Decision 2002/584/JHA (the **EAW FD**), as interpreted by the CJEU (citations in blue).
   c. Article 14 of the International Covenant on Civil & Political Rights (**ICCPR**), as interpreted by the UN Human Rights Committee (HRC) (citations in pink).

Context

3. Judicial cooperation in the European Union frequently involves the enforcement of conviction decisions handed down following trials at which the accused was absent. This is most obviously the case for the EAW FD, Article 4a of which requires surrender of a person to serve sentences of imprisonment handed down following a trial in absence, where certain conditions are satisfied. A significant proportion of the CJEU case-law on the EAW FD arises from this type of case, a reflection of the difficulties that such trials cause.

4. All EU judicial cooperation systems rest on mutual trust between the judicial authorities involved. Thus, Member States' courts are frequently led to e.g. surrender a person to face a prison sentence issued following a trial in absence, on the strength of assertions made in an EAW to the effect that the person was informed of the trial, or that they will have the right to a retrial. Given that (as set out herein) a trial in absence can be regarded as a '*flagrant denial of justice*' if there is no waiver but also no retrial right, a huge amount depends upon these systems operating fairly. This, in turn, requires that each Member State's law properly protects the right to be present at trial in criminal proceedings.

5. The Directive is intended to solidify trust between EU Member States' judicial authorities by enshrining the right to presence at trial; defining the

circumstances in which a trial can proceed in absence; and enshrining the right to a new trial for those for whom the conditions for a trial in absence were not satisfied. The Directive, thereby, adds to the existing standards developed by the ECHR and ICCPR on the right to presence at trial.

6. Although born of a judicial cooperation teleology, like all EU directives on defence rights, the Directive applies not just in those cases where e.g. a person has been surrendered. They apply in all domestic criminal proceedings falling unlinked to any judicial cooperation. As will be seen, CJEU case-law on the Directive mostly arises from such domestic scenarios. With this, comes a potentially much broader impact on fundamental rights in Europe, affecting a far higher number of people than those subject to international cooperation.

About this document

7. The immediate purpose of this document is to provide a common underpinning of European standards to assist with national-level research. Partners will conduct desk research on their national law. They will also review circa 50 judicial decisions relating to trials in absentia. Further research will also be derived on five non-EU countries from Freshfields, for comparison. Still further information will be obtained via Fair Trials' legal networks.

8. Thereafter, a final (updated) version of this standards framework will be included within the final project report towards the end of the Absent Rights project in late 2027.

9. As noted above, this document covers ECHR, EU law and ICCPR standards. For all three, legal principles as stated by the ECtHR, CJEU or HRC are cited in colour-coded quotations – in abridged form as far as possible. For the ECHR and ICCPR, where possible, this is supplemented by a series of brief case-specific case-law illustrations to bring to life how the HRC and especially the ECtHR apply the general standards in practice. It is hoped that this combination offers a helpful reference point for national research. This is not done for CJEU case-law, which is all preliminary rulings (which involve no adjudication).

10. On limited occasions, Fair Trials will express an opinion on aspects of the case law, or identify judgments we think require a degree of caution using the symbol **(!)**. In general, however, this document aims to be purely

descriptive. Our own positions on what the case-law should say will be set out in future amicus briefs before the HRC / ECtHR.

11. No artificial intelligence has been used for this document – for better of worse. The human author of the document is available to discuss and improve this working version based on Partner and other feedback, ahead of finalisation for the final report in late 2027.

High-level summary

12. Under Article 6 ECHR, a defendant enjoys a right to be present at trial. This always includes the first-instance trial. In an appeal context, the requirement has to be assessed by reference to the special features of the proceedings, the procedure overall what was at stake, but generally an appeal proceeding involving a new assessment of guilt and innocence in fact and law or the determination of sentence will entail a right for the applicant to be present at the hearing. As emphasised in CJEU case-law concerning Article 4a EAW FD, ECtHR also covers hearings which affect the nature or quantum of sentence, particularly where the court enjoys a margin of discretion. Article 8(1) of the Directive requires presence at trial. It is assumed that it requires presence at least wherever Article 6 ECHR requires this.

13. Under Article 6 ECHR, nothing prevents the accused waiving unequivocally his right to presence at trial. ECtHR case-law identifies conditions for an implicit valid waiver to be inferred from a person's conduct: (i) knowledge of the proceedings, including knowledge of the nature and cause of the accusation; (ii) safeguards, such as legal representation; (iii) foreseeability of the consequences. The question whether a person's conduct amounts to an implicit unequivocal waiver is judged on all the circumstances. The ECtHR case-law also recognises that where a person does not strictly waive the right to attend, but of their own motion brings about a situation in which they are unable to, it *may* be compatible with Article 6 to proceed in absence; whether or not this is so will depend on all the facts.

14. Article 8(2) of the Directive also aims at situations where there is a waiver. The person must in all cases be informed of the trial, although they can be deemed to be so informed where they have taken steps to avoid being served with information. In addition, the person must either (a) have been informed of the consequences of non-appearance, i.e. the trial proceeding in their absence if they did not appear or (b) represented by a lawyer, however appointed, to whom they have personally given mandate to represent at trial in absentia. At present, it appears that Article 8(2) imposes

a stricter (or certainly clearer) requirement for prior notification that a trial may go ahead in absence if the person does not appear than Article 6 ECHR case-law. Even if the conditions of Article 8(2) are ostensibly satisfied, the Directive and Charter implicitly require that there have been a genuine opportunity for the person to attend trial before their absence is treated as their own unequivocal waiver.

15. Under all standards – ECHR, EU law and ICCPR – states are expected to make reasonable efforts to locate a person and notify them. It appears unlikely that a person can be deemed to have waived their right to presence if the state has not made the reasonable efforts expected of it. In the EU system, these reasonable efforts include issuing an SIS II alert for the purpose of summoning a person known to reside in another EU Member State.

16. Waiver principles apply equally to the scenario of removal of a defendant from a courtroom: in such circumstances, in ECtHR cases, the accused is by definition aware of the charges and proceedings, and more focus falls on the question whether they appreciated that the trial would proceed in their absence if they continued their disruptive behaviour.

17. In ECHR Article 6 terms, it is not yet clear whether a person attending trial by video is to be regarded as absent due to their physical absence. The available case-law indicates that both in-person and video are viewed as modes of participation at trial, the focus falling on whether the video-link procedure secured effective participation of the accused. The CJEU has held that the Directive does not regulate the issue of video-link hearings. The CJEU has indicated that participation at trial for an evidential purpose can be done by way of a video-link under the EIO Directive, even if (in the issuing state's law) this involves appearance at trial. This may be broadened by the creation of the proposed Remote Participation Order.

18. Under the ECHR, to convict a person in absentia in the absence of an indication that they have waived their right to be present (below) will amount to a flagrant denial of justice, unless the person has access to a fresh assessment of the merits of the charge as a remedy. Article 8(2)/(4) of the Directive, read with Article 9, broadly, mirror that, permitting a trial in absence if there has been a waiver or, if not, requiring a new trial as a remedy.

19. The right to a fresh assessment of the merits can, for Article 6 ECHR purposes, be satisfied by the reopening of time to appeal with the possibility for the accused to appear and be heard before the appeal court and request the introduction of new evidence. There is at least some indication that other rights associated with first instance trial should be available.

20. Case-law under Article 9 of the Directive so far focuses more on the effectiveness of the procedure antecedent to the new trial remedy itself (a gateway proceeding), emphasising certainty of outcome, provision of information to the convicted person, and speediness. CJEU case-law on the EAW FD strongly indicates that the effectiveness of the new trial would require the cessation of enforcement of any suspended sentence activated due to the person's conviction in absentia for a further offence.

21. The approach under the ICCPR is less developed. It places a greater burden on the authorities to establish that they have notified a person of the trial. It does not expressly mirror the ECHR concept of waiver but the concept is present to some extent. There is a also basic recognition in the HRC case-law that a trial improperly proceeded with in the absence of the accused can be remedied by way of a retrial in his presence. It is as yet not determined within the case-law what would and would not satisfy the idea of a retrial.

I — ECHR standards

The general principles

The core ECtHR reference on trial in absence remains the judgment of the Grand Chamber is Sejdovic v Italy 56581/00 (2006), which includes this lengthy exposition:

(a) Right to take part in the hearing and to obtain a new trial

81. Although this is not expressly mentioned in paragraph 1 of Article 6, the object and purpose of the Article taken as a whole show that a person "charged with a criminal offence" is entitled to take part in the hearing. Moreover, sub-paragraphs (c), (d) and (e) of paragraph 3 guarantee to "everyone charged with a criminal offence" the right "to defend himself in person", "to examine or have examined witnesses" and "to have the free assistance of an interpreter if he cannot understand or speak the language used in court", and it is difficult to see how he could exercise these rights without being present […]

82. Although proceedings that take place in the accused's absence are not of themselves incompatible with Article 6 of the Convention, a denial of justice nevertheless undoubtedly occurs where a person convicted in absentia is unable subsequently to obtain from a court which has heard him a fresh determination

of the merits of the charge, in respect of both law and fact, where it has not been established that he has waived his right to appear and to defend himself […].

83. The Convention leaves Contracting States wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of Article 6. The Court's task is to determine whether the result called for by the Convention has been achieved. In particular, the procedural means offered by domestic law and practice must be shown to be effective where a person charged with a criminal offence has neither waived his right to appear and to defend himself nor sought to escape trial […].

84. The Court has further held that the duty to guarantee the right of a criminal defendant to be present in the courtroom – either during the original proceedings or in a retrial – ranks as one of the essential requirements of Article 6 […] Accordingly, the refusal to reopen proceedings conducted in the accused's absence, without any indication that the accused has waived his or her right to be present during the trial, has been found to be a "flagrant denial of justice" rendering the proceedings "manifestly contrary to the provisions of Article 6 or the principles embodied therein" […].

85. The Court has also held that the reopening of the time allowed for appealing against a conviction in absentia, where the defendant was entitled to attend the hearing in the court of appeal and to request the admission of new evidence, entailed the possibility of a fresh factual and legal determination of the criminal charge, so that the proceedings as a whole could be said to have been fair […].

(b) Waiver of the right to appear at the trial

86. Neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial […] However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance […] Furthermore, it must not run counter to any important public interest […].

87. The Court has held that where a person charged with a criminal offence had not been notified in person, it could not be inferred merely from his status as a "fugitive" (latitante), which was founded on a presumption with an insufficient factual basis, that he had waived his right to appear at the trial and defend himself […]. It has also had occasion to point out that, before an accused can be said to have implicitly, through his conduct, waived an important right under Article 6 of the Convention, it must be shown that he could reasonably have foreseen what the consequences of his conduct would be […].

88. Furthermore, a person charged with a criminal offence must not be left with the burden of proving that he was not seeking to evade justice or that his absence was due to force majeure […] At the same time, it is open to the national authorities to assess whether the accused showed good cause for his absence or whether there was anything in the case file to warrant finding that he had been absent for reasons beyond his control […].

(c) Right of a person charged with a criminal offence to be informed of the accusations against him

89. Under the terms of paragraph 3 (a) of Article 6 of the Convention, everyone charged with a criminal offence has the right "to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him". This provision points to the need for special attention to be paid to the notification of the "accusation" to the defendant. An indictment plays a crucial role in the criminal process, in that it is from the moment of its service that the defendant is formally put on notice of the factual and legal basis of the charges against him […].

90. The scope of the above provision must in particular be assessed in the light of the more general right to a fair hearing guaranteed by Article 6 § 1 of the Convention. In criminal matters the provision of full, detailed information concerning the charges against a defendant, and consequently the legal characterisation that the court might adopt in the matter, is an essential prerequisite for ensuring that the proceedings are fair […].

(d) Representation by counsel of defendants tried *in absentia*

91. Although not absolute, the right of everyone charged with a criminal offence to be effectively defended by a lawyer, assigned officially if need be, is one of the fundamental features of a fair trial […] A person charged with a criminal offence does not lose the benefit of this right merely on account of not being present at the trial […] It is of crucial importance for the fairness of the criminal justice system that the accused be adequately defended, both at first instance and on appeal […].

92. At the same time, it is of capital importance that a defendant should appear, both because of his right to a hearing and because of the need to verify the accuracy of his statements and compare them with those of the victim – whose interests need to be protected – and of the witnesses. The legislature must accordingly be able to discourage unjustified absences, provided that any sanctions used are not disproportionate in the circumstances of the case and the defendant is not deprived of his right to be defended by counsel […].

93. It is for the courts to ensure that a trial was fair and, accordingly, that counsel who attends trial for the apparent purpose of defending the accused in his absence is given the opportunity of doing so […].

94. While it confers on everyone charged with a criminal offence the right to "defend himself in person or through legal assistance …", Article 6 § 3 (c) does not specify the manner of exercising this right. It thus leaves to the Contracting States the choice of the means of ensuring that it is secured in their judicial systems, the Court's task being to ascertain whether the method they have chosen is consistent with the requirements of a fair trial […]. In this connection, it must be remembered that the Convention is designed to "guarantee not rights that are theoretical or illusory but rights that are practical and effective" and that

assigning counsel does not in itself ensure the effectiveness of the assistance he may afford an accused […].

95. Nevertheless, a State cannot be held responsible for every shortcoming on the part of a lawyer appointed for legal aid purposes or by the accused. It follows from the independence of the legal profession from the State that the conduct of the defence is essentially a matter between the defendant and his counsel, whether appointed under a legal aid scheme or privately financed […] The competent national authorities are required under Article 6 § 3 (c) to intervene only if a failure by legal aid counsel to provide effective representation is manifest or is sufficiently brought to their attention in some other way […].

23. The Grand Chamber has only revisited these principles, without any substantive departure, in Hermi v Italy (dealt with infra) and Idalov v Russia 5826/03 (2012):

170. While it is of capital importance that a defendant in criminal proceedings should be present during his or her trial, proceedings held in the absence of the accused are not always incompatible with the Convention if the person concerned can subsequently obtain from a court which has tried him a fresh determination of the merits of the charge, in respect of both law and fact […]

171. The proceedings as a whole may be said to have been fair if the defendant was allowed to appeal against the conviction in absentia and entitled to attend the hearing in the court of appeal entailing the possibility of a fresh factual and legal determination of the criminal charge […].

172. Neither the letter nor the spirit of Article 6 of the Convention prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to the guarantees of a fair trial. However, if it is to be effective for Convention purposes, a waiver of the right to take part in the trial must be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance. Furthermore, it must not run counter to any important public interest […].

173. The Court has also held that before an accused can be said to have, through his conduct, waived implicitly an important right under Article 6 of the Convention, it must be shown that he could reasonably have foreseen the consequences of his conduct in this regard […].

174. The Convention leaves Contracting States a wide discretion as regards the choice of the means calculated to ensure that their legal systems are in compliance with the requirements of Article 6. The Court's task is to determine whether the standards required under Article 6 were met. In particular, the procedural means offered by domestic law and practice must be shown to be effective where a person charged with a criminal offence has neither waived his right to appear and to defend himself nor sought to escape trial […].

24. The First Section of the ECtHR has recently (2026) set forth the following recapitulation of the principles in Khattab v Belgium 40272/18 (2026):

48. Quoique non mentionnée en termes exprès au paragraphe 1 de l'article 6, la faculté pour l'« accusé » de prendre part à l'audience découle de l'objet et du but de l'ensemble de l'article. Du reste, les alinéas c), d) et e) du paragraphe 3 reconnaissent à « tout accusé » le droit à « se défendre lui-même », « interroger ou faire interroger les témoins » et « se faire assister gratuitement d'un interprète, s'il ne comprend pas ou ne parle pas la langue employée à l'audience », ce qui ne se conçoit guère sans sa présence […].

49. Si une procédure se déroulant en l'absence de l'accusé n'est pas en elle-même incompatible avec l'article 6 de la Convention, il demeure néanmoins qu'un déni de justice est constitué lorsqu'un individu condamné in absentia ne peut obtenir ultérieurement qu'une juridiction statue à nouveau sur le bien-fondé de l'accusation en fait comme en droit, alors qu'il n'est pas établi qu'il a renoncé à son droit de comparaître et de se défendre […].

50. La Convention laisse aux États contractants une grande liberté dans le choix des moyens propres à permettre à leurs systèmes judiciaires de répondre aux exigences de l'article 6. Il appartient toutefois à la Cour de rechercher si le résultat visé par ce texte se trouve atteint. En particulier, il faut que les ressources offertes par le droit et la pratique internes se révèlent effectives si l'accusé n'a ni renoncé à comparaître et à se défendre ni entendu se soustraire à la justice […].

51. La Cour a estimé que l'obligation de garantir à l'accusé le droit d'être présent dans la salle d'audience – soit pendant la première procédure à son encontre, soit au cours d'un nouveau procès – est l'un des éléments essentiels de l'article 6 […]. Dès lors, le refus de rouvrir une procédure qui s'est déroulée par contumace en l'absence de toute indication que l'accusé avait renoncé à son droit de comparaître a été considéré comme un « déni de justice flagrant » rendant la procédure « manifestement contraire aux dispositions de l'article 6 ou aux principes qui y sont consacrés » […].

52. Ni la lettre ni l'esprit de l'article 6 de la Convention n'empêchent une personne de renoncer de son plein gré aux garanties d'un procès équitable de manière expresse ou tacite. Cependant, pour entrer en ligne de compte sous l'angle de la Convention, la renonciation au droit de prendre part à l'audience doit se trouver établie de manière non équivoque et être entourée d'un minimum de garanties à la mesure de sa gravité. De plus, elle ne doit se heurter à aucun intérêt public important […].

53. La Cour a estimé que, lorsqu'il ne s'agit pas d'un inculpé atteint par une notification à personne, la renonciation à comparaître et à se défendre ne peut pas être inférée de la simple qualité de « fugitif », fondée sur une présomption dépourvue d'une base factuelle suffisante […]. Elle a également eu l'occasion de souligner qu'avant qu'un accusé puisse être réputé avoir implicitement renoncé, par son comportement, à un droit important énoncé à l'article 6 de la Convention, il doit être établi qu'il pouvait raisonnablement prévoir les conséquences du comportement en question […].

54. Par ailleurs, il faut qu'il n'incombe pas à l'accusé de prouver qu'il n'entendait pas se dérober à la justice ou que son absence s'expliquait par un cas de force majeure […]. En même temps, il est loisible aux autorités nationales d'apprécier si les excuses fournies par l'accusé pour justifier son absence sont valables et si les éléments versés au dossier permettent de conclure que son absence était indépendante de sa volonté […].

25. Case-law (pre- and post-Sejdovic) has provided a range of illustrative applications which bring these principles to life. These are illustrated in the **annex** to this section. Beyond the general principles, it is also necessary to have regard to certain other principles set forth by the ECtHR, which combine with the general principles on presence at trial and waiver.

Principles broken down

The right to participate at the hearing

26. The possible violation of a person's right to presence at a hearing is linked to the question whether Article 6 requires a hearing in the first place. The position in that regard varies according to the different stages of criminal proceedings, as discussed below.

The first-instance trial

27. The foundational principle of the right to be *present at* trial (as discussed in Sejdovic) flows from the nature of the trial hearing. The Grand Chamber states in Jussila v Finland (2006):

An oral, and public, hearing constitutes a fundamental principle enshrined in Article 6 § 1. This principle is particularly important in the criminal context, where generally there must be at first instance a tribunal which fully meets the requirements of Article 6 […] and where an applicant has an entitlement to have his case "heard", with the opportunity, *inter alia*, to give evidence in his own defence, hear the evidence against him, and examine and cross-examine the witnesses.

28. As is evident from Sejdovic §81, the hearing required by Article 6(1) in respect of the principal criminal trial implies the right of the accused to be present at it, in the sense of being able to participate and exercise the various rights set forth by Article 6.

Appeal proceedings, in general

29. The ECtHR has set forth a fact-sensitive approach to the assessment of whether Article 6 required an opportunity for the applicant to appear in person. This is linked to the scope of jurisdiction of the appeal court, whether factual issues are in play, and what is at stake.

30. The principle is as set forth by the Grand Chamber in Hermi v Italy (2006), §§60-62:

60. However, the personal attendance of the defendant does not take on the same crucial significance for an appeal hearing as it does for the trial hearing […] The manner of application of Article 6 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role of the appellate court therein […].

61. Leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6, although the appellant was not given an opportunity of being heard in person by the appeal or cassation court, provided that a public hearing was held at first instance […] However, in the latter case, the underlying reason was that the courts concerned did not have the task of establishing the facts of the case, but only of interpreting the legal rules involved […].

62. However, even where the court of appeal has jurisdiction to review the case both as to facts and as to law, Article 6 does not always require a right to a public hearing, still less a right to appear in person […] In order to decide this question, regard must be had, among other considerations, to the specific features of the proceedings in question and to the manner in which the applicant's interests were actually presented and protected before the appellate court, particularly in the light of the nature of the issues to be decided by it […] and of their importance to the appellant […].

31. This principle, then, becomes central to determining whether an applicant had, in a given context, an Article 6 right to hearing, and on that basis whether they waived the right.

32. See e.g. Arps v Croatia (2016) §§25-26 (hearing had been required where the applicant '*contested the charges, her conviction, and the sentence, on both factual and legal grounds*', and the appeal court was therefore '*called upon to make a full assessment of the applicant's guilt or innocence*', but the appeal court decided the parties did not need to be present); Kozlitin v Russia (2013) §§63-64 (appeal court was '*called on to make a full assessment of* […] *guilt or innocence*' where the applicant had '*contested his conviction on factual and legal grounds*', plus '*the proceedings at issue were of utmost importance for the applicant*' who had been sentenced to 20 years' imprisonment and was not represented, and the prosecutor was present); Jelcovas v Lithuania (2011) §§108-109 (where applicant convicted of murder and sentenced to 8 years' imprisonment, in light of '*the gravity of what was at stake*', the '*right to a fair trial* […] *required that the applicant be taken to the hearing at the Supreme Court*', plus '*the prosecutor took part in the hearing*' and '*the interests of justice required that the applicant be given the opportunity to comment*').

Sentencing-related appeal contexts

33. Even where guilt and innocence are not per se at issue, the fact of the appellate hearing having an incidence on sentencing may have a bearing. The principle as stated in X v Netherlands (2021) is that:

45. Where the appellate court is competent to modify, including to increase, the sentence imposed by the lower court and when the appeal proceedings are capable of raising issues involving an assessment of the accused's personality and character and his or her state of mind at the time of the offence, which make such proceedings of crucial importance for the accused, it is essential to the fairness of the proceedings that he or she be enabled to be present at the hearing and afforded the opportunity to participate in it […]

34. See e.g. X v Netherlands (2021) §§53-54 (violation in proceeding to a hearing in absence, even though it was '*not in doubt that the applicant had committed a criminal offence*', as the appeal court had to '*establish her guilt and to determine the sentence to be imposed, which it could reduce or increase and which sentence could involve imprisonment* […] and the applicant was '*clearly worried about the consequences for her employment*' and had '*wished to address that court in person in order to explain the causes of her reoffending and also her willingness to prevent further occurrences*'); Cani v Albania (2012) (in a case concerning '*matters of sentencing which involve the determination of a criminal charge*', violation where '*at no stage in the appeal proceedings* […] *did the applicant have the opportunity to argue in person that there were mitigating factors, such as his remorse following the crime, his lack of previous criminal convictions, his background and his family's economic hardship, which would have militated in favour of imposing a lower sentence*', whereas '*these are all matters on which, as a matter of fairness, he should have been heard in person*'); Zhuk v Ukraine (2010) §§29-34 (where the applicant was unrepresented and challenged his sentence of imprisonment on points of law and '*requested that the hearing be held in his presence*' the '*examination of the applicant's appeal on points of law was of considerable importance for him*', plus '*procedural fairness required that the applicant should also have been given an opportunity to make oral submissions in reply*' to the prosecutor, who was present). In contrast, see Dementyev v Russia (2013) §§45-46 (regardless of waiver, there had been no need for a hearing given the '*limited scope of the issue to be dealt with*' where the appeal court was to rule '*solely on the conversion of the applicant's sentence to six months' community work into a prison sentence according to an arithmetical formula established by law*', to be added to a longer 13-year sentence).

35. Once it is established that the person had a right for there to be a hearing in their presence, akin to the first instance trial, the same principle applies in relation to trial: nothing prevents a person waiving the right to presence, but this must be unequivocal and knowing etc.

Other types of proceedings

36. The case-law has, occasionally, touched upon less common decisions affecting a person's interests, to determine whether the criminal limb of Article 6 applies. (Some of these cases are cited by the CJEU in its case-law relating to the EAW FD). These are scenario-specific determinations, where the ECtHR will refer to general principles as to what constitutes a 'penalty' under Article 7, the determination of which is covered by Article 6 ECHR.

37. With regard to Article 7, see e.g. Gurguchiani v Spain (2009), §31:

31. […] Le libellé de l'article 7 § 1, seconde phrase, indique que le point de départ de toute appréciation de l'existence d'une « peine » consiste à déterminer si la mesure en question a été imposée à la suite d'une condamnation pour une infraction pénale. D'autres éléments peuvent être jugés pertinents à cet égard : la nature et le but de la mesure en cause, sa qualification en droit interne, les procédures associées à son adoption et à son exécution, ainsi que sa gravité […] A cette fin, la Commission comme la Cour ont établi dans leur jurisprudence une distinction entre une mesure constituant en substance une « peine » et une mesure relative à l'« exécution » ou à l'« application » de la « peine » […].

38. With regard to Article 6, proceedings may attract a right of presence where they involve the determination of a criminal charge, which includes the sentencing process. See e.g. Dementyev v Russia (2013) §23:

23. The Court reiterates that, in criminal matters, Article 6 § 1 of the Convention covers the whole of the proceedings in question, including appeal proceedings and the determination of sentence.

39. With regard to Article 6, see what appears to be a general statement of principle in Boulois v Luxembourg (2012), §87:

87. According to the Court's traditional case-law, the examination of requests for temporary release or of issues relating to the manner of execution of a custodial sentence do not fall within the scope of Article 6 § 1.

40. Thus a core issue, when considering other forms of decisions, is whether they involve the determination of a criminal penalty (i.e. part of the determination of a charge for Article 6 purposes) or whether they relate solely to the execution of such a penalty.

41. See e.g. the cases cited by the CJEU Gurguchiani v Spain (2009) §§40/47-48 (replacement of a prison sentence by an expulsion and prohibition of return constituted the imposition of a new penalty, and Article 6 criminal limb therefore applied); Boulois v Luxembourg (2012) §85 (Article 6 *civil limb* did not apply to proceedings relating to prison leave); Vasilescu v Belgium (2014) §121 (Article 6 did not apply to temporary prison release requests).

42. Of course, the applicability of Article 6 does not, necessarily, entail a requirement for the accused to have the right to be present. The approach in relation to appeals (supra) would suggest that where the court determining the penalty has jurisdiction to consider something factual and/or to take account of personal circumstances, the individual should be there.

Waiver

43. The waiver principle as stated in Sejdovic is well-known and the case-law applies it without great elaboration. The cases decided by the ECtHR, however, involve significant illustrations as to factors that have been taken account of as part of the waiver. Various themes emerge. The below is not a systematic classification, but rather a thematic division Fair Trials considers a useful guide as to what factors are draw into the waiver analysis.

Knowledge of proceedings and charges

44. The discussion in Sejdovic, in particular at §§89-90 and §99, point to the question of awareness '*of the proceedings* […] *and of the charges*'. The subjective state of knowledge is at the core of the waiver assessment and is discussed extensively in the waiver analysis.

45. See: Austin v Portugal (Dec) (2026) (waiver established where applicant heard in person by prosecutor, received indictment, informed of hearing date, informed court of his move to UK demonstrating awareness of proceedings, thus '*dûment informé tant de l'ouverture que du déroulement de la procédure pénale*'); Rocha Carmelino v Portugal (Dec) (2026) (applicant '*aware of the existence of criminal proceedings against him as he had been subject to a house search, arrested, questioned by the police and by an investigating judge, and subject to reporting obligations*' and, moreover '*informed of his procedural rights and duties and, specifically, of the possibility of being tried in absentia*'; Danevski v North Macedonia (Dec) (2024) (applicant served with a copy of indictment and submitting comments in response, '*therefore no doubt that he was aware that those proceedings were pending against him*'); Stoyanov-Kobuladze v Bulgaria (2014) (overall, no '*sufficient knowledge*' when an applicant had been abroad and the domestic notoriety of pyramid scheme prosecutions was not enough to impute that to him knowledge of '*the investigation opened and the specific charges brought against him*'); Haralampiev v Bulgaria (2012) (given questioning by police, applicant had '*connaissance suffisante des poursuites et des accusations […] pour savoir que le dossier serait […] renvoyé […] et que lui-même serait par la suite cité à comparaitre*' but Court asking whether he had '*connaissance exacte des accusations portées contre lui*' at trial stage); Kounov v Bulgaria (2006) (no sufficient knowledge where applicant had been questioned by police but not served with an accusation: '*Ayant été interrogé sur les faits par les policiers, le requérant*

pouvait seulement supposer que des poursuites allaient être engagées mais ne pouvait en aucun cas avoir une connaissance précise des charges qui allaient être retenues'). Demebukov v Bulgaria (2008) (applicant had '*sufficient knowledge*' when applicant had been present and assisted by a lawyer of his choosing when initially charged, amended, and the results of investigation presented); Aliykov v Bulgaria (2009) (no '*sufficient knowledge*' ('*connaissance suffisante des poursuites et du procès*') where the applicant had knowledge of the institution of proceedings against him, but where legally untrained applicant could not appreciate subsequent development of case involving separation of charges etc.);

46. The case-law is clear that knowledge cannot be imputed via a lawyer not established to be acting on the applicant's own instructions. See: Shkalla v Albania (2011) ('*fact that the applicant was defended on appeal by a counsel appointed by his father does not mean that he had prior effective knowledge of the proceedings*'); Haxhia v Albania (2013), §63 / Hysi v Albania (2018), §38 / Topi v Albania (2018), §54 ('*Nor has it been shown that he explicitly or implicitly authorised his family members' actions on appeal or unequivocally waived his right to appear in court*'); Muca v Albania (2018), §34 (where applicant acquitted at first instance and went abroad, after which prosecutor and co-defendants appealing, '*even though his chosen lawyer continued to represent him on appeal, it cannot be inferred that the lawyer was acting on the applicant's explicit instructions*').

47. There appears to be some uncertainty as to whether departure (e.g. alleged flight) before any official action can be sufficient to establish waiver of the right to attend at a future trial on charges yet to be even framed still less notified. On the one hand, see Stoyanov v Bulgaria (2012) (in the case of a person alleged to have gone into hiding, '*sufficient knowledge*' of '*the investigation opened* […] *and the concrete charges brought against him*' not established: this had to be '*distinguished from the outright fact of fleeing the crime scene in fear of prosecution or a general expectation that criminal proceedings might be instituted*'). On the other hand, see Rroku v Albania (Dec) (2023) **(!)** (applicant who had absconded in the immediate aftermath of crime of which later convicted '*had, or ought to have had, sufficient knowledge of his prosecution and of the charges against him, or, in other words, that he had known or suspected that he was wanted by the authorities and had absconded*' and '*could reasonably have foreseen the consequences of his conduct*').

Safeguards commensurate to importance

48. There is little separate discussion of safeguards in the case-law on trials in absence specifically. It appears to be more of a background principle.

49. The presence of legal representation may be considered under this head. See e.g. Dijkhuizen v Netherlands (2021), §60 (*since the* [non-extraditable] *applicant's refusal* [to appear by video] *was twice stated by his counsel in open court […] it cannot be found that this waiver was not attended by guarantees commensurate with the importance of the right thus waived*'. However, non-trial in absence cases suggest that prior legal advice may not necessarily be pre-condition for a valid waiver, if the person understands its significance: see Fariz Ahmadov v Azerbaijan (2021) (twice-previously-convicted applicant understood significance of waiver of legal representation, even if law requiring prior advice breached).

50. Notably, case-law in non-trial in absence cases points provides more of a focus on safeguards. For example, the Court has frequently examined whether purported waivers of legal assistance in early interrogations was valid, having regard to how people were advised of their rights and how any vulnerabilities were counterbalanced. See e.g. Krpelík v Czech Republic (2025) §§77-88 (the '*waiver* [of legal representation] *was not attended by minimum safeguards*' where police had '*doubts as to applicant's intellectual abilities*', and '*should have taken additional steps*' e.g. providing an '*easy-to-read version of the information on his rights and obligations*' but did nothing at the time); Bogdan v Ukraine (2024) §§54-70 (waiver of an applicant suffering from drug withdrawal symptoms was subject to a safeguard in national law against acceptance of waivers by those affected by addiction-related disorders, but this was circumvented by police delaying disclosure of their knowledge of the applicant's condition at the time of his signing a waiver).

51. For Fair Trials, these principles seem particularly important in terms of the treatment of early encounters with police, in which accused are notified of procedural obligations and how proceedings might develop. In our view, Article 6 requires that careful account be taken of the safeguards (e.g. legal advice, interpretation, what is provided in writing, in what context etc.) available at the moment of these interactions, if they are later relied upon to establish knowledge of a future trial proceeding and the consequences of not being there.

Reasonable foresight of the consequences

52. The cases suggest that there must be reasonable foresight of what then takes place, i.e. a trial in absence with any particular features associated with that. The cases show a link between the safeguards (e.g. legal advice) and foresight of a trial in absence. Steps taken by the authorities to warn of that possibility are also material. However, since these are after-the-fact determinations by the Court, as usual all the facts are considered together.

53. See: Jaupi v Albania (2024) (applicant assisted by a lawyer at the point of waiving right to exercise appeal rights amounting to a fresh determination, thus '*should*' reasonably have foreseen consequences); Suslov and Batikyan v Ukraine (2022) (applicant reprimanded 25 times and removed temporarily from courtroom before final expulsion had been '*fully and fairly informed that his behaviour was wrong and intolerable and had been warned of the possible consequences*); Bykhovets v Russia (Dec) (2019), §§26-27 (lawyer confirming expressly court that he had told his client of the quashing of his earlier acquittal, such that the applicant with legal knowledge could have foreseen that the hearing would result in his being tried in absence); Karpyuk & Others v Ukraine (2015) ('*the possible consequences of continued disruptive behaviour must have been clear to the applicant*', who had been temporarily removed from the courtroom but continued disrupting); Mihelj v Slovenia (2015) (applicant '*could* [not] *reasonably have foreseen that he risked a conviction for fraud*' given an earlier change to attempted fraud, but factual substance unchanged so no issue arising); Sulejmani v Albania (2012) (applicant who did left the country after appointing lawyers to represent him '*could reasonably have foreseen the consequences of his conduct*'); Kononov v Russia (2011) (accused '*[could not] have been expected to appreciate that the failure to make a special request to ensure his participation in the appeal hearing would result in his appeal being examined in his absence*'); Makarenko v Russia (2009) §136 (applicant, '*being initially represented by three lawyers of his own choosing, could have been advised by his lawyers of the consequences of his refusal to attend the trial hearings* […] *and could have been expected to appreciate that his failure to attend* […] *would result in his being tried and convicted in his absence*'); Ananyev v Russia (2009) §45 (before excluding an unruly defendant from the hearing, it was '*incumbent on the presiding judge to establish that the applicant could have reasonably foreseen what the consequences of his conduct would be*'); Seyithan Demir v Turkey (2009) §§13/41 ('*as a layman*,' an applicant accepting to be questioned at a rogatory court and requesting to be dispensed from appearing before the trial court '*[could not] have been expected to appreciate that such a demand would result in his being tried and convicted in his absence*'; Boyarchenko v Ukraine (Dec) (2008) (applicant, present at initial hearing and then leaving for Russia and then convicted in absence '*[being] represented by a lawyer of his choice […] could anticipate the consequences of his absence from the further court hearings*'; Demebukov v Bulgaria (2008) §57 (applicant who left country in defiance of a movement restriction order, making himself unavailable to be informed of the trial stage, was '*assisted by a lawyer of his own choosing and should reasonably have foreseen what the consequences of his conduct would be*'); Holowinski v Poland (2006) (applicant '*who had already acted as a defendant in numerous cases in the past* […] *could reasonably have foreseen the consequences of his conduct*; Jones v UK (Dec) (2003) (a frequently cited case which is referred to in the Sejdovic summary) (accused could not foresee trial in absence without a lawyer when the possibility of that was not clearly established in law).

Legal representation: further aspects

54. The fact of an applicant being represented by a lawyer acting on his instructions, whilst it may indicate an applicant's awareness of the proceedings and charges / enable foresight of the consequences / form part of the safeguards surrounding a waiver, does **not** per se establish the applicant's waiver of his own right to be present. The test still turns on the full facts. See: X v Netherlands (2021) (court wrongly proceeding after refusing short adjournment requested by the absent applicant's lawyer, on her instructions); Borisov v Russia (2012) (applicant represented by professional lawyer of his choosing on appeal, but what was decisive was that applicant had not reiterated earlier request to appear, therefore waiver inferred); Cani v Albania (2012) (where lawyer unilaterally inviting court to proceed in absence based on his mandate, Court did '*not consider* [this] *statement to constitute a waiver of the applicant's repeated and unequivocal wish to attend the hearing*'); Medenica v Switzerland (2001) (applicant represented by local counsel throughout, but Court's analysis focused upon his bringing about the situation due to which he could not attend).

55. In Fair Trials' notes that EAW Framework Decision in principle *requires* surrender where a person '*being aware of the scheduled trial, had given a mandate to a legal counsellor* […] *to defend him or her at the trial, and was indeed defended by that counsellor at the trial*' (Article 4a(1)(b)). This presents significant fair trial risks in certain factual scenarios where a person is represented by an instructed lawyer but is unable to attend to participate directly himself as well. It is necessary to interpret Article 4a(1)(b) accordingly, i.e. that it assumes a person opting not to attend and to be defended by lawyers in their absence.

Address changes / leaving the country

56. A person's departure from an address and/or whether they communicate such address changes to authorities frequently form part of the broader waiver analysis. Whether an inference can be drawn, and to what effect, depends on the circumstances of the case.

57. See: Khattab v Belgium (2026), §57 (applicant lodging appeal against conviction then travelling to Syria under a false identify could be deemed to have waived his right to attend trial); Danevski v North Macedonia (Dec) (2024) (applicant duly served with North Macedonian court's indictment in Bulgaria then left, which '*rendered unsuccessful the domestic courts' attempts, with the assistance of the Bulgarian authorities, to summon him to a hearing*'); Yeğer v Turkey (2022), §34 (where applicant had left Türkiye and service attempted at known address, unclear that going abroad was prompted by same debt issues as were the subject of criminal proceedings, '*too great a leap to attach*' to the failure to notify authorities of the

departure '*the rationale that the applicant was either aware of the criminal proceedings or intended to evade justice*', and the '*mere fact of being abroad*' did '*not in and of itself suffice to provide an unequivocal indication*' of absconding and waiver); NZ v France (Dec) (2022) (applicant had implicitly waived right to attend before appeal court when he had gone on 22-day holiday without advising the court, during which appeal summons served at his recorded address, having created a situation of which he could have foreseen the consequences); Vybornova v Russia (Dec) (2019) (!) (where applicant had left Russia and claimed asylum in the Czech Republic in connection with prosecution, it was said to be '*evident […] that [she] decided to stay away from Russia*' and was to be regarded as aware and waiving attendance); Dridi v Germany (2018) (violation where, among other circumstances, applicant had communicated address when departing for Spain, the national court then initially serving notice of appeal date via the court noticeboard); Sulejmani v Albania (Dec) ('*choosing to leave the country*' the applicant who had appointed lawyers '*must be considered to have intentionally and unequivocally waived his rights*'); Stoyanov v Bulgaria (2012), §33 (where summons served at known address and father stating applicant had left it, '*mere absence of the applicant from his home*' was '*insufficient to consider that he was aware of the proceedings and, consequently, had absconded*'); Popovitsi v Greece (2010) (where authorities had wrongly treated accused as being of unknown domicile, fact of non-communication of changes irrelevant: Court '*does not see on what basis citizens, when they have no knowledge of charges against them, would be required to inform prosecution of their own motion every time they change address*'); Boroanca v Romania (2010) (account taken of service at address supplied by applicant earlier in proceedings, though not decisive of waiver analysis); Aliykov v Bulgaria (2009) (applicant moving to Türkiye after measure to guarantee attendance at trial communicated to him no longer in effect, and new address duly notified to Bulgarian consulate).

Impediments to attendance, extent of Applicant's contribution

58. Some cases have considered the situation where a person is unable to attend by reason of circumstances comprising an objective dimension. In these cases, the ECtHR sometimes appears to take a more general approach asking whether the conviction in absence breached Article 6(1)/(3)(c) in the circumstances, exploring in particular whether the Applicant brought about the problem by his conduct and/or the efforts made by the national courts.

59. A key reference point is Medenica v Switzerland (2001) (in which the Court endorsed findings of all the Swiss courts according to the effect that the applicant had '*largely contributed to bringing about a situation that prevented him from appearing*' in that he had '*misled the American court* [which had issued order restraining his movement] […] *with the aim of*

securing a decision that would make it impossible for him to attend trial').

60. See also Khattab v Belgium (2026) (applicant who left Belgium for Syria with appeal outstanding but then detained in Türkiye '*s'était placé, par son fait personnel, dans la situation dont il dénonce la contrariété à l'article 6 de la Convention*'); Rusu v Romania (2025) (applicant seeking several adjournments before then relying on Covid-19 travel restrictions, Court doubting he had ever had '*genuine willingness on his part to actively participate*', he had '*not shown any interest in participating*' and his '*sudden alleged wish to attend in person* […] *occurred at the very moment when, because of the Covid-19 pandemic* […] [it] *became impossible*'); Jaupi v Albania (2024) **(!)** (no violation despite applicant being in extradition detention in Spain, which ultimately *refused* his extradition, partly on the basis that applicant was aware of proceedings in Albania and '*chose not to return there*' – although Applicant also had access to appeal capable of curing any issues and chose not to avail himself of opportunities); Bivolaru v Romania (No 2) (2018) (no violation of Article 6(1) where Romanian High Court had offered a refugee in Sweden to be heard by video, which he refused, and then abandoned alternative of hearing him by MLA due to delay by Swedish authorities, the Court attaching importance to the video option, the fact of representation by lawyers throughout and the diligence of the Romanian court's efforts); Hokkeling v Netherlands (2017) (although applicant's detention in Norway during Dutch appeal process was '*direct consequence of his own behaviour*', stark contrast with Medenica, and presence at trial and representation on appeal insufficient to compensate for absence at hearing at which sentence increased by the court of appeal).

61. Fair Trials has reservations about some of these judgments and notes that this issue has not been considered by the Grand Chamber. Fair Trials doubts that it could be Article 6(1)-compatible for a court to proceed to a full merits examination in absence where the accused has not waived their attendance, but there is a legitimate objective barrier not of the accused's making, just because reasonable efforts were made (unsuccessfully) to ensure the accused's attendance, and even if the applicant is represented by fully instructed lawyers. In Fair Trials' view, convictions reached this way should be subject to retrial remedies.

Fresh determination (remedy)

62. The basic principle stated in Sejdovic is that '*reopening of the time allowed for appealing against a conviction in absentia, where the defendant was entitled to attend the hearing in the court of appeal and to request the admission of new evidence, entailed the possibility of a fresh factual and legal determination*'. This has not been much developed since.

63. There is limited case-law on procedural hurdles standing in the way of exercise of access to a sufficient appeal remedy. See e.g. Elyasin v Greece (2009) §32 (criticism of a court of appeal's rigidity in rejecting a request for leave to appeal). There is, already, comparatively more case-law of the CJEU on this topic under Article 9 of the Directive, see infra.

64. There is also only limited case-law on the concept of a '*fresh determination*', and there is some inconsistency. See Jaupi v Albania (2025) §106 (applicant had right to be present before court of appeal which '*would have enabled him to intervene in the hearing*' and '*present the domestic courts with his own version of events*'); Shala v Italy (2023) (asking whether there had been an '*effective opportunity of obtaining a fresh determination of the merits*' and finding there had not: applicant '*did not have the opportunity to have the proceedings reopened ab initio, but only to appeal against the firstinstance judgment, with all the limitations inherent in appeal proceedings*', with no '*evidencetaking activity*' on appeal, nor was the applicant '*heard personally*' who was '*denied the rights to contest the territorial jurisdiction of the courts and to obtain to be tried under the summary procedure that he could have exercised* [at] *trial*' – this suggests a need for full equivalence to trial.

65. In Fair Trials' view, the case-law leaves open questions as to what does and does not constitute a fresh determination. In particular, it is unclear whether the applicant enjoys a right to have witnesses heard in his absence re-examined in his presence.

Trial by videoconference

66. There is little case-law on the conduct of first-instance trials via a video-link. The majority of it concerns appeals, including those which conduct a new assessment of the merits.

67. The ECtHR first stated in Marcello Viola v Italy (2006) §67:

67. Although the defendant's participation in the proceedings by videoconference is not as such contrary to the Convention, it is incumbent on the Court to ensure that recourse to this measure in any given case serves a legitimate aim and that the arrangements for the giving of evidence are compatible with the requirements of respect for due process

68. See also Sakhnovskiy v Russia (2010), §98:

98. As regards the use of the video link, the Court reiterates that this form of participation in proceedings is not as such incompatible with the notion of a fair and public hearing, but it must be ensured that the applicant is able to follow the proceedings and to be heard without technical impediments, and effective and confidential communication with a lawyer must be provided for

69. More recently the ECtHR has said in Kucera v Austria (2025) §62 (the only judgment relating to a first instance context, namely a challenge to a criminal penalty):

62. The Court reiterates that a defendant's participation in proceedings via videolink is not as such contrary to the Convention […] While the physical presence of an accused in the courtroom is highly desirable, it is not an end in itself: it rather serves the greater goal of securing the fairness of the proceedings, taken as a whole

70. Notably, in the above case, the Court commented that '*there was an oral hearing, and the applicant was able to participate in it*. *The case is to be distinguished from those cases in which oral hearings were held in the absence of the accused*' (§54) – this is the clearest statement to the effect that trial by video would not be regarded as trial in absence.

71. Overall, the current case-law suggests that a video proceeding can be compatible with Article 6 if it serves a legitimate aim and ensures effective participation of the kind physical presence would enable, in particular ensuring that the person can follow proceedings and be heard, and enabling confidential communication with the person's lawyer.

72. As to the '*legitimate aim*' question, see e.g. Kucera v Austria (2025) (videoconference legitimately used in the context of Covid-19); Marcello Viola v Italy (2006) (appeal of mafia suspect in a special prison regime legitimately heard by video). In contrast, see Medvedev v Russia (2017) (no reason advanced for video hearing for accused detained in Moscow, where trial and lawyers also in Moscow). As to the assessment of technical impediments, and/or the impact on participation, see e.g. Kucera v Austria (2025) §§63-64 (applicant and lawyers were not required to be in separate locations when attending video and had been '*able to present arguments and to put questions to the witnesses*'; technical issues arising twice and resolved, insufficient evidence of a constant problem); Medvedev v Russia (2012) §37 ('*no evidence* […] *that the video-link system malfunctioned or otherwise prevented the applicant from following the progress of the hearing or making oral remarks and putting questions to the participants in the proceedings when necessary*). As to communications with a lawyer, see Sakhnovskiy v Russia (2010) §104 (applicant able to communicate with newly-appointed lawyer 15 minutes before hearing; applicant '*might legitimately have felt ill at ease*' discussing case with her via video link system '*installed and operated by the state*'; Gennady Medvedev v Russia

(2012) §37 (same).

II – ICCPR standards

General principles

73. The ICCPR sets forth:

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

[…]

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; […]

74. The HRC has, in General Comment No 32 on Article 14 ICCPR, summarised the principles emerging from its previous decisions and materials as follows:

36. […] Proceedings in the absence of the accused may in some circumstances be permissible in the interest of the proper administration of justice, i.e. when accused persons, although informed of the proceedings sufficiently in advance, decline to exercise their right to be present. Consequently, such trials are only compatible with article 14, paragraph 3 (d) if the necessary steps are taken to summon accused persons in a timely manner and to inform them beforehand about the date and place of their trial and to request their attendance.

75. The underlying reference for the statement about '*steps* […] *taken to summon accused persons*' indicates clearly that these steps must achieve their outcome: see Maleki v Italy 11123/2002 (1999) §9.3-4, which sets it forth as follows:

9.3 […] a trial in absentia is compatible with article 14, only when the accused was summoned in a timely manner and informed of the proceedings against him […]

9.4 […] It was incumbent on the court that tried the case to verify that the author had been informed of the pending case before proceeding to hold the trial in absentia […]

76. A fuller statement appears in Salikh v Uzbekistan 1382/2005 (2009) §9.4 as follows:

Under article 14, paragraph 3, everyone is entitled to be tried in his presence and to defend himself in person or through legal assistance. This provision and other requirements of due process enshrined in article 14 cannot be construed as invariably rendering proceedings *in absentia* impermissible, irrespective of the reasons for the accused person's absence. Indeed, proceedings in absentia may in some circumstances (for instance, when the accused person, although informed of the proceedings sufficiently in advance, declines to exercise his right

to be present) be permissible in the interest of the proper administration of justice. Nevertheless, the effective exercise of the rights under article 14 presupposes that the necessary steps should be taken to inform the accused of the charges against him and notify him of the proceedings (article 14, paragraph 3 (a), of the Covenant). Judgment in absentia requires that, notwithstanding the absence of the accused, all due notifications [have] been made to inform him [or the family **(!)**] of the date and place of his trial and to request his attendance. Otherwise, the accused, in particular, is not given adequate time and facilities for the preparation of his defence (article 14, paragraph 3 (b)), cannot defend himself through legal assistance of his own choosing (article 14, paragraph 3 (d)) nor does he have the opportunity to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf (article 14, paragraph 3 (e)).

77. When exploring whether states have done enough to inform a person, the HRC has sometimes added this coda, without however spelling out what the 'limits' are (see e.g. Salikh v Uzbekistan 1382/2005 (2009) §9.5 / Osiyuk v Belarus 1311/2004 (2009) §8.3):

'The Committee acknowledges that there must be certain limits to the efforts that can reasonably be expected of the competent authorities with a view to establishing contact with the accused'

78. Although the HRC does not enter into this question in every case, its case-law establishes a core position with regard to retrial rights as a remedy for trial in absence. See Maleki v Italy 11123/2002 (1999), continuing:

9.5 […] the violation of the author's right to be tried in his presence could have been remedied if he had been entitled to a retrial in his presence when he was apprehended […]

79. In Fair Trials' view, the main difference between the HRC approach and the ECtHR case-law is two-fold. First, the HRC places a clearer onus on the state to demonstrate that it made all efforts to notify the person. Second, the HRC places less emphasis on the question of 'waiver', a term which does not particularly arise in the case-law. Whether or not this makes a substantive difference would have to be judged on two cases of comparable facts.

80. Fair Trials sees significant scope for clarification of the HRC's case-law, in particular as to when the retrial question arises (in many of the decisions discussed below, it is not even discussed) and as to the consequences under Article 14(3)(d) when a state has made all the efforts that can reasonably be expected of it but the person still does not acquire notice.

Specific issues

Right to be present

81. Extreme scenarios have led the HRC to find a breach of the right to be present where this does not actually exist in law, see Guerra de la Espriella v Colombia 1623/2007 (2010) (trial by 'faceless' judge courts where there was no presentation of the accused at trial).

State's obligation to inform

82. In general, the key question turns on whether the state did enough to inform the person before proceeding in absence, judged essentially by whether notice was achieved or not.

83. See Ismagulova v Kazakhstan 3736/2020 §11.5 (state had failed to demonstrate that it had taken the necessary steps to inform the author of her right to attend where the summons was not sent to her residential address, which must have been known to the court registry); Osiyuk v Belarus 1311/2004 (2009) §§2.7/8.3 (state had '*failed to make sufficient efforts with a view to informing the author about the impending court proceedings*' where the author, who had received a summons but challenged the judge, did not receive a summons to the hearing before the new judge despite telephoning the registry several times).

84. The HRC has also drawn a distinction between notice being given to a lawyer and the accused acquiring due knowledge. See Maleki v Italy 11123/2002 (1999) §9.3 (for the state to say that it '"*assumes" that the author* [who had been in the US throughout] *was informed by his counsel of the proceedings in Italy*' was '*clearly insufficient*' under Article 14(3)(d)).

Waiver?

85. There is much less, if any, emphasis on waiver in the HRC case-law. However, the concept is certainly present within these principles mentioned above: trial in absentia may be permissible where the person '*declines to exercise*' their right to be present so as to exercise the associated rights. Hence, however, the primary focus in the HRC case-law as to whether the state has done enough to notify the person and give them that opportunity.

86. See also Mukhtar v Kazakhstan 2304/2013 (2015) §7.5 (breach of Article 14(3)(d) where the author had lost consciousness further to a hypertensive crisis and asked through lawyers for two trial hearings to be postponed – so a definite non-waiver – and the state had failed to explain why it was necessary for those hearings to proceed in his absence).

Trial by video-link

87. See Alakuş v Türkiye 3736/2020 §10.10 (a national court refusing the author's request to appear in person without sufficient justification and proceeding remotely instead, on the facts of the case, breached Article 14(3)(d) ICCPR).

Appeal stages

88. The standard applied by the HRC appears to mirror, broadly speaking, the ECtHR's standard. It first asks whether there was a right for the person to be present – which turns on whether the appeal court was exercising full merits jurisdiction. It then asks whether there was a violation of the applicant's right to be present on the facts of the case.

89. See Likhovid v Russia 2703/2015 (2023) §7.6 (Article 14(3)(d) applied to a cassation appeal, in which the cassation court '*examined the case as to the facts and law and made a new assessment of the issue of guilt or innocence*', and was breached where applicant had request to attend but was rejected based on domestic law); Sadykov v Kazakhstan 2431/2014 §7.2 (Article 14(3)(d) applied to the appeal hearing, in which the court '*made a new assessment of the issue of guilt or innocence*', and was breached where applicant had requested to attend but his request was rejected); Kostin v Russia 2496/2014 (2017) §7.2 (Article 14(3)(d) applied to the cassation, hearing, in which the cassation court '*made a new assessment of the issue of guilt or innocence*', and was breached where the court had '*failed to demonstrate that it has taken the steps necessary to inform the author of his rights to attend the proceedings in person and to be represented*'; Dorofeev v Russia 2041/2011 (2014) §10.6 (breach of Article 14(3)(d) where author submitted three written requests to be allowed to participate in person in the cassation hearing, but those requests were ignored – notably without analysis of the appeal jurisdiction).

Removal from the courtroom

90. See Neporozhnev v Russia 1941/2010 (2016) §8.5 (breach of Article 14(3)(d) where the state had not refuted allegations that the applicant was '*removed from parts of the first instance court hearings and could not deliver testimony in his defence*').

III — The Directive and other EU law

Key provisions of the Directive

The core: presence, absence, and remedy

91. The key provisions of the Directive are found in Article 8 and Article 9. Article 8(1) sets forth the right to presence at trial; Article 8(2) sets out circumstances when it can be permissible to try in absence; Article 8(4) recognises that it is open to a state to proceed in other circumstances, if there is a suitable remedy available (under Article 9). In full:

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.

92. The case-law discussed below also relies significantly on recitals (35) (which draws the link to the ECtHR 'waiver' principle) (36) (which clarifies what it is to inform a person of the trial and the consequences of not appearing) and (38) (which places a focus on the diligence of the state in order to inform the person, and the person's own diligence):

(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) […] 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.

[…]

(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..

93. Article 9 then sets forth the right to a new trial remedy, which (as clarified in case-law discussed infra) must be available to those convicted in absence where Article 8(2) conditions are not satisfied, or where the option in Article 8(4) has been exercised:

Right to a new trial

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.

Right to presence

94. The Directive allows but does not require Member States to provide for trials in absence, and it does not therefore govern national law enabling the state

to *require* attendance at trial by coercive measures, removing the option of waiver. In other words, pre-trial detention is not (yet) covered by EU law. See Case C68/26 (PPU) [Kilyanov] (2026):

27. […] the conditions under which a person who is the subject of criminal prosecution may be kept in detention before and during his or her trial are governed solely by national law and not by Article 8(1) and (2) of [the Directive]

[…]

64. […] national legislation […] which […] allows a person who is the subject of criminal prosecution to be kept in detention in order to guarantee that person's appearance at trial, falls outside the scope of the Charter.

Article 8(2)(a)/(b) conditions (waiver)

Article 8(2) cover scenarios of unequivocal waiver of presence

95. The CJEU has stated that Article 8(2) conditions, as clarified by recital (36), essentially target scenarios when the person can be said to have waived their right to presence at trial. See Case C569/20 [IR] (2022) §§34-35:

34. […] the power given to the Member States by Article 8(2) and (3) of Directive 2016/343 to conduct a trial *in absentia* when the conditions laid down in Article 8(2) are met and to enforce the decision without providing for the right to a new trial is based on the premiss that, in the situation envisaged in Article 8(2), the person concerned, having been duly informed, has voluntarily and unequivocally foregone exercise of the right to be present at the trial.

35. That is borne out by recital 35 of Directive 2016/343, which states that the person concerned may, expressly or tacitly, but unequivocally, waive the right to be present at the trial. That recital […] makes it clear that, whilst it is true that the right to be present at the trial is not absolute, the possibility of conducting a trial in absentia without there being any need to organise subsequently a new trial at the request of the person concerned remains nevertheless limited to situations in which that person has, of his or her own free will, unequivocally refrained from being present at his or her trial.

96. Thus Article 8(2) covers scenarios where they have '*voluntarily and foregone exercise of*' the right to be present at trial, which is clearly similar to the ECHR waiver concept.

97. The IR judgment confirms that Article 8(2)(a)/(b) two alternative conditions with a common element. There is first a common requirement for the person to be informed of the trial. In addition, the person must either (a) have been warned of the consequences of non-appearance or (b) have been represented by a mandated lawyer. As is immediately apparent, these

conditions relate closely to the ECtHR case-law conditions for a valid waiver.

In all cases: information as to the trial

98. Both Article 8(2)(a) and 8(2)(b) require that the person be '*informed, in due time, of the trial*' / '*informed of the trial*' respectively (the '**trial information condition**') The case-law elaborates upon what this means.

99. See, initially, Case C569/20 [IR] (2022) §§39/

39 […] it is apparent from recital 36 of Directive 2016/343 that the intention of the EU legislature was to **regard the person concerned as having been duly informed if he or she has, in due time, been '[summoned] in person' or, 'by other means [provided] 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**.

100. Thus, the starting point is that the trial information condition is, in principle, satisfied by a person actually becoming aware of the date and place of the trial. This is, however, not the case where the person does not receive the information due to their absconding: see *infra*.

Plus (EITHER) notice as to the consequences of non-appearance

101. The first alternative condition, in Article 8(2)(a), is that the person be informed 'of the consequences of non-appearance'. In IR §40 the CJEU, referring to Directive recital (36), confirms that the consequences involved include the trial proceeding in absence:

40. It is also apparent from that recital that, according to the EU legislature, informing the person concerned of the consequences of non-appearance means, in particular, informing that person, in due time, '**that a decision might be handed down if he or she does not appear at the trial**'.

102. The CJEU has stated that the condition in Article 8(2)(a) cannot be satisfied (i.e. there cannot be said to be a waiver on that basis) if the person has not '*actually received*' of the consequences of not appearing at trial. See Case C135/25 PPU [Kachev] (2025) §40:

40. […] **if the information on the consequences of failing to appear at the trial are not actually communicated, in due time, to the person** concerned, in accordance with the detailed rules which afford **certainty that that information has been provided and actually received** by that person, **the second condition** laid down in Article 8(2)(a) of Directive 2016/343 **cannot be regarded as having been satisfied**. Thus, **the person can under no circumstances simply be deemed to have received the information, even if he or she absconded** before the stage of the procedure at which that information should normally have been communicated to him or her in accordance with the applicable national rules. **Whilst knowing that charges have been laid against him or her can reasonably allow a suspected or**

accused person to ascertain that he or she will probably be brought to trial, that knowledge alone does not enable that person to understand the consequences of failing to appear at that trial.

103. Fair Trials notes that this may be an area where EU law offers more extensive protection than the ECHR. This is because the ECtHR cases appear to answer the question whether the accused '*could reasonably have foreseen the consequences of his actions*' in the affirmative by reference to facts establishing that a person could reasonably apprehend that they would be brought to trial, without requiring specific prior notice that the trial could proceed in absence. We anticipate that ECtHR case-law will in time align with this.

Plus (OR) representation by a mandated lawyer

104. The alternative condition of Article 8(2)(b) of the Directive is that the person, duly informed of the trial, was '*represented by a mandated lawyer*' appointed by him or by the state.

105. The CJEU states clearly in Case C135/25 PPU [Kachev] / M.S.T. §41 that the lawyer (however appointed) must be acting on the instructions of the person concerned:

41. […] as regards representation by a mandated lawyer, it must be stated that, **in order for there to be a 'mandate'** within the meaning of Article 8(2)(b) of Directive 2016/343, **the person concerned must himself or herself have entrusted a lawyer**, as the case may be a court-appointed lawyer, **with the task of representing him or her at the trial *in absentia***

106. There is, clearly, a correspondence between this and the ECtHR cases which draw a distinction between a lawyer instructed by the person and one who is not so instructed.

107. Importantly, the CJEU has clarified further that mere contact at an early stage with a lawyer cannot per se be assimilated with mandating a lawyer to represent a person in absence:

61. […] representation by a lawyer demonstrates that a person tried in his or her absence voluntarily and unequivocally waived the right to present at the trial **only if that person deliberately left it to that lawyer to mount his or her defence before the trial court, which presupposes that he or she appointed the lawyer specifically to represent him or her, in his or her absence, during the trial**.

62 It follows that **contact between the person convicted in absentia and a court-appointed lawyer which occurred solely over the course of the pre-trial stage cannot be regarded as being sufficient** to show that that person

was represented, during his or her trial in absentia, 'by a mandated lawyer' within the meaning of Article 8(2)(b) of Directive 2016/343

108. Beyond the above, Fair Trials notes an important issue which has not been dealt with directly to date. As set out at §§##-## above, in ECtHR terms the fact of an instructed lawyer appearing does not answer the waiver question per se. Article 8(2) should accordingly be read as permitting trial in absence and refusal of a subsequent new trial only where the lawyer is mandated by a person who *unequivocally waives their own right to be present at trial as well*. Otherwise, a strict application of Article 8(2)(b) would lead to violations of Article 6 ECHR in patterns like X v Netherlands (2021) (in which there was an instructed lawyer, but the person had not waived her own right to attend and be heard).

Deemed information (e.g. for an absconder)

109. Of course, the CJEU case-law responds to situations where the person takes steps which suggest that they have sought to make it impossible for the information to be served upon them. In such cases, the Article 8(2) conditions are satisfied if the person was given the correct information satisfying Article 8(2) notice requirements at the preliminary stages.

110. In Case C644/23 (Stangalov) / I.R. (2025) §38, the CJEU considered a situation where the person had given an address early in proceedings, at the same time as receiving a preliminary indictment corresponding to the offence eventually tried in absence, and then departed without providing notice of the address change. The CJEU stated:

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 […]

[…]

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.

111. It is important, however, to note the further qualification set forth by the CJEU, which is that this '*deemed*' information will only operate if the person also received, at the preliminary stage, the required notice as to the consequences of non-attendance, or alternatively that they were represented at the trial by a mandated lawyer:

43. […] **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

State's obligation of reasonable efforts

112. The 'deemed' information concept is dependent on the authorities discharging an obligation of diligence ('*this 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*'). See also Case C135/25 PPU [Kachev] (2025) §52:

52. […] the service of the indictment and of a document indicating the date and place of the scheduled trial at the address which [the accused] had provided to the investigating authorities after receiving the preliminary indictment, the content of which corresponds, as regards the alleged acts and their legal classification, to that of the indictment, is such as to allow the view to be taken that that person is deemed to have been informed of that trial, once provided, however, that the competent authorities made **reasonable efforts to locate the 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 that trial (emphasis added).

Reasonable diligence: cross-border situations

113. The CJEU has added a side-note with regard to persons who are known to reside in another EU Member State. In such scenarios, the diligence expected of the trial state requires it to use Schengen Information System

II database before going ahead to try in absence. See Case C135/25 PPU [Kachev] (2025) §56:

56. […] where, as appears to be the case in the situation at issue in the main proceedings, the competent authorities have information indicating that a person on whom they wish to serve an indictment and a document indicating the date and place of the trial has travelled to another Member State, those authorities are required, in order to be regarded as having made 'reasonable efforts' [to locate the person and summon them] to enter an alert into SIS pursuant to Article 34 of Regulation 2018/1862.

There must be a genuine waiver

114. The CJEU has recognised that even where the conditions Article 8(2) are satisfied literally, interpreted in light of general fair trial principles, Article 8 does not permit trial in absence for someone who has not had a '*genuine opportunity to attend*' – e.g. because they are prohibited from entering the territory. See Case C420/20 HN (2022) §58:

58. […] the conditions to which Article 8(2) of Directive 2016/343 subjects the exercise of the option [of] holding of a trial in the absence of the person […] are intended to limit the exercise of that option to situations in which that person has had a genuine opportunity to attend, and voluntarily and unequivocally waived that option.

59. A Member State which merely informs the person concerned, who is prohibited from entering its territory, of the holding of his or her trial, without providing […] for measures enabling that person to be authorised to enter that territory despite that prohibition, would deprive that person of any real possibility of actually exercising his or her right to be present at the trial and would thus deprive the conditions laid down in that provision of any practical effect.

60. Such a situation differs from one in which the person concerned voluntarily and unequivocally waives his or her right to be present at the trial […].

115. The above interpretation is achieved by reference to the underlying Charter rights Article 47-48, interpreted in light of ECtHR case-law referred to supra. This confirms that Article 8(2) conditions have to be approached in light of the ECtHR waiver principles.

Trial by videoconference

116. The CJEU, asked about the question of trial by videoconference, has stated simply in Case C760/22 FP (2024) §28-29:

28. […] in the light of the limited scope of the harmonisation carried out by that directive and the fact that Article 8(1) thereof does not govern the issue of whether the Member States may provide that the accused person may, at his or her express request, participate in the hearings in his or her criminal trial by videoconference, such an issue falls within the scope of national law

29. Since Article 8(1) of Directive 2016/343 does not govern that issue, that provision cannot preclude an accused person, who makes an express request to that effect, from being authorised to participate in the hearings in his or her trial by videoconference

Article 9 - Right to a new trial

Gateway proceedings: permissible but must be effective

117. The CJEU case-law establishes that Article 9 can be complied with where a Member State sets up a process whereby a court determines *whether* there will be a new trial, by reviewing whether the conditions of Article 8(2) were satisfied. See Case C-400/23 VB (2025) §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.

118. Importantly, the CJEU has underlined the requirement for such proceedings to comply with the principle of equivalence and effectiveness. See Case C-400/23 VB (2025) §§49-50:

49. […] 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) […]

119. In this connection, the CJEU has added a number of stipulations as to what the principle of effectiveness entails, namely (i) certainty of outcome with regard to the Article 8(2) conditions, (ii) clear information about the decision and as to the gateway procedure; (iii) a requirement of speediness with regard to entitlement to the new trial and to the person's detention status. See Case C-400/23 VB (2025) §§59-64:

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.

[…]

61. In order to observe the principle of effectiveness […] in the second place [national law must offer] 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.

[…]

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.

[…]

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 […] 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 […] 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 […] 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.

120. Substantively, per the CJEU the substantive task of the national court in a gateway proceeding is as set out in Case C569/20 IR §§41 et seq.:

41. Consequently, it is for the national court which is led to examine whether the conditions set out in Article 8(2) of Directive 2016/343 are met to check whether an official document, referring unequivocally to the date and place fixed for the trial and, in the absence of representation by a mandated lawyer, to the consequences of any non-appearance, has been issued for the attention of the person concerned.

42. It is, in addition, incumbent upon that court to check whether that document has been served in due time, that is to say, on a date sufficiently distant from the date set for the trial, so as to enable the person concerned, if he or she decides to take part in the trial, to prepare his or her defence effectively.

[…]

54. [the national court's task is] to examine whether [the person requesting a new trial remedy] was informed, in due time, of the trial and, if he was not represented by a mandated lawyer, of the consequences of non-appearance, and whether he waived, tacitly, but unequivocally, his right to be present at that trial.

Nature of the new trial remedy

121. To date, there is no CJEU ruling on what does and does not satisfy the

concept of a 'new trial' under Article 9. Fair Trials suggests that, in the meantime, such questions are answerable by reference to ECtHR case-law. See, in this regard, the discussion below.

The Charter: what dimension it adds

122. As noted above, the Directives fall to be considered together with the provisions of the Charter, including in particular Articles 47 and 48(2). For the purposes of this project, it is useful to review its application and legal effects; its substantive content; and how it has been relied upon to date by the CJEU with regard to trial in absence situations.

123. The Charter applies where Member States implement EU law. This essentially means when the situation is within the scope of EU legislation. Trial in the absence of an accused person is covered by Articles 8 and 9 of the Directive. The Charter will, therefore, apply together with the Directive in situations involving trial in absence and access to a new trial.

124. In accordance with Article 52(3) of the Charter, and the Explanations to the Charter, the Charter rights must be interpreted consistently with equivalent rights of the ECHR, as interpreted by the ECtHR. EU law may, however, offer more extensive protection.

125. To date, the Charter has been invoked by the CJEU to draw in broader principles of ECtHR case-law, notably with regard to 'waiver' of fair trial rights, which has ensured overall interpretation of the Directive compatibly with fair trial rights.

126. See, in this regard, Case C420/20 HN (2022): a person who is informed that they will be brought to trial and of the consequences of non-appearance, and who is represented by a mandated lawyer (and thus for whom the conditions of Article 8(2) are ostensibly satisfied) nevertheless cannot be regarded as having unequivocally waived their right to attend if they have not had a '*genuine opportunity*' to attend (not the case for a person prohibited from entering the country).

The EAW FD

127. The EAW FD, in Article 4a, sets forth conditions for the execution of convictions following a trial in absence. These provisions (of 2009) pre-date Articles 8 and 9 of the Directive (of 2016) but are closely related to it. The provisions of Article 4a(1)(a)/(b), like those of Article 8(2), essentially identify situations where the person has waived their right to be present at trial, requiring the executing state to surrender the person to serve the sentence and allowing it to refuse surrender where those conditions are not satisfied. The provisions of Article 4a(1)(c)/(d) require surrender where the person had (but waived the exercise of) or will have access to a new trial remedy (as now protected by Article 9 of the Directive).

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:

(a) in due time:

(i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;

and

(ii) was informed that a decision may be handed down if he or she does not appear for the trial;

or

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

or

(c) after being served with the decision and being expressly informed about the 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:

(i) expressly stated that he or she does not contest the decision;

or

(ii) did not request a retrial or appeal within the applicable time frame;

or

(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.

128. Strictly speaking, the case-law relating to Article 4a EAW FD relates only to the obligations of an executing judicial authority faced with a conviction in absentia. However, that case-law necessarily explores the issue of fair trial rights as applied to convictions in absence, with reference to the Charter. The case-law is thus often relevant to the Directive.

What is a 'trial' at which presence must be assured?

129. The most frequently revisited issue is precisely what hearings fall within the concept of the '*trial resulting in the decision*' in Article 4a EAW FD. This is because, in surrender proceedings, a final conviction the enforcement of which is sought via an EAW may be the result of a proceeding in several stages (first instance, appeals, cassation, potentially further proceedings combining the penalties from different instances etc.). Executing judicial authorities have what stage(s) constitute(s) the '*trial*' for Article 4a purposes. This case-law refers to the ECtHR case-law discussed supra which establishes the right to a hearing in the presence of the accused, linked to the determination (in fact and law) of the accused's innocence and the determination of the substantive sentence. It is, as such, at the very least persuasive and informative with regard to the interpretation of Article 8 of the Directive.

Full merits / full jurisdiction appeals

130. The CJEU case-law relies on the idea (discussed in ECtHR case-law reviewed supra) that if there is an appeal involving a full merits determination of guilt and innocence and of the criminal penalty, this involves a right of presence, and therefore Article 4a applies to those hearings. See Case C-270/17 PPU Tupikas (2017):

81. […] in the event that proceedings have taken place at several instances which have given rise to successive decisions, at least one of which was given in absentia, it is appropriate to understand by 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, the instance

which led to the last of those decisions, provided that the court at issue made a final ruling on the guilt of the person concerned and imposed a penalty on him, such as a custodial sentence, following an assessment, in fact and in law, of the incriminating and exculpatory evidence, including, where appropriate, the taking account of the individual situation of the person concerned.

131. This approach relies on the idea that even if a person was present at first instance, their right to be present may still infringed if there is a full merits appeal (entailing a right of presence) at which they are absent. Conversely, if the person was absent at first instance, but was present at such an appeal, no issue arises. What matters for present purposes is that the CJEU recognises that fair trial rights entail a right of presence in full merits appeals.

Sentence accumulation etc.

132. By virtue of the same principle, the CJEU requires Article 4a(1) (waiver / retrial rights) checks to be applied in respect of other hearings which form part of the determination of a criminal sentence. In Case C271/17 PPU Zdziaszek (2017), of a Polish sentence-accumulation decision, the CJEU said the following:

84. […] such a decision, although taken after one or more decisions sentencing the person concerned to one or more penalties, does not affect the finding of guilt set out in the previous decisions, that conviction therefore being final.

85. Next, such a decision modifies the quantum of the penalty or penalties imposed. […]

[…]

87. […] it is apparent from the case-law of the European Court of Human Rights that the guarantees laid down in Article 6 of the ECHR apply not only to the finding of guilt, but also to the determination of the sentence.

88. This is the case with respect to specific proceedings for the determination of an overall sentence where those proceedings are not a purely formal and arithmetic exercise but entail a margin of discretion in the determination of the level of the sentence, in particular, by taking account of the situation or personality of the person concerned, or of mitigating or aggravating circumstances [ECtHR case-law references].

[…]

90. It follows that proceedings giving rise to a judgment handing down a cumulative sentence, such as that at issue in the main proceedings, leading to a new determination of the level of custodial sentences imposed previously, must be regarded as relevant for the application of Article 4a(1) of Framework Decision 2002/584, where they entail a margin of discretion for the competent authority within the meaning of paragraph 88 of the present judgment and give rise to a decision which finally determines the sentence.

Conversion of non- to custodial sentence

133. Similarly, a decision which converts a non-custodial disposal to a different sentence of a custodial nature, on account of the breach of conditions for the former. Such determines the criminal sentence and is covered by Article 4a EAW FD. See Case C798/23 [Abbottly] (2025), it drew a distinction between a decision activating a suspended custodial sentence and proceedings which convert a non-custodial part of a sentence into a custodial one:

44. […] the decision at issue […] is not concerned with the execution or application of a custodial sentence previously imposed […] but actually constitutes a new decision imposing a custodial sentence which had not previously been handed down against SH.

45. […] The situation at issue in the main proceedings can therefore be distinguished from the revocation of suspension of a custodial sentence since, in the latter case, the custodial sentence is immediately suspended, so that the revocation of that suspension simply enables the custodial sentence previously imposed to be executed

46. That finding is borne out by the fact that […] [the law in question] does not appear to lay down a mechanism for the automatic conversion of a sentence of police supervision into a custodial sentence if the person concerned breaches the conditions governing that supervision. The courts enjoy a discretion in deciding whether, at the request of the police institution, to convert the unserved term of the additional sentence of police supervision into a custodial sentence; that conversion is not, therefore, automatic.

47. Furthermore […] the purpose of the custodial sentence which may be imposed following a breach of the conditions governing the additional sentence is to punish not the initial criminal offence which led to the imposition of the sentence of police supervision as an additional sentence, but the specific breaches of the conditions attached to that sentence. The courts must thus decide, after examining the person's situation, whether or not those breaches justify converting the measure of police supervision into a custodial sentence.

48. Consequently, a decision imposing a custodial sentence in lieu of the additional sentence of police supervision is not a decision relating to the execution or application of a custodial sentence previously imposed, but must be regarded as a decision imposing a new custodial sentence, which is different in nature from the custodial sentence initially imposed.

Activation of a suspended sentence

134. In contrast, the CJEU has so far maintained the view that a decision activating a previously suspended sentence is not a decision for which presence / waiver / retrial rights must be verified, because it is not covered by Article 6 ECHR and the associated right to presence at trial. See Case C-571/17 PPU Ardic (2017):

75. While the final judicial decision convicting the person concerned, including the decision determining the custodial sentence to be served, falls fully within Article 6 of the ECHR, it is apparent from the case-law of the European Court of Human Rights that that provision does not apply, however, to questions relating to the detailed rules for the execution or application of such a custodial sentence [ECtHR references]

76. The position is different only where, following a finding of guilt of the person concerned and having imposed a custodial sentence on him, a new judicial decision modifies either the nature or the quantum of sentence previously imposed, as is the case when a prison sentence is replaced by an expulsion measure [ECtHR references] or where the duration of the detention previously imposed is increased [ECtHR references].

77. In the light of the foregoing, it must therefore be considered that, for the purposes of Article 4a(1) of Framework Decision 2002/584, the concept of 'decision' referred to therein does not cover a decision relating to the execution or application of a custodial sentence previously imposed, except where the purpose or effect of that decision is to modify either the nature or quantum of that sentence and the authority which adopted it enjoyed some discretion in that regard.

The LU and PH principle

135. The CJEU has also, in the context of Article 4a, been called upon to consider an important issue which has not yet come up in ECtHR case-law: where a person is subject to a suspended sentence, and is then convicted in absentia for another offence, resulting in the activation of the suspended sentence. In Joined Cases C514/21 and C515/21 LU and PH (2023), the CJEU reached the ultimate conclusion that:

Article 4a(1) [EAW FD] must be interpreted as meaning that where the suspension of a custodial sentence is revoked, on account of a new criminal conviction, and a European arrest warrant, for the purpose of serving that sentence, is issued, that criminal conviction, handed down in absentia, constitutes a 'decision' within the meaning of that provision. That is not the case for the decision revoking the suspension of that sentence

136. Although this is, once again, an interpretation of Article 4a EAW FD, it is highly relevant in relation to Article 8 of the Directive. The principle – which Fair Trials strongly supports – is that a person should not suffer imprisonment by activation of a suspended sentence as a result of a new conviction in which the person was absent, without waiver. We would suggest that, under the Directive, a person who enjoys an Article 9 right to a new trial in respect of the trigger conviction, that remedy must be fully effective including immediate effects of that trigger conviction on the enforcement of the activated sentence.

The EIO Directive: videoconference

The current law

137. Although not the focus of this project, it is important to Article 24 of the EIO Directive, which provides for the issuance of an EIO for a person (which may include a suspect or accused person) to be heard by way of videoconference. In Case C325/24 Bissilli (2025) the CJEU held that this could be employed to hear a suspect or accused person *at trial* for an evidential purpose, even if this involves their *'appearance at trial'*:

61. […] Articles 3, 22 and 24 of [the EIO Directive] must be interpreted as meaning that the judicial authority of a Member State may issue an EIO for the purposes of […] the organisation, by the authorities of the [executing] Member State, of a hearing by videoconference of that person in that same capacity during his or her trial, even if the execution of that measure also involves the appearance of that person at that trial, in so far as that measure has an evidential objective and its execution does not go beyond what is necessary for the purpose of gathering evidence.

138. The above pronouncement is made in the context of Italian law, which provides for the person to be present via video-link (see §25). The judgment is not, therefore, stating that participation by video will always amount to appearance at trial akin to presence.

The proposed Remote Participation Order

139. The European Commission has recently proposed a bolt-on instrument within the EIO Directive to establish a European Remote Participation Order whereby a suspect or accused would participate in criminal hearings. It is subject to a refusal ground where execution might entail a manifest breach of, inter alia, the right to a fair trial. The proposal requires compliance with the Directive (2016/343), which would include Article 8(1) (presence).

ANNEX 1

Present at trial, absent on appeal e.g. following departure abroad	
Khattab v Belgium (2026)	• **Facts** – Applicant present at first instance hearings, convicted of a terrorism offence – Appeals – Leaves Belgium with appeal proceedings pending to travel to Syria under a false identity – Arrested in Türkiye and administratively detained there – Becomes aware of a summons for the first appeal hearing – Whilst detained, writes via the Belgian consulate, accepting he had fled but indicating his wish to attend the appeal hearing in Belgium – Lawyers appear on his behalf at the first appeal hearing in Belgium – At a later hearing, lawyer requests severance of his case from others – Appeal court refuses, and re-convicts the Applicant – Appeal court refuses opposition, finding that Applicant had placed himself in the situation he complained of and there had been no force majeure or legitimate excuse. • **No violation of Article 6(1)/(3)(c)** – Having appealed, the Applicant could reasonably expect to be informed of the appeal hearing – However, he had left for Syria without telling the authorities – Applicant had been aware of criminal proceedings against him and of the charges he was facing – Represented at the first appeal hearing – At appeal hearing, lawyers did not refer to any difficulty representing their client, despite knowing of his detention in Türkiye – National courts' reasoning was not arbitrary in rejecting his request for a new determination on the basis that he had voluntarily placed himself in the situation of which he complained.
Dridi v Germany (2018)	• **Facts** – Applicant convicted at first instance – Appeals – Requirement to appear at the appeal hearing – Applicant leaves Germany for Spain, communicating an address – Court refuses request to be dispensed from requirement to attend hearing – Revokes order for representation by original counsel – Notice of appeal served by 'public notification' (court noticeboard) because Applicant had gone abroad – Not served in Spain pursuant to mutual legal assistance arrangements – Original lawyer reinstated but learning of it only on the day – Adjournment refused – Appeal dismissed without assessment of the merits because Applicant had failed to appear – Restoration of status quo ante refused – Further appeal dismissed • **Violation of Article 6(1)/(3)(c)** – Address in Spain was known – Summons not served in Spain, nor notification of the summons being served by public notification, despite basis available in EU MLA Convention – Applicant not represented by his lawyer at the time – Lawyer only learned of hearing on the day, and adjournment refused – Overall, on the facts, service of summons by way of public notification was not sufficient to enable Applicant's attendance.

Muca v Albania (2018)	• **Facts** – Applicant present at trial (detained) at first instance – Represented by chosen lawyer – Acquitted – Thereafter, left Albania – Two other accused and prosecutor appealed – Court of appeal quashed decision and remitted the case – Applicant represented by same lawyer in absence, who appealed against remittal – On the retrial, Applicant convicted, represented in absence by same lawyer, but apparently this time appointed by the court – Further appeal in which again represented by court-appointed lawyer – Family later inform Applicant of conviction *in absentia* – Applicant applies for leave to appeal out of time – Courts reject this on the basis that he '*should have known*' of the proceedings as had been represented by a lawyer of his choosing, who was informed of the prosecution appeal against acquittal • **Violation of Article 6** – Applicant left after acquittal – '*even though his chosen lawyer continued to represent him on appeal, it cannot be inferred that the lawyer was acting on the applicant's explicit instructions*', that lawyer being appointed by the court in the retrial proceedings and another court-appointed representing him subsequently – further it '*cannot be said that the appointment of a lawyer by family members in order to make an application for review met with the applicant's approval or had his consent*' – it had '*not been shown that the applicant had sufficient knowledge of the appeal proceedings or that he had sufficient knowledge of the retrial proceedings against him*'
Arps v Croatia (2016)	• Applicant tried in summary proceedings – Convicted and sentenced to one year's imprisonment suspended – Applicant appeals, '*challenging all legal and factual aspects of the case*' e.g. as to fraudulent intent – Requested to appear at appeal session – Appeal court examined case in absence without informing Applicant or lawyer, dismissing the appeal – Constitutional complaint dismissed • **Violation of Article 6(1)/(3)(c)** – Court (referring to Zahirovic v Croatia) of the view that appeal involving a '*full assessment of an applicant's guilt or innocence*' required an applicant's presence at appeal session – Applicant had contested the charges, conviction, sentence, on factual and legal grounds – Appeal court instead deciding that the parties did not need to be present – Even though discretion existed, fairness required presence.
Hokkeling v Netherlands (2017)	• Applicant convicted and sentenced at first instance – in custody – appeals – released during appeal phase due to serving two thirds of sentence imposed – appeal proceedings adjourned – Applicant arrested and detained pre-trial in Norway for drugs offences – Applicant's lawyer requests adjournment until he can be there – Appeal court noting that (i) temporary transfer apparently impossible due to Norwegian reservation to the COE MLA Convention and (ii) no extradition possible due to there being no detention warrant in Netherlands – Appeal court balancing Applicant's interest in presence with the interest in the matter being tried – Re-convicts and imposes heavier sentence, in absentia – Supreme Court dismisses appeal – Applicant later returns and serves remainder sentence

	• **Violation of Article 6(1)/(3)(c)** – Nothing to indicate Applicant did not intend to attend the appeal hearing on the merits – Stark contrast with Medenica – Although lawyer defended in absence, sought adjournment so that the Applicant could attend – Applicant entitled to attend appeal hearing – Refusal of Court of Appeal to consider measures that would have enabled attendance the more difficult to understand since it increased his sentence from 4 years 6 months to 8 years – Arrest in the Norway was result of own behaviour and account taken of interest of victims and society in resolution – However, neither earlier attendance at trial nor active conduct of defence by counsel could compensate for absence of accused in person
Kashlev v Estonia (2016)	• Applicant heard with other witnesses at trial – acquitted – Prosecutor's challenging assessment of evidence – Court of Appeal summons Applicant and lawyer to hearing – Applicant informs court he did not wish to take part and requested that the case be examined in his absence – Appeal court assessed evidence differently, finding Applicant guilty and sentencing him to five years' imprisonment, with two months to serve the remainder suspended. • **No issue as to trial in absence** – Court considered that the Applicant had unequivocally waived his right to take part in the appeal hearing – Court not therefore required to consider whether the special features of the appeal proceedings allowed decision without direct assessment of evidence given in person by the accused.
Coniac v Romania (2015)	• Cheque fraud allegations – Investigation in absence, applicant having left country previously – First instance proceedings in absence on the basis that accused abroad – Applicant represented by court-appointed lawyer – Conviction and sentence in absence – Applicant appeals with same lawyer but now of his choosing – Applicant not returning from Italy until after appeal hearings – Appeal court finding that he had not been officially notified of charges nor heard by authorities or trial court, but it was his fault having left the country and the authorities had informed his wife of the criminal complaint – Applicant appealing to High Court of Cassation, attending hearings but not heard – High Court finding that he had left the country to avoid the investigation and trial against him • **Violation of Article 6(1)** – Question whether he was notified of criminal proceedings – left country before criminal complaint lodged and investigation initiated – Question whether authorities acted diligently and made efforts to notify him – Police attending residence address but not delivering any summons; unclear if wife passed on information (they were divorced around the same time) – Court not convinced that Applicant had knowledge of the trial at the beginning of proceedings – Appears that became aware later, since he appealed – Court ultimately '*not been shown […] that the applicant had a degree of knowledge of the investigation that had been opened or the specific charges brought against him sufficient to justify the conclusion that he had waived his right to participate […] or had attempted to evade justice*' (§55)

	• High Court had jurisdiction to redetermine facts and deliver fresh judgment on the merits – Matters decided were of a factual nature which would have justified a fresh examination of the evidence – Did not avail itself of that possibility – The more problematic because it carried out assessment of subjective element of crime (intention) – Event though neither Applicant nor lawyer requested that he be heard as a witness, absence before investigative authorities and the lower courts was a '*sufficiently strong reason to justify a fresh examination of the evidence*' – Positive obligations – Mere fact of allowing Applicant to make a statement was not sufficient, referring to Constantinescu.
Aliykov v Bulgaria (2009)	• **Facts** – Applicant arrested whilst driving with alcohol in his blood – Applicant placed under investigation for driving under the influence of alcohol and driving during whilst suspended – Required to pay a caution – Authorised to go to Türkiye – Suspension case separated out and returned to investigator, this order not being sent to Applicant – Drink driving case goes to court, court approving an agreement involving a fine – Applicant making several trips to Türkiye and then moving there – Investigator in suspension case then seeking to summon him at original address – Later, indicted in absence and obligation to stay at residence imposed but not communicated – Court notes trips to Türkiye and proceeds in absence – Ex officio lawyer accepting offending and not appealing against conviction – Reopening refused, had been aware of prosecution and had not notified changes of address • **Violation of Article 6(1)** – Whether the applicant had 'sufficient knowledge' ('*connaissance suffisante des poursuites et du procès*') for his conduct to be regarded as a waiver or an attempt to evade justice – Applicant undoubtedly had knowledge of the initiation of proceedings against him, being placed under investigation – Documents regarding the suspension case appearing in the file for the drink driving case, so could in theory have appreciated former had not been abandoned – However, Applicant not legally trained and could not appreciate development of the case – Measure seeking to ensure presence at trial ceased being in effect after conclusion of drink driving case – New measure in the suspension case not notified to him – At the point Applicant left for Türkiye, not in force – Notably, Applicant had notified new address in Türkiye to Bulgarian consulate and appealed against the refusal to issue him a passport, thus it does not appear that he sought to evade trial by avoiding revealing his address – Reopening refused on the basis that the Applicant had knowledge of trial and absence was due to his own blameworthy conduct
Medenica v Switzerland (2001)	• **Facts** – Applicant accused and questioned several times by investigating judge – Arrested and charged – Released on bail on payment of security – Applicant travels to US – Swiss court indicts, set aside on Applicant's motion – Fresh order committing to trial, appeals against this dismissed – At a preliminary hearing, President discusses case with Pros and Applicant's lawyers in Geneva – Court gives notice that trial will begin the following year – Applicant attends questioning and confirms he will return for trial – Thereafter, one of Applicant's patients applies to US court for order requiring treatment by the Applicant and prohibiting him from leaving the US – US court grants interim order – At

	hearing, Applicant states no other doctor able to look after his patients and makes allegations as to lack of access to evidence and the death penalty in Switzerland – US court makes order prohibiting exit and requiring passport surrender – Swiss lawyers seeking adjournment of Geneva trial – Swiss court declines to adjourn, noting that US court had relied on unscientific patient evidence, influential figures had supported Applicant, who had not appealed against the decision restricting his movement, and he had known of trial date and not secured a replacement for his duties – Applicant represented in absence – Applicant thereafter challenges US court order – Geneva court convicts in absence and sentences to 4 years' imprisonment – Applicant challenges conviction in absentia before Cantonal Court of Justice, alleging good cause for his absence – Court of Justice dismisses appeal, finding that the criterion was whether the reason preventing appearance is beyond the control of the accused, and that Applicant had been at serious knowledge for not transmitting his knowledge to others despite knowing he would face trial in Switzerland, and was fault for delaying his appeal against US decision until after Swiss trial had begun such that he could not reverse course he set in motion – US court subsequently ordering release of passport – Swiss Court of Cassation dismisses appeal, arguing that he had brought about the situation preventing him from leaving his patients by his own conduct, and evidencd of bad faith / doubting his wish to return to Switzerland since he had misled the US court – Federal Court also dismissing appeal: Applicant had misled US court to obtain judgment making it impossible for him to attend • **No violation of Article 6(1)/(3)(c)** – Applicant was not penalised for his absence by being denied legal representation as in some earlier cases: represented by lawyers of own choosing – Nothing to suggest that the Swiss courts acted arbitrarily or relied on manifestly erroneous premisses – Court likewise considered that '*the applicant had largely contributed to bringing about a situation that prevented him from appearing*', referring to national court findings about misleading statements leading to the US decision – Conviction in absentia and refusal to grant retrial did not amount to a disproportionate penalty
Accused abroad throughout	
Rusu v Romania (2025)	• **Facts** – Applicant convicted at first instance in his absence, although summonses sent to known addresses in Romania – Soon after conviction, Applicant appeals – Requests that documents be served in UK and for time to instruct counsel – Neither summonses for the hearing nor mutual legal assistance requests to the UK succeeded in establishing receipt of the summons – Appeal court orders summons be sent by email – Applicant requests by email and fax that next appeal hearing be adjourned due to travel restrictions preventing his attendance – Court refuses to adjourn further, upholds conviction – Request for annulment rejected on the basis that Applicant lawfully summoned. • **No violation of Article 6(1)/(3)(c)** – Applicant was '*aware of the criminal proceedings and of the charges brought against him*', having been interviewed three times; had apparently been aware of the first-instance trial, since he

	appealed – No suggestion that he waived his right to appear at the appeal hearing, since he had requested adjournment of it – However, whether his conduct was '*dilatory to the point of aiming at escaping justice*', having due regard to the national courts' reasoning – Romanian courts' approach was not unduly formalistic, since he had knowledge of the dates of hearings, having made requests in relation to them – National courts had informed him of the hearings allowing him to participate – As to refusal to the final appeal hearing on the basis of Covid-19 travel, Applicant's prior conduct suggested a lack of '*genuine willingness on his part to actively participate in the proceedings*'; he had not shown '*any interest in participating in those proceedings by submitting written observations or proposing or giving evidence*'; his '*sudden alleged wish to appear in person* […] *occurred at the very moment when, because of the Covid-19 pandemic* […] [it] *became impossible*' – National courts had been reasonable in considering final request dilatory – Failure to offer the Applicant participation by video-link could not be held against national court given the circumstances of the case – Applicant had exercised remedies even if not present – Ultimately, conduct of the appeal in absentia and refusal to annul the decision '*did not amount to a disproportionate measure*' and that '*the overall fairness of the criminal proceedings* […] *was ensured*'.
Stoyanov-Kobuladze v Bulgaria (2014)	• Applicant leaves for Georgia in 1995 – After that, criminal proceedings instituted for large-scale fraud – Declared wanted – Unclear what measures taken to ascertain his whereabouts – Indicted – Proceedings in absence – Represented by court-appointed counsel – Sentenced to 10 years' imprisonment for pyramid scheme in May 2004 – Arrested at border in October 2004 and detained in prison – Requests reopening to Supreme Court – Refused, file destroyed – Request to prosecutor refused, file destroyed and grounds not satisfied – Supreme Court later refuses reopening again due to file destruction and legal certainty requirements, and in any case Applicant had moved to Georgia, married and taken his wife's name and must have known he was being tried because this type of trial was covered extensively in the media and had become notorious • **Violation of Article 6(1)** – Reopening refused on two grounds – First, destruction of the file: not a good reason – Second, alleged waiver of presence – '*first issue is whether applicant was officially notified of the criminal proceedings against him*': not disputed that Applicant had '*left the country before the start of the proceedings against him and that he did not receive any official notification of the criminal investigation opened against him or about the date of his trial*'*;* and no information that '*authorities acted diligently and made sufficient and adequate efforts to track the applicant and establish his whereabouts in order to notify him*' – then [second issue] '*in the absence of an official notification*', whether facts provide '*unequivocal indication that an accused is aware of the existence of criminal proceedings against him and of the nature and the cause of the accusation*': mere absence from usual place of residence or being untraceable does not equate to knowledge (Sejdovic); further factors namely the fact of moving to Georgia and taking wife's name or the fact of trials regarding Pyramid schemes being covered by the media in

	Bulgaria do not sufficiently establish knowledge of the proceedings against him – overall no '*sufficient knowledge*' of '*the investigation opened and the specific charges brought against him*' which could justify conclusion that he had waived his right to participate
Shkalla v Albania (2011)	• **Violation of Article 6(1)** – Not disputed that Applicant had not received official information on the charges or the date of his trial – Whether, in absence of notification, Applicant may be regarded as 'sufficiently aware of his prosecution and trial' to the effect that he might be considered to have waived his right to appear – Applicant disputed authenticity of his signature in the appeal documents – Unable to contest that issue in the constitutional complaint to the effect that he did not have knowledge – Fact of defence by father-appointed lawyer did not mean that he had prior effective knowledge – Mere absence from home not sufficient to consider that he was aware of proceedings and escaped – Applicant had surrendered – Lack of remedy for trial in absence
Cases involving extradition	
Jaupi v Albania (2024)	• The Applicant was in detention in Spain when the trial took place in Albania in 2003 (§30), having been arrested upon an extradition request from Albania. He was represented by a lawyer appointed by his family. That lawyer sought adjournment which was refused. The Applicant was released in Spain 2004. The Spanish courts first allowed then eventually refused his extradition. The Applicant was then arrested in Italy in 2008 and extradited. • Upon extradition, the Applicant applied for leave to appeal out of time. This was first rejected on the basis that he had been represented by the family-appointed lawyer (who could have appealed) and because he was presumed to be aware of the proceedings, the burden being on him to show otherwise. The Supreme Court overturned that, finding that he could not be established to have been aware of the proceedings, placing the burden on the state. • In the appeal, the facts were contested. A request for the original evidence to be re-heard was rejected. The Applicant was in (pre-trial) detention (in Albania) at this point and offered the opportunity of attending. He decided not to attend and was represented by the same lawyer as originally appointed by his family. The appeal court upheld the original conviction and refused to reopen the evidence. Further challenges did not succeed, essentially on the basis that he had been duly informed and waived his right to presence and his interests had been represented bv a lawyer. • The Court noted that the Applicant '*was in detention in Spain and therefore could not be present at the trial in Albania*', but it considered **(!)** that the Applicant had been aware of the proceedings, being informed of them and adducing the judgment in the Spanish legal proceedings, but '*chose not to return there*'. [Comment – Fair Trials finds this reasoning very troubling].

	• The Court further noted that the Applicant was granted leave to appeal out of time after extradition. He '*had the right to be present at the* [appeal] *hearing which would have enabled him to intervene in the hearing and, in particular, to present the domestic courts with his own version of the events leading to the charges against him and to request the admission of new evidence, but he did not avail himself of any of these opportunities*'. He had also been assisted by a lawyer and should have foreseen what the consequences of his conduct would be. §106.
Hysi v Albania (2018)	• Applicant sentenced to 17 years' imprisonment – Appeal dismissed – Applicant apparently represented by a lawyer appointed by his family – Applicant extradited from Greece – Applicant granted leave to appeal out of time – Appeal court requalifying charges based on original evidence, but upholding judgment: res judicata – Supreme Court finding that appeal out of time should not have been allowed – Constitutional Court dismissing further appeal • **Violation of Article 6(1)** – Not established that Applicant had knowledge of legal proceedings against him – Not shown that he had authorised expressly or implicitly the family members' actions – Although appeal out of time initially allowed, no fresh determination of the merits as original judgment regarded as res judicata
Malo v Albania (2018)	• Applicant convicted of serious offences and sentenced to 25 years' imprisonment *in absentia* – Applicant represented by court-appointed lawyer – On appeal by other defendants, first instance decision upheld – Upon extradition to Albania five year later, court accepts application for leave to appeal out of time: Applicant in Italy and not aware of conviction • Upon the out-of-time appeal – Appeal rejected: Applicant '*had not put forward new evidence to change the outcome of* [the trial] *proceedings*', appeal directed at evidence already examined – Applicant appealed to Supreme Court on basis that he had requested investigations e.g. identity parade which were refused – Further appeals dismissed • **Violation of Article 6(1)** – No dispute that the Applicant had not had sufficient knowledge of the proceedings against him – Informed of conviction only after extradition to Albania – Whether appeal proceedings constituted fresh legal and factual determination of the merits – National court dismissed appeal on basis no new evidence advanced to change the outcome, whilst also not giving any reasons for not conducting the fresh investigative actions requested.
Topi v Albania (2018)	• Applicant charged in absentia and untraceable during the investigation – Represented by officially appointed lawyer during investigation – Father appointed a lawyer to represent the Applicant before the domestic courts – Trial in absentia with lawyer appointed by family – Convicted and sentenced to 15 years' imprisonment – family-appointed lawyer appealed – appeal not admissible but conviction confirmed on merits

	• Applicant extradited form the Czech Republic – Constitutional Court application – (pre-2017 reforms) rejected as being out of time, on the basis that he '*had been appointed by a court-appointed lawyer or a family-appointed lawyer and that accordingly he had had the opportunity to become acquainted with the proceedings brought against him*' • **Violation of Article 6(1)** – not shown that the Applicant had had '*sufficient knowledge*' of the proceedings – nor was it shown that he had '*explicitly or implicitly authorised his family members' appeal*' or waived his right to appear – no mechanism for him to request a retrial at the time, so no fresh determination of the merits.
Haxhia v Albania (2013)	• Applicant declared a fugitive, not being located – Indicted in absence – Trial conducted in absentia, represented by a lawyer appointed by his family – Conviction in absentia, 20 year sentence – Family-appointed lawyer appeals, appeals rejected by Court of Appeal and Supreme Court – Applicant arrested by Turkish authorities on the basis of Albanian extradition request • **Violation of Article 6** – Not been shown that applicant had '*sufficient knowledge*' of the legal proceedings against him – In fact, informed only upon arrest by the Turkish authorities – Not shown that he expressly or implicitly authorised his family members' actions on appeal or waived his right to appear by evading justice – No possibility under the domestic law as it stood to request a retrial, thus no opportunity for a fresh determination of the charge
	•
Domestic scenarios	
Yeğer v Turkey (2022)	• In proceedings relating to an unfunded cheque, the trial court was unable to notify the Applicant in person. [It appears in circa July 2008,] the court attempted to serve a writ of summons at a business address linked to the Applicant (returned: not at address). It then attempted to serve it at a residential address identified by police. The postmen observed that the Applicant had been at work. It was then served on the district chief (muhtar) for the neighbourhood. • The trial court proceeded in absence, convicted and imposed a fine in 2009. This was later converted to a period of imprisonment in default of payment. Police enquiries in 2011 established that he had left the residential address three years prior, around the time of the original service efforts. The court's decision was served on the residential address and a notice posted on the building. • The Applicant was later arrested and put in prison. He asked the court to hold a retrial and to hear him, stating that he had been abroad between July 2008 and July 2009 i.e. around the time of the original service efforts. The court refused, finding that there had been service in accordance with domestic law.

	• The Court noted that it was undisputed that there had not been personal service. It considered the Government's argument that the Applicant had knowingly absconded and thus waived his right to presence because he had moved out of his residential address, not informed the authorities and gone abroad for a significant period. The Court rejected these did not correspond to '*objective factors "* (§33). It was not clear that the applicant had moved out due to the same debts as were at issue in the criminal case; it was too great a leap to attach to his failure to notify a change of address that the applicant was aware of the proceedings or intended to evade justice; and similarly going abroad did not per se provide an unequivocal indication. He was not shown to have had effective knowledge of the proceedings and was then denied a fresh determination of the charge, contrary to Article 6. §§33-36.
X v Netherlands (2021)	• The Applicant had a history of shoplifting said to be compulsive and related to mental illness. She accepted the two thefts at issue. After an initial adjournment, the court tried the theft. Defence was conducted by counsel in the absence of the accused, with her instructions. The court imposed a suspended sentence on condition of seeking treatment. It also ordered the execution of two previously suspended sentences, one a fine the other a prison sentence. • The Applicant appealed. She was summoned to a hearing on 4 June 2015. Counsel informed the court that she would be out of the country on that date. The hearing was re-listed for 20 July 2015, in consultation with counsel. There was correspondence between counsel and the court staff / judge in which it emerged that the Applicant was not available on 20 July 2015 and that she wished to attend to explain the reasons for her reoffending. Counsel requested adjournment stating that he had made a professional mistake and that she wished to be present at the hearing. • The court refused to adjourn, noting that the case had been adjourned already. On the appeal, the court quashed the original sentence and sentenced her unconditionally to two weeks' imprisonment and execution of the two earlier sentences. The court of cassation refused a cassation appeal referring to Article 6. • The Court found that the Applicant had neither waived her right to appeal nor sought to evade justice and that counsel had made a professional mistake in relation to her availability. The Court reviewed the national court's weighing in the interest in trial and the Applicant's interest in adjournment, finding the reasons insufficient. It found the interest in proceeding to trial modest given the short delay involved. It noted that whilst the Applicant accepted the offence, the '*Court of Appeal was also called upon to deliberate on […] the punishment […] It was thus for the appellate court to establish her guilt and determine the sentence […] which it could reduce or increase and which sentence could involve imprisonment*' (§53). It noted that '*the applicant wished to address that court in person in order to explain the causes of her reoffending and also her willingness to prevent further occurrences of shoplifting and to elaborate on the aspects that had helped her not to reoffend since her last arrest*' (§54). It found that '*the interests cited by the*

	Court of Appeal […] *were not sufficient to outweigh the applicant's right to attend the hearing of her appeal in person*' (§55). [Comment – We do not see the basis for this weighing approach in Grand Chamber cases]
M.T.B. v Turkey (2018)	• Applicant indicted for issuing an uncovered cheque on behalf of a company – Summons sent to company address – Returned: Applicant had left that address – Enquiries made as to the Applicant's new address – Court authorising detention in absentia – In other proceedings at the time, notices sent to Applicant at a new address – Trial court again serving at old address written on the company cheque – Applicant tried (as an individual) in absence – Convicted and sentenced to a fine – Judgment served on the same address as the summons • Applicant subsequently arrested – Appeal lodged: not had notice of proceedings – Defence advanced as to the background to the cheque in question – Appeal before trial court dismissed as out of time – Further appeal dismissed despite Prosecutor's agreement with appeal – Cassation refused – Applicant subsequently very briefly imprisoned for failure to pay the fine imposed • **Violation of Article 6(1)** – First question whether waiver, express or through conduct e.g. attempting to evade justice – Question '*whether the applicant had knowledge of the criminal proceedings against him, without which no valid waiver can take place*' – No evidence that Applicant received summons / judgment – As to tacit waiver, no evidence that Applicant sufficiently aware, Government instead focusing on efforts to comply with domestic law on service – Efforts focused on the (company) address on the cheque, despite Applicant being tried as an individual – Other court able to serve it at residential address in other proceedings – Overall, no knowledge or waiver. • As to legal remedies – National courts focused on service and failed to examine whether Applicant in fact notified or had unequivocally waived his right to appear and defend himself – Thus fresh determination refused despite absence of any indication he had waived right to be present at trial.
Mihelj v Slovenia (2015)	• Applicant heard by investigating judge, denying the charges – Absent at subsequent acts, with no record of being summoned – Applicant served with indictment alleging aggravated fraud and contesting it – Pre-trial panel requalifying charges as attempted fraud – Applicant served with decision and appealing it, dismissed – Applicant failed to collect two summonses – Hearing rescheduled – Summons to hearing served via court courier service at home and work address – Applicant sends letter objecting to the hearing – Court proceeding in absence: Applicant had not provided justification for his absence although duly summoned and had been questioned previously – Prosecutor modifies indictment, reclassifying offence to actual fraud and adding factual details including specific alleged lies – Court convicts in absence – Applicant appeals – Appeal court finding no violation of defence rights – Supreme Court finding no violation of defence rights – Constitutional complaint dismissed: offence had been the same.

	• **No violation of Article 6(1)(a)/(b)/(c)/(d)** – Court unable to accept Applicant's submission that he would not have known what the summons related to – Applicant did not provide a valid reason for his absence requiring a response – Absent of his own free will, thus conviction in absence and refusal to set aside and reopen not a denial of justice – No issue in lack of ability to cross-examine witnesses: reasonably foreseeable that he would not be able to do so if not attending the trial – Although reclassification not foreseeable, factual underpinnings essentially unchanged, and no aggravation – In any case, conviction decision served, legal and factual aspects challengeable on appeal with option to attend session to explain views, not done
Petrina v Croatia (2014)	• **Facts** – §§5-31 – Trial listed – On day of hearing, Applicant informs that he is unable to appear owing to a medical condition – Lawyer informs court that she no longer represents the Applicant – Trial panel orders Applicant summoned by letter explaining that he should appoint another lawyer or the hearing would be held in the absence of a lawyer – Applicant informs court he is unable to appear for trial for a certain period of time as required to undergo medical treatment, asking that proceedings be stayed and supplying documentation – Medical expert confirming arrhythmia – Expert later confirming he could still not attend – Later report of three experts confirming not able to take part and that a strong triggering factor such as stress could lead to a heart attack with a possibly fatal outcome – Further report stating that attendance would be possible '*in the presence of* [a] *doctor, namely a medical team equipped for prompt intervention in the event of a heart attack*' – Doctor summoned to next hearing, without appearing – Request for adjournment of next hearing dismissed as abusive on the basis that medical back-up had been secured and that the Applicant attempting to delay proceedings – Court convicts in absence – Appeals dismissed • **Violation of Article 6(1)/(3)(c)** – §§52-56 – Court agreeing that flagrant disregard for elementary standards should not be tolerated, but such flagrant disregard not present – Medical experts indicating that Applicant could only attend without endangering his life if the trial court ensured adequate medical back-up – Contracting states 'must exercise diligence in order to ensure Article 6 rights are enjoyed – Mere summoning of a physician to trial did not meet this requirement necessary for effective participation – Physician never attended – Applicant never informed that physician summoned for trial, thus his reliance on expert report stating attendance only possible with medical team present did not signify that he had waived his right to defend himself and appear before the trial court – Trial court also failing to appoint a legal aid lawyer to represent the applicant after lawyer withdrawing – Thus absence prevented him from exercising both right to be present and to be effectively represented, upsetting equality of arms • As to whether the appeal court redressed the violation of the applicant's right to take part – Appeal court had full legal and factual jurisdiction but the applicant and defence lawyer were not able to take part in the hearing – Thus appeal court '*failed to cure the defects in the proceedings*' – only referral back for de novo hearing would have done so

Haralampiev v Bulgaria (2012)	• **Facts** – Summons to appear as a witness sent to domicile in village M **–** Mayor returns summons with note that Applicant absent from village, parents refusing to accept summons – Later placed under suspicion in same case – Applicant then accused in another case – Summons returned with note from mayor stating that Applicant not permanently in the village, visiting episodically, family refusing to accept summons – Applicant later questioned in the presence of a lawyer in second case – Indicted in that case – Summons purportedly accompanied by indictment purportedly served on address, but without proof of sending – Court proceeds in absence – Convicts – Later reopening request refused on the basis that Applicant had been questioned by police, thus aware of the proceedings • **Violation of Article 6(1)** – Applicant questioned as a defendant in the presence of lawyer, thus had sufficient knowledge ('*connaissance suffisante des poursuites et des accusations […] pour savoir que le dossier serait […] renvoyé […] et que lui-même serait par la suite cité à comparaitre*'), plus a security was lodged – Whether authorities did enough to inform him of the development of the procedure or if he sought to evade justice – Court asks '*si le requérant avait une connaissance exacte des accusations portées contre lui*' – No indication that accusations communicated to the place where he was apprehended for the purposes of questioning – Authorities merely relied upon a search notice being issued – insufficient efforts and no indication applicant had sought to make service impossible or waived his right to attend – However, reopening conditioned upon the absence of knowledge of the proceedings resulting in conviction in absence – National courts finding that his being questioned in the investigation was a sufficient reason to proceed in absence – Thus applicant refused reopening without authorities having demonstrated that he had unequivocally waived his right to attend – No other fresh determination remedy available
Stoyanov v Bulgaria (2012)	• **Facts** – Applicant alleged to have shot girlfriend and then taken flight – Applicant not located – Indicted in absence, represented by state-appointed lawyer – Summoned at permanent address, returned undelivered, father stating had left address – Established not in prison and not left country – Convicted in absence, sentenced – No appeal – Later request to reopen – Refused, court stating he had left scene and not informed authorities of his address, thus not aware by own fault and had given up procedural rights of own free will. • **Violation of Article 6 –** Fact of disappearing not among circumstances envisaged Seijdovic where absent formal notification facts provide unequivocal indication of awareness of proceedings and charges: '*Such circumstances are to be distinguished from the outright fact of fleeing from the crime scene in fear of prosecution or a general expectation that criminal proceedings might be instituted, which are not sufficient to justify the assumption that the accused was aware of the proceedings for the determination of the charges against him and has waived his right to appear in court. An assumption of that kind would risk undermining the very concept of the right to a public hearing within the meaning of Article 6 § 1 of the Convention as well as the notion of an effective defence guaranteed under Article 6 § 3*

	of the Convention, which includes the right of the accused to be informed promptly of the nature and cause of the charges against him, to have adequate time and facilities for the preparation of the defence and to examine or have examined witnesses against him' – Mere absence from home is not sufficient per se, see Sejdovic – Not been shown that he had '*sufficient knowledge of the investigation opened* […] *and the concrete charges brought against him*' – Since reopening refused, denial of justice
Boroanca v Romania (2010)	• **Facts** – Applicant questioned by police whilst at liberty and provides an address for correspondence – Court summons him at that address, returned: address changed – Summons issued to two other places including the town hall – At the hearing, Applicant not present, represented by ex officio lawyer – Convicted of influence peddling – Applicant appeals alleging not properly summoned – On appeal, present and represented by ex officio lawyer – Appeal court dismissing appeal on the basis that non-summoning was his fault since he gave an address and did not update authorities – In further appeal, applicant present and represented by chosen lawyer – High Court refuses appeal • **No violation of Article 6(1) –** Applicant was appraised of development of proceedings and was summoned at the address provided by him [note – not considered decisive per se] – Even if absent at first instance, present on appeal and represented by ex officio lawyer – Applicant had possibility ask for a fresh determination with new evidence which he could present – However, did not exercise that option and only criticised unfairness
Popovitsi v Greece (2010)	• **Facts** – Applicant recorded as being of 'unknow domicile' and summons served at Athens town hall **–** Court then proceeds in absence on the basis that she had been regularly summoned – Imposes six months' imprisonment – Applicant returns to Athens and, upon renewing residence, learns of conviction – Residence documents bearing addresses in Athens – Court refusing to reopen on the basis that her address was unknown at the time in question • **Violation of Article 6(1)/(3) –** Not disputed that the Applicant had no knowledge of the criminal proceedings: nothing undermining her account that she learned of them only upon renewing her residence – Annulment sought on the basis that Applicant lived at a different address in Athens at the time and thus wrongly summoned as a person of unknown address – Court '*does not see on what basis citizens, when they have no knowledge of charges against them, would be required to inform prosecution of their own motion every time they change address*' '*la Cour n'aperçoit pas non plus à quel titre les citoyens, lorsqu'ils n'ont aucune connaissance d'accusations portées à leur encontre, seraient tenus d'informer de leur propre chef le parquet à chaque changement d'adresse.*' – In confining itself to the reasoning that had led to the decision to serve in absence, national court deprived the Applicant of a possibility to be present and defend herself in a new trial.

Kounov v Bulgaria (2006)	• **Facts** – Applicant taken to police station in relation to a series of thefts – Written testimony in relation to one incident – Leaves (Applicant saying with leave, police saying in flight) – Investigation then opened in relation to other matters (case 586/99) – Convicted in absence of the one incident and sentenced to 4 years' imprisonment (case 777/99) – Other matters also pursued and convicted in absence with 5 year sentence (case 586/99) – Supreme Court allows reopening in respect of 586/99, as even if he had fled from the police station he had not been acquainted with the specific charges – Supreme Court refuses reopening in 777/99 • **Violation of Article 6(1)** – Accusations framed in his absence – Question whether he had sufficient knowledge ('*connaissance suffisante des poursuites à son encontre pour lui permettre de décider de renoncer à son droit de comparaître*') – Not established: '*Ayant été interrogé sur les faits par les policiers, le requérant pouvait seulement supposer que des poursuites allaient être engagées mais ne pouvait en aucun cas avoir une connaissance précise des charges qui allaient être retenues*'
Appeal contexts	
Kozlitin v Russia (2013)	• **Violation of Article 6(1)/(3)(c) –** §§58-73 – Main issue whether holding the appeal hearing in the Applicant's absence – Whether absence justifiable by '*special features*' of the appeal proceedings – Appeal court had jurisdiction to deal with questions of law and fact pertaining to criminal liability and sentencing, with option to dismiss, quash and terminate, quash and remit, or amend judgment – On the facts, appeal court called on to make full assessment of guilt or innocence – Proceedings of utmost importance to applicant who was sentenced to 20 years' imprisonment – Court finds that the national court could not properly determine issues without a direct assessment of the evidence given by the applicant in person, nor could it ensure equality of arms without enabling him to reply to prosecutor observations • As to waiver, Applicant had requested to participate at the hearing, rejected because not in the correct form – Had not therefore waived his right to attend – Video-link had been a possibility and would have complied with Article 6 (referring to Sakhnovskiy)
Borisov v Russia (2012)	• **No violation of Article 6(1)/(3)(c)** – Appeal court had jurisdiction to determine factual and legal issues pertaining to both criminal liability and sentencing, empowered to examine additional materials, full remedial jurisdiction – Applicant's right to participate (directly or by video) conditional on making a request to that effect – Not incompatible with Convention provided clearly established in law – Applicant aware of requirement to request leave to appear – Applicant, assisted by a professional lawyer of his choosing, did not reiterate a previous request to attend – Thus, through conduct, waived right to appear – No indication that adversarial nature of hearing compromised

Nefedov v Russia (2012)	• **Facts** – §§5-16 – Applicant arrested for abuse of authority – Applicant convicted at trial – Applicant alleges plant of drugs by police – Judgment served on Applicant and his lawyer – Applicant and lawyer appeal, alleging flawed assessment of facts, disregarding of own evidence as to involvement in covert capacity – Appeal does not ask Supreme Court to ensure presence at hearing – Notice of hearing served on prison, summons allegedly sent to lawyer – Supreme Court examines appeal in absence, hears prosecutor, examines appeal statements, upholds judgment • **Violation of Article 6(1)/6(3) –** Supreme Court had power to fully review the case and to consider additional arguments not considered at trial – Applicant contested conviction on factual and legal grounds – Appeal court thus called upon to make a '*full assessment of guilt or innocence*' – Prosecutor present at appeal hearing – What was at stake for the applicant, sentenced to four and a half years' imprisonment – Supreme Court could not properly determine the issues without a direct assessment of the evidence given by the applicant – Nor could it ensure equality of arms without giving applicant opportunity to reply to prosecutor – Applicant's failure to ask to attend did not constitute an explicit and unequivocal waiver – Serious doubts that Applicant received clear and comprehensible instructions from the trial court as to need to request attendance – No evidence that lawyer summoned via bar association and doubt as to whether notification sent to the detention facility had reached the applicant.
Cani v Albania (2012)	• **Facts** – Applicant represented by court-appointed lawyers – Appoints own lawyer under mandate accepting offence, authorising lawyer to request summary procedure and for case to proceed in his absence – convicted of several charges and sentenced by District Court to a cumulative sentence of life imprisonment, commuted to 25 years' imprisonment as the summary procedure had been adopted – Appeal challenging penalty imposed, alleging failure to take into account mitigating features – Applicant summoned to hearing via prison and indicates he will attend – Later summonses not delivered via prison, prison rejecting that they were answerable to the court – Lawyer invites court to proceed on the basis of his power of attorney – Appeal court proceeds in absence – Imposes cumulative term of 25 years, reduced by one third due to mitigating factors on account of parity between co-defendants – Prosecutor's appeal to Supreme Court – Supreme Court quashes appeal judgment and reinstates District Court judgment – Applicant represented by lawyer but not present • **Violation of Article 6(1)** – §§55-63 – Jurisdiction of appeal courts extends to facts and law – Appeal court made findings relevant to guilt in its judgment – Applicant had repeated wish to attend – In the particular circumstances, lawyer's request to continue did not amount to waiver – No right to appear before the Supreme Court in national law or the Convention – Applicant at no stage of the appeal proceedings had opportunity to argue that there were mitigating factors such as remorse, lack of prior convictions, or family's hardship which might have militated in favour of a lower sentence than the one handed down by the District Court

Jelcovas v Lithuania (2011)	• **Facts –** §§20-28 – Applicant participates in and represented by officially appointed lawyer at trial for murder, convicted and sentenced – Applicant wished to represent himself in the appeal and rejecting services of officially appointed lawyer in the appeal proceedings – Appeal court upholds conviction – Applicant lodges appeal on points of law – Applicant refuses assistance of lawyer before Supreme Court but explicitly requests to be present at the hearing – Applicant not present before Supreme Court; prosecutor present and heard – Supreme Court dismisses appeal in Applicant's absence – Supreme Court, in response to complaint, stating that production before Supreme Court only in cases where a heavier charge or penalty was being requested • **Violation of Article 6 (infringement of equality of arms and adversarial proceedings)** – Court reminds itself that necessity of presence at appeal hearings turns on '*special features of the proceedings involved and the manner in which the defence's interests are presented and protected before the appellate court, particularly in the light of the issues to be decided and their importance for the applicant*' – Applicant had been convicted of murder and sentenced to eight years' imprisonment – Taking account of what was at stake, respect for fair trial '*required that applicant be taken to the hearing at the Supreme Court, especially when the applicant had expressly requested to be present*' – Prosecutor took part in the hearing – '*Interests of justice required that the applicant be given the opportunity to comment on* [the prosecutor's observations]' – Note: in contrast, complaint as to non-appearance at the Supreme Court in another case (in which appearance not requested) dismissed as manifestly ill-founded
Faniel v Belgium (2011)	• **Facts** – Convicted in absence for family-related offence – Judgment not delivered and left at police station – Applicant collects it, and allegedly informed that he could not lodge opposition – Applicant upon being instructed to go to prison, instructs lawyer to appeal – Law not providing for notification of appeal rights upon service – Found to be constitutional in preliminary reference – Appeal courts dismissing appeal on the basis that it was lodged late, rules not creating a fair trial violation • **Violation of right of access to court contrary to 6(1) –** Court agreeing that the Applicant should have appreciated that his inertia at the point of collecting judgment would have consequences in terms of its enforcement, and that he could have consulted with a lawyer upon collecting the judgment – However, not determinative – What matters is not only the rules but '*qu'elles soient portées à la connaissance des justiciables de la manière la plus explicite possible, afin que ceux-ci puissent en faire usage*' – Particularly where a person is detained or not represented by a lawyer when they received notice of a judgment: they must be immediately be informed in official and reliable manner of the appeal avenues and timeframes for lodging – No such indication in the judgment – Subsequent circular / draft law confirming need for such notice – Thus refusal of appeal when appeal routes not notified was a denial of access to a court to challenge the judgment convicting him

Zhuk v Ukraine (2010)	• **Facts** – Applicant claims to have been assaulted by police and drugs planted during a search – Detained – Applicant appointed lawyer, who allegedly does not visit him – Applicant convicted of drug trafficking in part in reliance on evidence from the search and sentenced to six years' imprisonment – Applicant appeals, challenging lawfulness of search and use of evidence obtained in it – Appeal court reduces sentence to four years but finds the search lawful as Applicant had consented to it – Applicant appeals pro se to the Supreme Court on points of law, expressing a wish to be present at the hearing – Supreme Court panel considers case in presence of prosecutor but in absence of Applicant – Dismisses appeal, finding no grounds for cassation, nevertheless reviewing on merits • **Violation of Article 6(1)** – Examination of appeal was of considerable importance to the Applicant, who had been sentenced, was no longer represented, and whose liberty was at stake – Competence of Supreme Court was limited to questions of law – Prosecutor had advantage of being present at the in camera hearing and to make submissions to the three-judge panel, presenting charges etc. and *not* (as in some other cases) acting as an amicus – Procedural fairness required that the Applicant be given an opportunity to make submissions in reply – Court dismissed appeal without a public hearing to which Applicant would have been summoned and been able to take part – Applicant had requested that hearing be held in his presence – Proceedings did not enable Applicant to participate per equality of arms
Deliktas v Ukraine (2023)	• **Facts** –
Sentence-related hearings	
Dementyev v Russia (2013)	• **Facts** – §§5-12 Applicant sentenced to six months' community work for battery – Represented – Appeals, unsuccessful – Later convicted of murder and sentenced to 13 years' imprisonment – Correctional facility seeks conversion of battery sentence – Applicant signs acknowledgment of hearing stating attendance not mandatory and may be represented – Prison informs has chosen not to be represented – Court proceeds in absence – Court converts term to a prison sentence added to murder sentence • **No violation of Article 6(1)/(3)(c) –** Regardless of national law, Article 6 did not require presence at the hearing considering conversion of sentence: court was ruling solely on conversion according to an arithmetical formula for converting days' work into days in prison, even if character and mitigating factors considered – Accordingly, court could properly examine the issue on the basis of the case file without hearing evidence from the Applicant in person – In any case, national authorities had been entitled to conclude he waived his right to attend: he was well aware of his rights and the steps needed to secure his attendance and had not alerted the authorities to any issue

Physically absent accused: use of video-link / mutual legal assistance	
Kucera v Austria (2025)	• **Facts** – Applicant issued penalty notice imposing a criminal penalty – Appeals before the regional administrative court (proceedings constituting determination of criminal charge) – Court schedules hearing by video-link, pursuant to temporary legislation applicable during Covid-19 pandemic – At hearing, Applicant's counsel raises issues as to sound quality / background noise – Court proceeds – Appeal rejected – Further appeals before higher courts fail • **No violation of Article 6(1)** – Court finds '*there was an oral hearing, and the applicant was able to participate in it. The case is to be distinguished from those cases in which oral hearings were held in the absence of the accused*' (§54) – Rather, issue concerned the manner of participation i.e. by video-link – Video-link had served a legitimate aim of reducing the spread of Covid-19 – Applicant and his lawyer had participated in hearing and been able to present arguments and put questions to witnesses – Sound issues arose twice and were resolved – Applicant lawyers did not seek for a remark to be added to the hearing record – Insufficient evidence of a constant problem.
Dijkhuizen v Netherlands (2021)	• Applicant detained in the Netherlands and convicted at first instance – Released during appeal proceedings, allowed to travel – Arrested and detained in Peru – Counsel indicated his wish to appear at the appeal hearing and invited the court / prosecutor to seek his extradition – Peruvian law does not permit transfer out of the country of those facing allegations – Counsel indicates that his client would not cooperate with a videoconference hearing and requested that an extradition request me made. The prosecutor declined to make such request. Counsel subsequently indicated that his client had agreed to be heard as a witness by video. The hearing resumed, during which counsel asked for adjournment. At the close, counsel asked for reopening for his client to appear by temporary transfer, extradition or by video. The Court of Appeal in its reasoning essentially found that his change of position on video had come too late. It weighed his interest in participating against the interest of society in a speedy trial and resolved in favour of the latter. It imposed a substantial prison sentence. Further appeals did not succeed. • The Court accepted without question that the Applicant was unable to return, being detained in Peru. It accepted that an extradition request could not have succeeded and would have been pointless (§55). • The Court found that bearing in mind the complexity of the case, the Dutch court had been entitled to substitute a hearing by videoconference for one at which he was physically present, so that there was a '*realistic option open to the applicant to take part in the hearing of his appeal*' (§56). • The Court however accepted the submission that the Applicant had waived his right to participate that way. It noted his initial refusal to cooperate with such a hearing and that he later agreed only to participate as a witness, without withdrawing his refusal to participate as an accused, which was only changed at the close of the hearing (§59).

Bivolaru v Romania (No 2) (2018)	• **Facts** – Criminal investigation opened against MISA spiritual movement, resulting in a statement inculpating Applicant of sexual offences against a minor – Applicant questioned, at which point he sees a summary of the allegations including facts and legal provisions – Placed in pre-trial detention and then released – Obtains refugee status in Sweden – Meanwhile, first instance proceedings in Romania – Numerous efforts made to serve summons in Sweden, with significant involvement of instructed Romanian lawyers – Applicant submits recorded video testimony and explains absence by reference to Swedish Supreme Court refusing Romanian extradition request – Acquitted – Prosecution appeal – Applicant participates through lawyers and indicates no wish to make further statement – Prosecutor appeals to High Court of Cassation – Applicant through lawyers indicates no wish to make further statement – High Court indicating that it must consider the evidence directly – Applicant's lawyer asks for him to be heard by MLA in Sweden – Refugee status in Sweden confirmed – High Court asks Applicant if he would consent to being questioned by video-conference, allowing his direct hearing – Applicant refuses consent and intended to be heard by MLA – High Court accepts request to proceed by MLA – Urgent MLA request to Sweden – Significant delays ensue, Romanian court chasing pointing out that no complaint as to the form of the request and that it was made at the Applicant's behest – High Court renouncing MLA request – Substantive hearing, Applicant represented by his lawyers – High Court convicts Applicant and sentences him to six years' imprisonment – • Applicant later invoking Article 466 to reopen his conviction – Refused on the basis that he was represented by lawyers and therefore not regarded as absent – However, court also deals for completeness with other allegations, noting inter alia the fact that he could have been heard by videoconference, establishing waiver – In further appeal against refusal to reopen, Applicant's contention that he declined videoconference on advice of Swedish authorities dismissed as being unevidenced • **No violation of Article 6(1)** – Complaint focused only on not being heard by the High Court – High Court was called upon to examine the case on facts and law and to proceed to a global assessment of guilt or innocence – His participation at the hearing and being heard was in principle necessary – However, Applicant having refugee status in Sweden did not intend to be physically present – However, though initially stating otherwise, Applicant expressed interest in being heard and cannot be said to have waived his right to be heard – Therefore, must assess whether High Court acted with diligence and took all measures available to enable the Applicant to be heard – High Court proposed to the Applicant that he be heard by videoconference and Applicant, advised by his lawyers, knowingly declined to be questioned by videoconference on the basis that the law allowed him to refuse consent – This modality would have been an appropriate means to hear the Applicant directly – As to MLA, High Court's decision to abandon it does not appear unreasonable given the delays and uncertainty involved – Further, Romanian proceedings, pending a very long time by this point – Further, High Court was able to know Applicant's position via his lawyers – When High Court

	abandoned MLA, Applicant via lawyers continued to insist on being heard that way without proposing to be heard by other means – Could reasonably foresee the consequences of that position – Applicant never substantiated his case that videoconference had been refused on advice of the Swedish authorities – Overall no lack of diligence can be attributed to Romanian authorities
Absent accused – Expulsion from courtroom: accused's conduct as waiver of presence	
Suslov and Batikyan v Ukraine (2022)	• During the proceedings the judge warned the Applicant at least 25 times for improper conduct, including shouting, interrupting speakers, making obscene gestures and disrespectful comments, ignoring the presiding judge's orders and addressing witnesses in the Kurmanji dialect of Kurdish. He was repeatedly warned that he might be excluded until the end of the proceedings. He was twice provisionally excluded until the end of the session. He was then excluded. The trial court noted that he had not changed his behaviour and his interests would be represented. See §58. • The Court took the view that the Applicant had been '*fully and fairly informed that his behaviour was wrong and intolerable and had been warned of the possible consequences*'. It concluded that '*there is no doubt that the first applicant, by persisting in his reprehensible conduct, waived his right to be present at the trial*' (§139).
Idalov v Russia (No 2) (2016)	• Applicant engaged in problematic conduct during the proceedings – Applicant tearing out pages of case file and burning them, making threats and insulting persons in the courtroom, threats to interpreters – Presiding judge reprimanding Applicant and warning him as to possible removal from courtroom – Applicant removed – Final hearing proceeds in absence – Witness questioned – Lawyer putting questions – Conviction and four year sentence • **No violation of Article 6(1)/(3)(c)/(d)** – Court noting that Applicant had repeatedly disrupted proceedings, ignoring warnings of the presiding judge – Behaviour was such as to justify removal and continuation of trial in absence – Court satisfied that, prior to removal, Applicant had been '*fully and fairly informed that his conduct was wrong and intolerable, and had been warned of the possible consequences of his misbehaviour*' – Court had '*no doubt that the applicant, by persisting in his reprehensible conduct, waived his right to be present at the trial*' (§151).
Karpyuk & Others v Ukraine (2015)	•
Pishchalnikov v Russia (2009)	• **Violation of Article 6(1) [in combination with other aspects]** – Nothing to show that the Applicant was made aware of the consequences of his removal from the courtroom, in particular that if removed it would try him in absence

	without appointing counsel to represent him – Court unable to conclude that, notwithstanding disruptive and unruly behaviour, Applicant had unequivocally waived right to be present or represented at trial
Appeal / remedy	
Chong Coronado v Andorra (2020)	• Accused was tried in his absence – Had apparently fled to Panama at the start of the process – Declined to attend to be heard by a Panamanian judge upon a rogatory letter – Convicted and sentenced in absence. • Accused sought to appeal – Appeal court declines: no jurisdiction, accused not before it – Requirement for accused to present himself before trial court to request a redetermination – Courts refusing constitutional challenges to this. • No violation of Article 6 in requiring Applicant to appear before the Andorran court – Applicant apparently sought to evade justice and declined to cooperate with Panamanian judge – Appeal available – Nature of appeal points (on matters of fact) requiring his presence – Fair balance achieved between defence rights and countervailing interests.
Lobzhanidze & Peradze v Georgia (2020)	• Accused, residing in Switzerland, provided contact details for his instructed lawyer – Investigator instead appointing legal aid lawyer – No contact between legal aid lawyer and accused – Conviction in absence – Legal aid lawyer unable to bring appeal on applicant's behalf – Applicant's later application for leave to appeal against conviction in absence refused on formalistic ground. • Violation of Article 6 – Defence rights adversely affected by appointment of legal aid lawyer in lieu of counsel of choosing, undermining overall fairness – Excessive formalism in refusing application for leave to appeal out-of-time
Baratta v Italy (2015)	• Applicant accused whilst in Brazil – Italian authorities requested extradition – Applicant detained in Brazil – Later also convicted in Brazil – Meanwhile, proceedings continue in Italy – Applicant convicted and sentenced to life imprisonment – Appeal stage, court insists on proceeding on the basis that Applicant resisting extradition (!) – Life imprisonment confirmed on appeal – Applicant later extradited to Italy on conviction basis – Applicant pursuing various remedies – Eventually restored in access to a trial • **No victim status** – Appeal sufficient to remedy denial of justice constituted by conviction in absence – Court confirming that reopening of time to appeal with the ability for the accused to be present at the hearing and to introduce new evidence was to be regarded as a fresh determination of the merits of the charge (referring to Jones)
Jónsson & Halldór v Iceland (2018)	• Applicants, lawyers, withdrew from a case – National court had imposed fines for offending the court – No new hearing convened to put the allegations and hear the Applicants – Fines upheld on appeal before the Supreme Court – No hearing of witnesses at the appeal stage, there being no practice to this effect.

	• **No violation of Article 6** – Applicants neither summoned nor made aware of court's intention to impose fines – Whether appeal constituted a fresh determination of the charge – Supreme Court offered a forum for the fresh factual and legal determination – Defendants, represented, did not avail themselves of remedies for their defence
Sanader v Croatia (2015)	• Applicant at large during investigation – Arrest warrants issued – Trial in absentia based on unavailability of accused and need to try war crimes offences – Legal aid lawyer appointed – No challenge to witness evidence – Applicant sentenced to 20 years' imprisonment – Appeal on legal grounds by legal aid lawyer – Remitted – Convicted again – Conviction this time becoming final • 5 years later, Applicant learns of conviction through a lawyer in Croatia – Applicant asks court to reopen proceedings, requesting to confront witnesses and have witnesses heard on his behalf, submitting statements of persons excluding his presence at the offence location – Witnesses questioned under MLA, confirming that – Court rejecting request for retrial on the basis that he had '*failed to show that there were new facts which could alter his conviction*' (§31) – Applicant argues that he should be entitled to a retrial automatically – Supreme Court refuses stating that he lives in Serbia and '*not available to the Croatian judicial authorities*' (§33) – Analysis limited to whether new facts warranted reopening and none existed – Constitutional Court application rejected • **Violation of Article 6(1)** – No suggestion that the Applicant was ever notified of the proceedings or that the reason for his absence was to escape trial (§76) – Holding a hearing in absence was not in itself contrary to Article 6, however, '*it has not been shown that he had any knowledge of his prosecution and of the charges against him*' (§77) • Where domestic law permits trial in absence of someone in that position, they should once they become aware of the proceedings be able to obtain a fresh determination of the merits – Automatic retrial right interpreted in national case law such that the person must appear before the domestic authorities to request a retrial, so a person not under Croatian jurisdiction may not request one – Court concluding that this is '*disproportionate*' for two reasons – First, person convicted and sentenced to prison residing outside Croatia would be deprived of liberty, and only once the reopening granted, which could take a month, and became final, would enforcement be suspended (§85) – '*There can be no question of an accused being obliged to surrender to custody in order to secure the right to be retried in conditions that comply with Article 6*' (§87) – Secondly, unreasonable and disproportionate procedurally – Conviction remains valid until the end of the retrial – Overall, disproportionate obstacle to the use of the retrial remedy, restricting the right to such an extent that its very essence was impaired – Other remedy relied on (reopening based on new facts) also a disproportionate hurdle to the right to appear at trial and challenge evidence – Applicant not afforded with sufficient certainty the opportunity of obtaining a fresh determination of the merits

ANNEX 2

Case name	Principle established (from dispositive part of judgment, unless otherwise stated)
Case C-688/18 TX and UW (2020)	Article 8(1)/(2) of the Directive must be interpreted as not precluding national legislation which provides, in a situation where the accused person has been informed, in due time, of his trial and of the consequences of not appearing at that trial, and where that person was represented by a mandated lawyer appointed by him, that his right to be present at his trial is not infringed where: – he decided unequivocally not to appear at one of the hearings held in connection with his trial; or – he did not appear at one of those hearings for a reason beyond his control if, following that hearing, he was informed of the steps taken in his absence and, with full knowledge of the situation, decided and stated either that he would not call the lawfulness of those steps into question in reliance on his non-appearance, or that he wished to participate in those steps, leading the national court hearing the case to repeat those steps, in particular by conducting a further examination of a witness, in which the accused person was given the opportunity to participate fully.
Case C-564/19 IS (2021)	Article 2(5) of Directive 2010/64 (Directive on Interpretation & Translation) and Article 4(5) and Article 6(1) of Directive 2012/13/EU (Directive on the Right to Information), read in the light of Article 48(2) of the Charter, must be interpreted as precluding a person from being tried in absentia when, on account of inadequate interpretation, he or she has not been informed, in a language which he or she understands, of the accusation against him or her or where it is impossible to ascertain the quality of the interpretation provided and therefore to establish that he or she has been informed, in a language which he or she understands, of the accusation against him or her.
Case C-420/20 HN (2022)	Article 8(1) of the Directive must be interpreted as not precluding national legislation which imposes an obligation on suspects and accused persons in criminal proceedings to be present at their trial. Article 8(2) of the Directive must be interpreted as precluding legislation of a Member State which permits a trial to be held in the absence of the suspect or accused person, where that person is outside that Member State and is unable to enter its territory because of an entry ban imposed on him or her by the competent authorities of that Member State.
Case C-569/20 IR (2022)	Articles 8 and 9 of the Directive 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.
Case C-347/21 DD (2022)	Article 8(1) of the Directive, read with Article 3(1) of Directive 2013/48 (Access to a Lawyer in Criminal Proceedings) must be interpreted as meaning that where, in order to ensure that the right of the accused person to be present at his or her trial and his or her right of access to a lawyer are safeguarded, the national court carries out an additional examination of an incriminating witness since, for reasons beyond their control, the accused person and his or her lawyer could not be present at the previous examination of that witness, it is sufficient that the accused person and his or her lawyer be able freely to question that witness, providing, prior to that additional examination, the accused person and his or her lawyer were sent a copy of the minutes of the previous examination of that witness. In those circumstances, it is not necessary to repeat in its entirety, thereby invalidating the procedural steps taken during that examination, the examination which took place in the absence of the accused person and his or her lawyer.
Case C-	Article 8(1) of the Directive, read in conjunction with Article 47 / 48(2) of the Charter, must be interpreted as precluding the application of national legislation which allows a national court, where it is not possible to examine a prosecution witness during the judicial stage of criminal proceedings, to base its decision on the guilt or innocence of the accused person on the witness testimony obtained during a hearing before a judge during the pre-trial stage of those proceedings, but without the participation of the accused person or their lawyer, unless there is a good reason warranting the non-appearance of the witness at the judicial stage of the criminal proceedings, the testimony given by that witness does not constitute the sole or decisive basis for the conviction of the accused person, and there are sufficient counterbalancing factors to compensate for the handicaps faced by the accused person and their lawyer as a result of the taking into account of that testimony.
Joined Cases C-430/22 & C-468/22 VB & VB (2023)	Article 8(4) of the Directive must be interpreted as not requiring a national court, in the event of a conviction *in absentia*, where the conditions of Article 8(2) of that directive are not met, to make express reference to the right to a new trial in the judgment convicting the person concerned.

	(§30 – The choice of the manner in which such information is to be provided to the persons concerned is left to the discretion of the Member States, provided that it is brought to the attention of the person concerned when he or she is informed of the decision in question.)
Case C-760/22 FP & Others (2024)	Article 8(1) of the Directive must be interpreted as not precluding an accused person from being able, at his or her express request, to participate in the hearings in his or her trial by videoconference, provided that the right to a fair trial is guaranteed.
Case C-400/23 VB II (2025)	Article 8(4) (second sentence) of the Directive 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. Article 8(4) (second sentence) read with Article 9 and Article 10(1) of the Directive 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.

	Article 8(4) (second sentence) and Article 9 of the Directive 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*.
Case C-644/23 IR (Stangalov) (2025)	Articles 8 and 9 of the Directive 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.
Case C-135/25 PPU [Kachev] (2025)	Articles 8 and 9 of the Directive must be interpreted as not precluding, pursuant to national legislation relating to accused persons who have absconded, the right to a new trial from being denied to a person convicted *in absentia* who has made a request to that effect where - firstly, the competent authorities made efforts to inform that person of the date and place of the trial but he or she had absconded, in infringement of a detention order which had been imposed on him or her, after receiving a preliminary indictment - secondly, the indictment and a document indicating the date and place of that trial were sent to that person and actually delivered to the address which he or she had provided to those authorities after receiving the preliminary indictment, the content of which corresponds, as regards the alleged acts and their legal classification, to that of the indictment, and - thirdly, the person was represented by a court-appointed lawyer throughout the judicial proceedings conducted in his or her absence, provided that, first, those authorities used all the means to which they could reasonably have recourse to locate the person convicted *in absentia* before his or her trial and, second, that person either was informed, in due time, of the consequences of non-appearance or he or she entrusted, unequivocally, to his or her court-appointed lawyer a mandate to represent him or her, in his or her absence, before the trial court.
Case C-68/26 PPU Kilyanov (2026)	Articles 8(1) and (2) of the Directive must be interpreted as not applying to national legislation under which [according to the national court's current interpretation] a person who is the subject of criminal prosecution may, after having made

	use of the possibility provided for by that legislation not to appear at the court hearings, be kept in detention for the sole purpose of ensuring the effective exercise of his or her right to be present at the trial.



This project is co-funded by
the European Union's Justice Programme