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European
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Directive 263/343 presumption of innocence and right to be present at trial



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Agenda



**Presumption of
Innocence**

Burden of proof

**Right to remain
silent**

**Right to be
present at trial**

Article 2

Scope of Directive

- ❑ The directive applies to any individual (natural person) suspected or accused in criminal proceedings.
- ❑ The directive does not apply to legal persons.
- ❑ It applies at **all stages** of the criminal proceedings, from the moment a person is suspected or accused of having committed a criminal offence to the final verdict
- ❑ but is not applicable to remedies after the end of the trial (see recital 12 and Art. 2).

Article 3

Presumption of Innocence

= Innocent until proven guilty

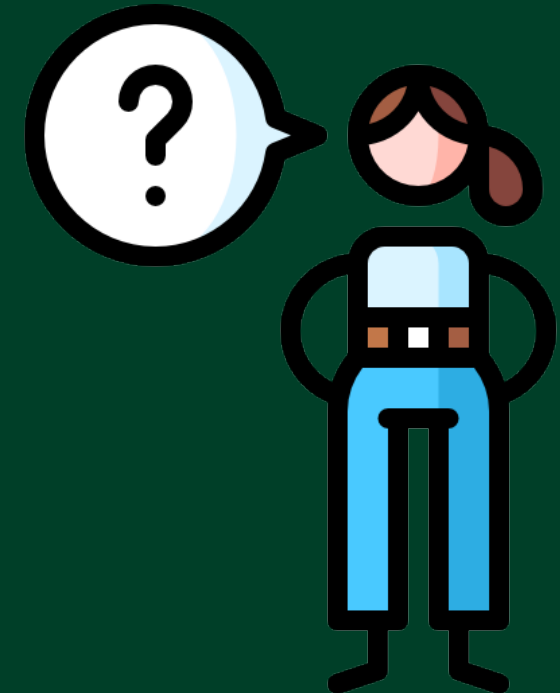
Article 3

Presumption of Innocence

C-467/18 - Rayonna Prokuratura Lom

Question:

does presumption of innocence apply to a person, in a state of insanity, who committed acts deemed to constitute a danger for society?



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- ☐ Where, at the end of earlier criminal proceedings, it has been definitively established that that person committed, in a state of insanity, acts constituting a criminal offence, it is not, as such, contrary to the principle of the presumption of innocence for the Public Prosecutor's Office to rely on those factors in support of its application for committal of that person to a psychiatric hospital.
- ☐ The principle of the presumption of innocence must be interpreted as requiring, in judicial proceedings for the committal to a psychiatric hospital, on therapeutic and safety grounds, of persons who, in a state of insanity, have committed acts representing a danger to society that the Public Prosecutor's Office provides proof that the person whose committal is sought is the perpetrator of acts deemed to constitute such a danger.

Article 4



Presumption of Innocence – public reference to guilt

Public authorities made during the pre-trial period are prohibited from making public statements which refer to a person as guilty unless proven according to law

Recital 14

an authority who is involved in the criminal proceedings in question, such as judicial authorities, police and other law enforcement authorities, or from another public authority, such as ministers and other public officials.

Recital 14

any statement which refers to a criminal offence made by an authority

Article 4



Presumption of Innocence – public reference to guilt

Public authorities made during the pre-trial period are prohibited from making public statements which refer to a person as guilty unless proven according to law

EXCEPT :

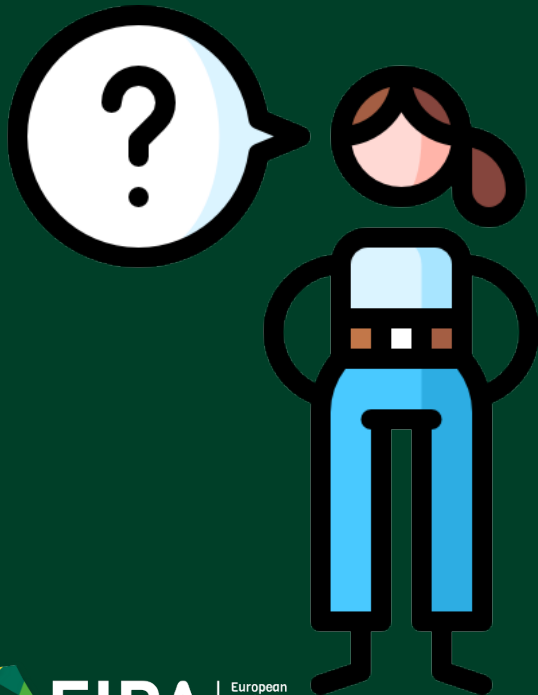
- ☐ the prosecutor's acts that aim to prove the individual's guilt (such as the indictment)
- ☐ preliminary procedural decisions by judicial or other competent authorities and which are based on suspicion or incriminating evidence
- ☐ information to the public about the ongoing criminal proceedings where strictly necessary for reasons relating to the criminal investigation or to the public interest, like the release of video footage of fugitives believed to be an imminent threat to the general public

Article 4

Presumption of Innocence – public reference to guilt

Question:

What about statements made against a third party involved in parallel criminal proceedings?



C-377/18 AH

Article 4(1) must be interpreted as meaning that it does not preclude that an agreement in which the accused person recognises his guilt in exchange for a reduction in sentencing, which must be approved by a national court, expressly mentions as joint perpetrators of the criminal offence in question not only that person, but also other accused persons, who have not recognised their guilt and are being prosecuted in separate criminal proceedings, on the condition that,

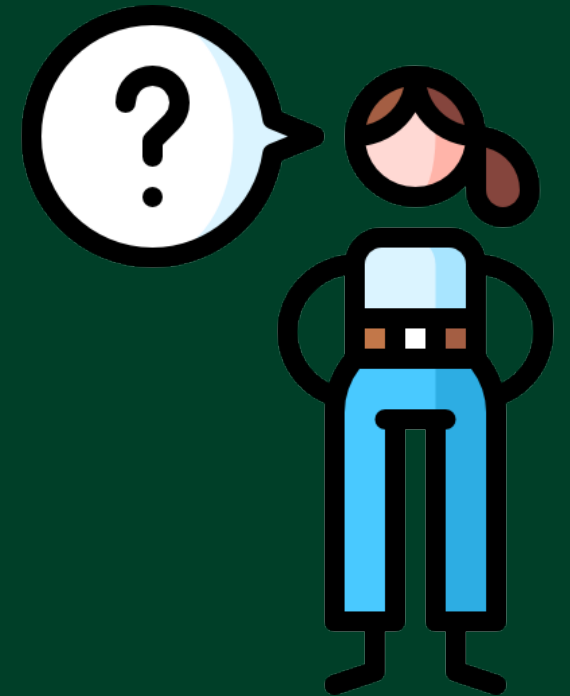
1. that reference is necessary for the categorisation of the legal liability of the person who entered into the agreement and,
2. that that same agreement makes it clear that those other persons are being prosecuted in separate criminal proceedings and that their guilt has not been legally established

Article 3 & 4

Presumption of Innocence

Question:

An individual is being held in pre-trial detention based on the existence of "reasonable grounds " for having committed a criminal offence in accordance with national law. Is this preliminary decision of procedural nature encroaching with the presumption of innocence as foreseen in Article 3 and 4?



Article 3 & 4

Presumption of Innocence

C-310/18 - Milev



- ❑ Art. 4 and recital 16 of the Directive allow for a regime where a national court has to give a reasoned opinion on the validity of suspicion and evidence presented, as long as the suspect is not presented as guilty in that decision.
- ❑ in light of the minimal degree of harmonisation pursued therein, Directive 2016/343 cannot be interpreted as being a complete and exhaustive instrument intended to lay down all the conditions for the adoption of decisions on pre-trial detention

C-8/19 PPU - RH

- ❑ Directive 2016/343 in Arts. 4 and 6 as well as Recital 16 widely exempts pre-trial detention from its scope. Therefore, secondary EU law does not include rules on how to review the legality of pre-trial detention, i.e., to which extent a national court is obliged to compare the elements of incriminating and exculpatory evidence presented to it and to provide reasoning *vis-à-vis* the objections of the defence counsel. However, that decision may not present the person detained as being guilty.

Article 5

Presentation of suspects and accused persons

1. Member States shall take appropriate measures to ensure that suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint.
2. Paragraph 1 shall not prevent Member States from applying measures of physical restraint that are required for case-specific reasons, relating to security or to the prevention of suspects or accused persons from absconding or from having contact with third persons.

Article 6

Burden of proof on the prosecution

- without prejudice to any obligation on the judge or the competent court to seek both inculpatory and exculpatory evidence,
- without prejudice to the right of the defence to submit evidence in accordance with the applicable national law

C-653/19 PPU - DK

Question:

Should the burden of proof be incumbent on the suspect when applying for a release from pre-trial detention ?



Directive distinguishes between judicial decisions on guilt, which necessarily occur at the conclusion of the criminal proceedings, and other procedural acts, such as acts of the prosecution and preliminary decisions of a procedural nature.

Burden of proof should be restricted to decisions on guilt or innocence of defendants.

Decisions on pre-trial detention are excluded from the scope of Article 6.

Article 7 Right to remain silent and right not to incriminate oneself

This shall not be used against them and shall not be considered to be evidence that they have committed the criminal offence concerned.



Key element of the right to a fair trial

Protecting the freedom of suspects or accused persons to choose whether to speak or to remain silent

EXCEPT :

competent authorities from gathering evidence which may be lawfully obtained through the use of legal powers of compulsion and which has an existence independent of the will of the suspects or accused persons.

Recital 5

During interrogations, individuals should not be forced to produce incriminating information, evidence or documents.

Article 7 Right to remain silent and right not to incriminate oneself

C-467/19 Spetsializirana prokuratura

Article 7(4) must be interpreted as meaning that it does not govern the issue of whether or not the approval, by a court, of an agreement on the imposition of a negotiated sentence concluded between a person accused, on the basis of his alleged membership of a criminal group, and the prosecutor, may be rendered subject to the condition that the other persons accused, on the basis of their membership of that criminal group, must give their consent to the conclusion of that agreement.

Article 8

Right to be present at trial

NOT an absolute right



Trial *in absentia* allowed when (see parag. 2) :

- ☐ the suspect or accused person has been informed, in due time, of the trial and of the consequences of nonappearance; OR
- ☐ 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.

If these conditions cannot be met because a suspect or accused person cannot be located, Member States may provide that a decision can nevertheless be taken and enforced.

In that case, Member States shall inform suspect or accused persons of their rights in accordance with **Article 9**

Article 8

Right to be present at trial

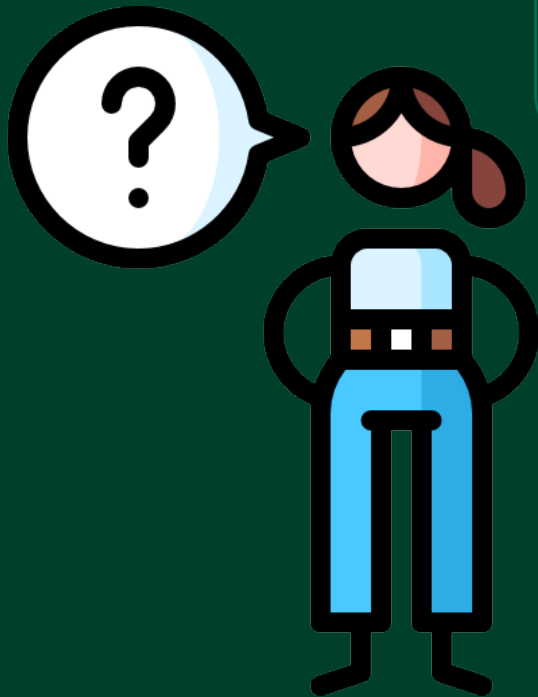
Question:

Is it permissible for the right of the accused person to be present in person at trial to be converted into an obligation incumbent on that person under procedural law?

Question:

Is it permissible for the right of the accused person to be present in person at trial to be restricted by national law under an expulsion ban?

C- 420/20 - HN



Article 8

Right to be present at trial



- ❑ The right to be present at trial 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) 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.

C- 420/20 - HN



Article 9

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.

- ❑ where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met.
- ❑ 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.

Article 9

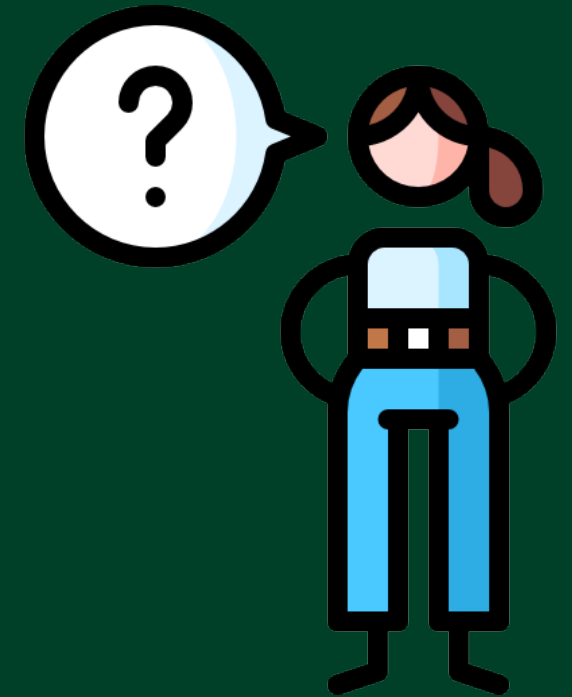
C-688/18 TX and UW

Right to a new trial

Question:

Is the right of the accused person to be present at the trial infringed if one of the hearings in criminal proceedings took place in the absence of the accused person, who was duly summoned, informed of the consequences of his non-appearance and defended by a lawyer chosen by him, 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.



Article 9

Right to a new trial

C-688/18 TX and UW



- ❑ Directive cannot be interpreted, in the light of the minimal degree of harmonisation it seeks to attain, as being a complete and exhaustive instrument
- ❑ to be present at the trial is based on the right to a fair trial
- ❑ *'individual is entitled to have his case 'heard', with the opportunity, inter alia, to give evidence in his defence, hear the evidence against him, and examine and cross-examine'*
- ❑ *'person from waiving of his own free will, either expressly or tacitly, entitlement to the guarantees associated with a fair trial. However, a waiver of the right to take part in the hearing must be established unequivocally and be attended by minimum safeguards commensurate with its seriousness. Furthermore, it must not run counter to any important public interest'*

Article 10

Remedies

1. Member States shall ensure that suspects and accused persons have an effective remedy if their rights under this Directive are breached.
2. Without prejudice to national rules and systems on the admissibility of evidence, Member States shall ensure that, in the assessment of statements made by suspects or accused persons or of evidence obtained in breach of the right to remain silent or the right not to incriminate oneself, the rights of the defence and the fairness of the proceedings are respected.



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