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RIGHT TO  
PRESUMPTION OF  
INNOCENCE AND  
TO BE PRESENT  
AT TRIAL UNDER  
DIRECTIVE (EU)  
2016/343

RIGHT TO  
PRESUMPTION  
OF  
INNOCENCE  
AND TO BE  
PRESENT AT  
TRIAL UNDER  
DIRECTIVE  
(EU) 2016/343

- Presumption of innocence for natural persons only
- Restrictions on public references to, or indications of, guilt of suspects or accused persons
- Identifying the accompanying case law of the European Court of Human Rights within the scope of the Article 6 of the Convention
- Relevant domestic criminal procedural law regarding the defendant's right to presumption of innocence and to be present at trial

# EQUAL APPLICATION OF THE PRESUMPTION OF INNOCENCE

- Article 48 of the EU Charter of Fundamental Rights
- Article 3 of Directive (EU) 2016/343
  - Provides for the right of every suspect and accused person to be presumed innocent until proven guilty according to law.
  - In accordance with recital 16 of this directive, public authorities should not refer to a defendant as being guilty or reflect such an opinion as long as that person has not been proved guilty according to law

## PUBLIC REFERENCES TO GUILT

Article 4 of Directive (EU) 2016/343,

- Authorities should not issue any public statements suggesting or implying a defendant's guilt before the final judgment.
- This obligation extends not only to actors directly engaged in a given case but also to other public authorities.

## PHYSICAL PRESENTATION OF SUSPECTS AND ACCUSED PERSONS

### Article 5 of Directive (EU) 343/2016

- The suspects and accused persons are not presented as being guilty, in court or in public, through the use of measures of physical restraint.
- Recital 20 includes examples of such measures, namely handcuffs, glass boxes, cages and leg irons.
- However, security concerns can be used to justify such measures.
- These include to prevent suspects or accused persons from harming themselves or others or from damaging property, or to prevent them from absconding or from having contact with third persons, such as witnesses or victims.

# BURDEN OF PROOF

## Article 6 of Directive (EU) 2016/343

- confirms the legal principle that the burden of proof for establishing the guilt of suspects and accused persons during a trial rests with the prosecution.
- The defence has the right to present exculpatory evidence, that is, evidence favourable to the defendant.
- Furthermore, the same provision specifies that any doubt as to the question of guilt should benefit the defendant.

## RIGHTS TO REMAIN SILENT AND NOT TO INCRIMINATE ONESELF

### Article 7 of Directive (EU) 2016/343

- Guarantees the rights to remain silent and not to incriminate oneself.
- The exercise of these rights cannot be used against defendants and cannot be considered evidence that they have committed an alleged offence.
- As specified in recitals 24–29, defendants should not be forced to make statements or answer questions (relating to the criminal offence that they are suspected or accused of having committed), produce evidence or documents or provide information that may lead to self-incrimination.
- However, the competent authorities are allowed to gather evidence that may be lawfully obtained from a defendant through the use of legal powers of compulsion and that has an existence independent of the will of the suspect or accused person.

# RIGHTS TO BE PRESENT AT TRIAL AND TO A NEW TRIAL

## Articles 8 and 9 of Directive (EU) 2016/343

- Deal with the rights to be present at trial and to have a new trial when a defendant's absence was justified.
- Accordingly, Member States have to ensure that defendants are properly notified of their upcoming trial and make reasonable efforts to locate them.
- If certain conditions are met, however, trials in absentia are allowed.
- Recitals 36 and 37 specify that a decision on the guilt or innocence of a suspect or accused person can be handed down even if they are not present at the trial.



# REMEDIES

## Article 10 of Directive (EU) 2016/343

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

## JURISPRUDENCE OF THE ECtHR

- The press and internet bloggers play an essential role in democratic society as ‘watchdogs’, ensuring the accountability of public authorities; Member States therefore have only a limited margin of appreciation to interfere with the freedom of the press for ‘pressing social needs’ (Allenet de Ribemont v. France)
- However, the ECtHR has also found that, in certain situations, a hostile media campaign can adversely affect the fairness of a trial and in such cases the state may be held responsible for violating the presumption of innocence. (Daktaras v. Lithuania)
- Therefore, the state and its courts, being the guarantors of the presumption of innocence, need to secure the fairness of a trial with regard to both the defendants and public opinion, irrespective of any media coverage. For example, a well-reasoned judgment on the facts of a case delivered by a court comprising professional judges would suffice to refute any allegations that a prejudicial press campaign had adversely influenced the presumption of innocence. (Allenet de Ribemont v. France)

# THE EUROPEAN COURT OF HUMAN RIGHTS

- ECtHR understands the application of the presumption of innocence as conditional on the existence of a criminal ‘charge’. (I.CJEU, C-688/18, TX, UW, 13 February 2020)
- Recital 12 of Directive (EU) 2016/343 goes beyond that, extending the temporal scope of application to the first moment of suspicion that a person has committed a criminal offence. This means that the presumption of innocence applies even before the competent authorities make that person aware, by official notification or otherwise, that they are a suspect or an accused person.
- International law
- Today’s main international human rights documents recognize the presumption of innocence as a right of a defendant in criminal proceedings. These instruments conceptualize the presumption of innocence as a specific aspect of a defendant’s right to a fair trial.
- The ECtHR holds that the presumption of innocence under Article 6 (2) of the ECHR is a constituent element of the notion of a fair trial in criminal proceedings and is also closely connected to equality of arms. (Council of the European Union (2009), Council Framework Decision 2009/299/JHA of 26 February 2009)

# THE EUROPEAN COURT OF HUMAN RIGHTS

## Minelli v. Switzerland

- The ECtHR found a violation of the presumption of innocence when it was ordered that the accused reimburse the costs of the court proceedings and fines, although the proceedings were suspended due to the statute of limitations. To exercise his right of defense, and the verdict against him reflects the opinion that he is guilty.

## RIGHT TO PRESUMPTION OF INNOCENCE

- There is a well-known **case of Aitan** in which journalists are still in the media during the investigation of the crime showed a picture of the stepfather of a three-year-old girl showing him, based on unverified information, as a bully who physically and sexually abused her and killed her even though a few days later it turned out that the girl died of a heart attack, while bodily injuries occurred earlier due to injuries on the playground. This case is a typical example in which the suspect is publicly shown with handcuffs on his hands, accompanied by strong media articles about him as the perpetrator of the crime led the public to the conclusion that he should be convicted even before the criminal proceedings against him have begun at all.

# SAUNDERS V. THE UNITED KINGDOM ECTHR

- The Court pointed out that the right to silence and the privilege against self-incrimination are generally recognized international standards which, because their purpose is to protect defendants from illicit pressure from public authorities and to ensure miscarriages of justice, are at the heart of the principle of fair trial.
- From Art. 6. of the ECHR, notwithstanding that this Convention provision does not expressly provide for them.

## NATIONAL LEGISLATION

### Relevant domestic criminal procedural law in Croatia

- (1) Everyone is innocent, and no one can be found guilty of criminal offense until he is convicted by a final court judgment which determines guilt.
- (2) The burden of proof in the procedure of establishing the guilt of a suspect, the defendant or the accused is on the state attorney unless otherwise prescribed by law.
- (3) Doubt about the existence of facts that form the characteristics of the criminal acts or on which the application of criminal law depends the court decides by a judgment in a manner more favorable to the defendant.

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**TO BE PRESENT  
AT TRIAL  
(CRIMINAL  
PROCEDURE  
ACT IN THE  
REPUBLIC OF  
CROATIA)**

The accused may be tried in absentia only if particularly important reasons exist for trial, and extradition is not possible, or the accused is on the run or not reachable by state bodies.

The decision on the trial in absentia shall be rendered by the court after state attorney's opinion is obtained. The appeal suspends the execution of the decision, if the decision was made contrary to the opinion of the state attorney





THANK YOU  
FOR YOUR  
ATTENTION

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