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TRIALS IN ABSENTIA: COMPARATIVE ANALYSIS FOR BALANCING DEMANDS OF JUSTICE AND PROTECTING DEFENDANTS' RIGHTS

ABSTRACT. This article offers a detailed comparative analysis of in absentia trials within the legal frameworks of Russia, Ukraine, and several CIS countries, with a particular focus on Azerbaijan's evolving legal system. Russia's increasing use of in absentia trials serves as a strategic tool for political repression and historical control, targeting dissidents, opposition figures, and scholars challenging the state's official narratives. Rooted in Soviet-era legal traditions, Russia's legal framework, including Article 282 of the Criminal Code and the 2002 Extremism Law, enables the prosecution of individuals in their absence. This practice circumvents fair trial principles, silencing critics and reinforcing the state's authority over political and historical discourse, as seen in high-profile cases involving opposition leader Alexei Navalny and Ukrainian authors critical of Soviet history.

In contrast, the article examines the legal heritage shared by other CIS states, such as Uzbekistan, as well as Ukraine, where in absentia trials are applied in cases where defendants evade justice by fleeing abroad or avoiding court appearances. While similar legal principles underpin these practices, there are significant regulatory differences. Moldova and Georgia have introduced comprehensive procedural safeguards, including explicit provisions for notification, legal representation, and appeal rights. Azerbaijan's recent legal reforms (2023–2024) mark a significant step toward aligning its in absentia trial procedures with European legal standards. Drawing on legal frameworks from countries like Italy, Germany, Romania, and Moldova, Azerbaijan has prioritized due notification, mandatory legal representation, and the right to appeal in its efforts to enhance the fairness of in absentia trials, reflecting its commitment to international human rights norms.

A central focus of this article is Ukraine's application of in absentia trials, especially in the context of ongoing armed conflict. Ukraine has relied on these trials to prosecute individuals accused of war crimes, treason, and other serious offenses, particularly targeting those who have fled the country during the conflict. Despite these extraordinary circumstances, Ukraine remains committed to upholding international legal standards, particularly under the European Convention on Human Rights (ECHR), ensuring procedural fairness for absent defendants. Ukraine's adherence to stringent notification requirements, legal representation, and the right to appeal has had a direct influence on Azerbaijan's legal reforms, serving as a model for balancing the demands of justice with the protection of defendants' rights, even in complex and challenging contexts.

The article also highlights Ukraine's broader participation in shaping regional legal practices, particularly its role in influencing Azerbaijan's reforms. Ukraine's approach, especially in managing

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in absentia trials during conflict, underscores the adaptability of these proceedings to both legal and practical exigencies while maintaining procedural fairness. By examining Ukraine's experience alongside Russia's use of in absentia trials for political repression, the article provides a comparative framework that underscores the divergent uses of in absentia proceedings across the region.

Through this comparative analysis, the article illustrates the critical importance of balancing judicial efficiency with fundamental human rights. Azerbaijan's measured legal reforms, heavily influenced by Ukraine's practices, reflect a forward-looking approach aimed at harmonizing its legal framework with European standards while ensuring that defendants' rights are safeguarded. In contrast, Russia's continued manipulation of in absentia trials as a tool for suppressing opposition and controlling historical discourse highlights the use of these proceedings for political repression. This study concludes by emphasizing how Azerbaijan and Ukraine's evolving legal systems offer valuable lessons on the effective regulation of in absentia trials, reinforcing justice and fair trial standards in complex legal environments across the CIS region.

KEYWORDS: Procedural safeguards for absent defendant; notification in "in absentia trials"; ECHR Article 6.

In absentia trials, where a defendant is prosecuted and judged without being physically present, raise critical questions about the balance between judicial efficiency and the protection of individual rights. How can justice be served in the absence of the defendant? Can procedural safeguards ensure fairness, or do in absentia trials inherently risk violating due process? As countries grapple with these dilemmas, they have adopted diverse approaches to incorporate such trials into their legal systems. Azerbaijan's recent introduction of in absentia procedures provides a fascinating case study on how a nation can adapt global legal trends to local needs while striving to uphold international standards of fairness.

Azerbaijan, which traditionally lacked formal mechanisms for in absentia trials, has now incorporated them into its legal framework, drawing from European models such as those in Italy, Germany, Romania, and Moldova. But what motivated this shift? Azerbaijan faces the increasing challenge of prosecuting individuals for serious offenses like terrorism and corruption, with defendants often fleeing the country to evade justice. In such cases, in absentia trials offer a way for the state to ensure that justice is not indefinitely delayed. However, the key challenge lies in ensuring these trials do not violate the rights of the accused, especially in cases involving serious charges and absent defendants.

What procedural safeguards exist in Azerbaijan's new system, and how do they compare with those in other countries? Azerbaijan's legal framework emphasizes essential protections such as ensuring that defendants are properly notified of the charges and the trial, have legal representation, and can appeal any judgment rendered in absentia. These safeguards are modeled after European legal systems, particularly Italy and Germany, where procedural fairness is a priority. However, these reforms must also be viewed through the lens of international legal standards, particularly the European Convention on Human Rights (ECHR). Article 6 of the ECHR, which guarantees the right to a fair trial, is central to determining whether in absentia trials meet the minimum requirements of justice. Article 6(1) mandates the right to a fair and public hearing within a reasonable time, while Article 6(3)

provides the accused with rights such as adequate time to prepare a defense and the right to legal representation¹. Can Azerbaijan ensure these rights are upheld, especially for defendants who may be unaware of the trial or unable to adequately defend themselves in their absence?

Azerbaijan's adoption of in absentia trials should also be considered in the broader legal landscape of the Commonwealth of Independent States (CIS). Azerbaijan is not alone in adopting such mechanisms; Ukraine, for example, has relied on in absentia trials, particularly after its 2014 conflict with Russia. While Ukraine has faced criticism for potential due process violations, its approach has highlighted the need for clear notification procedures and safeguarding defendants' right to defense. Similarly, Russia's use of in absentia trials, especially against political dissidents, has been scrutinized under the ECHR. Azerbaijan, learning from these regional experiences, appears to be attempting to balance judicial efficiency with fairness, while striving to adhere to Article 6 of the ECHR.

Crucially, Azerbaijan's reforms must also align with international legal standards set by the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU). Both courts have underscored that while in absentia trials are permissible, they must include strict procedural safeguards to ensure fairness. The ECtHR, in several cases, has emphasized the importance of ensuring defendants' right to participate in proceedings. This is particularly relevant in Azerbaijan's case, as the country looks to avoid the pitfalls that have led to ECHR violations by other nations. Article 13 of the ECHR, which guarantees the right to an effective remedy, also comes into play². If a defendant is unaware of the trial or lacks access to proper legal defense, can Azerbaijan provide an effective remedy for rights violations? This question is critical to understanding whether Azerbaijan's reforms will withstand scrutiny under international human rights law.

In this context, cases such as *Konecny v. District Court in Brno-Venkov* and CJEU Case C-569/20 have significant legal importance. *Konecny* underscores the importance of notifying the accused about the trial in sufficient detail, providing them an opportunity to defend themselves adequately. It sets a European precedent on what constitutes sufficient notification in in absentia trials, a principle Azerbaijan's legal reforms seek to mirror. The CJEU ruling in Case C-569/20 further elaborates on the standards required for fair trial guarantees under the EU's legal framework, highlighting the importance of maintaining procedural safeguards to avoid undermining defendants' rights, especially in cross-border legal proceedings. These cases emphasize the necessity of balancing state interests in prosecuting absconding individuals with the procedural rights of defendants, which are critical to ensuring that justice is not only efficient but also equitable.

¹ L Bachmaier Winter, 'New Developments in EU Law in the field of In Absentia national proceedings. The Directive 2016/343/EU in the light of the EctHR Case Law', in: S Quattrocchio, S Ruggeri (eds), *Personal participation in criminal proceedings: a comparative study of participatory safeguards and in absentia trials in Europe* (Springer 2019) 641–667.

² Bachmaier Winter (n 1).

Through this exploration of key questions and legal precedents, this essay provides a comprehensive analysis of Azerbaijan's emerging legal framework for in absentia trials. It compares Azerbaijan's approach with those of European and CIS countries, examining how different legal traditions and practical needs shape the evolution of in absentia procedures. The essay argues that while Azerbaijan's reforms are a significant step toward aligning with European legal standards, their success will depend on how effectively procedural safeguards – particularly those enshrined in Articles 6 and 13 of the ECHR – are applied in practice, ensuring justice is both expedient and fair.

In absentia trials in Russia: A legal and procedural analysis

In absentia trials in Russia are primarily regulated by the Criminal Procedure Code of the Russian Federation, with key provisions such as Article 247 outlining their scope³. Historically reserved for instances where a defendant had fled the country or otherwise evaded justice, in absentia trials have, in recent years, been increasingly applied to politically sensitive cases. These cases often involve prominent critics of the regime or scholars whose works challenge the state's official historical narrative.

One of the principal legal instruments facilitating these prosecutions is Article 282 of the Russian Criminal Code⁴, which criminalizes actions that incite ethnic, racial, or national hatred. The article's broad and imprecise language permits subjective interpretation, thereby enabling the state to prosecute political opponents or academics for producing works deemed contrary to the state-sanctioned historical account. For instance, an author may face prosecution under the guise of extremism for publishing materials that contradict the official narrative of Russia's Soviet past.

As of 2020, Russia has conducted over 200 in absentia trials, predominantly targeting individuals labeled as extremists or foreign agents. Many of these cases involve charges under Federal Law No. 114-F3 "On Countering Extremist Activities," a law enacted in 2002 that broadly defines extremism to include activities that incite hatred or undermine state authority.

Russia's use of in absentia trials extends beyond political opposition, encompassing efforts to control historical narratives as part of a broader memory politics agenda. In recent years, the Russian government has sought to exert control over historical interpretations of its Soviet past. A prominent example of this strategy is the case against the Ukrainian authors of the book *ChK-GPU-NKVD in Ukraine*, which was deemed extremist by a Moscow court in 2011. The work, which examines Soviet-era repressions in Ukraine, was classified as

³ A Mezyaev, 'Trial in Absentia and the Modern International Criminal Procedure' [2023] 1 Moscow Journal of International Law 76–85.

⁴ D Dyadkin, V Anisimov, O Glukhovska Schaefer, 'Punishability of Acts of Extremist Orientation Stipulated by Article 282 of the Criminal Code of Russian Federation ("CCRF")' [2020] 77 Faculty of Law, Stockholm University Research Paper.

extremist under Article 282 for allegedly inciting ethnic hatred between Russians and Ukrainians⁵.

The trial was conducted in absentia, denying the authors, Yurii Shapoval, Volodymyr Prystaiko, and Vadym Zolotariov, the opportunity to defend their scholarly work. The conviction was based on the findings of a linguistic and cultural commission assembled by the Russian Academy of Sciences. However, none of the experts involved had significant expertise in Ukrainian history or were fluent in the Ukrainian language, raising serious concerns about the integrity and objectivity of the trial. Through in absentia proceedings, the state effectively silenced the authors, ensuring that its official narrative of the Soviet past remained unchallenged.

This case exemplifies how Russia utilizes in absentia trials to maintain control over its historical narrative. By prosecuting authors of dissenting historical works in absentia, the state prevents alternative historical interpretations from gaining prominence, particularly in the context of efforts to rehabilitate Soviet symbols and leaders. The state's aggressive stance toward alternative historical accounts aligns with its broader objective of constructing a cohesive national identity anchored in a sanitized version of the Soviet past.

A critical feature of Russia's in absentia trials is the reliance on vague legal definitions, particularly in relation to extremism. Federal Law No. 114-F3 of 2002 defines extremism in broad terms, permitting expansive interpretations that can encompass political opposition or academic work challenging the state's narrative. This ambiguity grants the state significant latitude in applying the law to suppress a wide range of activities.

In the *ChK-GPU-NKVD in Ukraine* case, the court relied on a linguistic commission's conclusions to convict the authors. The commission, composed of three scholars from the Russian Academy of Sciences' Institute of Language Studies, determined that the book was extremist⁶. However, the commission's members lacked relevant expertise in Ukrainian history, and only one had experience with the Ukrainian language. The absence of specialized knowledge raises serious doubts about the objectivity of the findings, yet the court accepted them without challenge, facilitated by the lack of defense in the authors' absence. This case illustrates how in absentia trials can bypass due process and permit judicial decisions without meaningful scrutiny.

By relying on commissions with questionable expertise, the Russian state ensures that dissenting voices are effectively silenced, further entrenching its control over historical and political narratives. The vague legal definitions of extremism, coupled with the procedural deficiencies inherent in in absentia trials,

⁵ O Bertelsen, 'A Trial in Absentia: Purifying National Historical Narratives in Russia' [2016] 3 Kyiv-Mohyla Humanities Journal 57–87.

⁶ Bertelsen (n 5) 57–87.

foster an environment in which the state can easily prosecute those who contest its authority.

*Ukraine's approach to criminal proceedings in absentia:
a legal and procedural analysis*

Ukraine's criminal justice system has witnessed substantive reforms in recent years, particularly in the realm of criminal proceedings conducted *in absentia*. These reforms, precipitated by the necessity to address cases involving individuals evading justice, reflect a critical shift in the prosecutorial approach toward serious offenses. The introduction of *in absentia* procedures in the *Criminal Procedure Code of Ukraine* (CPC) in 2014 was a response to a pressing need to prosecute high-profile cases involving national security, corruption, and other grievous offenses. This analysis aims to elucidate the legal framework and procedural safeguards governing such proceedings, as well as the challenges faced in ensuring compliance with fundamental rights⁷.

The *Criminal Procedure Code* (CPC) delineates specific conditions under which *in absentia* proceedings can be initiated. The primary legal provisions governing this area of law are contained in Articles 297-1 through 297-5 of the CPC, which set forth the circumstances, procedural safeguards, and rights accorded to the accused in such proceedings.

1. Conditions for Initiation of In Absentia Proceedings: Under Ukrainian law, *in absentia* proceedings may only be initiated in respect of serious and grievous offenses, as defined under part 2 of Article 297-1 of the CPC. These include crimes such as terrorism, high-level corruption, and acts that threaten national security. The initiation of such proceedings requires that:

- The accused is evading criminal liability by absconding or remaining in hiding.
- The accused has been placed on an international or interstate wanted list.
- Proper notification of the initiation of criminal proceedings has been effected, albeit through alternative means when direct service is not feasible.

2. Notification Requirements: A central tenet of Ukrainian *in absentia* law is the requirement that the accused be duly notified of the proceedings against them. The CPC mandates that a notice of suspicion and summons must be served on the accused, either personally or through alternative public announcements, such as publication in national media. This is to ensure that the accused is afforded an opportunity to participate in the proceedings, even if they are evading justice.

3. Role of Legal Representation: To safeguard the accused's right to defense, Ukrainian law stipulates that in the absence of the accused, a defense lawyer must be appointed to represent the accused's interests during trial. If the accused does not retain legal counsel, the state is obligated to appoint a defense lawyer.

⁷ O Kalinnikov, 'Comparative Analysis of Trial in Absentia in Legislation of the FRG and Ukraine' [2023] 2(10) Law Journal of the National Academy of Internal Affairs 105–116.

However, the effectiveness of this representation is often constrained by the absence of direct communication between the lawyer and the accused, which may undermine the defense's ability to adequately advocate on behalf of the accused.

4. *Applicable Crimes:* In *absentia* proceedings in Ukraine are strictly limited to serious and grievous offenses, primarily those that have profound implications for public safety and national security. The law precludes the application of *in absentia* trials to misdemeanor offenses or crimes of lesser gravity, thus ensuring that the procedure is reserved for cases of significant public concern.

Prior to the legislative amendments in 2014, Ukrainian criminal law did not permit the prosecution of individuals in their absence. This legal lacuna posed significant challenges in cases where suspects fled the country to evade criminal liability, particularly in instances of corruption, terrorism, and offenses against state security. To remedy this, the Ukrainian legislature introduced provisions that allow for the prosecution and sentencing of individuals *in absentia*, thereby ensuring that justice could proceed even in the absence of the accused.

The amendments to the *Criminal Procedure Code of Ukraine*, effected in October 2014, instituted both *special pre-trial investigations* and *special judicial proceedings* that may be conducted in the absence of the suspect or accused. These procedures were designed to address the issue of impunity, particularly in cases involving grievous crimes where the accused seeks to escape prosecution by absconding from the jurisdiction.

The Ukrainian legal framework for *in absentia* proceedings comprises two primary stages: the *special pre-trial investigation* and the *special judicial proceedings*. Each stage is governed by specific procedural requirements aimed at balancing the need for justice with the protection of the accused's rights.

1. *Special Pre-Trial Investigation:* The CPC permits pre-trial investigations to proceed without the presence of the accused, provided that the accused has been notified of the charges and has evaded capture. During this stage, the investigative authorities gather evidence, question witnesses, and compile the case as though the accused were present. The conclusion of the pre-trial investigation leads to the transfer of the case to the prosecutor for the filing of an indictment.

2. *Special Judicial Proceedings:* Once the case reaches the judicial stage, the court may proceed with the trial *in absentia*. At this stage, the prosecutor presents the case, while the defense lawyer – appointed by the state or retained by the accused – advocates on behalf of the absent individual. The court is required to ensure that the proceedings are conducted in accordance with the principles of fairness and justice, including the consideration of all available evidence and ensuring that the defense has the opportunity to challenge the prosecution's case.

While the introduction of *in absentia* proceedings has addressed critical gaps in Ukraine's criminal justice system, the procedure is not without its challenges and criticisms, particularly in relation to the accused's right to a fair trial.

One of the most significant criticisms of Ukraine's *in absentia* process is the potential infringement on the accused's right to an effective defense. Although the law mandates the appointment of a defense lawyer, the inability of the lawyer to directly consult with the accused may result in inadequate representation. The absence of personal communication between the lawyer and the accused severely limits the ability of the defense to present a coherent and comprehensive legal strategy, raising concerns about the fairness of the trial.

Another area of concern is the efficacy of the notification mechanisms employed in *in absentia* proceedings. While the CPC allows for public announcements in cases where the accused is hiding or abroad, there is no guarantee that the accused will receive these notifications. This creates a risk that the trial may proceed without the accused having actual knowledge of the charges or the proceedings, potentially violating the principles of due process.

Ukraine's *in absentia* procedures have faced scrutiny from international human rights organizations, including the United Nations and the European Court of Human Rights (ECHR). These bodies have raised concerns about the potential for abuse and the adequacy of procedural safeguards to protect the accused's rights. The absence of mechanisms to allow for a retrial in cases where the accused was not properly notified further complicates Ukraine's compliance with international standards governing the right to a fair trial.

Azerbaijan: an emerging legal framework

Azerbaijan's recent introduction of *in absentia* trials in 2023–2024 signals a shift towards harmonizing its legal system with European practices. The Azerbaijani legal framework draws heavily from the models seen in Italy, Germany, Romania, and Moldova, focusing on ensuring defendants are duly notified and represented. While *in absentia* trials are now recognized as a legal right, Azerbaijan's legal system remains cautious, emphasizing that these trials should occur only under conditions that do not compromise the defendant's right to a fair trial.

The influence of countries like Italy and Germany is evident in Azerbaijan's requirement for legal representation during *in absentia* proceedings and the opportunity for post-verdict appeals. At the same time, the system reflects a need for further development, particularly in ensuring that the notification process is robust and effectively implemented in practice. Azerbaijan's reforms show a concerted effort to balance judicial efficiency with the protection of individual rights, a challenge that many European countries have faced and navigated in varying ways.

The legal systems of *Romania* and *Moldova*, which also follow the Roman-German tradition, place a strong emphasis on procedural fairness. Both countries allow *in absentia* trials but maintain strict conditions regarding notification and legal representation, ensuring that defendants' rights are respected throughout the process. These models have likely had a direct influence on Azerbaijan's

reforms, which seek to uphold fair trial standards by providing clear procedures for notifying defendants and protecting their right to appeal.

Ukraine, in particular, has had to navigate the challenges of ensuring fair trials in absentia, especially for individuals who have fled the country due to the ongoing conflict. Despite these extraordinary circumstances, Ukraine remains committed to the principles of *ECHR Article 6*, ensuring that defendants are notified and provided with legal representation. Azerbaijan has mirrored Ukraine's emphasis on procedural fairness, ensuring that even in the event of a defendant's absence, the right to appeal and proper legal representation are guaranteed.

Overall, Azerbaijan's legal evolution in adopting in absentia trials is shaped by the combined influences of these European systems. The reforms incorporate key safeguards, ensuring that defendants are duly notified, represented, and provided the opportunity to appeal, aligning with the requirements of *ECHR Article 6*. Azerbaijan's cautious but determined effort to strike a balance between judicial efficiency and human rights reflects its commitment to improving its legal system while upholding international standards. As Azerbaijan continues to refine its in absentia framework, the emphasis on fair trial rights and procedural safeguards will remain critical to ensuring justice is served without compromising the fundamental rights of defendants.

Comparative analysis within the CIS context

Azerbaijan's approach to *in absentia* trials aligns with, yet distinguishes itself from, practices observed in other CIS countries, reflecting both shared legal heritage and nuanced national adaptations.

Shared Legal Foundations:

– Many CIS countries, including *Uzbekistan*, as well as *Ukraine*, permit *in absentia* trials under conditions where the defendant evades justice by remaining outside national borders or deliberately avoiding court appearances.

– The procedural emphasis across these nations is on ensuring that justice is not thwarted by the defendant's absence, particularly in cases involving serious crimes.

Divergent Approaches and Safeguards:

– *Moldova* and *Georgia* have developed more detailed procedural regulations and safeguards for *in absentia* trials, outlining explicit conditions and defendant rights protections.

– Azerbaijan's recent amendments place it among those countries with a *structured and balanced framework*, providing clear procedures and robust safeguards, thereby enhancing legal certainty and fairness.

Alignment with International Standards:

Azerbaijan's legal provisions for *in absentia* trials demonstrate an effort to *harmonize national laws with international legal standards*, including those articulated in human rights treaties and European legal practices. Emphasizing

due process, defendant rights, and judicial oversight ensures that in absentia proceedings uphold fundamental legal principles while addressing practical challenges in prosecuting serious crimes.

Romania, Moldova, and Ukraine: emphasis on procedural fairness

Romania and Moldova, both adhering to the Roman-German legal tradition, allow in absentia trials with robust procedural protections. In these countries, in absentia trials can proceed only after due notification, and legal representation is mandatory to protect the absent defendant's rights. The right to appeal is a critical element, ensuring that any injustice stemming from the defendant's absence can be rectified. Moldova's procedural standards closely mirror Romania's, focusing on balancing judicial efficiency with the protection of individual rights.

Ukraine, which has faced significant challenges due to ongoing conflict, allows in absentia trials primarily in cases where defendants have fled the country. Despite the extraordinary circumstances, Ukraine remains committed to ensuring fair trial standards, particularly by adhering to *ECHR Article 6's* requirements for notification and representation. The Ukrainian approach, especially in wartime, underscores the importance of ensuring that absent defendants are given the opportunity to appeal or challenge verdicts. This focus on procedural fairness has likely influenced Azerbaijan's reforms, particularly in relation to notification and the right to appeal.

Czech Republic: stringent protection of defendant presence

The Czech Republic offers one of the strictest models concerning in absentia trials. Under *Article 8(2) of the Charter of Fundamental Rights and Basic Freedoms of the Czech Republic*, the Czech legal system mandates the physical presence of defendants in criminal trials⁸. The procedural code reflects a strict adherence to the principle of fair trial, generally prohibiting trials in absentia unless in extraordinary circumstances. This conservative approach prioritizes the defendant's right to participate in their defense, ensuring a higher level of protection for individual rights compared to other European systems.

While Azerbaijan's recent legal reforms have moved towards recognizing in absentia trials, the influence of the Czech model can still be seen, particularly in the careful balance Azerbaijan seeks to strike between efficiency and protecting defendants' rights. The Czech Republic's strong safeguards have likely encouraged Azerbaijan to emphasize notification and legal representation as core elements of its new in absentia framework.

⁸ O Hamul'ák, 'Penetration of the Charter of Fundamental Rights of the European Union into the Constitutional Order of the Czech Republic – Basic Scenarios' [2020] 7(1) *European Studies-the Review of European Law, Economics and Politics* 108–124.

*Konecny v District Court in Brno-venkov: extradition dynamics and human rights considerations in the context of Czech legal proceedings within the EU framework*⁹.

On February 27, 2019, the Supreme Court of the United Kingdom rendered its judgment in the case. This case, centered on the European Arrest Warrant (EAW) issued by the Czech Republic for the extradition of Mr. Konecny, a Czech national convicted of fraud in absentia, offers critical insights into the intersection of extradition law, mutual trust between European Union (EU) member states, and the protection of individual rights under the European Convention on Human Rights (ECHR).

Background of the case. The case's roots extend back to between November 2004 and March 2005, when Mr. Konecny committed three offenses of fraud in the Czech Republic. In his absence, the District Court in Brno-Venkov convicted him on May 12, 2008, and sentenced him to eight years in prison. Following this conviction, the Czech authorities issued a European Arrest Warrant on April 17, 2013, seeking his extradition from the United Kingdom, where he had been residing.

The EAW issued by the Czech Republic specified that Mr. Konecny would be granted an unconditional right to a retrial upon his return, a critical element in this case. After being arrested in the UK on March 2, 2017, Mr. Konecny challenged his extradition on several grounds, primarily focusing on the significant delay since the alleged offenses and the potential infringement of his rights under Article 8 of the ECHR, which protects the right to respect for private and family life.

Legal issues and arguments. At the extradition hearing, Mr. Konecny's legal team argued that extradition would be unjust and oppressive due to the long delay between the commission of the alleged offenses and the issuance of the EAW. They contended that this delay should trigger a bar to extradition under section 14(a) of the Extradition Act 2003, which concerns individuals facing prospective trials. They further argued that extradition would disproportionately interfere with Mr. Konecny's family and private life, thus violating his rights under Article 8 of the ECHR¹⁰.

The District Judge, however, ruled that the relevant provisions were those under section 14(b) of the Extradition Act, which applies to convicted persons rather than accused persons. The judge determined that the time period for considering the delay began from the date of Mr. Konecny's conviction in May 2008, rather than from the time the offenses were committed. Consequently, the judge found that the delay did not warrant barring extradition, and that the public interest in ensuring that convicted individuals serve their sentences outweighed any potential interference with Mr. Konecny's Article 8 rights.

⁹ UK Supreme Court. (2019). *Konecny (Appellant) v. District Court in Brno-Venkov, Czech Republic (Respondent)* [2019] UKSC 8. On appeal from [2017] EWHC 2360 (Admin). Justices: Lord Kerr, Lord Hodge, Lady Black, Lord Lloyd-Jones, Lord Kitchin.

¹⁰ I Krstić, B Čučković, 'Procedural aspects of article 8 of the ECHR in environmental cases – the greening of human rights law' [2015] 63(3) *Annals of the Faculty of Law in Belgrade* 170–189.

This ruling was upheld by the High Court, which also certified a point of law of general public importance, leading to an appeal to the Supreme Court.

The Supreme Court's Judgment. The Supreme Court was tasked with determining whether Mr. Konecny should be classified as an “accused person” or a “convicted person” under the Extradition Act 2003. This classification was crucial because it dictated how the delay would be considered in relation to the request for his extradition. The appellant argued that since his conviction was not final due to his right to a retrial, he should be treated as an accused person. However, the Supreme Court unanimously dismissed this appeal.

The Court emphasized that the EAW system is predicated on a high degree of mutual trust between EU member states. In light of this trust, UK courts are generally expected to accept the description of the legal status of the individual as provided by the requesting authority, in this case, the Czech Republic. The Supreme Court held that Mr. Konecny's conviction, though open to retrial, was binding and enforceable under Czech law, thereby categorizing him as a convicted person. This classification aligned with the structure and intent of the Extradition Act and the broader EAW framework.

The Court acknowledged that this classification could be disadvantageous for individuals like Mr. Konecny, as it limits the consideration of delays prior to the conviction. However, the Court noted that any deficiencies in the statutory framework could be mitigated by the application of Article 8 of the ECHR, which serves as a safeguard against extradition where the passage of time might render it unjust or oppressive.

This case illustrates the delicate balance between respecting international cooperation and safeguarding individual rights. The Supreme Court's judgment underscores the importance of mutual trust between EU member states, which is a cornerstone of the EAW system. By affirming the Czech Republic's classification of Mr. Konecny as a convicted person, the Court reinforced the principle that member states should generally rely on each other's legal determinations. However, the case also highlights potential gaps in the UK's extradition law, particularly regarding the treatment of individuals convicted in absentia who have a right to retrial. The Court's recognition of Article 8 as a protective measure is significant, as it ensures that human rights considerations are not overlooked, even in the face of strong public interest in enforcing convictions. The decision also raises questions about the fairness of applying different standards of delay depending on whether an individual is classified as accused or convicted. This issue may warrant further legislative review to ensure that the Extradition Act adequately protects individuals from unjust or oppressive extradition.

*Case C-569/20: The CJEU's interpretation of in absentia trials
and fair trial rights in the context of Bulgarian legal proceedings*

The judgment in Case C-569/20 by the Court of Justice of the European Union (CJEU) provides a nuanced interpretation of the legal standards for trying and convicting an accused person in absentia under European Union law¹¹. The case involves the prosecution of a defendant in Bulgaria who could not be located, raising fundamental questions about the rights of the accused and the procedural safeguards necessary to ensure a fair trial. The CJEU's ruling interprets Directive 2016/343, which aims to protect certain aspects of the presumption of innocence and the right of an accused person to be present at their trial. This essay examines the key findings of the CJEU's judgment, the conditions under which in absentia trials are permitted, the limitations on the rights of the accused, and the implications for Member States' legal systems. A central tenet of the CJEU's judgment is the right of an accused person who has been tried or convicted in absentia to seek the reopening of proceedings on the merits of the case in their presence. This right is guaranteed under Articles 8 and 9 of Directive 2016/343, which emphasize that the accused must have the opportunity to fully participate in their defense, provided specific conditions are met¹². The CJEU stresses that the right to reopen proceedings exists unless there is clear evidence that the accused deliberately evaded judicial proceedings by preventing the authorities from delivering proper notification of the trial.

This principle underscores the EU's commitment to upholding the right to a fair trial, even in situations where the accused cannot be located. The court specifies that an accused person must not be denied the opportunity to challenge a conviction in absentia unless it can be proven that they took deliberate steps to avoid the trial. Thus, the burden of proof lies with the authorities to demonstrate that the accused acted with intent to evade justice.

Directive 2016/343 serves as the cornerstone for interpreting the rights of the accused in criminal proceedings within the EU¹³. Article 8 establishes the right of an accused person to be present at their trial. It allows for trials in absentia under certain conditions:

1. The accused must have been informed, in due time, about the trial and the consequences of non-appearance.
2. If the accused was informed, they must have been represented by a lawyer, either mandated by themselves or appointed by the State.

When these conditions cannot be met due to the accused being unlocatable, despite reasonable efforts, Member States may proceed with a trial in absentia.

¹¹ J Callewaert, 'Convention Control Over the Application of Union Law by National Judges: The Case for a Wholistic Approach to Fundamental Rights' [2023] 1 European Papers-A Journal on Law and Integration 331–347.

¹² Callewaert (n 11) 331–347.

¹³ V Mitsilegas, 'The European Union and the rights of individuals in criminal proceedings', in: D Brown, J Iontcheva Turner, B Weisser (eds), *The Oxford Handbook of Criminal Process* (Oxford University Press 2019) 115.

However, they must ensure that the decision, once made, is communicated to the accused, and that they are informed of their right to seek a new trial or equivalent remedy.

Article 9 complements these provisions by ensuring that, in cases where the accused was not present at their trial and the conditions in Article 8(2) were unmet, they retain the right to a new trial or another remedy that allows for a re-examination of the case in their presence. This reflects a fundamental commitment to maintaining the fairness and integrity of criminal proceedings across the EU.

While the right to a new trial is protected under EU law, the CJEU clarifies that this right is not absolute. The judgment outlines specific circumstances under which the right to reopen proceedings can be denied:

– *Deliberate Evasion of Justice*: The CJEU emphasizes that if there is “precise and objective indicia” showing that the accused was aware of the trial and intentionally took steps to avoid receiving official notification, they may lose the right to reopen the proceedings. This might include providing false contact information, failing to respond to efforts made to contact them, or other deliberate actions designed to avoid the trial.

– *Requirement for Concrete Evidence*: For a denial of the right to a new trial to be justified, the court must be presented with concrete evidence demonstrating the accused’s intent to evade justice. This could involve proof that the accused had deliberately communicated incorrect contact details, ignored official communications, or moved without notifying the authorities. The judgment sets a high bar for denying the right to a new trial, emphasizing that such a decision must be based on solid evidence of the accused’s intent.

The CJEU’s ruling places significant responsibilities on national courts and authorities to ensure compliance with Directive 2016/343 when conducting trials in absentia. Courts must verify that all reasonable efforts have been made to inform the accused. This involves ensuring that official documents specifying the trial’s date, location, and the consequences of non-appearance have been issued and delivered in a timely manner.

Authorities are required to demonstrate due diligence in their efforts to notify the accused. This includes using all available means of communication and, in cross-border cases, employing diplomatic channels or international postal services if necessary. The CJEU also mandates that courts consider both the efforts of the authorities and the diligence of the accused in receiving the information. For example, if the accused changed their address without notifying the court, this could affect their right to challenge the conviction.

The CJEU’s judgment restricts Member States from denying a new trial solely because the accused has absconded or the authorities could not locate them. National legislation must not categorically exclude the right to a new trial in such cases unless there is clear evidence of deliberate avoidance. The court emphasizes that Member States must align their laws with Directive 2016/343 by providing

adequate safeguards for accused persons tried in absentia. This includes provisions for reopening trials unless it is demonstrated that the accused knowingly waived their right to be present.

The CJEU's interpretation is designed to uphold the right to a fair trial as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union and Article 6 of the European Convention on Human Rights (ECHR). These rights guarantee that an accused person must be given a fair opportunity to defend themselves, be promptly informed of the charges against them, and have access to a fair and public hearing. The court's ruling ensures that trials in absentia do not undermine these principles, fostering trust among Member States in each other's criminal justice systems.

To comply with the CJEU's interpretation, Member States must take several practical steps:

- *Enhanced Documentation*: Authorities should meticulously document all efforts to notify the accused, including records of attempted communications and responses received. This ensures that courts can evaluate whether reasonable efforts were made to inform the accused.

- *Improved Cross-Border Cooperation*: In cases involving accused persons in other jurisdictions, authorities may need to rely on diplomatic channels, international treaties like the Hague Service Convention, or other agreements to ensure proper notification.

- *Criteria for Determining Deliberate Evasion*: National courts should establish clear criteria to assess whether an accused has deliberately avoided notification. Factors such as repeated failed delivery attempts, unnotified address changes, and lack of response to official communications could indicate intentional evasion.

The CJEU's judgment reinforces the importance of balancing procedural efficiency with the protection of fundamental rights. Future reforms may involve:

- *Greater Use of Technology*: Utilizing digital communication tools to improve the efficiency and reliability of notifications.

- *Standardized Practices Across Member States*: Developing consistent procedures to ensure uniform application of Directive 2016/343.

The CJEU's ruling in Case C-569/20 offers essential guidance on when in absentia trials are allowed under EU law, underscoring the importance of safeguarding the right to a fair trial. The decision highlights the need for careful procedural adherence to ensure that accused individuals are properly informed and able to defend themselves. While recognizing the operational demands of criminal justice systems, the judgment enforces strict protections for the rights of the accused, requiring Member States to bring their laws into compliance with EU directives. This ruling strikes a thoughtful balance between pursuing justice and upholding fundamental rights, setting a key precedent for future legal developments in the EU.

*A comparative analysis of in absentia trials and their impact
on Azerbaijan's legal system*

In absentia trials, where a defendant is tried without being physically present, remain a contentious aspect of legal systems globally. Their use raises concerns regarding fair trial standards, particularly in relation to fundamental human rights. Across European jurisdictions and beyond, countries apply different models for these trials, and Azerbaijan's recent legal reforms in 2023–2024 have prompted a deeper exploration of how in absentia is applied across various systems. This section examines the practices of in absentia trials in several countries, including Italy, Germany, the Czech Republic, Turkey, Belgium, Romania, Moldova, Belarus, and Ukraine, and analyzes their influence on Azerbaijan's evolving legal framework.

Conclusion

The recent introduction of in absentia trials in Azerbaijan signifies a transformative moment within its legal framework, reflecting both a response to the exigencies of prosecuting serious offenses and an endeavor to harmonize with European legal standards. By emulating the procedural structures established in jurisdictions such as Italy, Germany, and Moldova, Azerbaijan aims to achieve a nuanced balance between judicial efficiency and the safeguarding of fundamental rights. However, a salient inquiry persists: can Azerbaijan effectively ensure fair trial standards in the absence of the accused, particularly in light of the procedural safeguards enshrined in international legal instruments, most notably the European Convention on Human Rights (ECHR)?

The operationalization of procedural protections – encompassing notification obligations and access to competent legal representation – is imperative for ensuring that in absentia trials adhere to the stipulations articulated in Article 6 of the ECHR. Jurisprudential precedents established by international cases, such as *Konecny v. District Court in Brno-Venkov* and CJEU Case C-569/20, delineate clear standards regarding the conduct of in absentia trials, emphasizing the necessity of upholding the defendant's right to a fair trial. While Azerbaijan's legal framework is ostensibly informed by these landmark decisions, the actualization of these safeguards will ultimately determine the efficacy of its reforms.

A comparative analysis of Azerbaijan's approach vis-à-vis other CIS countries, particularly Russia, as well as Ukraine elucidates both the potential advantages and inherent risks associated with such legal reforms. The challenges faced by Ukraine regarding due process in its in absentia proceedings, coupled with Russia's politically motivated applications of these trials, underscore the necessity for Azerbaijan to learn from these experiences. In this regard, Azerbaijan must ensure that its legal processes are characterized by transparency, fairness, and the provision of an effective remedy, as mandated by Article 13 of the ECHR.

In summation, the introduction of in absentia trials in Azerbaijan represents a significant step toward judicial modernization. Nevertheless, the implementation

of these trials must proceed with a judicious awareness of the delicate balance between prosecuting defendants in their absence and preserving their rights. The capacity of Azerbaijan to adhere to international legal standards will be pivotal in ascertaining its legal credibility within the global context. Ultimately, the true measure of Azerbaijan's legal reforms will reside in its ability to protect the rights of the accused while simultaneously addressing the imperatives of justice – ensuring that the pursuit of efficiency does not come at the expense of fairness or precipitate miscarriages of justice.

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КРИМІНАЛЬНЕ ПРОВАДЖЕННЯ IN ABSENTIA: ПОРІВНЯЛЬНИЙ АНАЛІЗ УСТАНОВЛЕННЯ БАЛАНСУ МІЖ ВИМОГАМИ ПРАВОСУДДЯ ТА ЗАХИСТОМ ПРАВ ОБВИНУВАЧЕНОГО

АНОТАЦІЯ. У цій статті пропонується докладний порівняльний аналіз проваджень in absentia у правових рамках Росії, України та кількох країн СНД, з особливим акцентом на розвитку правової системи Азербайджану. Росія дедалі частіше використовує провадження in

absentia як стратегічний інструмент політичних репресій та історичного контролю, спрямований проти дисидентів, опозиційних діячів і науковців, які кидають виклик офіційним наративам держави. Законодавча база Росії, яка ґрунтується на правових традиціях радянської епохи, включаючи ст. 282 Кримінального кодексу та Закон про екстремізм 2002 р., дозволяє притягувати осіб до відповідальності *in absentia*. Така практика обходить принципи справедливого судового розгляду, змушуючи критиків замовкнути та зміцнюючи владу держави над політичним та історичним дискурсом, як це видно у резонансних справах за участю лідера опозиції Олексія Навального та українських авторів, які критикують радянську історію.

На протипагу цьому у статті розглядаються правові надбання інших держав СНД, таких як Узбекистан, а також Україна, де застосовуються провадження *in absentia* у випадках, коли обвинувачені ухиляються від правосуддя, втікаючи за кордон або ухиляючись від явки до суду. Хоча в основі цих практик лежать подібні правові принципи, існують значні нормативні відмінності. Молдова та Грузія запровадили комплексні процесуальні гарантії, включаючи чіткі положення щодо сповіщення, правового представництва та прав на оскарження. Нещодавні правові реформи в Азербайджані (2023–2024 рр.) знаменують собою значний крок у напрямі узгодження процедур провадження *in absentia* з європейськими правовими стандартами. Спираючись на законодавчу базу таких країн, як Італія, Німеччина, Румунія та Молдова, Азербайджан віддав пріоритет належному сповіщенню, обов'язковому юридичному представництву та праву на оскарження у своїх зусиллях щодо підвищення справедливості провадження *in absentia*, що відображає його прихильність міжнародним нормам з прав людини.

У центрі уваги цієї статті – застосування Україною провадження *in absentia*, особливо в контексті триваючого збройного конфлікту. Україна покладається на ці судові процеси для судового переслідування осіб, звинувачених у воєнних злочинах, державній зраді та інших тяжких злочинах, особливо щодо тих, хто втік з країни під час конфлікту. Незважаючи на ці надзвичайні обставини, Україна залишається відданою дотриманню міжнародних правових стандартів, зокрема Європейської конвенції з прав людини (ЄКПЛ), забезпечуючи процесуальну справедливість для відсутніх обвинувачених. Дотримання Україною суворих вимог щодо сповіщення, юридичного представництва та права на апеляцію мало безпосередній вплив на правові реформи в Азербайджані, слугуючи моделлю для балансу між вимогами правосуддя та захистом прав обвинувачених, навіть у складних і надскладних ситуаціях.

У статті також ширше висвітлюється участь України у формуванні регіональної правової практики, зокрема її роль у впливі на реформи в Азербайджані. Підхід України, особливо щодо організації судових процесів *in absentia* під час конфлікту, підкреслює адаптованість цих проваджень як до юридичних, так і до практичних потреб, зберігаючи процесуальну справедливість. Досліджуючи досвід України та використання Росією судових процесів *in absentia* як політичних репресій, стаття надає порівняльну базу, яка підкреслює різне використання судових процесів *in absentia* у регіоні.

Завдяки такому порівняльному аналізу стаття ілюструє критичну важливість балансу між ефективністю судової системи та основними правами людини. Зважені правові реформи в Азербайджані, на які значною мірою вплинула практика України, відображають перспективний підхід, спрямований на гармонізацію законодавчої бази з європейськими стандартами, забезпечуючи при цьому захист прав підсудних. На відміну від цього триваюче маніпулювання Росією судовими процесами *in absentia* як інструментом придушення опозиції та контролю над історичним дискурсом підкреслює використання цих процесів для політичних репресій. Це дослідження завершується підкресленням того, як розвиваються правові системи Азербайджану та України, пропонуючи цінні уроки щодо ефективного регулювання провадження *in absentia*, зміцнення правосуддя та стандартів справедливого судового розгляду в складних правових середовищах у всьому регіоні СНД.

Ключові слова: процесуальні гарантії обвинуваченого за його відсутності; повідомлення в провадженнях “*in absentia*”; ст. 6 Європейської конвенції з прав людини.