



TRIAL IN ABSENTIA

– UNDER THE APPLICABLE LEGISLATION OF THE REPUBLIC OF KOSOVO AND THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

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In recent years, trial in absentia has become an increasingly significant component of Kosovo's judicial system. On 19 July 2019, the Law on Amending and Supplementing the Criminal Procedure Code of the Republic of Kosovo entered into force, enabling the conduct of war crimes trials without the physical presence of the accused, through the legal mechanism of trial in absentia. On 26 December 2024, the Basic Court in Prishtinë/Priština rendered the first judgment of this kind, sentencing in absentia the accused, Čedomir Aksić, to 15 years of imprisonment for war crimes committed during the period January–May 1999 in the municipality of Shtime/Štimlje. However, this judgment was subsequently quashed by the Court of Appeals, and, at the beginning of 2026, the case was remanded for retrial before the competent court of first instance.

While trials in absentia are often regarded as a step toward ensuring justice for victims, they simultaneously raise significant concerns regarding the efficiency of judicial proceedings and the protection of fundamental human rights, particularly in relation to their compliance with fair and impartial trial standards. This legal mechanism also raises questions concerning the practical enforceability of such judgments.

This research analyzes Kosovo's constitutional and legal framework governing trials in absentia. It evaluates this mechanism against international fair trial standards, specifically the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.

INTRODUCTION

Criminal proceedings in which a defendant is tried without being physically present, namely trials in absentia, raise crucial questions regarding the balance between procedural efficiency and the fundamental rights of the accused. Legal scholars have extensively scrutinized this practice, evaluating its implications across diverse jurisdictions and its alignment with international human rights frameworks.¹ The historical context and legal foundations of the concept of trial in absentia have deep roots, with its acceptance and application varying depending on different legal traditions. This analysis was undertaken in response to the increasing application of trials in absentia within Kosovo's judicial practice, particularly following recent legislative amendments and the emergence of concrete case-law, including the first in absentia judgment rendered in 2024. The growing reliance on this mechanism in war crimes proceedings, combined with ongoing discussions on its compliance with fair trial standards, has created a need for a structured legal assessment grounded in international human rights law. This work is therefore intended to contribute to ongoing legal debates, as well as to support practitioners, institutions, and stakeholders engaged in the administration of justice. Historically, Common Law systems have been reluctant to permit trials in absentia, emphasizing the importance of the defendant's presence as a fundamental guarantee of a fair trial.² Conversely, certain Civil Law jurisdictions have allowed such proceedings under specific circumstances, reflecting a divergent approach to the rights of the accused. The right of the accused to be present at a criminal trial has been characterized by the U.S. Supreme Court as "one of the most basic rights" guaranteed by the Constitution.³ Consequently, the compliance of trial in absentia with international human rights standards has remained a contested issue. The European Court of Human Rights (ECtHR) has addressed this matter in several cases, establishing that while trials in absentia are not absolutely prohibited, they must comply with strict criteria in order to ensure fairness.⁴ Subsequent ECtHR case-law has reinforced these principles, affirming that a conviction in absentia complies with the European Convention on Human Rights (ECHR) only if the State can prove that the accused had effective knowledge of the proceedings or had waived their right to be present.⁵ Furthermore, the Court has stressed that even where proceedings are conducted in the absence of the accused, adequate procedural safeguards must be in place to ensure that defendants have access to legal representation and the opportunity to challenge the judgment once they become aware of their conviction.⁶

Other international human rights bodies have also assessed the issue of trial in absentia.

1 James G. Starkey, "The Right to Be Present at Trial: Common Law and Modern Perspectives," *St. John's Law Review* 75, no. 3 (2001): 589-612.

2 Eugene L. Shapiro, "Due Process and the Absentee Defendant: A Constitutional Analysis," *Marquette Law Review* 85, no. 4 (2002): 897-923.

3 *Taylor v. United States*, 414 U.S. 17 (1973).

4 *Colozza v. Italy*, App. No. 9024/80, European Court of Human Rights (1985).

5 *Sejdovic v. Italy*, App. No. 56581/00, European Court of Human Rights (2006).

6 *Medvedyev v. France*, App. No. 3394/03, European Court of Human Rights (2010).

The United Nations Human Rights Committee (UNHRC), in its General Comment No. 32 on Article 14 of the International Covenant on Civil and Political Rights (ICCPR), has stated that trials in absentia are permissible only where the defendant has been duly informed of the charges and the proceedings (*Mbenge v. Zaire*, 1977).⁷ Similarly, the African Commission on Human and Peoples' Rights, in *Law Office of Ghazi Suleiman v. Sudan*, noted that trying individuals in absentia without adequate safeguards constitutes a violation of fundamental fair trial rights.⁸ The Inter-American Court of Human Rights has adopted a similarly strict approach. In *Loayza Tamayo v. Peru* (1997), the Court found that the Peruvian Government practice of convicting individuals in absentia without adequate notification violated the right of defense under the American Convention on Human Rights.⁹ The judgment reaffirmed that trial in absentia should be permitted only in limited circumstances where the defendant has been aware of, and has effectively waived, the right to be present. In international criminal law, the debate on trials in absentia has been particularly notable. The Rome Statute of the International Criminal Court (ICC) prohibits trials in absentia, underscoring the importance of the accused's presence. However, certain ad hoc tribunals, such as the Special Tribunal for Lebanon (STL), allow trials in absentia under strict conditions (STL, 2011).¹⁰ The STL has justified this approach on the grounds that it helps prevent impunity in cases where high-profile defendants evade justice.

Nevertheless, critics argue that such proceedings risk undermining fair trial standards and due process guarantees.

Jurisdictions and internal variations across different countries reflect varying approaches to trials in absentia, shaped by their respective legal traditions and interpretations of defendants' rights. In the United States, the Supreme Court has held that the voluntary absence of a defendant after the commencement of trial constitutes a waiver of the right to be present, thereby allowing the proceedings to continue (*Crosby v. United States*, 1993).¹¹ By contrast, Italy permits trials in absentia more broadly, although this practice has been subject to criticism by international human rights bodies (*Maleki v. Italy*, 1996).

¹²

Within the legal framework of Kosovo, Article 31 of the Constitution of the Republic of Kosovo (hereinafter: the Constitution)¹³ and Article 6 of the European Convention on Human Rights (hereinafter: the ECHR),¹⁴ which guarantee the right to a fair and impartial trial, require that every person be treated fairly in judicial proceedings and be afforded an equal and effective opportunity to defend themselves. Nevertheless, trial in absentia serves as an important procedural mechanism to ensure that justice can proceed even in the absence of the accused, often due to flight, evasion of arrest, or refusal to participate in the proceedings. However, for proceedings conducted in the absence of the accused

⁷ *Mbenge v. Zaire*, UN Human Rights Committee, Communication No. 16/1977.

⁸ *Law Office of Ghazi Suleiman v. Sudan*, African Commission on Human and Peoples' Rights.

⁹ *Loayza Tamayo v. Peru*, Inter-American Court of Human Rights (1997).

¹⁰ Special Tribunal for Lebanon, Decision on Conducting Trials in Absentia, Case No. STL-11-01/PT/AC/AR126.1 (2011).

¹¹ *Crosby v. United States*, 506 U.S. 255 (1993).

¹² *Maleki v. Italy*, UN Human Rights Committee, Communication No. 699/1996.

¹³ Constitution of the Republic of Kosovo, 2008.

¹⁴ Council of Europe, European Convention on Human Rights, as amended by Protocols Nos. 11, 14, and 15, ETS No. 005, 4 November 1950.

to comply with international human rights standards, adequate safeguards must be in place, including ensuring that the accused has been properly notified and that there is an effective possibility of retrial or appeal.

The case-law of the European Court of Human Rights (hereinafter: the ECtHR), which is directly applicable within Kosovo's legal system pursuant to Article 22 of the Constitution [Direct Applicability of International Agreements and Instruments], has reiterated that, although this is not explicitly stated in paragraph 1 of Article 6 of the ECHR, the overall purpose of this provision is that any person "charged with a criminal offence" should have the right to be present at the hearing. Furthermore, subparagraphs (c), (d), and (e) of paragraph 3 of Article 6 of the ECHR guarantee that "everyone charged with a criminal offence" has 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."

According to the ECtHR, while proceedings conducted in the absence of the accused are not, as such, in noncompliance with Article 6 of the ECHR, a denial of justice arises where a person convicted in absentia is subsequently not afforded the opportunity to obtain a determination of the merits of the case, particularly where it has not been established that the person waived the right to appear and to defend themselves.¹⁵

In the Republic of Kosovo, the issue of trial in absentia is regulated by Article 303 of Code No. 08/L-032 Criminal Procedure Code of the Republic of Kosovo (hereinafter: the Criminal Procedure Code).¹⁶ This provision sets out the conditions that must be met for conducting a trial in absentia, as well as the right of a person tried in absentia to an unconditional, automatic, and full retrial upon request.

In the following section, six (6) ECtHR cases related to trial in absentia will be briefly presented, followed by an assessment of the compliance of domestic provisions with the case-law of the ECtHR.

¹⁵ See, ECtHR cases *Sanader v. Croatia*, Application no. 66408/12, Judgment of 12 February 2015; and *Colozza v. Italy*, Application no. 9024/80, Judgment of 12 February 1985).

¹⁶ Code No. 08/L-032 Criminal Procedure Code of the Republic of Kosovo, available at: CODE NO. 08/L-032 CRIMINAL PROCEDURE CODE.

PURPOSE, SCOPE AND INTENDED USE OF THE ANALYSIS

This document is intended as a reference tool for legal practitioners, judicial institutions, policymakers, civil society actors, and international stakeholders engaged in rule of law and transitional justice processes in Kosovo. It aims to provide a structured legal assessment of trials in absentia, focusing on their compatibility with fair trial guarantees under Article 6 of the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights.

The analysis is designed to: Support courts and legal practitioners in interpreting and applying domestic provisions in line with international standards; Inform policy discussions and potential legal reforms related to trials in absentia; Contribute to public and professional debates on balancing accountability and fair trial rights, particularly in war crimes proceedings.

The findings of this paper are intended to be shared with relevant justice institutions, legal professionals, and civil society organizations. The document may also be published as part of HLCK's broader efforts to promote accountability and adherence to human rights standards. Future steps may include public discussions, presentations, or policy-oriented engagement based on the findings of this analysis.

SUMMARY OF CASES FROM THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS

As noted above, the ECHR does not explicitly provide that the accused has the right to be present at his or her trial; however, in its case-law, the Court has held that “the scope and purpose of the Article, taken as a whole, is to ensure that a person charged with any criminal offence has the right to participate in the hearing.” Nevertheless, with regard to trial in absentia, the European Court of Human Rights, through its jurisprudence, applicable in Kosovo pursuant to Article 53 [Interpretation of Human Rights Provisions], has developed and interpreted specific and stringent requirements concerning the procedural safeguards necessary to ensure a fair and impartial trial as guaranteed under Article 6 of the ECHR. The following section presents a brief summary of the key cases from this body of case-law, highlighting the specific and strict requirements related to the right to a fair trial in the context of proceedings conducted in absentia. The summary of key cases includes the relevant statements of fact in each case, as well as the findings and conclusions of the ECtHR.¹⁷

¹⁷ All ECtHR cases are available on the Court's official website at: <https://hudoc.echr.coe.int/eng>.

Sejdovic v. Italy [GC] – Application no. 56581/00

Judgment of 1 March 2006 [GC]

Article 6

The applicant, a German national, was suspected of the murder of Mr. S. in a travelers' encampment in Rome on 8 September 1992. In this regard, on 15 October 1992, the investigating judge in Rome ordered his detention on remand pending trial. As the applicant could not be located, he was declared "a fugitive." Since the Italian authorities were unable to contact and inform the applicant of his right to choose legal counsel, a defense counsel was appointed for him. The appointed counsel was notified that a hearing had been scheduled before the Assize Court in Rome. The trial was conducted in the absence of the applicant, with only his defense counsel present. On 2 July 1996, the Assize Court in Rome found the applicant guilty of murder and unlawful possession of weapons, sentencing him to 21 years and 8 months of imprisonment. The applicant's defense counsel lodged no appeal, and the judgment became final. Two and a half years later, following the applicant's arrest in Germany on the basis of an arrest warrant issued by the Rome Public Prosecutor's Office, the Italian Ministry of Justice submitted a request for his extradition from Germany to Italy. In that request, it was stated that, pursuant to Article 175 of the Italian Code of Criminal Procedure, the applicant would be allowed to file an out-of-time appeal against the judgment of the Assize Court in Rome. The request of the Italian Ministry of Justice was refused by the German authorities on the grounds that Italian legislation did not sufficiently guarantee that proceedings conducted in the applicant's absence could be reopened. The Government argued that the applicant had failed to exhaust the domestic remedies provided for under Articles 670 and 175 of the Code of Criminal Procedure. According to the Government, the factual circumstances of the case demonstrated that the applicant had deliberately sought to evade trial. On the other hand, the applicant contested the Government's submissions, arguing that he had not been informed of the existence of any domestic remedy, nor that he had been declared "a fugitive," or that criminal proceedings had been initiated against him and had resulted in a conviction. Accordingly, the applicant alleged a violation of his right to a fair trial, maintaining that he had not been informed of the charges against him and that the Italian authorities had proceeded on the assumption of his guilt on account of his absence.

In the applicant's case, the ECtHR held that, while the applicant could satisfy the first condition by demonstrating that the judgment convicting him had not been served on him personally, as regards the second condition, given that he had absconded after the commission of the offense, which had occurred in the presence of eyewitnesses who had identified him as perpetrator, the Italian authorities could reasonably conclude that he had deliberately sought to evade justice. The ECtHR found that the Government's arguments were not based on any objective factors other than the applicant's absence from his usual place of residence, viewed in light of the evidence against him and the assumption that he had been involved in the commission of the offense. In these circumstances, the Court held that it had not been established that the applicant had sufficient knowledge of the charges against him, and therefore it could not be concluded that he had sought to evade trial or had unequivocally waived his right to appear before the court.

Furthermore, with reference to Italian legislation, which provides that an objection to enforcement is admissible only where a procedural irregularity capable of rendering the decision invalid is established, particularly in relation to the service of summons on defendants who cannot be located, and given that in the applicant's case the summons had been served in accordance with domestic law, the ECtHR found that recourse by the applicant to the remedy under Article 670 of the Code of Criminal Procedure would not have been successful. As regards the remedy provided under Article 175 of the Code of Criminal Procedure, the Court held that it did not offer sufficient certainty that the applicant would have the opportunity to participate in a new trial in order to present his defense.

In conclusion, the ECtHR found a violation of Article 6 of the ECHR, holding that the applicant, who had been tried in absentia and for whom it had not been established that he had sought to evade trial or had unequivocally waived his right to appear, had not been afforded the opportunity to obtain a determination of the charges against him by a court which had heard him in accordance with his defense rights.

Sanader v. Croatia – Application no. 66408/12

Judgment of 12 February 2015

Article 6

In 1992, while the applicant was living in the then-occupied parts of Croatia, the Public Prosecutor's Office in Sisak indicted him for the criminal offense of war crimes against prisoners of war. The proceedings against him were conducted in his absence, with the applicant being represented by a court-appointed legal aid attorney. On 21 January 1993, the Sisak Municipal Court found the applicant guilty and sentenced him to 20 years' imprisonment, relying on the testimony of eight witnesses, which had not been challenged by his appointed defense counsel. The judgment of the Sisak Municipal Court, in so far as it concerned the applicant, was upheld by the Supreme Court in 2000, and subsequently, in 2004, an arrest warrant was issued against him. In 2009, after becoming aware of his conviction, the applicant requested the Croatian courts to reopen the proceedings. However, the Supreme Court dismissed his request on the grounds that he was residing in Serbia and was not available to the Croatian authorities. The applicant subsequently lodged a constitutional complaint before the Constitutional Court of Croatia, which was declared inadmissible.

The ECtHR noted that the Government had relied on two legal avenues under domestic law for the reopening of proceedings: (i) Article 497 paragraph 2 of the Criminal Procedure Code, which provides a specific ground for reopening proceedings conducted in absentia, requiring the convicted person to appear before the domestic authorities and to have a registered place of residence in Croatia for the duration of the proceedings; and (ii) Article 501 paragraph 1(3) of the Criminal Procedure Code, which provides for a general possibility of retrial. According to the ECtHR, the requirement for persons convicted in absentia to appear before domestic authorities and to provide a residence address

in Croatia in order to request a retrial was disproportionate, as it effectively prevented individuals residing abroad from seeking the reopening of proceedings without first surrendering to the Croatian authorities. The Court further observed that, under Article 501 paragraph 1(3) of the Criminal Procedure Code, the applicant was required to submit new and significant evidence in order to challenge the final judgment and obtain a retrial. The ECtHR found that the applicant, who had been tried in absentia, had no opportunity to challenge the evidence or to appeal against his conviction, and that this requirement was disproportionate in light of the fundamental right to be present at trial and to contest the evidence. Accordingly, the Court concluded that this legal avenue did not effectively guarantee the applicant a retrial. In conclusion, the ECtHR found a violation of Article 6 of the ECHR, holding that the applicant, who had been tried in absentia and for whom it had not been established that he had sought to evade trial or had unequivocally waived his right to appear, had not been afforded, with sufficient certainty, the opportunity to obtain a fresh judicial determination on the merits of the charges against him.

Einhorn v. France (dec.) – Application no. 71555/01

Decision of 16 October 2001 [Section III]

Articles 3 and 6

The applicant, a United States national, was convicted in absentia and sentenced to life imprisonment for the offense of murder committed in 1993 in the United States (hereinafter: USA). Following his arrest in France in 1997, an initial request by the USA for his extradition was refused by the French authorities due to the absence of guarantees for a retrial. In 1998, the State of Pennsylvania amended its legislation to allow for retrial in cases of convictions rendered in absentia. Following a renewed extradition request by the USA, accompanied by assurances of a fair retrial and the non-imposition of the death penalty, the Bordeaux Court of Appeal and the French Prime Minister approved the applicant's extradition. The applicant challenged the extradition decision, invoking the risk of life imprisonment and exposure to the death penalty. However, these claims were dismissed on the grounds that the US authorities had provided sufficient guarantees. Following a suicide attempt by the applicant and a medical assessment confirming his fitness for extradition, it was established that he would be extradited. Subsequently, the applicant was transferred to the USA in 2001.

The applicant alleged a violation of Article 3 of the ECHR, claiming that he faced a real risk of being sentenced to death and of exposure to the "death row phenomenon," amounting to inhuman or degrading treatment. He also alleged a violation of Article 6 paragraph 1 of the ECHR, arguing that his extradition had been approved on the basis of retroactive legislation enacted in Pennsylvania specifically to influence the outcome of his extradition proceedings.

The ECtHR declared the complaint filed by the applicant under Article 3 of the ECHR inadmissible, finding that the US authorities had provided sufficient assurances that the death penalty would not be imposed or enforced by the court of retrial. As regards the complaint alleging a violation under Article 6 of the ECHR, the Court held that it could

not be established that the applicant would be denied a retrial in the USA or that the risk of an egregious denial of justice was sufficiently substantiated. According to the ECtHR, France had fulfilled its obligations under Article 6 of the ECHR by securing assurances from the US authorities that the applicant would not be required to serve the sentence imposed in absentia. Accordingly, the ECtHR declared the application inadmissible.

Stoichkov v. Bulgaria – Application no. 9808/02

Judgment of 24 March 2005

Article 5

The applicant left Bulgaria in 1988. He was subsequently convicted in absentia by the Pernik District Court for the offenses of rape and attempted rape and sentenced to 10 years' imprisonment. Following his return to Bulgaria in 2000, he was arrested in order to serve the sentence imposed by the competent court. The applicant applied for his release before the Pernik District Prosecutor's Office, arguing that the 10-year limitation period for the enforcement of his sentence had expired. His request was rejected on the grounds that the limitation period had been interrupted, most recently in 1992. Subsequent appeals to the Pernik Regional Prosecutor's Office, the Sofia Appellate Prosecutor's Office, and the Supreme Cassation Prosecutor's Office were dismissed, on the basis that various enforcement actions, such as the transmission of a copy of the judgment to the police in 1992 and the issuance of a nationwide search warrant in 1995, had interrupted the limitation period.

The applicant alleged that his arrest in 2000 had been unlawful and arbitrary. The ECtHR considered that the applicant's complaint fell within the scope of Article 5 paragraph 1 of the ECHR. At the outset, the Court reiterated that the duty to guarantee an accused person's right to be present at trial is one of the fundamental requirements of Article 6 of the ECHR. The Court found that, in the applicant's case of trial and conviction in absentia, there was no indication that he had waived, either expressly or implicitly, his right to appear and defend himself. In order for the proceedings leading to his conviction not to amount to a "denial of justice," he should have had the opportunity to have the proceedings reopened. Accordingly, the ECtHR held that the criminal proceedings conducted against the applicant, together with the impossibility of having his case reheard, were manifestly contrary to the principles embodied in Article 6 of the ECHR. The Court therefore concluded that, while the applicant's initial deprivation of liberty in February 2000 could be regarded as justified under Article 5 paragraph 1(a) of the ECHR for the purpose of enforcing the sentence, such justification ceased to exist after 19 July 2001, when the Supreme Court of Cassation refused to reopen the proceedings. This conclusion rendered it unnecessary to determine whether the applicant had been detained despite the expiry of the limitation period for the enforcement of his sentence. In conclusion, the ECtHR found a violation of Article 5 paragraph 1 of the ECHR.

Colozza v. Italy – Application no. 9024/80

Judgment of 12 February 1985

Article 6

Criminal proceedings were conducted against the applicant for the offense of fraud. He was declared a fugitive by the Italian authorities and, in 1975, was convicted in absentia and sentenced to six years' imprisonment by the Rome Regional Court. After the judgment became final, the applicant was arrested and lodged a procedural objection against the arrest warrant, as well as an out-of-time appeal against the conviction. The judgment of the Rome Regional Court was upheld by the Court of Appeal and subsequently by the Court of Cassation, on the grounds that the appeal had been filed outside the statutory time-limit.

The ECtHR observed that it had not been established that the applicant had been aware of the criminal proceedings against him, as he had been deemed notified solely through documents submitted to the investigating judge. According to the Court, the efforts to locate the applicant were insufficient, as they relied on outdated addresses, despite the fact that other branches of the prosecution and police had obtained his current address in separate proceedings. In this regard, the ECtHR emphasized that States are required to act with due diligence to ensure the effective exercise of the rights guaranteed under Article 6 of the ECHR, and that there was no evidence to show that the applicant had waived his right to appear or had sought to evade justice. The Court further noted that, under Italian case-law, the applicant had the possibility to lodge an out-of-time appeal, which he did; however, the Court of Appeal and the Court of Cassation failed to remedy the alleged violation, as the former limited itself to declaring the appeal inadmissible and the latter concluded that his classification as a fugitive had been lawful. Accordingly, the ECtHR found that the applicant's case had never been heard, in his presence, by a "tribunal" competent to determine all aspects of the case. The Court also rejected the argument that the applicant had been responsible for informing the authorities of his change of address, particularly after being declared a fugitive, noting that he could not have done so since it had not been established that he had been aware of the proceedings initiated against him. In conclusion, the ECtHR found a violation of Article 6 paragraph 1 of the ECHR.

Yeşer v. Turkey – Application no. 4099/12

Judgment of 7 June 2022

Articles 5 and 6

The applicant was convicted in absentia on 7 November 2009 by the Istanbul Criminal Court of First Instance for issuing an uncovered cheque, under Article 16(1) of the relevant law. Following several attempts to serve the judgment, it was eventually served at his residential address on 2 December 2009 and became final on 10 December 2009 without appeal. The applicant was arrested on 30 March 2011 to serve the sentence. On 25 April 2011, he submitted a request for retrial, claiming that he had not been aware of the proceedings as he had been abroad from July 2008 to July 2009. On 3 May 2011, the competent court rejected his request, reasoning that the documents had been served at his address. The applicant's lawyer subsequently lodged an appeal seeking to have the conviction set aside, arguing that the applicant had lacked knowledge of the proceedings. However, on 6 October 2011, the appeal was dismissed for failure to comply with the

statutory seven-day time-limit.

The applicant maintained that he had not been aware of the criminal proceedings against him and had not received any documents related to them, including the judgment convicting him. He further argued that he could not have informed the authorities of a change of address, as he had no knowledge of the proceedings and was therefore unable to lodge an appeal within the prescribed time-limit. The Government, for its part, argued that the authorities had taken the necessary steps to notify him. The ECtHR noted that there was no objective evidence to suggest that the applicant had effective knowledge of the proceedings, that he had deliberately sought to evade justice, or that he had waived his right to appear. In this regard, the Court found that the domestic courts had failed to adequately assess and verify whether the applicant had been informed, and that the mere failure to update his address was insufficient to conclude that he had knowledge of the case. Accordingly, the ECtHR held that the applicant had been deprived of the opportunity to obtain a fresh determination of his case, in violation of his right to a fair trial under Article 6 of the ECHR. The Court also found a violation of Article 5 paragraph 1 of the ECHR, holding that the applicant's deprivation of liberty for the purpose of serving a sentence resulting from proceedings that failed to comply with the procedural requirements of Article 6 could not be regarded as "lawful" within the meaning of Article 5 paragraph 1(a) of the ECHR.

CONCLUSION

Article 303 of the Criminal Procedure Code governs trial in absentia by setting out the conditions for notifying the accused and ensuring their defense through legal representation. This provision permits trials in absentia, provided that reasonable efforts have been made to notify the accused, and it also guarantees the right to a full and automatic retrial upon request.

Initially, under paragraph 2 of this Article, the accused may be deemed to have waived the right to be present at trial in cases where: (i) the accused has attended the initial hearing and has been informed of the trial date by the single trial judge or the presiding judge, or during another court session, where they were informed of the obligation to be present and that the trial may proceed in their absence; and (ii) the accused was present at trial but subsequently failed to appear at later hearings, despite being informed of the new hearing date. In such cases, pursuant to paragraph 3 of Article 303 of the Criminal Procedure Code, the court determines whether the absence is voluntary and, if so, defense counsel may represent the accused.

Furthermore, under paragraph 5 of Article 303, where the court determines that the accused has voluntarily chosen to be absent, it must, in deciding whether to proceed with the trial in absentia, consider: (i) the difficulty of postponement; (ii) the burden on the prosecution; and (iii) the risk that delay may create difficulties for prosecution witnesses. Paragraph 6 of Article 303 provides that, where the trial is conducted in the absence of the accused, the court must make efforts to notify them of the judgment and, where this is not possible, defense counsel may lodge an appeal on their behalf, as provided under Articles 380 and 383 of the same Code.

Paragraph 7 of Article 303 stipulates that, in cases involving criminal offenses under Article 104 of the Criminal Code (genocide, war crimes, crimes against humanity, and aggravated murder), trials in absentia may be conducted even without fulfilling the standard presence-related requirements, provided that the single trial judge or the presiding judge is satisfied that reasonable efforts have been made to notify the accused of the proceedings and to secure their presence.

With regard to paragraph 7 of Article 303, which allows trials in absentia for offenses under Article 104 of the Criminal Code, subject to reasonable efforts to notify the accused and to ensure their presence, as well as their representation by defense counsel throughout the proceedings, the case-law of the ECtHR requires: (i) that the State undertake sufficient and reasonable efforts to notify the accused of the proceedings; and (ii) that a person tried in absentia be afforded effective legal representation. In this respect, it may be concluded that the provisions of this paragraph are broadly in line with the ECtHR's jurisprudence. However, the State must ensure that the defense provided by court-appointed counsel is effective and not merely formal.

Furthermore, paragraph 8 of Article 303 provides for “reasonable efforts” to notify the accused, including procedures under Articles 172 and 173 of the same Code, as well as a comprehensive information campaign calling on the accused to surrender to the jurisdiction of the court, publication of the charges on official websites, and public calls for any person with relevant information on the accused’s whereabouts to communicate such information to the police. In this regard, the ECtHR has emphasized that notification must be adequate and direct. Accordingly, publication on official websites and in official gazettes may not always be sufficient or direct. The effectiveness of notification efforts may therefore be called into question where the means employed do not genuinely ensure that the accused is informed.

Under paragraph 9 of Article 303 of the Criminal Procedure Code, a person tried pursuant to paragraph 7 of the same Article is entitled to an unconditional, automatic, and full retrial upon request. In this regard, the ECtHR considers the right to a full retrial to be a fundamental safeguard for the compliance of trials in absentia with the ECHR. Accordingly, this provision is, in principle, fully aligned with this standard, as it guarantees a comprehensive and fair re-examination of the case. However, this provision does not set any time-limit for the reopening of proceedings, whereas according to the ECtHR, a person convicted in absentia must be afforded a new trial without undue delay if such a request is made (see *Sejdovic v. Italy*, Application no. 56581/00, Judgment of 1 March 2006, §125; *Gençel v. Turkey*, Application no. 53431/99, Judgment of 23 October 2003, §27).

KEY FINDINGS

Based on the above analysis, the following key findings can be highlighted:

Kosovo’s legal framework permits trials in absentia and incorporates several safeguards, including the right to retrial, which are broadly aligned with ECtHR standards;

Notification of the accused remains a critical concern, as indirect or purely formal methods may fail to satisfy the ECtHR requirement that the accused has actual knowledge of the proceedings;

The role of defense counsel is essential, and safeguards must ensure that representation is effective and not merely formal;

Trials in absentia should be applied strictly in line with the case law of the ECtHR and used only as a measure of last resort, in order to prevent their development into a routine or merely formal practice. This approach is particularly important in anticipation of Kosovo’s future membership in the Council of Europe, when such proceedings may be subject to scrutiny and potential challenge before the ECtHR.

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