

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

Roberto Alonso Buzo

Judge and Professor of the Judicial School of Spain

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

1. Introduction.
2. Outline of Directive 2016/343/EU.
3. Scope of Directive 2016/343/EU.
  - 3.1. Subjective scope of application.
  - 3.2. Material scope of application.
  - 3.3. Spatial scope of application.
  - 3.4. Temporal scope of application.
4. Protection of the presumption of innocence in Directive 2016/343/EU
  - 4.1. The presumption of innocence as rule of treatment.
  - 4.2. Presumption of innocence as a rule of judgment.
5. The right to be present at a trial

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

## 1. Introduction.

**Several reflections can be offered as a introduction.**

- European legal instruments of judicial cooperation are based on the confidence between Member States.
- A significant milestone on the road to setting common standards for strengthening mutual trust among Member States in criminal proceedings.
- ECtHR and CJEU have set minimum standards regarding criminal proceedings which are normally already recognized in all national laws.

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

-Even the level of protection of the presumption of innocence in the EU was within “acceptable” standards and the recognition of the presumption of innocence in Europe is supported by a wide range of case law.

-Serious breaches of these fundamental safeguards have occurred frequently in practice: States parties to the European Convention of Human Rights (ECHR) had been condemned for not respecting the presumption of innocence.

- Reason: the increase in the phenomena of terrorism and organised crime, in recent years almost all countries had adopted measures restricting freedoms and rights, often diminishing the effectiveness of the presumption of innocence.

- The idea to be appropriate of adopting a legislative measure at European level on the presumption of innocence

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

## **2. Outline of Directive 2016/343/EU.**

-Directive 343/2016 devoted four chapters, comprising a total of sixteen articles, to the regulation of two basic guarantees: the presumption of innocence and the right to be present at one's trial.

- Particular importance in the text are the fifty-one recitals with which the Directive is opened

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

## **3. Scope of Directive 2016/343/EU.**

### 3.1. Subjective scope of application. Article 2 of the Directive.

- Natural persons.(Recital 14 of the Directive).
- Persons suspected or accused in criminal proceedings.
- Throughout the criminal proceedings until resolutions become definitive

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

## 3.2. Material scope of application.

- The Directive has restricted its scope of protection only to “criminal proceedings”. (Recital 11).
- Minor offences are included.

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

## 3.3. Spatial scope of application.

- The Directive applies to all Member States of the Union, with the exception of the United Kingdom, Ireland and Denmark.

## 3.4. Temporal scope of application.

- Directive 2016/343/EU entered into force on 29 March 2016, twenty days after its publication in the Official Journal.



# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

## **4. Protection of the presumption of innocence in Directive 2016/343/EU.**

- One of the most essential guarantees of the criminal process. (Article 3)
- The content is based on two aspects: the burden of proof against the accused in the trial (Article 7) and the treatment that he must be given while the process is pending (Article 4 and 5).

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

## 4.1 The presumption of innocence as rule of treatment

- Information on suspects or accused persons (Article 4).
- Public presentation of the suspected and accused persons (Article 5).  
*(Case Svinarenko and Slyadenev v. Russia)*  
*(Case Raimishvili and Kohreidze v. Georgia)*
- Right to remain silent and not to incriminate oneself (Article 7).

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

## 4.2. Presumption of innocence as a rule of judgment. (Article 6)

- The presumption of innocence plays a second great role during the trial and sentencing: as a criterion to determine who should meet the burden of proof in criminal proceedings

*(Case Barberá et al. Spain)*

# Directive 343/2016/EU on the presumption of innocence and the right to be present at a trial

## **5. The right to be present at a trial. (Article 8).**

- Case law ECtHR (Case Hermi v. Italia).
- This guarantee is related to the right to fair trial.