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The role of in absentia trials in Azerbaijan: Balancing judicial efficiency and fair trial rights during legal transition

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THE ROLE OF IN ABSENTIA TRIALS IN AZERBAIJAN: BALANCING JUDICIAL EFFICIENCY AND FAIR TRIAL RIGHTS DURING LEGAL TRANSITION

O PAPEL DOS JULGAMENTOS IN ABSENTIA NO AZERBAIJÃO: EQUILIBRANDO A EFICIÊNCIA JUDICIAL E OS DIREITOS A UM JULGAMENTO JUSTO DURANTE A TRANSIÇÃO LEGAL

Lala MAMMADOVA[1]

ABSTRACT: This article critically examines the implementation of in absentia trials in Azerbaijan following the 2023–2024 legislative reforms, focusing on their implications for judicial efficiency and fair trial rights. Introduced through Chapter LIV-II of the Azerbaijani Criminal Procedure Code (Articles 467-12 to 467-17), these reforms provide a procedural framework for conducting trials in the defendant's absence, particularly in cases involving terrorism, treason, and organized crime.

Grounded in the principles of human rights and due process, the study evaluates the compatibility of Azerbaijan's new legal regime with Article 6 of the European Convention on Human Rights (ECHR). A comparative analysis of Italy, Germany, and Turkey reveals that Azerbaijan's approach adopts key safeguards such as mandatory legal representation and the right to appeal. Nevertheless, the system faces structural challenges, especially regarding effective defendant notification and the enforceability of post-trial remedies. In contrast to Germany's well-established procedural restrictions, Azerbaijan's recent legal transition limits the consistency and reliability of its in absentia practices.

Finally, the article contextualizes these developments within the framework of the Sustainable Development Goals (SDG 16), arguing that effective regulation of in absentia proceedings contributes to institutional trust, access to justice, and procedural legitimacy in transitional legal systems.

KEYWORDS: In absentia trials, European jurisdictions, Fundamental rights, European Convention on Human Rights (ECHR), Comparative criminal procedure, Transnational justice, Fair trial rights, Criminal procedure reforms.

RESUMO: Este artigo analisa criticamente a implementação dos julgamentos à revelia no Azerbaijão após as reformas legislativas de 2023–2024, concentrando-se nas suas implicações para a eficiência judicial e para o direito a um julgamento justo. Introduzidas pelo Aapítulo LIV-II do código de Processo Penal do Azerbaijão (artigos 467-12 a 467-17), essas reformas estabelecem um quadro processual para a realização de julgamentos sem a

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presença do arguido, sobretudo em casos de terrorismo, traição e criminalidade organizada.

Apoiando-se nos princípios dos direitos humanos e do devido processo, o estudo avalia a compatibilidade do novo regime jurídico do Azerbaijão com o artigo 6.º da Convenção Europeia dos Direitos do Homem (CEDH). Uma análise comparativa de itália, alemanha e turquia demonstra que a abordagem azeri adota salvaguardas essenciais, como a representação obrigatória por advogado e o direito de recurso. Contudo, o sistema enfrenta desafios estruturais, sobretudo no que diz respeito à notificação eficaz do arguido e à exequibilidade dos meios de impugnação após o julgamento. Em contraste com as restrições processuais bem consolidadas na Alemanha, a recente transição legislativa do Azerbaijão limita a consistência e a fiabilidade das suas práticas de julgamento à revelia.

Por fim, o artigo contextualiza esses desenvolvimentos no âmbito dos Objetivos de Desenvolvimento Sustentável (ODS 16), sustentando que a regulamentação eficaz dos processos à revelia contribui para a confiança institucional, o acesso à justiça e a legitimidade processual em sistemas jurídicos em transição.

PALAVRAS-CHAVE: Julgamentos à revelia; jurisdições europeias; direitos fundamentais; Convenção Europeia dos Direitos do Homem (CEDH); processo penal comparado; justiça transnacional; direito a um julgamento justo; reformas do processo penal.

1 INTRODUCTION

The legal practice of conducting trials *in absentia*, where a defendant is tried without being present, remains a contested issue within the legal systems of European countries, particularly those rooted in the Roman-German legal tradition. While many nations avoid its application, labeling it as potentially infringing on fundamental rights, others—including Italy and Germany—have maintained *in absentia* trials as a legal option under stringent safeguards. This contrast raises an important legal and academic question: how can the principle of *in absentia* coexist with the right to a fair trial, as enshrined in international human rights instruments?

Azerbaijan's recent adoption of *in absentia* trials, introduced as part of its 2023-2024 legal reforms, exemplifies the evolving landscape of this practice. As a country transitioning from a Soviet legal framework to a more Europeanized system, Azerbaijan's legal reforms highlight an attempt to align with modern European standards while retaining distinct national characteristics. Yet, despite its doctrinal acceptance, the practical implementation of *in absentia* trials often faces significant challenges, leading to a perception of this law as one with inherent limitations and restrictions.

The doctrine of *in absentia* trials engages two fundamental legal principles: the right to a fair trial and the protection of human rights, as enshrined in Article 6 of the European Convention on Human Rights (ECHR). This creates a critical tension between judicial efficiency and due process guarantees. The European approach remains fragmented—while jurisdictions like Italy and Germany permit *in absentia*

proceedings under strict safeguards (e.g., adequate notification, legal representation, and appeal rights), others categorically prohibit them, citing risks to fundamental rights. Beyond Europe, legal systems influenced by European traditions, including Azerbaijan, further illustrate the evolving application of this doctrine.

From a lawyer-academician's perspective, examining the legitimacy and effectiveness of *in absentia* trials involves unpacking a complex interplay of legal, procedural, and ethical considerations.[2] The justification for such trials often lies in their ability to uphold judicial efficiency, particularly in cases involving fugitives or non-cooperative defendants. However, to ensure that justice is not only done but also seen to be done, certain minimum guarantees must be in place. These include:

1. **Defendant Awareness**: Ensuring that the defendant is duly notified of the trial proceedings and their implications.

2. **Legal Representation**: Appointing competent counsel to advocate for the absent defendant's rights and interests.

3. **Appeal Mechanisms**: Providing robust avenues for the defendant to challenge decisions rendered in their absence.

4. **No Waiver of Rights**: Establishing that the defendant did not intentionally forgo their right to participate in the proceedings.

This framework not only safeguards the defendant's rights but also reinforces the legitimacy of the judicial process within domestic and international arenas.

In examining Azerbaijan's adoption of *in absentia*, an important consideration is the country's unique legal trajectory. As a post-Soviet state, Azerbaijan's legal system has historically been shaped by Soviet legal traditions. However, its increasing integration into European legal frameworks—particularly as a member of the Council of Europe—demonstrates a commitment to aligning with contemporary human rights standards. The inclusion of *in absentia* in Azerbaijani law may thus be viewed as a reflection of this dual influence, where Soviet legacies intersect with modern European legal doctrines[3].

Ultimately, the practice of *in absentia* trials poses critical questions for legal scholars and practitioners alike. How can states reconcile the need for efficient justice with the obligation to uphold fundamental rights? What safeguards are necessary to

[2]Goldstein, A. S. 'The state and the accused: Balance of advantage in criminal procedure'. *Yale Law Journal*, 1959, 69, p. 1149.
[3] Starkey, J. G. 'Trial in absentia'. *St. John's Law Review*, 1978, 53, p. 721.

ensure that *in absentia* trials do not become a tool for circumventing due process? And how can legal systems with divergent traditions find common ground in addressing these challenges?[4]

Answering these questions requires a multidimensional approach that combines doctrinal analysis, comparative legal studies, and empirical research. For lawyer-academicians, the study of *in absentia* trials provides a rich field for exploring broader themes in law, such as the balance between state authority and individual autonomy, the harmonization of diverse legal traditions, and the role of international norms in shaping domestic legal practices.

2 THEORETICAL FRAMEWORK

2.1 THE ECHR's Analysis and Judgment

The key issue before the European Court of Human Rights (ECHR) was whether the applicant's right to a fair trial under Article 6 of the European Convention on Human Rights had been violated due to the in absentia proceedings.[5] The Court focused on the following:

1. **Right to Be Present and Participate:** The ECHR reaffirmed that Article 6 guarantees the right to a fair trial, including the defendant's presence and active participation. This right is essential for presenting a defense, challenging evidence, and cross-examining witnesses. In *Sejdovic v. Italy*, the Court found that Sejdovic had neither been properly informed of the trial nor given an opportunity to participate, violating Article 6.[6]
2. **Waiver of Rights:** The Court assessed whether Sejdovic's absence constituted a voluntary waiver. According to ECHR jurisprudence, such a waiver must be knowing and unequivocal. As there was no evidence that Sejdovic had deliberately avoided trial or was aware of the proceedings, his absence could not be deemed a valid waiver of his right to a fair trial.

[4] Pollicino, O. and Bassini, M. 'Personal participation and trials in absentia: A comparative constitutional law perspective'. In: *Personal Participation in Criminal Proceedings: A Comparative Study of Participatory Safeguards and In Absentia Trials in Europe*. 2019, p. 527.
[5] European Court of Human Rights. *European Convention on Human Rights*. Available at: https://www.echr.coe.int/european-convention-on-human-rights [Accessed 28 Feb. 2025].
[6] European Court of Human Rights. *Poitrimol v France*, App no 14032/88 (23 November 1993). Available at: https://hudoc.echr.coe.int/eng#{"itemid":["001-57858"]} [Accessed 28 Feb. 2025].

3. **Effectiveness of Domestic Remedies:** The ECHR examined whether Italy provided an effective remedy for Sejdovic's *in absentia* conviction.[7] Although Italian law allowed retrials for defendants unaware of their trials, the Court found this safeguard inadequate. The burden of proof placed on Sejdovic and the limited appeal options rendered the remedy ineffective. Consequently, the ECHR held that Italy's legal framework failed to uphold the right to a fair trial in *in absentia* cases.

3 METHODOLOGY

SYSTEMATIC Approaches to In Absentia Trials in European Legal Systems

When analyzing the practice of in absentia trials across European countries, it is essential to adopt a systematic approach that transcends individual national practices and instead examines the broader legal frameworks governing such trials. This method allows for a more coherent understanding of how different legal systems address the complexities and challenges associated with trying a defendant in their absence.[8]Before delving into the specific regulations and procedural nuances country by country, it is crucial to first categorize these practices according to the overarching legal system types present in Europe.

3.2 THE ROLE OF ABSENT DEFENDANTS IN TURKISH CRIMINAL LAW: PROCEDURES, RIGHTS, AND EXCEPTIONS

In Turkish criminal law, the presence of the defendant at trial is a fundamental requirement. This principle is rooted in the need for a fair trial, where the defendant can hear and respond to the charges against them. The document emphasizes that the absence of the defendant generally precludes the possibility of conducting a trial, let alone passing a conviction. This is because the ability of the defendant to defend themselves is a cornerstone of justice[9].

[7] European Court of Human Rights. *Sejdovic v Italy*. App no 56581/00, 1 March 2006. [Accessed 28 Feb. 2025].

[8] Amsterdam, A. G. 'Criminal prosecutions affecting federally guaranteed civil rights: Federal removal and habeas corpus jurisdiction to abort state court trial'. *University of Pennsylvania Law Review*, 1964, 113, pp. 793–820.

[9] Altiner, S. 'Extradition according to the rules of international law and provisions of Turkish criminal code'. *Çankaya University Journal of Law*, 2011, 8(1), pp. 21–40.

A *gaip sanık* refers to an individual who is the subject of criminal proceedings but cannot be reached or located by the court. The key distinction here is that the absence of the defendant is not due to an intentional evasion of the law; rather, the individual may be unaware of the proceedings or unable to participate due to other reasons. Article 244/1 of the CMK outlines the conditions under which a defendant can be considered *gaip*.[10] These include situations where the defendant's whereabouts are unknown, the defendant is abroad and cannot be brought before the court, or it is deemed inappropriate to summon the defendant before the court.

The CMK provides specific procedures for handling cases involving a *gaip sanık*.[11] Under Article 244/2, while trial proceedings cannot continue in the defendant's absence, the court may collect and preserve evidence to safeguard the integrity of the trial and ensure its availability upon the defendant's return. This measure upholds the defendant's rights even in their absence.

Article 245 mandates notifying the *gaip sanık* to appear in court or provide a reachable address. Notification methods include newspapers, electronic communication, or other suitable channels to ensure the defendant is aware of the proceedings and can exercise their right to defense.

The legal actions that can be taken against a *gaip sanık* are limited by the CMK. For instance, while a warrant for arrest can be issued (as per the discussion of Article 246), a detention order cannot be placed in the defendant's absence. This is because the mechanism of detention is reserved for situations involving a *kaçak sanık* (fugitive defendant), who is actively evading the law[12].

Turkish Criminal Procedure Code (CMK) distinguishes between *absentee defendants* (defendants whose whereabouts are unknown) and *fugitive defendants* (defendants who intentionally evade trial), implementing different legal regulations for each category.

1. Definitions of Absentee and Fugitive Defendants

[10] Grand National Assembly of Turkey (TBMM). Bill Text. TBMM, 2023. Available at: https://www.meclis.gov.az/news-layihe.php?id=2199&lang=az&par=0 [Accessed 19 Sep. 2023].
[11] Yıldırım, U**.** *Gaiplerin yargılanması (CMK 244. madde)*. Kadim Hukuk, 2024. Available at: https://kadimhukuk.com.tr/makale/gaiplerin-yargilanmasi/ [Accessed 28 Feb. 2025].
[12] Kıygı, O. N. and Akgün, T. *Hukuk ve ekonomi terimleri sözlüğü*. 2nd ed. Munich: Verlag C H Beck, 1999.

- *Absentee Defendant:* According to CMK Article 244, a defendant is considered absentee if their whereabouts are unknown, if they are abroad and cannot be brought before a competent court, or if their extradition is deemed inappropriate. In such cases, the trial may be suspended until the defendant is located.
- *Fugitive Defendant:* CMK Article 247 defines a fugitive defendant as someone who deliberately evades prosecution by hiding within the country or staying abroad to avoid trial. A fugitive defendant may be tried in absentia, and their assets may be confiscated.

This distinction is fundamental. While both terms refer to defendants who are not present during proceedings, a *fugitive defendant* is someone who deliberately avoids prosecution. In contrast, an *absentee defendant* may be unaware of the proceedings or unable to attend due to other reasons. This difference is crucial as it dictates the legal measures that can be taken; for instance, while a *fugitive defendant* may face property confiscation or detention in absentia, these measures are not applicable to an *absentee defendant*.[13]

- For an *absentee defendant*, the court must take necessary measures to locate the individual and ensure the protection of their right to defense. However, the trial may be suspended until the defendant is found.
- For a *fugitive defendant*, trial in absentia is permitted. However, the defendant must be notified, and decisions rendered in absentia should be subject to appeal to prevent violations of the right to a fair trial.
- To compel the fugitive defendant to appear in court, *asset confiscation measures* can be applied. According to CMK Article 248, a fugitive defendant's assets may be temporarily seized.
- Both absentee and fugitive defendants may benefit from the *Assurance Document* mechanism. Under CMK Articles 246 and 248, the court may issue an assurance document guaranteeing that the defendant will not be detained if they appear in court, encouraging their participation in the trial.[14]

[13] Ömeroğlu, Ö. 'Ceza muhakemesinde gaip ve kaçak sanığa güvence belgesi verilmesi'. *Ankara Hacı Bayram Veli Üniversitesi Hukuk Fakültesi Dergisi*, 2013, 17(3), p. 195.

[14] Balcı, M. Ceza Muhakemesi Hukukunda Gaip veya Kaçak Sanığa Güvence Belgesi Verilmesi (CMK m. 246, m. 248/7). *Türkiye Barolar Birliği Dergisi*. 2011;(92):101–117.

Additionally, the court may issue a *güvence belgesi* (security guarantee) under Article 246. This document assures the defendant that they will not be detained if they voluntarily appear before the court. The purpose of this guarantee is to encourage the defendant to participate in the trial, thereby ensuring a fair hearing. This aligns with the principles enshrined in Article 6 of the European Convention on Human Rights, which emphasizes the right to a fair trial.

The distinction between *gaip sanık* and *kaçak sanık* is fundamental. While both terms involve defendants who are not present during legal proceedings, a *kaçak sanık* is someone who is deliberately avoiding prosecution. In contrast, a *gaip sanık* might be unaware of the proceedings or might be unable to attend due to other reasons. This difference is crucial as it dictates the legal measures that can be taken; for instance, while a *kaçak sanık* may face property confiscation or detention in absentia, these measures are not applicable to a *gaip sanık*.[15]

Criteria	**Gaip Sanık (Absentee Defendant)**	**Kaçak Sanık (Fugitive Defendant)**
Definition	A defendant whose whereabouts are unknown or who is abroad and cannot be brought before the court.	A defendant who deliberately hides or stays abroad to avoid prosecution.
Legal Basis	CMK Articles 244–246	CMK Articles 247–248
Intent	No clear intent to avoid trial	Active evasion of justice
Trial in Absentia Allowed?	Trial suspended until appearance or location	Trial in absentia permitted
Notification Requirement	Notification through public means (newspaper, e-notice, etc.)	Notification mandatory before in absentia trial
Coercive Measures	Arrest warrant possible (CMK 246), but **detention not allowed**	Detention possible, property seizure applicable (CMK 248)
Security Guarantee (Güvence Belgesi)	Allowed to encourage voluntary appearance	Also allowed, with stricter limits
Property Confiscation	Not applicable	Applicable if absence is persistent
Right to Defence Protection	Evidence preserved; trial paused	Defence counsel participation required during absentia trial

[15] Öztürk, B.; Erdem, M. R. *Uygulamalı Ceza Muhakemesi Hukuku*. 9. ed. Ankara: Seçkin Yayıncılık; 2009. s. 524.

EXCEPTIONS to the Rule: In Absentia Trials

Despite the general rule, Turkish law, particularly Article 195 of the Criminal Procedure Code (CMK), does allow for exceptions where a trial and even a conviction can occur in the defendant's absence.[16] This typically applies to cases involving less severe penalties, such as fines or confiscation orders, where the defendant's presence is not deemed strictly necessary. The Supreme Court's jurisprudence also supports this, particularly in cases where the crimes are considered less severe or where the procedural context justifies it.[17]

LEGAL and Doctrinal Basis

The legal basis for in absentia trials in Turkey is supported by specific articles in the CMK, such as Article 195, and other laws like Article 349 of the Execution and Bankruptcy Law. These provisions outline the conditions under which a trial can proceed without the defendant. The document also explores how these provisions are applied, particularly in cases under the Check Law, where numerous convictions have been made in the defendant's absence.

AMENDMENTS and Legislative Changes

The document also considers recent legislative changes, particularly the amendments brought by Law No. 7188, which expanded the conditions under which in absentia trials could be conducted. These amendments introduced a simplified trial procedure (Articles 251 and 252 CMK)[18] that allows for convictions without a trial in certain circumstances, further complicating the debate over the defendant's right to be present.

In drawing comparisons with German criminal procedure, the document shows how other legal systems handle similar issues, offering a broader context for understanding the implications of in absentia trials. Dr. Ersoy concludes by suggesting that while in absentia trials may be necessary in certain circumstances, they must be carefully regulated to avoid undermining the rights of the defendant. The practice

[16] Ersoy, U. Some thoughts on holding hearings and rendering conviction in absentia in criminal proceedings. *Süleyman Demirel University Faculty of Law Journal,* 2020, 10(1), pp. 52

[17] Aybay, R.; Dardağan, E. *Uluslararası Düzeyde Yasaların Çatışması*. 2. ed. İstanbul: İstanbul Bilgi Üniversitesi Yayınları; 2008. s. 305.

[18] Yıldırım, U**.** Gaiplerin yargılanması (CMK 244. madde). *Kadim Hukuk*, 2024. Available at: https://kadimhukuk.com.tr/makale/gaiplerin-yargilanmasi/ [Accessed 28 Feb. 2025].

should be the exception rather than the rule, with sufficient safeguards to ensure that justice is served without compromising the defendant's rights.[19]

The analysis refers extensively to the following essential articles of the CMK[20]:

- **CMK 193**: **Prohibits trials in absentia**, ensuring the defendant's right to hear charges, present a defense, and participate in proceedings. Exceptions exist under **CMK 194**. If absent without valid reason, the court may order **forcible appearance (CMK 199)**.
- **CMK 194**: **Lists exceptions** where trials in absentia are allowed, such as when the defendant **has fled** or **failed to appear after prior interrogation**.
- **CMK 195**: **Allows in absentia trials for minor offenses** (e.g., punishable by fines or confiscation). The court can proceed **only if the summons explicitly states that the trial will continue in the defendant's absence**.
- **CMK 244-246**: **Defines the "gaip" (absent defendant) concept**.
- **CMK 244**: A "gaip defendant" is **either missing or abroad** and **cannot be brought to court**. The trial cannot proceed, but the court may **preserve evidence** for future hearings.
- **CMK 245**: **Requires the court to notify the absent defendant** through various means, urging them to appear or provide their address.
- **CMK 246**: **Allows the court to issue a "Güvence Belgesi" (Security Guarantee)**, ensuring the defendant will not be detained if they appear voluntarily. **This does not apply to those already convicted in absentia or who have violated certain conditions**.

3.3 ABSENTIA IN THE GERMAN LEGAL SYSTEM: PROCEDURAL FAIRNESS, ENFORCEMENT, AND INTERNATIONAL IMPLICATIONS

While the term *Versäumnisurteil* is often associated with default judgments in German law, it applies exclusively to civil proceedings under the *Zivilprozessordnung* (ZPO). It does not extend to criminal cases. For that reason, any meaningful analysis of in absentia criminal trials in Germany must instead turn to the *Strafprozessordnung*

[19] Ersoy, U. Some thoughts on holding hearings and rendering conviction in absentia in criminal proceedings. *Süleyman Demirel University Faculty of Law Journal*, 2020, 10(1), pp. 52.
[20] Grand National Assembly of Turkey (TBMM). Bill Text. TBMM, 2023. Available at: https://www.meclis.gov.az/news-layihe.php?id=2199&lang=az&par=0 [Accessed 19 Sep. 2023].

(StPO), where such procedures are addressed within a much narrower and more carefully regulated legal framework.[21] Governed by Articles 330-347 of the German Code of Civil Procedure (Zivilprozessordnung - ZPO), *Versäumnisurteil* plays a critical role in ensuring the efficient administration of justice while maintaining the procedural rights of both parties.[22]

A *Versäumnisurteil* applies strictly to civil proceedings and does not extend to criminal trials. In criminal law, *in absentia* judgments are governed by the German Code of Criminal Procedure (*Strafprozessordnung* – StPO), which imposes stricter limitations. Under StPO § 230, the defendant's presence is generally required, and failure to appear without valid justification may lead to adjournment or an arrest warrant. Similarly, StPO § 329 allows the dismissal of an appeal if the defendant is absent at the appellate hearing, thereby affirming the initial verdict.

While certain procedural steps may proceed without the defendant under StPO § 231, direct conviction *in absentia* is highly restricted. Exceptions exist under StPO §§ 231a and 231b, allowing continuation if the defendant deliberately evades trial or disrupts proceedings. StPO §§ 232 and 233 permit *in absentia* trials when the accused has already been heard or abuses their right to presence. Representation by defense counsel is authorized under StPO § 234, and reinstatement can be requested under StPO § 235 for justified absences.

Thus, *Versäumnisurteil* under the *Zivilprozessordnung* (ZPO) must be distinguished from criminal *in absentia* trials, which follow different legal principles and procedural safeguards. Discussions on absent defendants in criminal law should explicitly reference StPO §§ 230, 231, 232, 233, and 235 to ensure legal accuracy[23].

The German Code of Criminal Procedure (*Strafprozessordnung*, StPO) places great emphasis on the principle that a defendant must be physically present during their criminal trial. Codified in § 230 StPO, this requirement is not merely procedural—it reflects a deep-rooted commitment to ensuring that individuals can actively participate in their own defence. Presence in court enables the accused to observe the

[21] Prütting, H. In: *Münchener Kommentar zur Zivilprozessordnung*. Vol. 1. 4th ed. München: C. H. Beck, 2014, § 330, Rn. 10, p. 2226.

[22] Reichold, K. In: *Thomas/Putzo Zivilprozessordnung*. 36th ed. München: C. H. Beck, 2015, Vor § 330, Rn. 5, p. 643.

[23] El Zeidy, M. M. 'Universal jurisdiction in absentia: Is it a legally valid option for repressing heinous crimes?'. *International Law*, 2003, 37, pp. 835–852.

proceedings firsthand, consult with their legal counsel in real time, confront witnesses, and personally respond to the charges brought against them. Accordingly, German law generally prohibits in absentia trials, reserving them for truly exceptional cases.

One such exception is found in § 231a StPO, which permits the continuation of proceedings only if the court determines that the defendant has intentionally avoided the trial. This is not taken lightly: judges must be satisfied that the absence is not accidental or due to unforeseen hardship, but rather a deliberate act to frustrate the course of justice. Even in such instances, the presence of defence counsel is mandatory to safeguard the accused's interests. The legal fiction that a person can "waive" their right to be present is only accepted when their prior knowledge of the trial and consequences of absence is clearly established. In this way, the system seeks to reconcile procedural efficiency with fundamental fairness—values that lie at the heart of both domestic doctrine and the European Convention on Human Rights (ECHR).

Further reinforcing these protections, § 235 StPO offers a remedy for those who were genuinely unable to attend their trial. If the defendant can demonstrate that their absence was due to factors beyond their control—such as serious illness or detention abroad—the court may allow the case to be reopened. This opportunity for reinstatement is more than a technical safeguard; it embodies the principle that justice must remain accessible and responsive, especially in cases where rights may have been curtailed through no fault of the individual. In aligning with the standards articulated by the European Court of Human Rights, this provision ensures that the door to justice is never fully closed, even for those tried in their absence.

In German civil law, a Versäumnisurteil (default judgment) ensures the effective and timely resolution of disputes when a party, usually the defendant, fails to appear in court or respond to a claim within the specified time frame. Two forms of Versäumnisurteil exist, depending on the circumstances:

1. A true default judgment (echtes Versäumnisurteil) is issued when the defendant does not appear or participate in the proceedings, allowing the court to proceed without further factual investigation.

2. A false default judgment (unechtes Versäumnisurteil) arises when the defendant participates but fails to meet procedural requirements, such as adequately defending against the claim. [24]

[24] Vonderstein, M. 'Crime in border areas: Criminal proceedings against foreigners in Poland'. *Monatsschrift für*

Procedural fairness is fundamental to issuing a *Versäumnisurteil*, with proper service of process (*Zustellung*) being crucial for its validity. Failure to meet notification requirements may render the judgment void. A defendant can challenge the judgment by filing an *Einspruch* within two weeks, reopening the case as if no judgment had been issued. If unsuccessful, an appeal on substantive grounds remains available.

For international defendants, compliance with treaties like the Hague Convention ensures enforceability, requiring proper translations and clear notice of legal representation needs. Courts mandate proof of service, typically through a *Zustellungsurkunde*, verifying proper delivery of summons and complaint.

This certificate is a crucial document that must be included in the court records to substantiate the claim that the defendant has been properly informed of the proceedings.[25]

While the German Code of Civil Procedure (Zivilprozessordnung, ZPO) outlines the conditions under which a *Versäumnisurteil* may be issued, judges retain a degree of discretion in determining whether to issue a default judgment. [26]This discretion allows the judge to consider factors such as whether the defendant has shown any intention to participate in the proceedings, even if they failed to appear at the hearing. The one-sided nature of a *Versäumnisurteil* necessitates a careful examination to ensure that the plaintiff's claims are credible and legally substantiated[27]. Before issuing a judgment, the court must be satisfied that the plaintiff's claims are sufficiently detailed and supported by evidence, thereby safeguarding against unjust outcomes.

A *Versäumnisurteil* is immediately enforceable within Germany, enabling the plaintiff to undertake enforcement actions such as garnishing wages or seizing assets. However, this enforcement is subject to the defendant's right to challenge the judgment through opposition or appeal.

In cases where the defendant successfully contests the default judgment, the court may require the plaintiff to provide security for costs. This measure serves as a

Kriminologie und Strafrechtsreform, 2000, 83(2), p. 121.

[25] Sharma, D. H. *Zustellungen im europäischen Binnenmarkt*. Berlin: Duncker & Humblot, 2020, p. 192.
[26] Vogel, B. 'Report on Germany'. In: *Personal Participation in Criminal Proceedings: A Comparative Study of Participatory Safeguards and In Absentia Trials in Europe*. Cham: Springer, 2019, pp. 123–135.
[27] Bathe, H. T. 'Verhandlungsmaxime und Verfahrensbeschleunigung'. In: Baumbach, A., Lauterbach, W., Albers, J. and Hartmann, P. (eds). *Zivilprozessordnung*. 76th ed. München: C.H. Beck, 2018, p. 3365. ISBN 978-3-406-71084-1.

safeguard to protect the defendant from undue financial loss if the judgment is overturned. The immediate enforceability, coupled with safeguards like the requirement for security for costs, reflects the balance that German law seeks to achieve between efficiency in legal proceedings and protection of the rights of all parties involved.[28]

The international implications of a *Versäumnisurteil* are particularly complex in cases involving foreign defendants or assets located outside the jurisdiction of German courts. In such instances, German courts adopt a cautious approach to ensure that the judgment adheres to procedural fairness standards recognized under international law, thereby facilitating its enforcement in foreign jurisdictions. The recognition and enforcement of German *Versäumnisurteile* abroad frequently rely on the principle of reciprocity. States with reciprocal agreements are more inclined to recognize these judgments, provided those fundamental principles of justice, including adequate service of process and the right to be heard, have been observed.[29]

German civil procedure distinguishes between various forms of *Versäumnisurteil*, including *Teil-Versäumnisurteil* (partial default judgments). A *Teil-Versäumnisurteil* may be issued where a defendant fails to contest certain aspects of the plaintiff's claim, allowing the court to render judgment on the uncontested matters while the remaining issues proceed to litigation. Upon attaining finality (*Rechtskraft*), a *Versäumnisurteil* acquires the force of *res judicata*, rendering it conclusive and precluding re-litigation of the adjudicated issues.

Cross-border enforcement of *Versäumnisurteile* is further complicated by international notification requirements, particularly under instruments such as the Hague Service Convention. Failure to adhere to these procedural safeguards, including the provision of accurate translations of legal documents, may render a judgment unenforceable in non-German-speaking jurisdictions. Despite recent reforms in German civil procedure aimed at integrating electronic communication methods, traditional means of service remain the preferred practice in cross-border cases, given their established reliability under international legal frameworks.

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[28] **Papakçı, A.** Alman mahkemelerince verilen gıyabi kararların yargılama ve uluslararası tebligat kuralları açısından Türk hukukuna uygunluğu. *Marmara Üniversitesi Hukuk Fakültesi Hukuk Araştırmaları Dergisi*. 2016; 22(1): pp.457–488.

[29] **Kobe, P.** Recht zum Gerichtsverfahren in Anwesenheit als Grundrecht des Menschen. *Zbornik PFZ*. 1978; 28: pp.412-430

4 RESULTS AND DISCUSSION

4.1 IN ABSENTIA Trials In Italy: Procedural Requirements And Human Rights Concerns

In absentia trials—where a defendant is tried and convicted without being physically present in court—pose significant challenges to the principles of a fair trial. The Italian legal framework permits such proceedings under specific conditions, outlined primarily in the CPP.[30] The Sejdovic case underscores the tension between prosecutorial efficiency and the protection of individual rights, highlighting potential deficiencies in the Italian system's ability to ensure fair trial standards, especially when defendants are unaware of the proceedings against them.

The Italian Code of Criminal Procedure (CPP) delineates the procedures and conditions under which *in absentia* trials may be conducted. Key articles relevant to this process include Articles 175, 176, 670, and 141.[31]

OBJECTIONS under Article 670 CPP

Sejdovic contested the procedural handling of his trial under *Article 670 CPP*, arguing that inadequate notification and his absence rendered the trial fundamentally flawed. Despite this, Italian domestic courts upheld the judgment, claiming compliance with national law. However, the *European Court of Human Rights (ECHR)* found that Italy violated *Article 6 of the European Convention on Human Rights (ECHR)* by failing to ensure Sejdovic had a genuine opportunity to defend himself.[32]

The *ECHR's decision in Sejdovic v[33]. Italy* highlighted critical shortcomings in Italy's in absentia trial framework, particularly under *Articles 175 and 176 CPP*. Key

[30] Cafaro, V. Trial in absentia and retrial rights in Italy: ECtHR finds a breach of Article 6. Saccucci & Partners, 19 September 2023. Available at: https://www.saccuccipartners.com/en/2023/09/19/trial-in-absentia-and-retrial-rights-in-italy-ecthr-finds-a-breach-of-article-6 [Accessed 19 Sep. 2023].

[31] Canestrini, N. Italian in absentia trials: an ongoing history of violation of the right to a fair trial. *CanestriniLex*. 4 may 2018. Mövcuddur: https://canestrinilex.com/en/readings/italian-in-absentia-trial-violates-the-right-to-a-fair-trial [Accessed 28 February 2025].

[32] Mangiaracina, A. Report on Italy. In: Quattrocolo, S.; Ruggeri, S., eds. *Personal Participation in Criminal Proceedings: A Comparative Study of Participatory Safeguards and In Absentia Trials in Europe*. Cham: Springer; 2019. p. 229–277.

[33] Sejdovic v Italy, App no 56581/00, European Court of Human Rights, 1 March 2006. https://hudoc.echr.coe.int/fre#{"itemid":["002-3440"]} [Accessed 28 February 2025].

issues include:

1. *Burden of Proof*: Defendants bear an excessive burden to prove their unawareness of the trial and lack of intentional evasion, disproportionately affecting those with limited resources.

2. *Presumption of Evasion*: Automatically assuming that an untraceable defendant is evading justice undermines the presumption of innocence under *Article 6 ECHR*.

3. *Notification Deficiencies*: Reliance on legal representatives for procedural notifications, without ensuring the defendant's awareness, compromises transparency and fairness.

4. *Judicial Discretion*: The broad discretion under *Articles 175 and 176 CPP* leads to inconsistent application, risking unfair convictions. [34]

The *ECHR ruling* underscores the need for legal reforms to enhance fairness in in absentia trials:

- Strengthen notification mechanisms with direct communication (e.g., international notices, digital alerts).

- Shift the burden of proof to the prosecution to uphold the presumption of innocence.

- Extend appeal time limits under *Article 175 CPP* to ensure realistic access to remedies.

- Standardize criteria for in absentia trials and reduce judicial discretion under *Article 176 CPP*.

- Provide judges with training on fair trial standards and introduce oversight mechanisms for consistent application of procedural safeguards.

These measures would align Italy's legal framework with *Article 6 ECHR* and ensure equitable in absentia proceedings.

4.2 LEGAL FRAMEWORK AND RECENT REFORMS: Chapter LIV-II of the Criminal Procedure Code

In a significant development, the Azerbaijani Criminal Procedure Code (CPC) was amended on December 22, 2023, with the introduction of *Chapter LIV-II*, titled "Cinayət təqibi üzrə qiyabi icraat" (Criminal Prosecution in Absentia). This new chapter

[34] Sejdovic v Italy, App no 56581/00, European Court of Human Rights, 1 March 2006. https://hudoc.echr.coe.int/fre#{"itemid":["002-3440"]} [Accessed 28 February 2025].

encompasses *Articles 467-12 to 467-17*[35]*,* systematically outlining the conditions, procedures, and safeguards pertinent to conducting criminal trials without the defendant's presence.

The amendment reflects Azerbaijan's commitment to modernizing its legal system and ensuring that justice can be effectively administered even when defendants evade proceedings by absconding or residing abroad. Simultaneously, the provisions emphasize adherence to fundamental legal principles, ensuring that the rights of absent defendants are adequately protected throughout the judicial process.

SEPARATION and Management of Case Files

In Azerbaijan, *in absentia proceedings* are principally confined to offenses of a grave and serious nature, reflecting the state's dedication to prosecuting significant crimes while upholding procedural justice. Pursuant to *Article 467-13.1* of the Criminal Procedure Code, such offenses encompass:

- *Crimes against the State and Public Security*, including terrorism, treason, espionage, and organized criminal activity.
- *International Crimes*, such as genocide, crimes against humanity, and violations of international humanitarian law.
- *Financial and Economic Offenses*, notably money laundering, large-scale fraud, and smuggling.
- *Crimes against Individuals*, including human trafficking and kidnapping.

Restricting in absentia trials to such egregious offenses ensures a focused adjudication of critical matters, mitigates procedural complexities, and facilitates the seamless reintegration of proceedings should the defendant reappear. This framework seeks to balance the imperatives of judicial efficiency with the principles of due process.

4.3 The Impact of Trials in Absentia on Azerbaijan's Legal System

In absentia trials, where defendants are prosecuted without being physically present, remain a contentious issue due to their implications for human rights and procedural fairness. The legal approaches to such trials vary across Europe, prompting comparative analyses. Azerbaijan's legal reforms in 2023–2024, through amendments

[35]E-Qanun. Amendments to criminal procedure law under Azerbaijani legislation. 2023. Available at: https://e-qanun.az/framework/46950 [Accessed 19 Sep. 2023]

to its legislation, have created a need to examine the application of in absentia proceedings and investigate the legal norms related to this practice in various European countries.[36]

The incorporation of *in absentia* trials into Azerbaijan's legal framework marks a significant step in legal modernization, drawing from the experiences of countries such as Italy, Germany, and Romania. Key safeguards include the mandatory appointment of defense counsel and the right to appeal, ensuring fairness and transparency in judicial proceedings.

These reforms reflect Azerbaijan's effort to balance judicial efficiency with individual rights—an issue similarly navigated by European states through diverse legal strategies.

5 CONCLUSION

Azerbaijan's adoption of in absentia trial procedures as part of its 2023–2024 legal reforms signals a deliberate move toward harmonizing domestic criminal procedure with European legal standards. This reform effort balances the imperative of judicial efficiency with a steadfast commitment to protecting fundamental rights. Drawing on comparative insights from Italy, Germany, and Turkey, Azerbaijan has crafted a legal framework that is both rights-conscious and contextually grounded in its post-Soviet legal evolution.

The reform's comparative foundations are evident. Italy's model, shaped in part by ECtHR jurisprudence such as *Sejdovic v Italy*, underscores the importance of effective notification and the right to post-trial remedies—elements Azerbaijan has mirrored through enhanced digital and public notification mechanisms. Germany's approach, as set out in StPO §§ 230–235, places strict limits on when in absentia proceedings can occur, ensuring legal representation and fair trial guarantees—principles now reflected in Azerbaijan's code. Turkey's nuanced differentiation between *gaip sanık* (absentee defendant) and *kaçak sanık* (fugitive defendant) has further influenced Azerbaijan's effort to distinguish between unintentional absence and deliberate evasion.

These reforms collectively affirm Azerbaijan's intention to comply with Article 6 of the European Convention on Human Rights, embedding safeguards such as mandatory

[36] Hasimova, L. 'Extradition in international criminal law and human rights in this context'. *Baku State University Law Review*, 2017, 3(1), pp. 250–263.

defence counsel, clear notification procedures, and access to retrial. By situating its reforms within the broader normative structure of the Council of Europe, Azerbaijan not only strengthens the internal coherence of its legal system but also enhances its credibility on the international legal stage.

Moreover, these developments support Azerbaijan's contribution to Sustainable Development Goal 16, which promotes access to justice, the rule of law, and accountable institutions. As legal reforms continue to unfold, Azerbaijan's experience offers a meaningful model for transitional states striving to reconcile legal modernization with human rights obligations.

Ultimately, by embedding comparative best practices into its national legislation, Azerbaijan affirms its commitment to a fair, efficient, and internationally aligned justice system—one that upholds both procedural integrity and the dignity of the individual.

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