

Proceedings in Absentia: A Procedural-Legal Institution or a Political Instrument

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In criminal justice proceedings, the accused person's direct participation and the effective exercise of the right to defense constitute fundamental guarantees of the right to a fair trial. In absentia investigation and in absentia court proceedings are conceived as exceptions to these principles and are intended to function as procedural mechanisms whose application is permissible only under stringent legal conditions.

However, in systems where judicial independence is not ensured and legal institutions are used instrumentally to serve political objectives, in absentia proceedings generate systemic risks to the right to defense and to the fairness of judicial adjudication. In the Republic of Azerbaijan, the extensive application of in absentia proceedings against opposition political activists in recent years reveals a profound mismatch between the legal purpose of this institution and its practical deployment.

The purpose of this article is to examine the legal nature of in absentia investigation and in absentia judicial proceedings, to evaluate them in light of international human rights standards, and to analyze the legal consequences they produce within domestic practice.

The Concept of In Absentia Investigation and In Absentia Court Proceedings

In absentia investigation and in absentia court proceedings refer to criminal procedural activities conducted in the absence of the accused person's actual participation in the

criminal process. From a legal perspective, these concepts must be distinguished. In absentia investigation denotes the conduct of investigative actions at the preliminary investigation stage of criminal prosecution without the participation of the accused, whereas in absentia court proceedings are characterized by the examination of a criminal case by the court without the accused person's presence.

In legal doctrine, in absentia proceedings are generally regarded as an exceptional procedural form within the criminal process.[\[1\]](#) The application of such proceedings is typically justified by circumstances such as the deliberate evasion of the investigation or the court by the accused, the inability to establish their whereabouts, or their failure, without valid excuse, to respond to summonses issued by competent authorities. Nevertheless, the exceptional nature of in absentia proceedings gives rise to serious legal risks with regard to ensuring the real and effective exercise of the right to defense.

In the Criminal Procedure Code of the Republic of Azerbaijan (CPC), the concept of in absentia proceedings was formally codified through amendments adopted on 22 December 2023. According to the definition set out in Article "7.0.8-1" of the Code, in absentia proceedings in criminal prosecution are understood as "proceedings conducted in criminal prosecution against an accused person without their participation, at the pre-trial stage as well as before courts of first instance, appellate, and cassation instances, on the basis of a decision adopted by the court to initiate in absentia proceedings in criminal prosecution."

This definition establishes in absentia proceedings as a distinct procedural institution within the criminal process and indicates that their application is permissible only in cases expressly provided for by law.

Historical Aspects of In Absentia Proceedings

The historical roots of in absentia proceedings can be traced back to ancient legal systems. In Roman law, a person's failure to appear before the court could, in certain circumstances, serve as grounds for adopting a decision against them.[\[2\]](#) Decisions rendered in the absence of the person significantly limited the practical realization of the right to defense and revealed the potentially repressive nature of in absentia proceedings. In medieval Europe, particularly within inquisitorial processes, in absentia adjudication was most often accompanied by the dominance of the prosecution and entirely curtailed the individual's opportunities for defense. During this period, in absentia proceedings functioned as a reactionary institution that largely disregarded the protection of individual rights and instead reinforced the authority of state and religious bodies.

The institution of in absentia adjudication also existed within the Soviet criminal procedural system, where it was predominantly applied in politically motivated cases. In the Soviet era, in absentia proceedings frequently operated as a legal mechanism that prioritized state interests over individual rights, restricted citizens' right to defense, and contravened the principles of a fair trial. The use of this institution, particularly in the context of political repression, exposed in absentia proceedings as an unjust mechanism detrimental to individual rights.[\[3\]](#)

In contemporary legal systems, by contrast, in absentia proceedings have gradually been restricted, and their application has been made contingent upon strict legal safeguards. Although the institution of in absentia proceedings exists in democratic states governed by the rule of law, its use is extremely rare and accompanied by rigorous oversight mechanisms. In many European countries, an in absentia judgment is considered permissible only where there is incontrovertible evidence that the accused has voluntarily waived participation in the proceedings or has deliberately

evaded the court. Moreover, where an in absentia judgment has been delivered, the automatic and full retrial of the case is guaranteed upon the apprehension or voluntary return of the accused. For instance, under German and French law, judgments rendered in in absentia proceedings are conditional in nature and do not produce their full legal effects without a new court hearing conducted with the participation of the accused. In countries such as Italy and Spain, the application of in absentia proceedings has been further narrowed on the basis of the case-law of the European Court of Human Rights, with the real – not merely formal – protection of defense rights accepted as the primary criterion.[\[4\]](#)

From the foregoing, it may be concluded that in states governed by the rule of law, in absentia proceedings are not employed as a preventive punitive mechanism against political opponents. On the contrary, state authorities establish additional legal guarantees and strengthen judicial oversight in order to minimize the risk of abuse of this institution. Nevertheless, historical experience demonstrates that even in the most developed legal systems, in absentia proceedings have consistently been accompanied by the risk of restricting individual rights, often justified by arguments relating to state interests and public security. For this very reason, a historical-critical analysis of in absentia proceedings clearly reveals their inherent structural tension with the principle of justice and their tendency to assume a reactionary character in contexts where legal safeguards are weakened.

Assessment of In Absentia Proceedings from the Perspective of Contemporary Human Rights

Modern international human rights law approaches in absentia investigation and court proceedings as an exceptional procedural form and restricts their application through strict legal conditions. The right to a fair trial, the right to defense, and the principle of equality of arms are among the

fundamental rights that are directly placed at risk in the context of in absentia proceedings.

Pursuant to Article 14(1) of the International Covenant on Civil and Political Rights of the United Nations, everyone is entitled to a fair and public hearing by a competent, independent, and impartial tribunal. Subparagraph (d) of Article 14(3) explicitly enshrines the right of the accused to defend themselves in person or through legal assistance of their own choosing. These provisions define the individual's direct participation in judicial proceedings as a core element of the right to a fair trial.[\[5\]](#)

A similar approach is reflected in Article 6 of the European Convention on Human Rights. Article 6(1) guarantees the right to a fair trial, while Article 6(3)(c) secures the right of the accused to defend themselves in person or through legal representation.[\[6\]](#)

The case-law of the European Court of Human Rights has developed a consistent and principled approach to the issue of in absentia proceedings. The Court has repeatedly emphasized that the accused person's right to participate in the hearing is one of the essential components of the right to a fair trial enshrined in Article 6 of the Convention, and that a waiver of this right may be considered valid only where it is expressed in a clear, voluntary, and unequivocal manner.[\[7\]](#)

In *Colozza v. Italy*, the Court held that where an individual has not been effectively informed of the proceedings or has not been afforded a genuine opportunity to organize their defense, an in absentia trial results in a violation of Article 6 of the Convention.[\[8\]](#) Subsequently, in *Sejdovic v. Italy*, the Court further developed this approach, stressing that even after an in absentia conviction has been rendered, the accused must be provided with effective legal mechanisms enabling a full re-examination of the case on its merits. The absence of such mechanisms renders in absentia proceedings

incompatible with the Convention.[\[9\]](#)

This line of reasoning was further specified in *Caka v. Albania* and in two other judgments[\[10\]](#), in which the Court simultaneously identified multiple violations: the absence of procedural safeguards in criminal proceedings conducted without the applicant's participation; the failure to ensure the summoning of witnesses to court; the first-instance court's disregard of testimony given in the applicant's favor; and the fact that, as a consequence of in absentia judgments, the applicant was effectively deprived of the possibility to lodge a complaint with the Constitutional Court.[\[11\]](#)

The European Court of Human Rights has expressly emphasized that, in the context of in absentia proceedings, the mere existence of formal notifications is insufficient. State authorities must demonstrate that the accused person was informed of the judicial proceedings in a real and effective manner. Furthermore, where an in absentia conviction is delivered, the person concerned must be afforded clear, accessible, and realistic time limits within which they can seek a re-examination of the case on its merits.[\[12\]](#)

The general conclusion drawn from the Court's case-law is that in absentia proceedings may be applied only as an exceptional measure and within the framework of strict procedural safeguards. These safeguards include, first and foremost, timely notification of the accused about the proceedings, access to legal counsel, the provision of equal opportunities for the presentation of evidence and the examination of witnesses, as well as the availability of genuine legal mechanisms enabling a substantive retrial following an in absentia decision. The violation of any of these conditions renders in absentia proceedings incompatible with the Convention and justifies their characterization as a breach of the right to a fair trial.

Thus, it may be concluded that while international law does

not prohibit in absentia proceedings as a matter of principle, it conditions their application upon three core criteria: *legality, a legitimate aim, and necessity*. Let us briefly consider each of these criteria in turn.

a) The criterion of legality means that in absentia proceedings may be applied only in cases provided for by legal norms that are established in advance, clear, and foreseeable. This implies that the mechanisms for initiating, conducting, suspending, and terminating in absentia proceedings, as well as for annulling in absentia decisions, must be precisely regulated by law, and that these norms must be accessible and comprehensible to the accused. According to the position of the European Court of Human Rights, the application of in absentia proceedings on the basis of vague provisions or norms open to broad interpretation creates a risk of violating Article 6 of the Convention.

b) The criterion of legitimate aim requires justification of the public interest served by the application of in absentia proceedings. From the perspective of international law, such aims primarily include preventing the artificial delay of criminal prosecution, ensuring the effectiveness of the administration of justice, and neutralizing the deliberate evasion of the court by the accused. However, the silencing of political critics, the punishment of opposition activity, or the pursuit of repressive objectives are not recognized as legitimate aims; in such cases, in absentia proceedings are considered incompatible with international law.

c) The criterion of necessity requires that in absentia proceedings be applied as a measure of *last resort* (*ultima ratio*). The state may resort to in absentia proceedings only where all real and available measures to secure the accused person's participation in the judicial process have been taken and have proven ineffective. As emphasized in the case-law of the European Court of Human Rights, effective notification of the individual about the judicial proceedings, the provision

of legal representation, and the establishment of effective legal avenues for a subsequent re-examination of the case constitute integral components of the necessity criterion. Where these conditions are not satisfied, in absentia proceedings cannot be regarded as proportionate and must be assessed as a violation of the right to a fair trial.

In absentia proceedings are considered permissible only where it is established that the individual has voluntarily waived participation in the trial or that their deliberate evasion of the investigation and the court has been proven. At the same time, the provision of legal counsel to the accused, access to the case materials, and the existence of mechanisms allowing for the subsequent annulment of the in absentia decision and a retrial of the case are regarded as mandatory conditions.

Thus, the contemporary international human rights system recognizes in absentia proceedings as a legal exception, but strictly limits their application through robust procedural safeguards and requires that this institution not be allowed to evolve into a means of undermining the individual's fundamental rights.

Azerbaijani Legislation on In Absentia Proceedings

The Criminal Procedure Code of the Republic of Azerbaijan currently provides for in absentia investigation and in absentia court proceedings as a distinct procedural institution. Chapter LIV-II, added to the Code in 2023, is entitled *In Absentia Proceedings in Criminal Prosecution* and comprises Articles 467-12 to 467-17. Under this Chapter, in absentia proceedings may be conducted only where the accused deliberately evades the investigation or the court, is located outside the territory of Azerbaijan, or is wanted by law-enforcement authorities. The initiation of in absentia proceedings is carried out by a court on the basis of a reasoned motion by the investigator and a submission by the prosecutor exercising procedural supervision over the

preliminary investigation, agreed with a higher-ranking prosecutor; such a decision may be adopted only after at least three months have elapsed since the accused was placed on the wanted list.

During in absentia proceedings, the accused has the right to legal assistance. If no defense counsel has been chosen, a lawyer is appointed by the state. The accused must also be informed about the proceedings; where necessary, information concerning the accused may be disseminated via public television, radio, and the official website. The Chapter further establishes procedures for the termination of in absentia proceedings: Where the accused appears voluntarily or is brought under the control of the court, the in absentia proceedings are discontinued, and the investigation and trial continue in accordance with the ordinary procedure. After an in absentia judgment or other final decision has been rendered, the accused may request a re-examination of the case, and a new court hearing is guaranteed.

Chapter LIV-II also provides that, during in absentia proceedings, international standards such as the presumption of innocence, the safeguarding of defense rights, and the protection of rights enshrined in the international treaties to which Azerbaijan is a party must be observed.

The Transformation of In Absentia Proceedings into a Political Instrument

Although the legal nature of the institution of in absentia proceedings presupposes its exceptional and limited application, in political systems marked by strong authoritarian tendencies this mechanism can rapidly shift from a legitimate legal tool into an instrument of political pressure and punishment. In such contexts, in absentia proceedings no longer serve the effectiveness of criminal prosecution; rather, they are employed to suppress dissenting voices, portray political opponents as criminals, and

undermine their legitimacy in the eyes of society.

In the Azerbaijani context, the principal problem observed in the application of in absentia proceedings lies in their practical use not as a measure of *last resort*, but as a *primary and default instrument*. The direct recourse to in absentia proceedings without first taking the real and effective measures required by international law to secure the accused person's participation in the process runs counter to the very essence of this institution. In particular, the initiation of in absentia investigations against political activists residing abroad, the bringing of serious criminal charges, and the imposition of lengthy custodial sentences in absentia transform this mechanism from a legal exception into an instrument of political repression.

In this context, in absentia proceedings function not so much as a procedural legal institution, but as a vehicle for political messaging. Through such proceedings, the authorities convey to their opponents the message that they *can be punished* even beyond the country's borders. This approach is not characteristic of a state governed by the rule of law, but rather of a system of governance based on fear and deterrence. In all cases, the state itself bears institutional responsibility for these processes. When individuals whose rights have been violated apply to the European Court of Human Rights, the state is compelled to pay compensation. In the future, the issue of the personal responsibility of officials involved in in absentia proceedings may also arise. Behind every decision to initiate an in absentia investigation, every ruling to conduct in absentia proceedings, and every in absentia judgment stand specific procedural documents and specific signatures. These signatures belong to investigators, prosecutors, and judges.

There is little doubt that political power often intervenes in these processes through informal means, such as verbal instructions or pressure exerted from above. However, from a

legal perspective, the subject that adopts and formalizes the decision is a specific public official. Historical experience demonstrates that when political regimes change, the argument of "*I was merely following orders*" does not eliminate individual responsibility. The initiation of in absentia proceedings, the bringing of fabricated charges, and the formal, rather than genuine, provision of defense rights are actions that may be subject to legal assessment in the future. For example, in East Germany (the German Democratic Republic), judges and prosecutors who participated in human rights violations under the former regime were subjected to review following reunification.[\[13\]](#) In South Africa, the past conduct of judicial and law-enforcement officials during the apartheid regime was examined, and questions of accountability were raised.[\[14\]](#)

From this perspective, a clear and serious reminder is warranted for officials who participate in the abuse of in absentia proceedings: when political power changes, the leaders who directed these processes may leave the country or attempt to evade responsibility. However, investigators, prosecutors, and judges whose signatures appear on these decisions will remain face to face with their legal and moral responsibility. Awareness of this reality should increase the legal weight and gravity of every decision taken today.

A Memorandum for Political Opponents Facing In Absentia Proceedings

In conditions where in absentia proceedings are applied for political purposes, spontaneous reactions are far less effective than a systematic and legally grounded strategy of conduct for opposition politicians, civil activists, and independent critics. The steps outlined below are conceived as a practical roadmap aimed at minimizing the legal consequences of in absentia proceedings and exposing abuses of this institution.

First, immediately document the fact that in absentia proceedings have been initiated. Any information obtained regarding the opening of in absentia proceedings against an individual—whether a court decision, a prosecutorial submission, an investigative document, an official notice, or a media report—should be promptly collected, systematized, and archived. At this stage, the objective is to build an evidentiary basis for future international legal procedures. Particular attention should be paid to documenting whether summonses were actually delivered, whether the search measures were merely formal in nature, and how the right to defense was ensured in practice.

Second, analyze the legal grounds for the in absentia proceedings with your lawyer and identify violations. In each individual case, compliance with the conditions prescribed by the Criminal Procedure Code must be assessed separately and in detail. This assessment should primarily examine whether the alleged deliberate evasion of the investigation or the court by the accused is substantiated by real evidence. Equally important is whether, where the person's whereabouts were known, the state undertook real and effective measures to secure their participation through extradition or legal assistance mechanisms.

In this context, the three-month requirement established for the initiation of in absentia proceedings plays a crucial role as a legal filter. Pursuant to Article 467-13.9 of the Criminal Procedure Code, a decision to open in absentia proceedings may be adopted only after at least three months have elapsed since the accused was declared wanted. The legal purpose of this period is to provide state authorities with sufficient time to locate the individual in practice, ensure their involvement in the process, activate international legal mechanisms, and genuinely safeguard the right to defense.

The three-month period is not a formal waiting period, but a key safeguard designed to ensure that in absentia proceedings

are applied only as a measure of last resort. If, during this period, search measures are merely formal, extradition and legal assistance mechanisms are not genuinely used, or effective steps are not taken to inform the accused of the proceedings, the initiation of in absentia proceedings is deprived of any legal basis. Consequently, non-compliance with the three-month requirement, its purely formal observance, or its expiration without real measures must be regarded as a serious procedural violation demonstrating the unlawfulness of the in absentia proceedings. Such violations may subsequently result in the state's inability, before the European Court of Human Rights, to substantiate the necessity and proportionality of the in absentia proceedings and may serve as an independent legal argument before international bodies.

Third, record the failure to ensure the effective right to defense. Where the lawyer appointed by the state acts in a passive or purely formal manner, this circumstance should be documented as a distinct legal issue. The formal provision of defense rights is regarded in the case-law of the European Court of Human Rights as a violation of the right to a fair trial. Where possible, cooperation should be established with lawyers experienced in international practice, and case materials should be submitted to legal institutions operating abroad.

Fourth, translate the violations committed during in absentia proceedings into the language of international law. Domestic procedural violations must be articulated within the framework of international human rights law. Restrictions on the right to defense, the absence of real notification, and the ineffectiveness of mechanisms for retrial should be transformed into legal claims under Article 6 of the European Convention on Human Rights. This approach elevates in absentia proceedings from an instrument of internal repression to a matter of international legal concern.

Fifth, inform the public and the international audience. The

essence of in absentia proceedings and the manner in which they are abused in specific cases should be communicated to the public in a consistent and fact-based manner. The aim is not to provoke emotional reactions, but to deepen the crisis of legitimacy through legal arguments. International media, human rights organizations, and parliamentary structures play an important role in this process.

Sixth, treat an in absentia conviction as the starting point of political struggle. For political opponents, the key psychological and legal principle should be that an in absentia conviction does not mark the end of legal resistance. On the contrary, this stage constitutes the starting point for activating international legal mechanisms. Consistently challenging the legitimacy of in absentia decisions and publicly naming the investigators, prosecutors, and judges responsible can transform this institution from a political weapon into a pathway to legal discreditation.

Seventh, record and emphasize the principle of individual responsibility. It must be clearly stressed that even where in absentia proceedings are driven by political will or informal instructions, responsibility for their legal consequences does not rest with an abstract notion of government, but with specific officials: the investigator, the prosecutor, and the judge. The initiation, conduct, and finalization of in absentia proceedings are in all cases formalized through individual procedural decisions, each of which acquires legal force through a specific signature.

Historical and international legal experience clearly demonstrates that political authorities are changeable and political will is transient. Legal responsibility, however, is individual in nature and does not dissipate over time. For this reason, every official who uses the institution of in absentia proceedings for political purposes, or who directly or indirectly participates in such abuse, must be aware that the execution of orders does not exclude legal responsibility

and cannot serve as a basis for evading future legal assessment.

This reality should be understood by investigators, prosecutors, and judges involved in in absentia proceedings not as a theoretical warning, but as a concrete legal reminder. Unlawful and politically motivated decisions may today create an illusion of impunity; tomorrow, however, the legal consequences of those decisions will be assessed in terms of individual responsibility, irrespective of shifting political configurations.

Conclusion

The institution of in absentia proceedings is neither legally prohibited per se nor inherently malign in nature. In states governed by the rule of law, when applied in exceptional circumstances under strict procedural safeguards and genuine judicial oversight, it may function as a technical instrument ensuring the effectiveness of criminal justice. However, the decisive factor that alters the essence of this institution—transforming it from a legal mechanism into an instrument of repression—is the will of the political authorities. It is precisely political orders, the absence of judicial independence, and the deliberate reduction of legal safeguards to a merely formal level that strip in absentia proceedings of their neutral legal character and convert them into a means of political persecution and intimidation.

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