Reports of Cases

ORDER OF THE COURT (First Chamber)

20 September 2024*

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Article 99 of the Rules of Procedure of the Court of Justice – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Article 1(3) – Article 4a – Surrender procedure between Member States – Grounds for optional non-execution – Article 48(2) of the Charter of Fundamental Rights of the European Union – Rights of the defence – Directive 2012/13/EU – Article 6 – Right to information in criminal proceedings – Directive 2013/48/EU – Article 3 – Right of access to a lawyer in criminal proceedings – Decision rendered following a trial at which the accused person neither appeared nor was represented by a lawyer – National legislation not permitting refusal to surrender the person concerned – Compliance with EU law)

In Case C-504/24 PPU [Anacco],[i]

concerning a request for a preliminary ruling under Article 267 TFEU from the Corte d'appello di Roma (Court of Appeal, Rome, Italy), made by decision of 18 July 2024, received at the Court on 19 July 2024, in the criminal proceedings against

RT,

intervening party:

Procura Generale della Repubblica presso la Corte d'appello di Roma,

THE COURT (First Chamber),

composed of A. Arabadjiev, President of the Chamber, T. von Danwitz, P.G. Xuereb, A. Kumin (Rapporteur) and I. Ziemele, Judges,

Advocate General: N. Emiliou,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to rule by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

* Language of the case: Italian.

[i] The name of the present case is a fictitious name. It does not correspond to the real name of any party to the proceedings.

Order

1 This request for a preliminary ruling concerns the interpretation of Article 6 TEU, Article 48(2) and Article 52(3) and (4) of the Charter of Fundamental Rights of the European Union ('the Charter'), Article 6(3)(c) of the Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR'), Article 1(3) and Article 4a of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584'), and Article 6 of Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings (OJ 2012 L 142, p. 1), as well as Article 3 of Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (OJ 2013 L 294, p. 1).

2 The request has been made in connection with the execution, in Italy, of a European arrest warrant issued on 29 April 2024 by the parquet du procureur du Roi de Bruxelles (Office of the Public Prosecutor of Brussels, Belgium) for the purpose of enforcing a custodial sentence handed down against RT by the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking), Belgium).

Legal context

European Union law

Framework Decision 2002/584

3 Recitals 6 and 12 of Framework Decision 2002/584 state:

'(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the "cornerstone" of judicial cooperation.

…

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [TEU] and reflected in the [Charter], in particular Chapter VI thereof. …'

4 Article 1 of that framework decision, entitled 'Definition of the European arrest warrant and obligation to execute it', provides as follows, in paragraphs 2 and 3 thereof:

'2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TUE].'

5 Article 4a of that framework decision, entitled 'Decisions rendered following a trial at which the person did not appear in person', provides:

'1. The executing judicial authority may also refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the person, in accordance with further procedural requirements defined in the national law of the issuing Member State:

(a) in due time:
   (i) either was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or by other means actually received official information of the scheduled date and place of that trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial;

   and
   (ii) was informed that a decision may be handed down if he or she does not appear for the trial;

   or

(b) being aware of the scheduled trial, had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him or her at the trial, and was indeed defended by that counsellor at the trial;

   or

(c) after being served with the decision and being expressly informed about the right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed:
   (i) expressly stated that he or she does not contest the decision;

   or
   (ii) did not request a retrial or appeal within the applicable time frame;

   or

(d) was not personally served with the decision but:
   (i) will be personally served with it without delay after the surrender and will be expressly informed of his or her right to a retrial, or an appeal, in which the person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed;

   and
   (ii) will be informed of the time frame within which he or she has to request such a retrial or appeal, as mentioned in the relevant European arrest warrant.

2. In case the European arrest warrant is issued for the purpose of executing a custodial sentence or detention order under the conditions of paragraph 1(d) and the person concerned has not previously received any official information about the existence of the criminal proceedings against him or her, he or she may, when being informed about the content of the European arrest warrant, request to receive a copy of the judgment before being surrendered. Immediately after having been informed about the request, the issuing authority shall provide the copy of the judgment via the executing authority to the person sought. The request of the person sought shall neither delay the surrender procedure nor delay the decision to execute the European arrest warrant. The provision of the judgment to the person concerned is for information purposes only; it shall neither be regarded as a formal service of the judgment nor actuate any time limits applicable for requesting a retrial or appeal.

3. In case a person is surrendered under the conditions of paragraph (1)(d) and he or she has requested a retrial or appeal, the detention of that person awaiting such retrial or appeal shall, until these proceedings are finalised, be reviewed in accordance with the law of the issuing Member State, either on a regular basis or upon request of the person concerned. Such a review shall in particular include the possibility of suspension or interruption of the detention. The retrial or appeal shall begin within due time after the surrender.'

Framework Decision 2009/299

6 Recitals 1, 14 and 15 of Framework Decision 2009/299 state:

'(1) The right of an accused person to appear in person at the trial is included in the right to a fair trial provided for in Article 6 [ECHR], as interpreted by the European Court of Human Rights. The Court has also declared that the right of the accused person to appear in person at the trial is not absolute and that under certain conditions the accused person may, of his or her own free will, expressly or tacitly but unequivocally, waive that right.

…

(14) This Framework Decision is limited to refining the definition of grounds for non-recognition in instruments implementing the principle of mutual recognition. Therefore, provisions such as those relating to the right to a retrial have a scope which is limited to the definition of these grounds for non-recognition. They are not designed to harmonise national legislation. This Framework Decision is without prejudice to future instruments of the European Union designed to approximate the laws of the Member States in the field of criminal law.

(15) The grounds for non-recognition are optional. However, the discretion of Member States for transposing these grounds into national law is particularly governed by the right to a fair trial, while taking into account the overall objective of this Framework Decision to enhance the procedural rights of persons and to facilitate judicial cooperation in criminal matters.'

7 Article 1 of that framework decision, entitled 'Objectives and scope', states, in paragraph 1:

'The objectives of this Framework Decision are to enhance the procedural rights of persons subject to criminal proceedings, to facilitate judicial cooperation in criminal matters and, in particular, to improve mutual recognition of judicial decisions between Member States.'

Directive 2012/13

8 Article 6 of Directive 2012/13, entitled 'Right to information about the accusation', is worded as follows:

'1. Member States shall ensure that suspects or accused persons are provided with information about the criminal act they are suspected or accused of having committed. That information shall be provided promptly and in such detail as is necessary to safeguard the fairness of the proceedings and the effective exercise of the rights of the defence.

…

3. Member States shall ensure that, at the latest on submission of the merits of the accusation to a court, detailed information is provided on the accusation, including the nature and legal classification of the criminal offence, as well as the nature of participation by the accused person.

…'

Directive 2013/48

9 Article 3 of Directive 2013/48, entitled 'The right of access to a lawyer in criminal proceedings', is worded as follows:

'1. Member States shall ensure that suspects and accused persons have the right of access to a lawyer in such time and in such a manner so as to allow the persons concerned to exercise their rights of defence practically and effectively.

…

4. Member States shall endeavour to make general information available to facilitate the obtaining of a lawyer by suspects or accused persons.

Notwithstanding provisions of national law concerning the mandatory presence of a lawyer, Member States shall make the necessary arrangements to ensure that suspects or accused persons who are deprived of liberty are in a position to exercise effectively their right of access to a lawyer, unless they have waived that right in accordance with Article 9.

…'

Directive (EU) 2016/343/EU

10 Article 8 of Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings (OJ 2016 L 65, p. 1), entitled 'Right to be present at the trial', states:

'…

2. Member States may provide that a trial which can result in a decision on the guilt or innocence of a suspect or accused person can be held in his or her absence, provided that:

(a) the suspect or accused person has been informed, in due time, of the trial and of the consequences of non-appearance; or

(b) the suspect or accused person, having been informed of the trial, is represented by a mandated lawyer, who was appointed either by the suspect or accused person or by the State.

…

4. Where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions laid down in paragraph 2 of this Article because a suspect or accused person cannot be located despite reasonable efforts having been made, Member States may provide that a decision can nevertheless be taken and enforced. In that case, Member States shall ensure that when suspects or accused persons are informed of the decision, in particular when they are apprehended, they are also informed of the possibility to challenge the decision and of the right to a new trial or to another legal remedy, in accordance with Article 9.

…'

11 Article 9 of that directive, entitled 'Right to a new trial', is worded as follows:

'Member States shall ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) were not met, they have the right to a new trial, or to another legal remedy, which allows a fresh determination of the merits of the case, including examination of new evidence, and which may lead to the original decision being reversed. In that regard, Member States shall ensure that those suspects and accused persons have the right to be present, to participate effectively, in accordance with procedures under national law, and to exercise the rights of the defence.'

National law

Italian law

12 Article 24 of the Italian Constitution provides:

'All persons are entitled to take judicial action to protect their individual rights and legitimate interests.

The right to defence shall be inviolable at every stage and instance of legal proceedings.

Appropriate measures shall ensure that indigent persons have the means to act and defend themselves before any court or tribunal.

…'

13 Article 2 of legge n. 69 – Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d'arresto europeo e alle procedure di consegna tra Stati membri (Law No 69 laying down provisions to bring national law into line with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States) of 22 April 2005 (GURI No 98 of 29 April 2005, p. 6; 'Law No 69/2005'), entitled 'Compliance with fundamental freedoms and constitutional guarantees', states that:

'Under no circumstances may the execution of a European arrest warrant entail an infringement of the overriding principles of the constitutional order of the State or of the inalienable rights of the individual recognised by the Constitution, of the fundamental rights and the fundamental legal principles enshrined in Article 6 [TEU] or of the fundamental rights guaranteed by the [ECHR] and the Additional Protocols thereto.'

14 Article 6 of Law No 69/2005, entitled 'Content of the European arrest warrant in the passive surrender procedure', states, in paragraphs 1, 1*bis* and 2:

'1. The European arrest warrant shall contain the following information:

(a) the identity and nationality of the requested person;

(b) the name, address, telephone and fax numbers and email address of the issuing judicial authority;

(c) evidence of an enforceable judgment, a decision imposing interim measures or any other enforceable judicial decision having the same effect, coming within the scope of Articles 7 and 8 of this law;

(d) the nature and legal classification of the offence;

(e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;

(f) the penalty imposed, if there is a final judgment, or, in other cases, the prescribed scale of penalties for the offence under the law of the issuing State;

(g) if possible, other consequences of the offence.

1*bis*. Where it has been issued for the purpose of executing a sentence or a detention order depriving the person of his or her liberty, applied following a trial at which the person concerned did not appear in person, the European arrest warrant must also contain an indication that at least one of the following conditions has been met:

(a) the person concerned was promptly summoned in person or by other means capable of ensuring unequivocally that he or she was aware of the date and place of the trial, which resulted in the decision rendered *in absentia* and of the fact that the decision could have been taken even in his or her absence;

(b) the person concerned, who was informed of his or her trial, was represented at the trial resulting in that decision by a lawyer, appointed by the person himself or herself or by the court;

(c) the person concerned, after being served the decision of which enforcement is sought and having been informed of his or her right to a retrial or of the possibility of lodging an appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which could lead to the original decision being reversed, has expressly declared that he or she does not contest that decision or has not requested the retrial of the case or lodged an appeal within the time limit set;

(d) the person concerned has not personally been served with the decision, but shall receive it personally and without delay after surrender to the issuing Member State and shall be expressly informed of the right to a retrial or to lodge an appeal, in which he or she has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which could lead to the original decision being reversed, and shall be informed of the time limits within which he or she must apply for a retrial or lodge an appeal.

2. If the European arrest warrant does not contain the information referred to in points (a), (c), (d), (e) and (f) of paragraph 1, or evidence of at least one of the conditions referred to in paragraph 1*bis* having been met, the judicial authority shall take steps in accordance with Article 16. It shall also take steps where it deems it necessary to obtain additional evidence in order to verify whether one of the cases provided for in Articles 18, 18*bis*, 18*ter* and 19 applies.'

15 Article 18*ter* of this law, entitled 'Decisions rendered in the absence of the person sought', states:

'1. Where the European arrest warrant has been issued for the purpose of executing a sentence or a detention order applied following a trial at which the person concerned did not appear in person, the Court of Appeal may also refuse surrender if the European arrest warrant does not indicate any of the conditions referred to in Article 6(1*bis*) having been met and the issuing State has given no indication as to those conditions, even after a request has been made under Article 16.

2. In the cases referred to in paragraph 1, the Court of Appeal may, in any event, permit surrender if it is determined with certainty that the person concerned was aware of the trial or willingly avoided being made aware of the trial.

3. Where the conditions referred to in point (d) of Article 6(1*bis*) are met, a requested person who was not previously informed of the criminal proceedings brought against him or her may request the transmission of a copy of the conviction on which the European arrest warrant is based. The request does not under any circumstances constitute a ground for postponement of the surrender procedure or of the decision to execute the European arrest warrant. The Court of Appeal shall immediately forward the request to the issuing authority.'

Belgian law

16 Under Article 186 of the code d'instruction criminelle belge (Belgian Code of Criminal Procedure):

'If the person summoned, or the lawyer representing that person, does not appear on the day and at the time established in the summons, he or she will be tried *in absentia*.'

17 Article 187(1) of that code provides:

'A person convicted *in absentia* may lodge an objection to the judgment within 15 days of service of the judgment.

Where the judgment has not been served on the person concerned, the person convicted *in absentia* may lodge an objection, in respect of criminal convictions, within 15 days of being made aware that the judgment has been served.

If that person has been informed of this by the service of a European arrest warrant or extradition request, or if the current 15-day period has not yet expired at the time of his or her arrest abroad, he or she may lodge an objection within 15 days of surrender or release abroad.

If it is not established that he or she was aware of being served, the person convicted *in absentia* may lodge an objection until the date on which enforcement of the sentence becomes time-barred. In the case of civil judgments, he or she may lodge an objection until the judgment has been enforced.

…'

The dispute in the main proceedings and the question referred for a preliminary ruling

18 On 29 April 2024, the parquet du procureur du Roi de Bruxelles (Office of the Public Prosecutor of Brussels) issued a European arrest warrant against RT ('the European arrest warrant at issue'), a French and Malian national and holder of a Malian diplomatic passport, for the purpose of enforcing a two-year custodial sentence to which she had been sentenced by the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)) by judgment of 18 October 2023, on the basis of Article 100*ter*, Article 432(1), first and second subparagraphs, and (3), and Article 432(2), first subparagraph, of the Belgian Criminal Code, for failure to present a minor child being held abroad for more than five days ('the judgment of 18 October 2023').

19 It appears from the order for reference that the judgment of 18 October 2023 was given *in absentia* following a trial that took place without RT having been actually served with the indictment and, consequently, without her or a lawyer instructed by her or appointed for her by the court being present at the hearing held in the context of those proceedings.

20 The facts that gave rise to the judgment of 18 October 2023, as stated in the order for reference, can be summarised as follows. Following the breakdown of her relationship with JG in 2018, RT moved to Mali with their daughter, UMTG, who had been born in Brussels on 3 November 2015. In so doing, RT infringed the judgments of the tribunal de la famille (Family Court) of the tribunal

de première instance de Bruxelles (Court of First Instance, Brussels, Belgium) of 26 June and 24 September 2019, which ordered, inter alia, that UMTG's primary residence was to be with JG in Belgium.

21 On 20 June 2024, RT was arrested on arrival in Italy and remanded in custody for the purpose of executing the European arrest warrant at issue. On 22 June 2024, the Corte d'appello di Roma (Court of Appeal, Rome, Italy), the referring court, conducted a hearing of RT, who did not consent to being surrendered to the Belgian authorities. She claimed in particular that the Malian courts had given her custody of UMTG and that JG had agreed to the transfer of the child to Mali. At a hearing on 2 July 2024, RT requested, inter alia, that the execution of this arrest warrant be refused and that the order to remand her in custody be lifted.

22 Following a request from the referring court, the ministère de la Justice (Ministry of Justice, Belgium) indicated, by letter of 8 July 2024, that RT had been summoned by registered letter to appear at the hearing on 4 October 2023 by the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)), in the proceedings resulting in the judgment of 18 October 2023. As RT did not appear at that hearing and was not represented at the hearing by counsel, the judgment was rendered *in absentia*, following a non-adversarial proceeding. Moreover, the referring court states that both that letter and the European arrest warrant at issue make it clear that, in the event of her surrender to the Belgian authorities, RT could lodge an objection against the judgment of 18 October 2023 before the tribunal de première instance francophone de Bruxelles (Brussels Court of First Instance (French-speaking)) within a period of 15 days from service of that judgment and that that objection, if declared admissible, would result in that judgment being set aside and a new trial being held, and that she would enjoy the same rights in that new trial as she would have enjoyed in the proceedings which gave rise to that judgment. In addition, RT would have the right to appeal the judgment of 18 October 2023 within 30 days of service of the judgment to the cour d'appel de Bruxelles (Court of Appeal, Brussels, Belgium). In both cases, RT would have the right to be assisted by a lawyer appointed by her or appointed for her by the legal aid office, she would be given adequate time to prepare her defence and she would be able to apply for release from custody.

23 By order of 11 July 2024, the referring court rejected RT's request to be released from custody and indicated that it had scheduled a hearing for 24 September 2024 to rule on the merits of the case concerning the execution of the European arrest warrant at issue.

24 Since Law No 69/2005 – which implements Framework Decision 2002/584 – does not provide for the possibility of refusing to surrender RT in a situation such as that at issue in the main proceedings, the referring court has doubts as to the compatibility of that law with both Italian constitutional law and EU law. In accordance with the case-law of the Corte costituzionale (Constitutional Court, Italy) and the Corte suprema di cassazione (Supreme Court of Cassation, Italy), it is not possible to hold a criminal trial in Italy without the accused being represented by a lawyer, even when the accused does not appear in person. This is a constitutional principle that, according to the referring court, is confirmed by Article 48 of the Charter and Article 6 ECHR and which, read in the light of Article 6 TEU and Article 1(3) of Framework Decision 2002/584, precludes the execution of a European arrest warrant for the purpose of enforcing a custodial sentence imposed without the accused being represented by a lawyer and, consequently, in breach of that individual's rights of defence.

25 In that context, the referring court notes the request for a preliminary ruling submitted by the Corte suprema di cassazione (Supreme Court of Cassation) by decision of 19 December 2023 in the pending Case C-40/24, *Derterti*, which deals with the same issues as those at issue in the main proceedings.

26 In those circumstances, the Corte d'appello di Roma (Court of Appeal, Rome) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must:

(a) Article 6 [TEU], [Article] 48(2) and [Article] 52(3) and (4) of the [Charter],

(b) Article 6(3)(c) [ECHR],

(c) Article 1(3) and Article 4a of [Framework Decision 2002/584],

(d) Article 6 of Directive [2012/13], and

(e) Article 3 of Directive [2013/48],

be interpreted, taken together, as precluding national legislation such as the Italian legislation, provided for in Articles 2, 6 and 18*ter* of [Law No 69/2005], which does not permit the Corte di appello ([Court of Appeal]), as the competent judicial body of the requested State, to refuse the surrender of a person to the issuing State in the execution of [a European arrest warrant] issued on the basis of a conviction imposing a custodial sentence delivered, in the issuing State, following a criminal trial which took place in the absence of a lawyer of choice appointed by the accused or appointed by the court of its own motion, and in any event without an actual defence, including in cases where – after the execution of the [European arrest warrant] – the convicted person has the right to be served the conviction and may lodge an objection or appeal against that conviction[?]'

Request for the application of the urgent preliminary ruling procedure

27 The referring court has requested that the reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in the first paragraph of Article 23a of the Statute of the Court of Justice of the European Union and Article 107 of the Rules of Procedure of the Court of Justice.

28 In support of that request, the referring court states that RT has been remanded in custody since 20 June 2024.

29 In that regard, it should be noted, in the first place, that this reference for a preliminary ruling concerns inter alia the interpretation of Framework Decision 2002/584, Directive 2012/13 and Directive 2013/48, which come under Title V of Part Three of the TFEU, relating to the area of freedom, security and justice. Consequently, the reference may be dealt with under the urgent preliminary ruling procedure.

30 In the second place, as regards the condition relating to urgency, that condition is satisfied, inter alia, where the person concerned in the main proceedings is currently deprived of his or her liberty and when his or her continued detention turns on the outcome of the dispute in the main proceedings, it being specified that the situation of the person concerned must be assessed as it stands at the time when consideration is given to whether the reference for a preliminary ruling should be dealt with under the urgent procedure (judgment of 14 May 2024, *Stachev*, C-15/24 PPU, EU:C:2024:399, paragraph 42 and the case-law cited).

31 In the present case, first, it is apparent from the order for reference that RT has in fact been deprived of her liberty since 20 June 2024 and that she was in that condition at the time when the request for a preliminary ruling to be dealt with under the urgent procedure was examined.

32 Second, the referring court has indicated, in essence, that it might be compelled, depending on the Court of Justice's response to the question referred for a preliminary ruling, to refuse to execute the European arrest warrant at issue and, consequently, to order RT's release.

33 In those circumstances, the First Chamber of the Court decided, on 1 August 2024, on the basis of the Judge-Rapporteur's proposal and after hearing the Advocate General, to grant the referring court's request that the reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the question referred

34 Pursuant to Article 99 of the Rules of Procedure of the Court of Justice, where the reply to a question referred to the Court for a preliminary ruling may be clearly deduced from existing case-law or admits of no reasonable doubt, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decide to rule by reasoned order.

35 It is appropriate to apply that provision in the present case.

36 By its sole question, the referring court is essentially seeking to ascertain whether Article 4a of Framework Decision 2002/584, read in the light of Article 6 TEU, Article 48(2) and Article 52(3) and (4) of the Charter, Article 6(3)(c) ECHR, Article 1(3) of that framework decision, Article 6 of Directive 2012/13 and Article 3 of Directive 2013/48 should be interpreted as precluding national legislation that does not allow the executing judicial authority to refuse to surrender the person concerned, pursuant to a European arrest warrant issued for the purpose of executing a custodial sentence imposed on that person in the issuing State, if that person did not appear in person at the trial resulting in the decision and was not represented by a lawyer appointed by him or her or appointed by the court and, in any event, in the absence of an effective defence, in a situation in which, after that surrender, the same person is served with the judgment rendered *in absentia* and may lodge an objection to, or appeal against, that judgment.

37 As a preliminary point, it is apparent from the settled case-law of the Court of Justice that both the principle of mutual trust between the Member States and the principle of mutual recognition, which is itself based on the mutual trust between the latter, are, in EU law, of fundamental importance given that they allow an area without internal borders to be created and maintained. More specifically, the principle of mutual trust requires, particularly as regards the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental

rights recognised by EU law (judgments of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 93, and of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraph 33 and the case-law cited).

38 Thus, when implementing EU law, the Member States are required to presume that fundamental rights have been observed by the other Member States, so that they may neither demand a higher level of national protection of fundamental rights from another Member State than that provided by EU law, nor check, save in exceptional cases, whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the European Union (Opinion 2/13 *(Accession of the European Union to the ECHR)* of 18 December 2014, EU:C:2014:2454, paragraph 192, and judgment of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraph 34 and the case-law cited).

39 In that context, Framework Decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (judgment of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraph 35 and the case-law cited).

40 The principle of mutual recognition, which, according to recital 6 of Framework Decision 2002/584, found its first concrete expression in the European arrest warrant provided for in that framework decision, constitutes the 'cornerstone' of judicial cooperation in criminal matters. That principle is expressed in Article 1(2) of that framework decision, which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the framework decision (judgments of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraph 36 and the case-law cited, and of 21 December 2023, *G.K. and Others (European Public Prosecutor's Office)*, C-281/22, EU:C:2023:1018, paragraph 59 and the case-law cited).

41 It follows, first, that the executing judicial authorities may refuse to execute a European arrest warrant only on grounds stemming from Framework Decision 2002/584, as interpreted by the Court. Second, while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception which must be interpreted strictly (judgment of 21 December 2023, *GN (Ground for refusal based on the best interests of the child)*, C-261/22, EU:C:2023:1017, paragraph 37 and the case-law cited).

42 In particular, Article 4a(1) of Framework Decision 2002/584 constitutes an exception to the rule requiring the executing judicial authority to surrender the requested person to the issuing Member State and must, therefore, be interpreted strictly (see, to that effect, judgment of 23 March 2023, *Minister for Justice and Equality (Lifting of the suspension)*, C-514/21 and C-515/21, EU:C:2023:235, paragraph 55).

43 In the first place, as is apparent from the very wording of that provision, the executing judicial authority is entitled to refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant indicates that the conditions set

out, respectively, in subparagraphs (a) to (d) of that provision are met (judgment of 23 March 2023, *Minister for Justice and Equality (Lifting of the suspension)*, C-514/21 and C-515/21, EU:C:2023:235, paragraph 48 and the case-law cited).

44 In that respect, it should be noted that Article 4a thus restricts the possibility of refusing to execute the European arrest warrant by listing, in a precise and uniform manner, the conditions under which the recognition and enforcement of a decision rendered following a trial at which the person concerned did not appear in person may not be refused (judgment of 23 March 2023, *Minister for Justice and Equality (Lifting of the suspension)*, C-514/21 and C-515/21, EU:C:2023:235, paragraph 49 and the case-law cited).

45 Consequently, the executing judicial authority is obliged to execute a European arrest warrant, notwithstanding the absence of the person concerned at the trial resulting in the decision, where one of the situations referred to in Article 4a(1)(a), (b), (c) or (d) of Framework Decision 2002/584 is verified (judgment of 17 December 2020, *Generalstaatsanwaltschaft Hamburg*, C-416/20 PPU, EU:C:2020:1042, paragraph 41).

46 As for Article 4a(1)(d) of Framework Decision 2002/584, which is relevant in the present case since it is clear from the reference for a preliminary ruling that RT did not appear in person at the trial resulting in the decision – namely the judgment of 18 October 2023 – nor personally received service of that judgment and that the European arrest warrant at issue states that she may lodge an objection to that judgment or appeal against it within 15 or 30 days of service respectively, that provision does not refer to the assistance of a lawyer at that trial.

47 In particular, it does not follow from the wording of Article 4a(1)(d) that the executing judicial authority can refuse to execute a European arrest warrant where that warrant is issued against the person concerned following a trial at which that person did not appear in person, on the ground that he or she was not represented by a lawyer appointed by him or her or appointed by the court. To accept otherwise would thus be tantamount to adding a condition to Framework Decision 2002/584 for the execution of a European arrest warrant that was not envisaged by the EU legislature.

48 In the second place, with regard to the origins and objectives of Article 4a of Framework Decision 2002/584, the Court of Justice has already held that this provision seeks to guarantee a high level of protection and to allow the executing authority to surrender the person concerned despite that person's failure to attend the trial which led to his or her conviction, while fully respecting the relevant rights of defence. More specifically, it is expressly stated in Article 1 of Framework Decision 2009/299, read in the light of recitals 1 and 15 thereof, that Article 4a was inserted into Framework Decision 2002/584 in order to protect the right of the accused person to appear in person at the trial, while improving mutual recognition of judicial decisions between Member States (judgment of 23 March 2023, *Minister for Justice and Equality (Lifting of the suspension)*, C-514/21 and C-515/21, EU:C:2023:235, paragraph 50 and the case-law cited).

49 In parallel, Framework Decision 2009/299 deleted Article 5(1) of Framework Decision 2002/584, which allowed – in the case of a European arrest warrant issued for the purpose of executing a sentence imposed by a decision rendered *in absentia* and if the person concerned had not been informed of the date and place of the hearing resulting in the decision rendered *in absentia* – the executing judicial authority to make the surrender subject to the condition that the issuing judicial

authority provide assurances deemed adequate to guarantee that that person will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment.

50 It is therefore in order to ensure that the rights of the defence and access to a lawyer are protected that Article 4a(1)(d)(i) of Framework Decision 2002/584 requires that a person sentenced *in absentia* be entitled 'to a retrial, or an appeal, in which [that] person has the right to participate and which allows the merits of the case, including fresh evidence, to be re-examined, and which may lead to the original decision being reversed'.

51 It is also important to note that Framework Decision 2002/584 introduces a system of mutual recognition based on the principle of mutual trust and that, as is clear from recital 14 of Framework Decision 2009/299, it does not seek to harmonise national legislation.

52 Furthermore, it should be noted that this requirement for a right to a retrial or to an appeal allowing the merits of the case to be re-examined corresponds to the requirement laid down in Article 8(4) and Article 9 of Directive 2016/343 where Member States provide for the possibility of holding trials in the absence of suspects or accused persons but it is not possible to comply with the conditions laid down in Article 8(2) of that directive, in particular the condition that the person concerned be informed of the trial, because a suspect or accused person cannot be located despite reasonable efforts having been made.

53 It follows from the foregoing that Article 4a(1)(d) of Framework Decision 2002/584 cannot be interpreted as meaning that the executing judicial authority may refuse to execute a European arrest warrant on the ground that the person concerned was not represented by a lawyer appointed by that person or by a lawyer appointed by the court at the trial resulting in the decision or, a fortiori, as meaning that that provision precludes the Italian legislation at issue in the main proceedings, in so far as it does not permit such a refusal, even though that legislation provides that, in Italy, a judgment *in absentia* may not be given if a lawyer has not been appointed by the court.

54 In the third place, that interpretation is not undermined by either Directive 2012/13 or Directive 2013/48, which were also cited by the referring court, although that court did not clarify the doubts it had in that regard. In so far as that court questions whether those directives impose an obligation on the Member States to ensure that suspects or accused persons are assisted by a court-appointed lawyer in a trial that could result in their conviction *in absentia*, that question is irrelevant for the purposes of determining the cases in which refusal to execute a European arrest warrant is permitted under Article 4a of Framework Decision 2002/584.

55 It suffices to note that, according to the case-law of the Court of Justice, any possible non-conformity of the national law of the issuing Member State with the provisions of a directive cannot constitute a ground which may lead to a refusal to execute the European arrest warrant. Reliance on the provisions of a directive in order to prevent the execution of a European arrest warrant would make it possible to circumvent the system established by Framework Decision 2002/584, which provides an exhaustive list of the grounds for non-execution (see, to that effect, judgment of 17 December 2020, *Generalstaatsanwaltschaft Hamburg*, C-416/20 PPU, EU:C:2020:1042, paragraphs 46 and 47).

56 In the fourth place, Article 4a of Framework Decision 2002/584 must also be interpreted and applied in a manner consistent with the second and third paragraphs of Article 47 and with Article 48 of the Charter, which, as stated in the Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17), correspond to Article 6 ECHR. The Court must, accordingly, ensure that its interpretation of the second and third paragraphs of Article 47 and of Article 48 of the Charter ensures a level of protection which does not disregard that guaranteed by Article 6 ECHR, as interpreted by the European Court of Human Rights (judgment of 23 March 2023, *Minister for Justice and Equality (Lifting of the suspension)*, C-514/21 and C-515/21, EU:C:2023:235, paragraph 51 and the case-law cited).

57 In accordance with that case-law, the Court of Justice has already ruled that, in each of the circumstances referred to in Article 4a(1)(a) to (d) of Framework Decision 2002/584, the execution of the European arrest warrant does not infringe the rights of the defence of the person concerned or the right to an effective judicial remedy and to a fair trial, as enshrined in Article 47 and Article 48(2) of the Charter (see, to that effect, judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraphs 47 to 54, and of 23 March 2023, *Minister for Justice and Equality (Lifting of the suspension)*, C-514/21 and C-515/21, EU:C:2023:235, paragraph 73 and the case-law cited).

58 The Court of Justice has also observed that the adoption of Framework Decision 2009/299, which inserted that provision into Framework Decision 2002/584, was intended to remedy the difficulties associated with the mutual recognition of decisions rendered in the absence of the person concerned at his or her trial arising from the differences among the Member States in the protection of fundamental rights. To that end, that framework decision effects a harmonisation of the conditions of execution of a European arrest warrant in the event of a conviction rendered *in absentia*, which reflects the consensus reached by all the Member States regarding the scope to be given under EU law to the procedural rights enjoyed by persons convicted *in absentia* who are the subject of a European arrest warrant (see, to that effect, judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 62).

59 Thus, as to the referring court's argument to the effect that the obligation to respect fundamental rights as enshrined in Article 6 TEU allows the executing judicial authorities to refuse to execute the European arrest warrant, including in the situation referred to in Article 4a(1)(d) of Framework Decision 2002/584, where the person concerned was not represented by a lawyer at the trial resulting in the conviction *in absentia*, which amounts, in reality, to raising the question of the compatibility of that provision with the fundamental rights protected in the legal order of the European Union, that argument should be rejected.

60 Lastly, in so far as the referring court appears to take the view that Italian law ensures a higher standard of protection of the rights of the defence, and in particular the right to be assisted by a lawyer, than that deriving from the fundamental rights defined by EU law, in particular Article 47 and Article 48(2) of the Charter, it should be borne in mind that an executing judicial authority may make the surrender of the person concerned by a European arrest warrant to the issuing judicial authority subject only to compliance with the requirements arising from those latter provisions and not to compliance with those arising from its national law. Indeed, the opposite solution would, by casting doubt on the uniformity of the standard of protection of fundamental rights as defined by EU law, undermine the principles of mutual trust and recognition which Framework Decision 2002/584 is intended to uphold and would, therefore, compromise the

efficacy of that framework decision (see, to that effect, judgments of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 63, and of 15 October 2019, *Dorobantu*, C-128/18, EU:C:2019:857, paragraph 79).

61 In the light of all of the reasons set out above, the answer to the question referred is that Article 4a of Framework Decision 2002/584, read in the light of Article 6 TEU and Article 47 and Article 48(2) of the Charter, must be interpreted as meaning that it does not preclude national legislation that does not allow the executing judicial authority to refuse to surrender the person concerned, pursuant to a European arrest warrant issued for the purpose of executing a custodial sentence imposed on that person in the issuing State, if that person did not appear in person at the trial resulting in the decision and was not represented by a lawyer appointed by him or her or by a lawyer appointed by the court, and if the conditions laid down in Article 4a(1)(d) are fulfilled.

Costs

62 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds, the Court (First Chamber) hereby rules:

Article 4a of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in the light of Article 6 TEU and Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union,

must be interpreted as meaning that it does not preclude national legislation that does not allow the executing judicial authority to refuse to surrender the person concerned, pursuant to a European arrest warrant issued for the purpose of executing a custodial sentence imposed on that person in the issuing State, if that person did not appear in person at the trial resulting in the decision and was not represented by a lawyer appointed by him or her or by a lawyer appointed by the court, and if the conditions laid down in Article 4a(1)(d) are fulfilled.

[Signatures]