Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

17 December 2020*

(Reference for a preliminary ruling – Urgent preliminary ruling procedure – Police and judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant – Article 4a(1) – Surrender procedures between Member States – Conditions for execution – Grounds for optional non-execution – Exceptions – Mandatory execution – Sentence handed down in absentia – Absconding of the accused person – Directive (EU) 2016/343 – Articles 8 and 9 – Right to be present at the trial – Requirements in the event of a conviction in absentia – Verification upon surrender of the person sentenced)

In Case C-416/20 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Court, Hamburg, Germany), made by decision of 4 September 2020, received at the Court on 7 September 2020, in the proceedings relating to the execution of European arrest warrants issued against

TR

Other party:

Generalstaatsanwaltschaft Hamburg,

THE COURT (Fourth Chamber),

composed of M. Vilaras, President of the Chamber, N. Piçarra, D. Šváby, S. Rodin (Rapporteur) and K. Jürimäe, Judges,

Advocate General: E. Tanchev,

Registrar: M. Krausenböck, Administrator,

having regard to the written procedure and further to the hearing on 19 November 2020,

after considering the observations submitted on behalf of:

– the Generalstaatsanwaltschaft Hamburg, by J. Fröhlich, acting as Agent,

– the German Government, by J Möller, M. Hellmann and F. Halabi, acting as Agents,

– the Romanian Government, by E. Gane, L.-E. Batagoi and A. Wellman, acting as Agents,

– the Polish Government, by B. Majczyna and J. Sawicka, acting as Agents,

* Language of the case: German.

– the European Commission, by C. Ladenburger, M. Wasmeier and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 December 2020,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 8 and 9 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).

2 The request has been made in the context of proceedings for the execution, in Germany, of European arrest warrants issued on 7 October 2019 by the Judecătoria Deva (Court of First Instance, Deva, Romania) and on 4 February 2020 by the Tribunalul Hunedoara (Regional Court, Hunedoara, Romania) for the purpose of enforcing custodial sentences imposed on TR in his absence by the Romanian courts.

Legal framework

EU law

Framework Decision 2002/584/JHA

3 Recitals 1, 5 to 7, 10 and 12 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'), are worded as follows:

'(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

…

(5) The objective set for the [European] Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(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.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

…

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.

…

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

4 Article 1 of that framework decision, headed 'Definition of the European arrest warrant and obligation to execute it', provides:

'1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

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 [EU].'

5 Article 4a of that framework decision, headed '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 Recital 1 of Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2009 L 81, p. 24) provides:

'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 of the Convention for the Protection of Human Rights and Fundamental Freedoms, 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.'

Directive 2016/343

7 In accordance with recitals 33 and 35 of Directive 2016/343:

'(33) The right to a fair trial is one of the basic principles in a democratic society. The right of suspects and accused persons to be present at the trial is based on that right and should be ensured throughout the Union.

…

(35) The right of suspects and accused persons to be present at the trial is not absolute. Under certain conditions, suspects and accused persons should be able, expressly or tacitly, but unequivocally, to waive that right.'

8 Article 8 of that directive, headed 'Right to be present at the trial', is worded as follows:

'1. Member States shall ensure that suspects and accused persons have the right to be present at their trial.

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.

3. A decision which has been taken in accordance with paragraph 2 may be enforced against the person concerned.

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.

5. This Article shall be without prejudice to national rules that provide that the judge or the competent court can exclude a suspect or accused person temporarily from the trial where necessary in the interests of securing the proper conduct of the criminal proceedings, provided that the rights of the defence are complied with.

6. This Article shall be without prejudice to national rules that provide for proceedings or certain stages thereof to be conducted in writing, provided that this complies with the right to a fair trial.'

9 Article 9 of that directive, headed 'Right to a new trial', provides:

'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.'

German law

10 Paragraph 83 of the Gesetz über die internationale Rechtshilfe in Strafsachen (Law on international mutual assistance in criminal matters) of 23 December 1982 (BGBl. 1982 I, p. 2071), in the version published on 27 June 1994 (BGBl. 1994 I, p. 1537), provides:

'(1) Extradition shall not be authorised where:

…

(3) in the event of a request for the purpose of executing a sentence, the person convicted did not appear in person at the hearing of the trial which resulted in the conviction …

(2) Notwithstanding subparagraph (1)(3), the extradition is permitted where

1. the convicted person,
   (a) in due time:
      (aa) was summoned in person to appear at the trial which led to the judgment or
      (bb) 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 the convicted person was aware of the scheduled trial; and
   (b) was informed that a decision may be handed down if he or she does not appear for the trial,

2. the convicted person, being aware of the proceedings against him or her, and in which a lawyer participated, has prevented a summons in person through absconding or

3. the convicted person, being aware of the scheduled trial, has given a mandate to a lawyer to defend him or her at the trial, and was indeed defended by that lawyer at the trial.

…

(4) Notwithstanding subparagraph (1)(3), the extradition is also permitted where the convicted person is personally served with the decision without delay after his or her surrender to the requesting Member State and is expressly informed about the right to a retrial, or an appeal, referred to in the second sentence of subparagraph 3, and the time limits prescribed for that purpose.'

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

11 It is apparent from the request for a preliminary ruling that the referring court, the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Court, Hamburg, Germany), is seised of two European arrest warrants, issued by the Romanian authorities on 7 October 2019 and 4 February 2020, for the surrender of TR, a Romanian national, for the purpose of enforcing custodial sentences imposed on him in his absence by the Romanian courts. At present, TR has been placed in detention pending extradition in Hamburg (Germany) since 31 March 2020.

12 TR has been the subject of:

– a first custodial final sentence, handed down in absentia by the Romanian courts, for three offences of threats and one offence of arson, of 6 years and 6 months and 1 832 days of imprisonment, less the period already served from 1 January 2016 to 14 April 2017 and an additional 48 days for having committed the offences of blackmail and damage to property (being a subsequent offender);

– a second custodial sentence, handed down in absentia, of 4 years of which he must still serve 2 years and 4 months, plus the remainder of a different sentence of 1 786 days for having committed the offences of conspiracy, drug trafficking in connection with conspiracy, two road traffic offences and assault.

13 It is apparent from the order for reference that TR absconded in October 2018 to go to Germany in order to evade the criminal proceedings brought against him in Romania which resulted in the sentences referred to in the preceding paragraph of this judgment.

14 Following a request for information, the Romanian authorities informed the Generalstaatsanwaltschaft (the Office of the Public Prosecutor) Hamburg that, in respect of the criminal convictions which were the subject of the European arrest warrants dated 7 October 2019 and 4 February 2020, the accused person could not be summoned in person at his known residential address in Romania. That is why, in accordance with Romanian law, an official notification had been left on each occasion at the address of the accused person, as Romanian law stipulates that, upon the expiry of a period of 10 days, the summons are deemed to have been notified.

15 The Romanian authorities added that, in both sets of proceedings leading to those convictions, the accused person had been represented, at first instance, by lawyers of his choosing and, on appeal, he had been represented by lawyers appointed by the courts.

16 It is clear from the European arrest warrant issued by the Judecătoria Deva (Court of First Instance, Deva, Romania) and the supplementary information provided on 20 May 2020 that, although he was aware of the proceedings brought against him, TR did not appear at the trial at first instance before that court, or at the appeal proceedings before the Curtea de Apel Alba Iulia (Court of Appeal, Alba Iulia, Romania), however, being aware of the scheduled trial before the Judecătoria Deva (Court of First Instance, Deva), TR had instructed a lawyer of his choice, who had actually defended him at first instance. At the appeal proceedings, TR had been represented by a court-appointed lawyer.

17 However, the Romanian authorities refused to comply with the German authorities' request for guarantees that the criminal proceedings in question would be reopened, as TR had been properly summoned and the criminal convictions could not therefore be reviewed under the Romanian Code of Criminal Procedure.

18 By decision of 28 May 2020, in accordance with the applicable German legislation, the referring court authorised the surrender of TR to Romania by executing the European arrest warrants dated 7 October 2019 and 4 February 2020. To that effect, it considered that, although the surrender of a person for the

purpose of executing a sentence is admittedly excluded in principle where that person did not appear in person at the hearing which led to the conviction, TR had prevented the service of a summons on him in person in Romania by absconding to Germany. Moreover, he was indeed aware of the proceedings concerning him, in which he was represented by a lawyer.

19 TR raised objections to his extradition and opposed the simplified extradition provided for in Paragraph 41 of the Law on international mutual assistance in criminal matters.

20 He disputes the decision of 28 May 2020 ordering his extradition on the ground that his surrender to Romania is unlawful on account of the absence of a guarantee on the part of the Romanian authorities in respect of his right to have the criminal proceedings concerned reopened. Such lack of guarantee is incompatible with Articles 8 and 9 of Directive 2016/343.

21 In those circumstances, the Hanseatisches Oberlandesgericht Hamburg (Higher Regional Court, Hamburg) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'In the case of decisions on the extradition for the purposes of criminal prosecution of a person convicted in absentia from a Member State of the European Union to another Member State, are the provisions of Directive 2016/343, in particular Articles 8 and 9 thereof, to be interpreted as meaning that the legality of the extradition (in particular in a case of "absconding") depends on the fulfilment by the requesting State of the conditions laid down in the Directive?'

The urgent procedure

22 The referring court requests that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure provided for in Article 107 of the Rules of Procedure of the Court of Justice.

23 In that regard, it should be noted, in the first place, that the referring court's question concerns both the interpretation of Framework Decision 2002/584 and the interpretation of Directive 2016/343, which come under the areas covered by Title V of Part Three of the FEU Treaty on the area of freedom, security and justice. Consequently, this reference can be dealt with under the urgent preliminary ruling procedure.

24 In the second place, as regards the criterion relating to urgency, it is necessary, according to the case-law of the Court, to take into consideration the fact that the person involved in the main proceedings is currently deprived of his liberty and that the question as to whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings (judgment of 28 November 2019, *Spetsializirana prokuratura*, C-653/19 PPU, EU:C:2019:1024, paragraph 22).

25 In the present case, it is clear from the information in the documents before the Court that the urgency within the meaning of Article 107(2) of the Rules of Procedure arises from the potentially serious consequences that a delayed decision could have on the person who is the subject of the European arrest warrants which the referring court has been called upon to execute, in particular as a result of the deprivation of liberty suffered on account of his placement in detention pending extradition in Hamburg since 31 March 2020, and that his surrender to Romania or his release depends on the answer to the question referred to the Court for a preliminary ruling.

26 In those circumstances, on 23 September 2020 the Fourth Chamber of the Court of Justice, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to accede to the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the question referred for a preliminary ruling

27 As a preliminary point, it should be borne in mind that, according to settled case-law, in the procedure laid down by Article 267 TFEU, providing for cooperation between national courts and the Court, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it (judgment of 2 April 2020, *Ruska Federacija*, C-897/19 PPU, EU:C:2020:262, paragraph 43 and the case-law cited).

28 In the present case, it is clear from the request for a preliminary ruling that the referring court is called upon to rule on the lawfulness of the surrender of TR to the Romanian authorities on the basis of the provisions of Paragraph 83 of the Law on international mutual assistance in criminal matters which implement Article 4a of Framework Decision 2002/584 in German law.

29 The referring court considers that the necessary conditions for such surrender are satisfied in so far as, first, that person knowingly evaded the proceedings which gave rise to the European arrest warrants to be executed by that court by absconding to Germany and thereby impeding his being summoned in person and, secondly, that person was represented in those proceedings, at first instance, by a lawyer of his choosing and, on appeal, by a lawyer appointed by the courts. However, before the referring court, TR has submitted that that surrender is unlawful in the light of the requirements set out in Articles 8 and 9 of Directive 2016/343, on the ground that there is no guarantee that the criminal proceedings against him in Romania will be reopened.

30 In those circumstances, the question referred must be understood as seeking to ascertain whether Article 4a of Framework Decision 2002/584 must be interpreted as meaning that the executing judicial authority may refuse to execute a European arrest warrant issued for the purpose of executing a custodial sentence or a detention order where the person concerned has prevented the service of a summons on him in person and did not appear in person at the trial because he had absconded to the executing Member State, on the sole ground that that authority has not been given the assurance that, if the person is surrendered to the issuing Member State, the right to a new trial, as defined in Articles 8 and 9 of Directive 2016/343, will be respected.

31 It should be recalled that the purpose of Framework Decision 2002/584, as is apparent, in particular, from Article 1(1) and (2) and recitals 5 and 7 thereof, is to replace the multilateral system of extradition based on the European Convention on Extradition, signed in Paris on 13 December 1957, with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of enforcing judgments or of conducting prosecutions, the system of surrender being based on the principle of mutual recognition (judgments of 29 January 2013, *Radu*, C-396/11, EU:C:2013:39, paragraph 33, and of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)*, C-314/18, EU:C:2020:191, paragraph 37 and the case-law cited).

32 That framework decision thus seeks, by the establishment of a new simplified and more 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 objective set for the European Union to become an area of freedom, security and justice by basing itself on the high degree of confidence which should exist between the Member States (judgments of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 37, and of 24 September 2020, *Generalbundesanwalt beim Bundesgerichtshof (Speciality rule)*, C-195/20 PPU, EU:C:2020:749, paragraph 32 and the case-law cited).

33 In the field governed by Framework Decision 2002/584, the principle of mutual recognition, which, as is apparent in particular from recital 6 of that framework decision, constitutes the 'cornerstone' of judicial cooperation in criminal matters, is applied in Article 1(2) thereof, 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 that framework decision. According to the provisions of that framework decision, the Member States may refuse to execute such a warrant only in the cases of mandatory non-execution provided for in Article 3 thereof and in the cases of optional non-execution listed in Articles 4 and 4a of Framework Decision 2002/584. Moreover, the executing judicial authority may make the execution of a European arrest warrant subject solely to the conditions set out in Article 5 of Framework Decision 2002/584 (judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 38 and the case-law cited).

34 Accordingly, 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 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, paragraph 41 and the case-law cited).

35 As regards, in particular, the situation where the European arrest warrant relates to the execution of a sentence imposed in absentia, the initial version of Article 5(1) of Framework Decision 2002/584 provided that the Member State of execution could, in that situation, make the surrender of the person concerned subject to the condition that the opportunity for a retrial in the presence of that person is guaranteed in the issuing Member State (judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 52).

36 That provision was repealed by Framework Decision 2009/299 and replaced, in Framework Decision 2002/584, by a new Article 4a which 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 in which the person concerned did not appear in person may not be refused (judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 53 and the case-law cited).

37 The new Article 4a 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 (judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 62).

38 As is apparent from the very wording of Article 4a(1) of Framework Decision 2002/584, 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 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 54 and the case-law cited).

39 Article 4a of Framework Decision 2002/584 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 conviction, while fully respecting his rights of defence (judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 58).

40 As the Court has already held, the EU legislature therefore adopted the approach of providing an exhaustive list of the circumstances in which the execution of a European arrest warrant issued in order to enforce a decision rendered in absentia must be regarded as not infringing the rights of the defence (see, to that effect, judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraph 44).

41 It follows that 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 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 55).

42 Furthermore, the Court has held that Article 4a(1) of Framework Decision 2002/584 does not disregard either the right to an effective judicial remedy and to a fair trial or the rights of the defence guaranteed by Article 47 and Article 48(2) of the Charter of Fundamental Rights respectively and that it is therefore compatible with the requirements set out in those provisions (see, to that effect, judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraphs 53 and 54).

43 As regards Directive 2016/343, mentioned by the referring court, it should be noted that Article 8(1) of that directive establishes the right of suspects and accused persons to be present at their trial. However, under paragraph 2 of that article, 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 the conditions set out in that paragraph are satisfied.

44 Moreover, in accordance with Article 9 of that directive, Member States must ensure that, where suspects or accused persons were not present at their trial and the conditions laid down in Article 8(2) of Directive 2016/343 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.

45 It should be noted that Framework Decision 2002/584 contains a specific provision, namely Article 4a, which covers, specifically, the situation of a European arrest warrant issued for the purpose of executing a custodial sentence or a detention order, concerning a person who did not appear in person at the trial resulting in the decision imposing that sentence or order.

46 In that context, any possible non-conformity of the national law of the issuing Member State with the provisions of Directive 2016/343 cannot constitute a ground which may lead to a refusal to execute the European arrest warrant.

47 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. This is a fortiori the case when Directive 2016/343 does not contain provisions applicable to the issue and execution of European arrest warrants, as the Advocate General stated, in essence, in points 62 and 63 of his Opinion.

48 It must also be recalled that the Court has ruled that, where the issuing Member State has provided for a criminal procedure involving several levels of jurisdiction which may thus give rise to successive judicial decisions, at least one of which has been handed down in absentia, the concept of 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, must be interpreted as relating only to the instance at the end of which the decision is handed down which finally rules on the guilt of the person concerned and imposes a penalty on him, such as a custodial sentence, following a re-examination, in fact and in law, of the merits of the case (judgment of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 98).

49 In the present case, the conditions set out in Article 4a of Framework Decision 2002/584 which raise a doubt that could not be dispelled by the answers received to the questions put by the Court at the hearing are the conditions relating to whether TR was actually and officially informed and to the instructions given by TR to the lawyers appointed by the Romanian courts. According to the information provided by the referring court, the European arrest warrants referred to in paragraph 12 of this judgment were issued following two judgments on appeal. TR did not appear at the appeal proceedings and was represented by a court-appointed lawyer. However, it is apparent from that

information that, with regard to at least one of the sets of proceedings at first instance, TR was aware of the scheduled trial, he had instructed a legal counsellor appointed by himself to defend him at the trial and was indeed defended by that counsellor at the trial.

50 It follows that the referring court, whose task it is to ascertain whether the conditions for the possible application of Article 4a of Framework Decision 2002/584 have been satisfied in the case before it, must, first, determine whether it is the proceedings against TR at first instance or those on appeal which fall within the concept of 'trial which resulted in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, as interpreted by the Court, and then examine whether those conditions are satisfied in respect of each of those sets of proceedings.

51 If the executing judicial authority were to consider that the conditions, set out in Article 4a(1)(a) or (b) of that framework decision, which preclude the possibility of refusing to execute a European arrest warrant, are not satisfied, as Article 4a provides for a case of optional non-execution of that warrant, that court may, in any event, take into account other circumstances that enable it to satisfy itself that the surrender of the person concerned does not entail a breach of his rights of defence, and surrender that person to the issuing Member State (see, to that effect, judgment of 24 May 2016, *Dworzecki*, C-108/16 PPU, EU:C:2016:346, paragraph 50).

52 In the context of such an assessment, the executing judicial authority may thus have regard to the conduct of the person concerned. It is at this stage of the surrender procedure that particular attention might be paid, inter alia, to the fact that the person concerned has sought to avoid service of the information addressed to him (see, to that effect, judgment of 24 May 2016, *Dworzecki*, C-108/16 PPU, EU:C:2016:346, paragraph 51), or even that he has sought to avoid any contact with the lawyers appointed by the Romanian courts.

53 Similarly, the executing judicial authority may also take into account the fact, set out in the request for a preliminary ruling that is before the Court, that TR has brought an appeal against the decisions at first instance, which confirms the existence of valid instructions under Romanian law being given to a lawyer.

54 Should it transpire that it is the proceedings at first instance and not those on appeal which fall within the concept of 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, it is clear from the information summarised in paragraph 49 of the present judgment that the conditions set out in Article 4a(1)(b) of Framework Decision 2002/584 appear to be satisfied, subject to verification by the referring court, with regard to at least one decision on which one of the European arrest warrants at issue in the main proceedings is based, and therefore the referring court would not have the power to refuse to execute that arrest warrant on the basis of Article 4a of Framework Decision 2002/584.

55 However, it is important to note that the fact that Directive 2016/343 cannot be relied on in order to prevent the execution of a European arrest warrant, unrelated to the grounds for non-execution provided for by Framework Decision 2002/584, does not in any way affect the absolute obligation of the issuing Member State to comply, within its legal system, with all provisions of EU law, including Directive 2016/343. Where appropriate, since the period prescribed for the transposition of that directive has expired, the person concerned may, if he is surrendered to the issuing Member State, rely before the courts of that Member State on those provisions of that directive which appear, so far as their subject matter is concerned, to be unconditional and sufficiently precise, where that State has failed to transpose the directive within the period prescribed or where it has failed to transpose it correctly (see, to that effect, judgments of 15 February 2017, *British Film Institute*, C-592/15, EU:C:2017:117, paragraph 13, and of 4 October 2018, *Link Logistik N&N*, C-384/17, EU:C:2018:810, paragraph 47).

56 It follows from all the foregoing that Article 4a of Framework Decision 2002/584 must be interpreted as meaning that the executing judicial authority may not refuse to execute a European arrest warrant issued for the purpose of executing a custodial sentence or a detention order, where the person concerned has prevented the service of a summons on him in person and did not appear in person at the trial because he had absconded to the executing Member State, on the sole ground that that authority has not been given the assurance that, if the person is surrendered to the issuing Member State, the right to a new trial, as defined in Articles 8 and 9 of Directive 2016/343, will be respected.

Costs

57 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth 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, must be interpreted as meaning that the executing judicial authority may not refuse to execute a European arrest warrant issued for the purpose of executing a custodial sentence or a detention order, where the person concerned has prevented the service of a summons on him in person and did not appear in person at the trial because he had absconded to the executing Member State, on the sole ground that that authority has not been given the assurance that, if the person is surrendered to the issuing Member State, the right to a new trial, as defined in Articles 8 and 9 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, will be respected.

[Signatures]