Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

9 October 2025 *

(Reference for a preliminary ruling – Police and judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – Article 4a(1) – Surrender procedure between Member States – European arrest warrant – Conditions for execution – Grounds for optional non-execution – Mandatory execution – Exceptions – Concept of 'trial resulting in the decision' – Additional sentence of police supervision – Breach of the conditions imposed in connection with that supervision – Decision converting police supervision into a custodial sentence – Sentence handed down *in absentia*)

In Case C-798/23 [Abbottly], [i]

REQUEST for a preliminary ruling under Article 267 TFEU from the Supreme Court (Ireland), made by decision of 21 December 2023, received at the Court on 21 December 2023, in proceedings relating to the execution of a European arrest warrant issued in respect of

SH,

THE COURT (First Chamber),

composed of F. Biltgen (Rapporteur), President of the Chamber, T. von Danwitz, Vice-President of the Court, acting as Judge of the First Chamber, I. Ziemele, A. Kumin and S. Gervasoni, Judges,

Advocate General: J. Richard de la Tour,

Registrar: R. Stefanova-Kamisheva, Administrator,

having regard to the written procedure and further to the hearing on 9 January 2025,

after considering the observations submitted on behalf of:

– the Minister for Justice, by M. Browne, Chief State Solicitor, A. Burke, A. Joyce and C. McMahon, acting as Agents, and by G. Gibbons, Senior Counsel, and D. Perry, Barrister-at-Law,

– SH, by R. Barron, Senior Counsel, S. O'Mahony, Solicitor, and B. Storan, Barrister-at-Law,

– the Romanian Government, by M. Chicu and E. Gane, acting as Agents,

* Language of the case: English.

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

– the European Commission, by H. Leupold and J. Vondung, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 10 April 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4a(1) 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').

2 The request has been made in proceedings concerning the execution, in Ireland, of a European arrest warrant issued in respect of SH with a view to the execution, in Latvia, of a custodial sentence.

Legal context

European Union law

Framework Decision 2002/584

3 Article 1 of Framework Decision 2002/584, entitled '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 [TEU].'

4 Article 4a of that framework decision, entitled 'Decisions rendered following a trial at which the person did not appear in person', is worded as follows:

'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.'

5 Article 27 of Framework Decision 2002/584, entitled 'Possible prosecution for other offences', states:

'1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

(a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;

(b) the offence is not punishable by a custodial sentence or detention order;

(c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;

(d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;

(e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;

(f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;

(g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance

with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5, the issuing Member State must give the guarantees provided for therein.'

Framework Decision 2009/299

6 Framework Decision 2009/299 amended Framework Decision 2002/584 specifically with regard to persons whose surrender was requested as a result of a conviction handed down following a trial *in absentia*.

7 Article 1 of Framework Decision 2009/299, entitled 'Objectives and scope', is worded as follows:

'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.

2. 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 of the Treaty, including the right of defence of persons subject to criminal proceedings, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.

3. This Framework Decision establishes common rules for the recognition and/or execution of judicial decisions in one Member State (the executing Member State) issued by another Member State (the issuing Member State) following proceedings at which the person concerned was not present, pursuant to the provisions of Article 5(1) of Framework Decision [2002/584] …'

Irish law

8 Article 4a of Framework Decision 2002/584 was transposed into Irish law by section 45 of the European Arrest Warrant Act 2003. Section 45 of the version of that act applicable to the main proceedings ('the EAW Act') provides:

'A person shall not be surrendered under this Act if he or she did not appear in person at the proceedings resulting in the sentence or detention order in respect of which the European arrest warrant … was issued, unless … the warrant indicates the matters required by points 2, 3 and 4 of point (d) of the form of warrant in the Annex to [Framework Decision 2002/584] … as set out in the table to this section.'

9 The table to section 45 of the EAW Act sets out, in four numbered points, the conditions referred to in Article 4a of Framework Decision 2002/584 under which a person tried *in absentia* may be surrendered. The Irish courts have stated that section 45 of the EAW Act is an implementing measure of EU law which must be interpreted in a manner consistent with that framework decision. For that reason, while section 45 of the EAW Act refers to 'the proceedings resulting in the sentence or detention order', that term is equated in Irish law with the term 'the trial resulting in the decision', as used in the framework decision.

Latvian law

10 Article 45 of the Krimināllikums (Criminal Code), in the version applicable to the main proceedings ('the Latvian Criminal Code'), entitled 'Police supervision', provided:

'(1) Police supervision is an additional sentence which a court may adjudge as a compulsory measure in order to supervise the conduct of a person released from a place of deprivation of liberty and to make him or her subject to the restrictions prescribed by the police institution. Where a person is granted early conditional release, enforcement of the additional sentence – police supervision – shall commence once the supervision of that person after his or her conditional early release has ended.

(2) The sentence of police supervision shall be imposed only when adjudging a custodial sentence, in the cases set out in the special part of this Code, for a term of not less than one year and not exceeding three years.

(3) A court may reduce the duration of the police supervision, or revoke it, at the request of the administrative board of the penal establishment or the police institution.

(4) If a convicted person, while serving an additional sentence, commits a further criminal offence, the court shall substitute the unserved term of the additional sentence with deprivation of liberty and shall determine the final sentence in accordance with the provisions of Articles 51 and 52 of this Code.

(5) If a person who has been placed under police supervision pursuant to a court judgment breaches the conditions governing that placement measure in bad faith, a court may, at the request of the police institution, substitute the unserved term of the additional sentence with deprivation of liberty, whereby two days of police supervision shall count as one day of deprivation of liberty.

(6) A breach of the conditions governing placement under police supervision shall be committed in bad faith if the person concerned has been the subject of two administrative determinations finding him or her to have committed such a breach in the course of one year.'

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

11 In 2014, SH was convicted of two criminal offences. One of those convictions was handed down by the Valmieras rajona tiesa (District Court, Valmiera, Latvia) and the other by the Jēkabpils rajona tiesa (District Court, Jēkabpils, Latvia). On 27 October 2015, the sentences attached to those convictions were combined into one custodial sentence of four years and nine months, accompanied by an additional sentence of police supervision for a term of three years. Under Latvian criminal law, that additional sentence would begin once SH had served the custodial sentence.

12 SH failed to comply with the obligation, imposed in connection with his placement under police supervision, to report to a police station within three working days of his release, despite having been informed beforehand that failure to report could lead to him receiving an administrative

penalty. SH was therefore found guilty of committing an administrative offence by the Zemgales rajona tiesa (District Court, Zemgale, Latvia), on 11 and 27 May 2020 and, as a result, was ordered to pay two fines.

13 Where, in the course of one year, a person is found on two occasions to have failed to comply with the conditions governing police supervision, Latvian criminal law provides for the possibility for the national court with jurisdiction to convert the additional sentence of police supervision into a custodial sentence for a specified period on the basis of a fixed ratio, namely one day's imprisonment for every two days of the unserved term of police supervision.

14 In June 2020, the competent Latvian police station applied to the Zemgales rajona tiesa (District Court, Zemgale) to have the remaining term of SH's additional sentence of police supervision converted into a custodial sentence.

15 On 25 June 2020, a court summons requiring SH to appear was sent by registered post to his official place of residence in Latvia, but could not be served. The summons was returned on 31 July 2020.

16 On 19 August 2020, a hearing took place before the Zemgales rajona tiesa (District Court, Zemgale) in the absence of SH. On the same day, that court delivered a decision ('the decision at issue') ordering that the unserved term of SH's additional sentence of police supervision, namely two years and two days, be converted into a custodial sentence of one year and one day. That decision, which was notified to SH but was returned unclaimed, was not challenged on appeal by SH.

17 On 26 February 2021, the Zemgales rajona tiesa (District Court, Zemgale) issued a European arrest warrant ('the European arrest warrant at issue') in respect of SH for the purpose of executing the custodial sentence imposed on him on 19 August 2020.

18 By judgment of 27 July 2022, the High Court (Ireland) refused to grant the application made by the Minister for Justice and Equality (Ireland) for SH's surrender to the Republic of Latvia under the European arrest warrant at issue, on the basis of the provision transposing Article 4a(1) of Framework Decision 2002/584 into Irish law.

19 The Court of Appeal (Ireland) dismissed the appeal brought against that judgment by the Minister for Justice and Equality, who then brought an exceptional appeal before the Supreme Court (Ireland), which is the referring court.

20 The referring court recalls that it follows from Article 1(2) of Framework Decision 2002/584 that execution of a European arrest warrant is the rule, whereas refusal to execute is intended to be an exception to be interpreted strictly.

21 It considers that the decision at issue is akin to the revocation of suspension of a sentence which, in accordance with the case-law of the Court of Justice, does not fall within the scope of Article 4a(1) of Framework Decision 2002/584. Indeed, the Court held in paragraph 77 of its judgment of 22 December 2017, *Ardic* (C-571/17 PPU, EU:C:2017:1026), that the concept of 'decision', within the meaning of that provision, does not cover a decision relating to the execution or application of a custodial sentence previously imposed, such as the revocation of the

suspension of execution, except where the purpose or effect of that decision is to modify either the nature or quantum of that sentence and the authority which adopted it enjoyed some discretion in that regard.

22 The referring court states that, in the present case, the period of police supervision began once SH had served his custodial sentence. No new judicial decision modifying the nature and quantum of the custodial sentence previously imposed was taken, given that, in the event of breach of the conditions governing police supervision, the duration of the deprivation of liberty liable to be imposed is determined by an arithmetical calculation provided for by Latvian law. It therefore fell solely to the Zemgales rajona tiesa (District Court, Zemgale) to decide whether or not to impose an additional custodial sentence, its duration being determined by operation of law. It is for that reason that the referring court provisionally found that the surrender of SH should not be refused, since the sentence imposed on him on 19 August 2020 did not, in that court's view, amount to a new sentence and did not modify either the nature or quantum of the custodial sentence previously imposed.

23 The referring court is nevertheless concerned that, although the prospect of a further prison sentence was inherent in the sentences previously imposed on SH and grouped together on 27 October 2015, the sentence imposed on 19 August 2020 did not simply require SH to serve, in part or in full, the custodial sentences that had initially been imposed.

24 In those circumstances the Supreme Court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Where the surrender of the requested person is sought for the purpose of serving a custodial sentence imposed on that person as a result of violating the terms of [an additional] sentence of police supervision previously imposed on him, in circumstances where the court that imposed that custodial sentence had a discretion whether to impose a custodial sentence (though no discretion as to the duration of the sentence if imposed), are the proceedings leading to the imposition of that custodial sentence part of the "trial resulting in the decision" for the purposes of Article 4a(1) of [Framework Decision 2002/584]?

(2) Was the decision to convert the [additional] sentence of police supervision into a custodial sentence in the circumstances set out in (1) above, one that had the purpose or effect of modifying the nature and/or quantum of the sentence previously imposed on the requested person and, in particular, the [additional] sentence of police supervision that formed part of his previous sentence, such as to come within the exception referred to in [paragraph] 77 of [the judgment of 22 December 2017, *Ardic* (C-571/17 PPU, EU:C:2017:1026)]?'

Procedure before the Court

25 As a result of SH's lawyer having informed the Registry of the Court of Justice that his client was, at the time of that correspondence, in prison in Latvia, the Court, by decision of the President of the Court of 26 April 2024, sent a request for information to the referring court to determine whether it would still be useful for the Court to provide an answer to the request for a preliminary ruling for the purpose of resolving the dispute in the main proceedings.

26 By reply of 10 May 2024, the referring court confirmed that SH was, at that time, in prison in Latvia and that he had been surrendered to the Latvian authorities pursuant to a European arrest warrant dated 17 February 2021. However, it stated that since SH had not been surrendered pursuant to the European arrest warrant at issue and that it could not, therefore, be ruled out that the Latvian authorities might apply the consent mechanism provided for in Article 27 of Framework Decision 2002/584 in order to secure the execution of the custodial sentence imposed on SH by the decision at issue, an answer to the request for a preliminary ruling would still be useful for the purpose of resolving the dispute in the main proceedings.

Consideration of the questions referred

27 By its two questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 4a(1) of Framework Decision 2002/584 must be interpreted as meaning that the concept of 'trial resulting in the decision', within the meaning of that provision, covers proceedings at the end of which a national court may order, on account of breach of the conditions attached to a sentence of police supervision previously imposed on the person concerned in addition to a custodial sentence, the conversion of the unserved term of that additional sentence into a custodial sentence, whereby two days of police supervision are to count as one day of deprivation of liberty.

28 As a preliminary point, it should be recalled that Framework Decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or accused 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, founded on the high level of trust which should exist between the Member States in accordance with the principle of mutual recognition (judgment of 27 May 2019, *PF (Prosecutor General of Lithuania)*, C-509/18, EU:C:2019:457, paragraph 36 and the case-law cited).

29 To that end, Framework Decision 2002/584 lays down, in Article 1(2) thereof, 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. Except in exceptional circumstances, the executing judicial authorities may, therefore, refuse to execute such a warrant only in the exhaustively listed cases of non-execution provided for by Framework Decision 2002/584 and the execution of the European arrest warrant may be refused only in the event of non-compliance with one of the conditions listed exhaustively therein. Accordingly, while the execution of the European arrest warrant constitutes the rule, the refusal to execute is intended to be an exception which must be interpreted strictly (see, to that effect, judgment of 21 December 2023, *Generalstaatsanwaltschaft Berlin (Conviction in absentia)*, C-396/22, EU:C:2023:1029, paragraph 36 and the case-law cited).

30 In particular, Article 4a(1) of Framework Decision 2002/584 is 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).

31 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 points (a) to (d) of that provision are met (judgment of 17 December 2020, *Generalstaatsanwaltschaft Hamburg*, C-416/20 PPU, EU:C:2020:1042, paragraph 38 and the case-law cited). 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).

32 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 right to an effective judicial remedy and to a fair trial or the rights of the defence of the person concerned, as enshrined in Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (see, inter alia, 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 73 and the case-law cited).

33 Article 4a of Framework Decision 2002/584 thus 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 his or her rights of defence (judgment of 17 December 2020, *Generalstaatsanwaltschaft Hamburg*, C-416/20 PPU, EU:C:2020:1042, paragraph 39 and the case-law cited). 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).

34 However, before determining whether one of the situations referred to in Article 4a(1)(a) to (d) of Framework Decision 2002/584 exists, the executing judicial authority must establish whether it is faced with a situation in which the requested person did not appear in person at the 'trial resulting in the decision', within the meaning of Article 4a(1) of that framework decision.

35 According to settled case-law, the expression 'trial resulting in the decision' set out in Article 4a(1) of Framework Decision 2002/584 must be regarded as an autonomous concept of EU law and interpreted uniformly throughout the European Union, irrespective of classifications used in the Member States. That expression must be understood as referring to the proceedings that led to the judicial decision which finally sentenced the person whose surrender is sought in connection with the execution of a European arrest warrant (see, to that effect, judgment of 21 December 2023, *Generalstaatsanwaltschaft Berlin (Conviction in absentia)*, C-396/22, EU:C:2023:1029, paragraphs 26 and 27 and the case-law cited).

36 The Court has held that a decision relating to the execution or application of a custodial sentence previously imposed does not constitute a 'decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, except where it affects the finding of guilt or where its purpose or effect is to modify either the nature or quantum of that sentence and the authority which adopted

it enjoyed some discretion in that regard (judgments of 22 December 2017, *Ardic*, C-571/17 PPU, EU:C:2017:1026, paragraphs 77 and 88, 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 53).

37 Thus, the Court has found that a decision revoking the suspension of a custodial sentence on account of the breach by the person concerned of an objective condition attached to that suspension, such as the commission of a new offence during the probation period, is not a 'decision' within the meaning of Article 4a(1) of Framework Decision 2002/584, since it leaves that sentence unchanged with regard to both its nature and its quantum. Moreover, the Court has made clear that, since the authority responsible for deciding on such a revocation is not called upon to re-examine the merits of the case that gave rise to the criminal conviction, the fact that that authority enjoys a margin of discretion is not relevant, as long as that margin of discretion does not allow it to modify either the quantum or the nature of the custodial sentence, as determined by the decision finally convicting the requested person (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, paragraphs 53 and 54 and the case-law cited).

38 It should be noted that such an interpretation of Article 4a(1) of Framework Decision 2002/584 is, moreover, consistent with the case-law of the European Court of Human Rights (see, inter alia, ECtHR, 21 October 2013, *Del Río Prada v. Spain*, CE:ECHR:2013:1021JUD004275009, § 89, and ECtHR, 10 November 2022, *Kupinskyy v. Ukraine*, CE:ECHR:2022:1110JUD000508418, §§ 47 to 52), according to which, first, proceedings concerning the manner of execution of sentences do not fall within the scope of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950, and, secondly, measures adopted by a court after the final sentence has been imposed or while it is being served can be regarded as 'sentences' for the purposes of that convention only if they may result in the redefinition or modification of the scope of the penalty initially imposed (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 58).

39 In order to determine whether a measure taken during the execution of a sentence concerns the manner of execution of the sentence only or, on the contrary, affects its scope, it is necessary to examine in each case what the 'penalty' imposed actually entailed under the domestic law at the material time or, in other words, what its intrinsic nature was (see, to that effect, ECtHR, 21 October 2013, *Del Río Prada v. Spain*, CE:ECHR:2013:1021JUD004275009, §§ 85 and 90).

40 In the present case, it appears that the basis for issuing the European arrest warrant at issue was the decision at issue converting the additional sentence of police supervision into a custodial sentence. In that regard, the referring court starts from the premiss that the decision at issue could be akin to a decision relating to the execution or application of a custodial sentence previously imposed, such as the revocation of suspension of a sentence. Such a decision could fall outside the scope of Article 4a(1) of Framework Decision 2002/584, in so far as it does not have the purpose or effect of modifying the nature and/or quantum of the sentence previously imposed on the requested person and the authority which adopted it did not enjoy some discretion in that regard.

41 It is therefore necessary to determine whether the decision at issue may be classified as a 'decision relating to the execution or application of a custodial sentence previously imposed', within the meaning of the case-law cited in paragraphs 36 and 37 above, in which case it would not constitute a 'decision' within the meaning of Article 4a(1) of Framework Decision 2002/584.

42 In that regard, it is apparent from the information contained in the order for reference and from the documents submitted to the Court that, under Article 45(1) of the Latvian Criminal Code, police supervision is an additional sentence which a court may impose on a person who has received a custodial sentence for the purpose of keeping him or her under supervision after his or her release, that person then being required to comply with the conditions stipulated by the police institution. In accordance with Article 45(2) of that code, that additional sentence may be imposed only on a person who has received a custodial sentence of at least one year and not exceeding three years. Article 45(3) of the Latvian Criminal Code states that the duration of the police supervision may be reduced or such supervision may be revoked at the request of the administrative board of the penal establishment or the police institution. Article 45(4) of that code provides that if the convicted person, while serving an additional sentence, commits a criminal offence, the court is to substitute the unserved term of the additional sentence with deprivation of liberty and is to determine the final sentence in accordance with the provisions of the code.

43 Under Article 45(5) and (6) of the Latvian Criminal Code, in essence, if a person who is serving an additional sentence of police supervision has breached the conditions governing supervision 'in bad faith' – that is to say, if he or she has been the subject of two administrative determinations finding him or her to have committed such a breach in the space of one year – a court may, in addition to imposing an administrative fine, order, at the request of the police institution, the conversion of the remaining term of the sentence of police supervision into a custodial sentence, the duration of which will be equal to half the number of days still to be served under police supervision. It is apparent from the order for reference that those provisions were applied in the main proceedings.

44 It follows that Latvian law appears to draw a distinction – although this is a matter for the referring court to verify – between a decision imposing a custodial sentence and a decision imposing police supervision, the latter of which is always, by its nature, a penalty additional to a custodial sentence. Thus, in the present case, SH had previously received a custodial sentence, accompanied by an additional sentence of police supervision, with the result that he was placed under police supervision after having served the custodial sentence imposed on him. Consequently, the decision at issue – imposing a custodial sentence on SH calculated by counting two days of the unserved term of police supervision as one day of deprivation of liberty – is not concerned with the execution or application of a custodial sentence previously imposed, within the meaning of the case-law cited in paragraphs 35 and 36 above, but actually constitutes a new decision imposing a custodial sentence which had not previously been handed down against SH.

45 The situation at issue in the main proceedings can therefore be distinguished from the revocation of suspension of a custodial sentence since, in the latter case, the custodial sentence is immediately suspended, so that the revocation of that suspension simply enables the custodial sentence previously imposed to be executed.

46 That finding is borne out by the fact that, in accordance with the relevant provisions of Latvian law referred to in paragraphs 42 and 43 above, that law does not appear to lay down a mechanism for the automatic conversion of a sentence of police supervision into a custodial sentence if the person concerned breaches the conditions governing that supervision. The courts enjoy a discretion in deciding whether, at the request of the police institution, to convert the unserved term of the additional sentence of police supervision into a custodial sentence; that conversion is not, therefore, automatic.

47 Furthermore, as the Advocate General stated in point 65 of his Opinion, the purpose of the custodial sentence which may be imposed following a breach of the conditions governing the additional sentence is to punish not the initial criminal offence which led to the imposition of the sentence of police supervision as an additional sentence, but the specific breaches of the conditions attached to that sentence. The courts must thus decide, after examining the person's situation, whether or not those breaches justify converting the measure of police supervision into a custodial sentence.

48 Consequently, a decision imposing a custodial sentence in lieu of the additional sentence of police supervision is not a decision relating to the execution or application of a custodial sentence previously imposed, but must be regarded as a decision imposing a new custodial sentence, which is different in nature from the custodial sentence initially imposed.

49 Such a decision must be classified as a 'decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, and the proceedings at the end of which it was adopted must, in accordance with the case-law of the Court cited in paragraph 35 above, be regarded as falling within the concept of 'trial resulting in the decision', within the meaning of that provision.

50 As the Advocate General observed in points 82 and 83 of his Opinion, what matters for the purposes of the classification as a 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, is that the proceedings relating to the conversion of the sentence be capable of leading to a deprivation of liberty which, while foreseeable in the event of breach of the conditions attached to the sentence of police supervision, was not, as such, part of the initial conviction and therefore required the handing down of a new conviction substituting the first.

51 It should be added that, as the Advocate General made clear in point 81 of his Opinion, the person concerned must, at the stage of the procedure intended to rule on the possible conversion of an additional sentence of police supervision into a custodial sentence, be able fully to exercise his or her rights of defence in order to assert his or her point of view in an effective manner and thereby to influence the final decision which could lead to the loss of his or her personal freedom. That person must, in particular, be able to put forward all matters of law or of fact which might lead the court with jurisdiction to decide not to carry out such a sentence conversion.

52 It will also be for the referring court to ascertain whether the situation at issue in the main proceedings corresponds to one of the scenarios referred to in Article 4a(1)(a) to (d) of Framework Decision 2002/584. If it does, the Irish executing judicial authority would have to agree to the surrender of SH to the Latvian authorities.

53 However, since SH has already been surrendered to the Latvian authorities pursuant to a European arrest warrant other than the European arrest warrant at issue, it will be necessary, as the referring court itself noted in its reply to the request for information sent to it by the Court of Justice, to have recourse, for the purposes of executing the custodial sentence imposed on SH by the decision at issue, to the consent mechanism provided for in Article 27 of Framework Decision 2002/584.

54 In the light of all the foregoing considerations, the answer to the questions referred is that Article 4a(1) of Framework Decision 2002/584 must be interpreted as meaning that the concept of 'trial resulting in the decision', within the meaning of that provision, covers proceedings at the end of which a national court may order, on account of breach of the conditions attached to a sentence

of police supervision previously imposed on the person concerned in addition to a custodial sentence, the conversion of the unserved term of that additional sentence into a custodial sentence, whereby two days of police supervision are to count as one day of deprivation of liberty.

Costs

55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (First Chamber) hereby rules:

Article 4a(1) 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 concept of 'trial resulting in the decision', within the meaning of that provision, covers proceedings at the end of which a national court may order, on account of breach of the conditions attached to a sentence of police supervision previously imposed on the person concerned in addition to a custodial sentence, the conversion of the unserved term of that additional sentence into a custodial sentence, whereby two days of police supervision are to count as one day of deprivation of liberty.

[Signatures]