Reports of Cases

OPINION OF ADVOCATE GENERAL
RICHARD DE LA TOUR
delivered on 13 June 2024[1]

Case C-305/22

C.J.
Criminal proceedings

(Request for a preliminary ruling from the Curtea de Apel București (Court of Appeal, Bucharest, Romania))

(Reference for a preliminary ruling – Area of freedom, security and justice – Judicial cooperation in criminal matters – Framework Decision 2002/584/JHA – European arrest warrant – Ground for optional non-execution of the European arrest warrant – Undertaking by the executing Member State to enforce the custodial sentence imposed on the requested person – Framework Decision 2008/909/JHA – Mutual recognition of judgments in criminal matters for the purpose of their enforcement in another Member State – Absence of consent on the part of the issuing Member State – Right of the issuing Member State to enforce the penalty itself – Obligation on the executing judicial authority to execute the European arrest warrant)

I. Introduction

1. This request for a preliminary ruling concerns the interpretation of Article 4(5) and (6) and Article 8(1)(c) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States,[2] and of Article 4(2), Article 22(1) and Article 25 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union.[3]

2. The request has been made in the context of national proceedings by which the Curtea de Apel București (Court of Appeal, Bucharest, Romania) has to rule on the validity of a national writ of enforcement of a prison sentence imposed in respect of C.J., who resides in Italy, and on the validity of a European arrest warrant issued in relation to him. The Italian judicial authorities refused to execute that European arrest warrant on the basis of the ground for optional

[1] Original language: French.
[2] OJ 2002 L 190, p. 1.
[3] OJ 2008 L 327, p. 27.

non-execution provided for in Article 4(6) of Framework Decision 2002/584.[4] At the same time, those authorities gave a decision recognising the judgment and enforcing the criminal conviction imposed on C.J., despite the opposition raised by the Romanian judicial authorities to that sentence being enforced in Italy.

3. This case illustrates a problem in the relationship between that framework decision and Framework Decision 2008/909, the two fundamental instruments of judicial cooperation in criminal matters.

4. In this Opinion, which, in line with the Court's request, will focus on the first three questions referred for a preliminary ruling, I will submit that a judicial authority cannot refuse to execute a European arrest warrant issued for the purpose of enforcing a custodial sentence by relying on the ground for optional non-execution set out in Article 4(6) of Framework Decision 2002/584, where the convicting judgment is recognised and enforced contrary to the procedure and the conditions laid down in Framework Decision 2008/909. In those circumstances, the issuing Member State[5] retains the right to enforce that sentence and it therefore falls to the executing judicial authority to execute the European arrest warrant by surrendering the requested person to that Member State.

II. The facts of the dispute in the main proceedings and the questions referred for a preliminary ruling

5. By judgment of 27 June 2017 of the Curtea de Apel București (Court of Appeal, Bucharest), as varied and made final by a judgment of 10 November 2020 of the Înalta Curte de Casație și Justiție (High Court of Cassation and Justice, Romania), C.J. was sentenced definitively to a term of imprisonment of four years and two months and prohibited from exercising, for a three-year period, certain rights in respect of various offences ('the convicting judgment').

6. On 20 November 2020, the Curtea de Apel București (Court of Appeal, Bucharest) issued a writ of execution of the prison sentence imposed on C.J. On 25 November 2020, that court issued a European arrest warrant in respect of C.J.

7. On 31 December 2020, the Ministero della Giustizia (Ministry of Justice, Italy) informed the Curtea de Apel București (Court of Appeal, Bucharest) of C.J.'s arrest and requested that an Italian-language version of the European arrest warrant be sent to it. That European arrest warrant was forwarded to it.

8. At the request of the Italian judicial authorities, the Curtea de Apel București (Court of Appeal, Bucharest) forwarded to them the convicting judgment on 14 January 2021. At that time, that court expressed its disagreement with any recognition of that judgment by the Italian judicial authorities with a view to its enforcement in Italy.

9. In response to a request from the Italian judicial authorities, the Curtea de Apel București (Court of Appeal, Bucharest) explained, on 20 January 2021, that, if the execution of the European arrest warrant were refused pursuant to Article 4(6) of Framework Decision 2002/584,

[4] That provision states that the executing judicial authority may refuse to execute the European arrest warrant 'if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or resident of, the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law'.

[5] In this Opinion, the issuing Member State may also be referred to as the convicting Member State.

it would not agree to that judgment being recognised indirectly and to the Italian Republic taking charge of the enforcement of the sentence, and that it would then request that the judgment be recognised and charge be taken in respect of its enforcement on the basis of Framework Decision 2008/909.

10. Subsequently, the Romanian authorities made a request to the Italian judicial authorities for information about the decision to execute the European arrest warrant, in accordance with Article 22 of Framework Decision 2002/584.

11. By judgment of 6 May 2021, the Corte d'appello di Roma (Court of Appeal, Rome, Italy) refused to surrender C.J., recognised the convicting judgment and ordered that that judgment be enforced in Italy. That court considered that, since C.J. was lawfully and actually resident in Italy, there were no grounds for requiring that he serve his sentence in Romania, as the enforcement of that sentence in Italy is more in line with the objective of facilitating his social rehabilitation. The court took the view that, after deducting the periods of detention already served, the total sentence remaining to be served was 3 years, 6 months and 21 days.

12. On 20 May 2021, that judgment of the Corte d'appello di Roma (Court of Appeal, Rome) was notified to the Curtea de Apel București (Court of Appeal, Bucharest). The Romanian authorities subsequently received a certificate dated 11 June 2021 from the Office for the Enforcement of Sentences at the Public Prosecutor's Office in Rome, from which it is apparent that C.J. is under house arrest, in accordance with Italian law. It is likewise apparent from that certificate, as regards the enforcement status, that it is a writ of enforcement with concurrent suspension, in the form of house arrest, and that the remaining sentence to be served is three years and eleven months' imprisonment; the date on which enforcement of the sentence began is 29 December 2020 and the date on which the sentence expires is 28 November 2024. [6]

13. By a letter sent on 28 June 2021, the Romanian judicial authorities reaffirmed their position, as set out in point 9 of this Opinion, and explained that, until such time as notice is given of the commencement of the enforcement of the custodial sentence by means of C.J.'s imprisonment, they are of the view that they retain the right to enforce the convicting judgment of 27 June 2017, pursuant to Article 22(1) of Framework Decision 2008/909. Those authorities added that the national writ of enforcement of the prison sentence and the international wanted persons notice have not been annulled and are still in force.

14. On 15 October 2021, the Office of Enforcement of the Second Criminal Division of the Curtea de Apel București (Court of Appeal, Bucharest) raised an opposition to the enforcement of the convicting judgment before the referring court.

15. That court explains that it is required to rule on the validity of the national writ of enforcement of the prison sentence and of the European arrest warrant, in view of a difference in interpretation between the Romanian and Italian judicial authorities as regards, specifically, the relationship between Framework Decision 2002/584 and Framework Decision 2008/909. This means that the court has to decide whether that national writ, issued by the Romanian authorities, has to be annulled if the convicting judgment is found to have been implemented by the Italian authorities and is currently being served.

[6] That certificate was supplemented by an additional certificate, sent to the Romanian judicial authorities on 14 July 2021, containing the following remark: 'as regards the house arrest, a decision on the alternative measure is awaited from the Tribunale di sorveglianza (Court of Supervision)'.

16. Thus, questions arise as to whether the recognition of a judgment, in the context of a procedure to execute a European arrest warrant which resulted in the executing judicial authority refusing to execute that warrant pursuant to Article 4(6) of Framework Decision 2002/584, requires the consent of the issuing Member State pursuant to Article 4(2) and Article 25 of Framework Decision 2008/909, and whether the forwarding of the convicting judgment by the issuing Member State to the executing Member State can constitute consent. The question is also raised as to whether such a procedure, which would be conducted in breach of Article 4(2) and Article 25 of the latter framework decision, can have legal effects in respect of the sentence as regards its enforcement on Romanian territory. Furthermore, it would also have to be determined whether, until such time as notice is given of the commencement of the enforcement of the custodial sentence by imprisonment of the sentenced person, the issuing Member State retains the full right to enforce the judgments given on its territory, pursuant to Article 22(1) of the Framework Decision.

17. In those circumstances, the Curtea de Apel București (Court of Appeal, Bucharest) has decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Must the provisions of Article 25 of Framework Decision [2008/909] be interpreted as meaning that the judicial authority executing a European [arrest] warrant, if it intends to apply Article 4(6) of Framework Decision [2002/584] for the purposes of recognising the judgment passing sentence, is required to request the [forwarding] of the judgment and the certificate issued pursuant to Framework Decision [2008/909] and to obtain the consent of the sentencing State pursuant to Article 4(2) of Framework Decision [2008/909]?

(2) Must the provisions of Article 4(6) of Framework Decision [2002/584], read in conjunction with Articles 25 and 4(2) of Framework Decision [2008/909], be interpreted as meaning that the refusal to execute a European arrest warrant issued for the purposes of the execution of a custodial sentence and recognition of the judgment passing sentence, without its effective execution by imprisonment of the sentenced person following a pardon and suspension of the sentence, in accordance with the law of the executing State, and without obtaining the consent of the sentencing State in the context of the recognition procedure, [cause] the sentencing State to forfeit its right to enforce the sentence under Article 22(1) of Framework Decision [2008/909]?

(3) Must Article 8(1)(c) of Framework Decision [2002/584] be interpreted as meaning that a judgment imposing a custodial sentence on the basis of which a European arrest warrant has been issued, the execution of which has been refused under Article 4(6) [of that Framework Decision], with recognition of the judgment passing sentence but without its effective execution by imprisonment of the sentenced person following a pardon and suspension of the sentence, in accordance with the law of the executing State, and without obtaining the consent of the sentencing State in the context of the recognition procedure, is no longer enforceable?

(4) Must the provisions of Article 4(5) of Framework Decision [2002/584] be interpreted as meaning that a judgment refusing to execute a European arrest warrant issued for the purposes of the execution of a custodial sentence and recognition of the judgment passing sentence pursuant to Article 4(6) of Framework Decision [2002/584], but without its effective execution by imprisonment of the sentenced person following a pardon and

suspension of the sentence, in accordance with the law of the executing State (EU Member State), and without obtaining the consent of the sentencing State in the context of the recognition procedure, amounts to a judgment "by a third State in respect of the same acts"?

(5) If Question 4 is answered in the affirmative: must the provisions of Article 4(5) of Framework Decision [2002/584] be interpreted as meaning that a judgment refusing to execute a European arrest warrant issued for the purposes of the execution of a custodial sentence and recognition of the judgment passing sentence pursuant to Article 4(6) of Framework Decision [2002/584], with the suspension of the sentence in accordance with the law of the executing State, amounts to a sentence that "is currently being served" where supervision of the sentenced person has not yet commenced?'

18. C.J., the Romanian, Czech and Netherlands Governments and the European Commission lodged written observations. Those parties, with the exception of C.J., participated, together with the French Government, in the hearing held on 13 March 2024, in the course of which they, inter alia, responded to questions for an oral answer put by the Court.

III. Analysis

A. Preliminary observations

19. In his written observations, C.J. stated that the Tribunale di sorveglianza di Roma (Court of Supervision, Rome, Italy) had, on 7 February 2023, ordered that the remainder of the sentence be served in the form of house arrest. The Court of Justice thus made a request for information to the referring court in order to clarify whether that information had an impact on the questions referred by it for a preliminary ruling.

20. On 22 November 2023, that court responded stating that it could not confirm that information, since the Italian judicial authorities had not forwarded any documents relating to C.J. since 2021. In addition, the court also explained that, if the information relating to the developments in the Italian procedure were to prove to be true, an answer to the first four questions would still be useful. At the very most, only the fifth question could be regarded as being no longer relevant.

21. In the light of those factors, it is my view that, in what follows in this Opinion, regard should be had to the facts as set out in the order for reference,[7] namely that the situation in relation to the enforcement in Italy of the custodial sentence imposed on C.J. concerns a national writ of enforcement of that sentence with concurrent suspension, in the form of house arrest, pending a decision by the Italian judicial authorities on an alternative measure to imprisonment.

B. The first three questions referred for a preliminary ruling

22. By its first three questions, which I propose to examine together, the referring court essentially asks the Court to rule on whether Article 4(6) and Article 8(1)(c) of Framework Decision 2002/584 and Article 4(2) and (5), Article 8(1), Article 22(1) and Article 25 of

[7] According to settled case-law, the national court is responsible for defining the factual and legislative context of the reference for a preliminary ruling: see, inter alia, judgment of 30 November 2023, *Ministero dell'Istruzione and INPS* (C-270/22, EU:C:2023:933, paragraph 34 and the case-law cited).

Framework Decision 2008/909 are to be interpreted as meaning that a judicial authority can legitimately refuse to execute a European arrest warrant issued for the purpose of the execution of a custodial sentence by relying on the ground for optional non-execution set out in the first of those provisions, where the convicting judgment is recognised and enforced contrary to the procedure and the conditions laid down in Framework Decision 2008/909. In addition, that court also wishes to ascertain whether, in those circumstances, the issuing Member State retains the right to enforce that sentence and whether it falls to the executing judicial authority to execute the European arrest warrant by surrendering the requested person to that Member State.

23. Two dramatically opposing views are put forward in response to those questions. While the Netherlands Government argues that the ground for optional non-execution set out in Article 4(6) of Framework Decision 2002/584 can be implemented outside the framework determined by Framework Decision 2008/909, the other participants to these proceedings take the opposing view. I am persuaded by the latter view.

24. 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 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. [8]

25. In the field governed by that framework decision, the principle of mutual recognition, which, according to recital 6 thereof, constitutes the 'cornerstone' of judicial cooperation in criminal matters, 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. [9]

26. 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. [10]

27. That framework decision explicitly sets out, in Article 3, grounds for mandatory non-execution of a European arrest warrant and, in Articles 4 and 4a, grounds for optional non-execution of such a warrant. [11]

28. Thus, although the system established by Framework Decision 2002/584 is based on the principle of mutual recognition, that recognition does not mean that there is an absolute obligation to execute the arrest warrant that has been issued. [12] Indeed, that framework decision

[8] See, inter alia, judgment of 6 June 2023, *Presidente del Consiglio dei Ministri and Others (European arrest warrant issued against a third-country national)* (C-700/21, EU:C:2023:444, paragraph 31 and the case-law cited; the 'judgment in *Presidente del Consiglio dei Ministri and Others*').

[9] See, inter alia, judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 32 and the case-law cited).

[10] See, inter alia, judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 33 and the case-law cited).

[11] See, inter alia, judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 34 and the case-law cited).

[12] See, inter alia, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)* (C-314/18, EU:C:2020:191, paragraph 40 and the case-law cited.

allows, in specific situations, the competent authorities of Member States to decide that a sentence imposed in the issuing Member State must be enforced in the territory of the executing Member State. [13]

29. As regards the grounds for optional non-execution of the European arrest warrant listed in Article 4 of Framework Decision 2002/584, it is clear from the case-law of the Court that, when transposing that framework decision into national law, the Member States have a margin of discretion. Therefore, they are free to transpose those grounds into their domestic law or not to do so. They may also choose to limit the situations in which the executing judicial authority may refuse to execute a European arrest warrant, thereby facilitating the surrender of requested persons, in accordance with the principle of mutual recognition set out in Article 1(2) of the Framework Decision. [14]

30. I note that the grounds for optional non-execution of a European arrest warrant include, under Article 4(6) of Framework Decision 2002/584, the fact that the executing judicial authority may refuse to execute the European arrest warrant if that warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of, the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law.

31. Thus, the application of the ground for optional non-execution of the European arrest warrant laid down in that provision is subject to two conditions being met, namely, first, that the requested person is staying in the executing Member State or is a national of or resident in that Member State and, second, that that State undertakes to execute, in accordance with its domestic law, the sentence or detention order in respect of which the European arrest warrant has been issued. [15]

32. As regards the first of those conditions, the Court has already held that a requested person is 'resident' in the executing Member State when that person has established his or her actual place of residence there, and is 'staying' there when, following a stable period of presence in that Member State, he or she has acquired connections with that State which are of a similar degree to those resulting from residence. [16]

33. As regards the second of those conditions, it follows from the wording of Article 4(6) of Framework Decision 2002/584 that any refusal to execute a European arrest warrant presupposes an actual undertaking on the part of the executing Member State to enforce the custodial sentence imposed on the requested person. [17] Therefore, the mere fact that that State declares itself 'willing' to execute that sentence cannot be regarded as justifying such a refusal. It follows that any refusal to execute a European arrest warrant must be preceded by the executing judicial authority's examination of whether it is actually possible to execute the sentence in accordance with its domestic law. [18]

[13] See, inter alia, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)* (C-314/18, EU:C:2020:191, paragraph 41 and the case-law cited).

[14] See, inter alia, judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 35 and the case-law cited).

[15] See, inter alia, judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 46 and the case-law cited).

[16] See, inter alia, judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 47 and the case-law cited).

[17] See, inter alia, judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 48 and the case-law cited).

[18] See, inter alia, judgment of 24 June 2019, *Popławski* (C-573/17, EU:C:2019:530, paragraph 88 and the case-law cited).

34. It is thus necessary to guarantee that the power of the executing judicial authority to refuse to execute the European arrest warrant is exercised only on condition that the sentence pronounced against the requested person is in fact executed in the executing Member State, and that a solution compatible with the purpose of Framework Decision 2002/584 is thus achieved. [19]

35. Where the executing judicial authority finds that both of the conditions which I have just recalled are satisfied, it must then ascertain whether there is a legitimate interest to justify the sentence imposed in the issuing Member State being enforced on the territory of the executing Member State. That assessment allows that authority to take account of the objective pursued by Article 4(6) of Framework Decision 2002/584 which consists, according to well-established case-law, of increasing the requested person's chances of reintegrating into society when the sentence imposed on him or her expires. [20] Thus, in order to decide whether or not, having regard to the intended objective of social reintegration, execution of the European arrest warrant should be refused, the executing judicial authority must enjoy the necessary discretion. [21]

36. The executing judicial authority must examine whether there is a legitimate interest which justifies the sentence or detention order imposed in the issuing Member State being enforced on the territory of the executing Member State by making an overall assessment of all the specific elements characterising the situation of the requested person capable of showing that there are connections between that person and the executing Member State that may lead to the conclusion that that person is sufficiently integrated into that State such that the execution, in the executing Member State, of the custodial sentence or detention ordered pronounced against him or her in the issuing Member State will contribute to the attainment of the objective of social rehabilitation pursued by Article 4(6) of Framework Decision 2002/584. [22]

37. In that context, the Court has clarified that it is appropriate to take into account Framework Decision 2008/909. In particular, recital 9 of that framework decision provides an illustrative list of elements capable of allowing a judicial authority to satisfy itself that the execution of the sentence by the executing Member State will serve the purpose of facilitating the social rehabilitation of the sentenced person. Those elements include, in essence, the attachment of that person to the executing Member State, and whether that Member State is the centre of his or her family life and his or her interests, taking into account, inter alia, his or her family, linguistic, cultural, social or economic links to that State. [23]

38. There is thus an interaction between Framework Decision 2002/584 and Framework Decision 2008/909. The Court has noted that such interaction exists, explaining that, since the objective pursued by Article 4(6) of Framework Decision 2002/584 is the same as that referred to in recital 9 of Framework Decision 2008/909 and is pursued by Article 25 of the latter, which refers to the ground for optional non-execution provided for in that Article 4(6), those elements are also relevant in the context of the overall assessment that the executing judicial authority must make when it applies that ground. [24]

[19] See, inter alia, judgment of 24 June 2019, *Popławski* (C-573/17, EU:C:2019:530, paragraph 92 and the case-law cited). As Advocate General Bot observed in his Opinion in *Popławski* (C-579/15, EU:C:2017:116), 'implementation of the principle of mutual recognition and the need to eliminate any risk of impunity dictate the view that, if it is not possible, for whatever reason, for the executing Member State to assume responsibility for executing the sentence, the European arrest warrant must be executed' (point 57).

[20] See, inter alia, judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 49 and the case-law cited).

[21] See judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 53).

[22] See, inter alia, judgment in *Presidente del Consiglio dei Ministri and Others* (paragraphs 60 and 61 and the case-law cited).

[23] See, inter alia, judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 62 and the case-law cited).

[24] See judgment in *Presidente del Consiglio dei Ministri and Others* (paragraph 63).

39. The interaction between Framework Decision 2002/584 and Framework Decision 2008/909 is not, however, limited to the assessment as to the existence of a legitimate interest which justifies the sentence or detention order imposed in the issuing Member State being enforced on the territory of the executing Member State. Indeed, the application of Framework Decision 2008/909 provided for in Article 25 thereof to the enforcement of sentences is far more general in scope where a Member State decides to implement the ground for optional non-execution laid down in Article 4(6) of Framework Decision 2002/584.

40. Thus, under Article 25 of Framework Decision 2008/909, 'without prejudice to Framework Decision [2002/584], provisions of this Framework Decision shall apply, *mutatis mutandis* to the extent they are compatible with provisions under that Framework Decision, to enforcement of sentences in cases where a Member State undertakes to enforce the sentence in cases pursuant to Article 4(6) of that Framework Decision, or where, acting under Article 5(3) of that Framework Decision, it has imposed the condition that the person has to be returned to serve the sentence in the Member State concerned, so as to avoid impunity of the person concerned'.

41. In my view, it follows from Article 25 of Framework Decision 2008/909 that the executing judicial authority's implementation of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584 presupposes compliance with the procedure and the conditions laid down in Framework Decision 2008/909 for the recognition and enforcement of a judgment in criminal matters in a Member State other than the convicting Member State.[25] A number of factors support that view.

42. First, it is appropriate to cite recital 12 of Framework Decision 2008/909 which states that that framework decision 'should also, *mutatis mutandis*, apply to the enforcement of sentences in the cases under Articles 4(6) and 5(3) of … Framework Decision [2002/584]. This means, *inter alia*, that, without prejudice to that Framework Decision, the executing State could verify the existence of grounds for non-recognition and non-enforcement as provided for in Article 9 of this Framework Decision, including the checking of double criminality to the extent that the executing State makes a declaration under Article 7(4) of this Framework Decision, as a condition for recognising and enforcing the judgment with a view to considering whether to surrender the person or to enforce the sentence in cases pursuant to Article 4(6) of Framework Decision [2002/584]'. Whilst the EU legislature does point, by way of example, to the verification by the executing Member State of the existence of grounds for non-recognition and non-execution as provided for in Article 9 of Framework Decision 2008/909, that by no means precludes, in my view, other conditions from being verified.

43. The connection between the procedures laid down in Framework Decision 2002/584 and in Framework Decision 2008/909 when implementing the ground for optional non-execution set out in Article 4(6) of the first of those framework decisions is also confirmed by part (f) of the model certificate contained in Annex I to Framework Decision 2008/909. That certificate is forwarded with the judgment, for the purposes of the recognition and enforcement of that judgment, and it must make reference to that ground if the ground is relied on. It follows that, in order to refuse to execute a European arrest warrant on that ground, the judgment and the certificate must be forwarded by the convicting Member State, in accordance with the rules laid down in that framework decision.

[25] See also, in this regard, Commission Notice – Handbook on how to issue and execute a European Arrest Warrant (OJ C C/2023/1270), sections 2.5.2 and 5.5.2, from which it is apparent that, in the situation referred to in Article 4(6) of Framework Decision 2002/584, Framework Decision 2008/909 must be applied when transferring the sentence to the Member State where it is executed.

44. Secondly, the condition that any refusal to execute a European arrest warrant, on the ground laid down in Article 4(6) of Framework Decision 2002/584, must be preceded by the executing judicial authority's examination of whether it is actually possible to enforce the custodial sentence in accordance with its domestic law appears to me to encompass those provisions in the law of the executing Member State which transpose Framework Decision 2008/909. [26] Therefore, in line with the provisions of Article 25 of that framework decision and in order to be able to ensure that such a sentence is actually enforced, the executing judicial authority must comply with the procedure and the conditions laid down in that framework decision with a view to the judgment pronounced in the convicting Member State being recognised and enforced.

45. Thirdly, as the Romanian Government rightly pointed out at the hearing, there is nothing to indicate that the EU legislature intended to provide for two separate legal systems for the recognition and enforcement of judgments in criminal matters according to whether or not a European arrest warrant exists.

46. Fourthly, it follows from the judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)*, [27] that, where an executing judicial authority intends to surrender a person under a European arrest warrant for the purposes of criminal prosecution, by making that surrender, in accordance with the provisions of Article 5(3) of Framework Decision 2002/584, subject to the condition that the person is returned to the executing Member State in order to serve there the sentence imposed on him or her in the issuing Member State, the enforcement of that sentence in the executing Member State is governed by Framework Decision 2008/909. [28] By analogy, the same must be true, in my view, in relation to the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584.

47. It follows from the foregoing that, for the purposes of implementing the ground for optional non-execution of a European arrest warrant provided for in Article 4(6) of Framework Decision 2002/584, the sentence imposed on the requested person must be recognised and enforced in accordance with the procedure and the conditions laid down in Framework Decision 2008/909.

48. This leads me to take the view that the sentence imposed on the requested person cannot be enforced effectively in the executing Member State if that Member State fails to comply with that procedure and those conditions. Thus, in order to be able to undertake to enforce the custodial sentence imposed on the requested person, by examining whether it is actually possible for it to execute that sentence in accordance with its domestic law, [29] and therefore to avoid any risk of impunity of that person, as required under Article 4(6) of Framework Decision 2002/584, the executing Member State must be empowered to resume the enforcement of that sentence in a manner compatible with the rules laid down in Framework Decision 2008/909.

[26] See, to that effect, Commission Notice – Handbook on the transfer of sentenced persons and custodial sentences in the European Union (OJ 2019 C 403, p. 2), which states, in section 11.1 thereof, that, 'according to Article 25 and recital 12 of [Framework Decision 2008/909], in cases where Articles 4(6) and 5(3) of … Framework Decision 2002/584 are applied, *the domestic law implementing [Framework Decision 2008/909]* shall apply, *mutatis mutandis* and to the extent compatible with … Framework Decision 2002/584, to the enforcement of the sentence'. In that same section, it is further stated that 'the connection between [Framework Decision 2008/909] and … Framework Decision 2002/584 is laid down in Article 25 and recital 12 of [Framework Decision 2008/909]' and that 'any refusal to execute a [European arrest warrant] under Article 4(6) of … Framework Decision 2002/584 must be preceded by the executing judicial authority's examination of whether it is actually possible to enforce the sentence *in accordance with its domestic law implementing [Framework Decision 2008/909]*' (emphasis added).

[27] C-314/18, EU:C:2020:191.

[28] See judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)* (C-314/18, EU:C:2020:191, paragraph 49 et seq.).

[29] See, inter alia, judgment of 24 June 2019, *Popławski* (C-573/17, EU:C:2019:530, paragraph 88 and the case-law cited).

49. It is now necessary to specify those rules.

50. In that regard, I would observe that, like Framework Decision 2002/584, Framework Decision 2008/909 gives concrete expression, in criminal matters, to the principles of mutual trust and mutual recognition. That framework decision further develops judicial cooperation concerning the recognition and enforcement of criminal judgments where persons were sentenced to a custodial sentence or a measure involving deprivation of liberty in another Member State, with a view to facilitating their social rehabilitation. [30]

51. Under Article 3(1) of Framework Decision 2008/909, the purpose of that framework decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence handed down by a court of another Member State.

52. For that purpose, Article 8 of Framework Decision 2008/909 provides that the competent authority of the executing Member State is, in principle, required to grant the request seeking recognition of a judgment and enforcement of a custodial sentence or measure involving deprivation of liberty handed down in another Member State, which has been forwarded to it in accordance with Articles 4 and 5 of that framework decision. It can, in principle, refuse to accede to such a request only on the grounds for non-recognition and non-enforcement exhaustively listed in Article 9 of the Framework Decision. [31]

53. Furthermore, Article 8(2) to (4) of Framework Decision 2008/909 lays down strict conditions for the adaptation, by the competent authority of the executing Member State, of the sentence handed down in the issuing Member State, those conditions being the sole exceptions to the obligation imposed on that authority, under Article 8(1) of that framework decision, to recognise a judgment which has been forwarded to it and forthwith take all the necessary measures for the enforcement of the sentence, which is to correspond in its length and nature to the sentences imposed in the judgment delivered in the issuing Member State. [32]

54. Article 4(1) of Framework Decision 2008/909 provides that the convicting Member State, which usually initiates the procedure for the recognition and enforcement in another Member State of a judgment in criminal matters given on its territory, may forward to that other Member State such a judgment together with a certificate, the model for which is contained in Annex I to that framework decision.

55. Under Article 4(2) of Framework Decision 2008/909, 'the forwarding of the judgment and the certificate may take place where the competent authority of the issuing State, where appropriate after consultations between the competent authorities of the issuing and the executing States, is satisfied that the enforcement of the sentence by the executing State would serve the purpose of facilitating the social rehabilitation of the sentenced person'.

56. Furthermore, Article 4(5) of Framework Decision 2008/909 provides that 'the executing State may, on its own initiative, request the issuing State to forward the judgment together with the certificate. … Requests made under this paragraph shall not create an obligation of the issuing State to forward the judgment together with the certificate.'

30 See judgment of 9 November 2023, *Staatsanwaltschaft Aachen* (C-819/21, EU:C:2023:841, paragraph 19).

31 See judgment of 9 November 2023, *Staatsanwaltschaft Aachen* (C-819/21, EU:C:2023:841, paragraph 20).

32 See, inter alia, judgment of 15 April 2021, *A V (Aggregate sentence)* (C-221/19, EU:C:2021:278, paragraph 35 and the case-law cited).

57. Article 5 of that framework decision sets out the procedure for forwarding the judgment and the certificate.

58. I infer from those provisions, first, that the convicting Member State must forward the judgment and the certificate provided for in Framework Decision 2008/909 with a view to that judgment being recognised and the sentence enforced, since their forwarding constitutes a form of expression of consent on the part of the convicting Member State to the executing Member State taking charge of the enforcement of the sentence. The judgment is then recognised and the sentence enforced on the basis of the information contained in the certificate. That certificate can, moreover, be withdrawn by the convicting Member State, in the circumstances provided for in Article 13 of that framework decision, [33] in particular if that Member State is dissatisfied with the proposed adaptation of the sentence.

59. Secondly, the convicting Member State is not obliged to forward the judgment and the relevant certificate. [34] If it does so, it consents to the sentence in question being enforced in the executing Member State. It follows that, if the judgment together with the certificate provided for in Framework Decision 2008/909 are not forwarded, the executing Member State is not empowered to enforce on its territory a sentence handed down in the convicting Member State, since the latter has not consented to that enforcement. This must likewise be the case when implementing the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584.

60. Accordingly, the executing Member State can take charge of the enforcement of the sentence only within the framework established by Framework Decision 2008/909, which requires close and active cooperation with the convicting Member State [35] and, in particular, that Member State's agreement to the sentence being enforced in the executing Member State. The forwarding of the judgment by the convicting Member State to the executing Member State, in the context of the procedure related to the execution of a European arrest warrant, does not satisfy that condition where, as in the present case, that judgment is not accompanied by the certificate provided for in that framework decision and, moreover, the first Member State unambiguously makes known its opposition to the sentence handed down being enforced in the second Member State.

61. The implementation of the procedure provided for in Framework Decision 2008/909 is thus capable of ensuring the mutual trust between the competent authorities of the issuing Member State and of the executing Member State, by means of prior consultations, which are the expression of the principle of sincere cooperation. If the convicting Member State refuses to

[33] Under that provision, 'as long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate from that State, giving reasons for so doing. Upon withdrawal of the certificate, the executing State shall no longer enforce the sentence.'

[34] See, in this regard, handbook cited in footnote 26 to this Opinion, which states, in section 1.1 thereof, that Framework Decision 2008/909 does not lay down 'any obligation for the issuing State to forward a judgment for the purposes of its recognition and enforcement in another Member State' and that 'the issuing State has the final say regarding the transfer, if it is satisfied with the adaptation of the sentence and the modalities for execution of the sentence'. In addition, in section 3.1 of that handbook, it is stated that, in the two scenarios set out in Article 4(5) of Framework Decision 2008/909, 'there shall be no obligation for the issuing State to comply with the requested forwarding of the judgment. This emanates logically from the fact that the issuing State remains the sole actor that has, following a criminal offence, delivered a judgment for which it had the sovereign competence to do so. As such, the issuing State retains the discretionary margin to assess the requests of either or both the executing State and the sentenced person.'

[35] Specifically, the executing Member State is required to provide the convicting Member State with certain information, such as that referred to in Articles 12 and 21 of Framework Decision 2008/909.

transfer the enforcement of the sentence, the executing Member State cannot unilaterally assume the competence to enforce that sentence and cannot rely on the ground for optional non-execution set out in Article 4(6) of Framework Decision 2002/584.

62. Contrary to what the Netherlands Government has argued in these proceedings, it is my view that the need to obtain the convicting Member State's consent cannot undermine the practical effect of the ground for optional non-execution provided for in Article 4(6) of Framework Decision 2002/584. Indeed, by imposing that requirement, a refusal to execute under that provision is simply subject to certain conditions and is not to be regarded as inapplicable. At that stage, it cannot be assumed that the convicting Member State will refuse to forward the judgment together with the certificate. That Member State may in fact be convinced, like the executing Member State, that enforcing the sentence on the territory of the latter State will contribute to achieving the objective of facilitating the social rehabilitation of the sentenced person.

63. Furthermore, it is indeed true that the Court has inferred from Article 25 of Framework Decision 2008/909 that no provision of that framework decision can affect the scope of the ground for optional non-execution set out in Article 4(6) of Framework Decision 2002/584, or the way in which it is applied.[36] However, that cannot mean that the conditions for recognition and enforcement of judgments in criminal matters do not apply where that ground for non-execution is implemented, but rather that those conditions apply only to the extent that they are compatible with the provisions of that framework decision.[37] The EU legislature has thus demonstrated its intention not to water down the objective of Framework Decision 2002/584, namely the surrender of the persons covered by a European arrest warrant.

64. I see no incompatibility with the provisions of Framework Decision 2002/584 in the requirement that the implementation of the ground for optional non-execution set out in Article 4(6) of that framework decision is subject to the consent of the convicting Member State. On the contrary, such a condition, in so far as it limits the situations in which the executing judicial authority may refuse to execute a European arrest warrant, contributes to reinforcing the system of surrender introduced by the Framework Decision to the advantage of an area of freedom, security and justice.[38] In particular, the application of that ground for non-execution remains primarily subject to the requirement that the custodial sentence imposed on the requested person can actually be enforced in that Member State.[39]

65. In addition, the Court has, admittedly, stated that the coordination provided for by the EU legislature between Framework Decision 2002/584 and Framework Decision 2008/909 must contribute to achieving the objective of facilitating the social rehabilitation of the person concerned, and that such rehabilitation is in the interest not only of the convicted person but also of the European Union in general.[40] However, the Court has likewise held that, although the ground for optional non-execution set out in Article 4(6) of Framework Decision 2002/584 has, in particular, the objective of allowing particular weight to be given to the possibility of increasing the requested person's chances of reintegrating into society when the sentence imposed on him or her expires, such an objective, while important, cannot prevent the Member States, when

36 See judgment of 13 December 2018, *Sut* (C-514/17, EU:C:2018:1016, paragraph 48).

37 See judgment of 13 December 2018, *Sut* (C-514/17, EU:C:2018:1016, paragraph 48).

38 See, inter alia, judgment of 13 December 2018, *Sut* (C-514/17, EU:C:2018:1016, paragraphs 43 and 44 and the case-law cited).

39 See, inter alia, judgment of 13 December 2018, *Sut* (C-514/17, EU:C:2018:1016, paragraph 49).

40 See judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)* (C-314/18, EU:C:2020:191, paragraph 51 and the case-law cited).

implementing that framework decision, from limiting, in a manner consistent with the essential rule stated in Article 1(2) thereof, the situations in which it is possible to refuse to surrender a person who falls within the scope of Article 4(6) thereof. [41]

66. It follows from the foregoing that the objective of increasing the requested person's chances of reintegrating into society when the sentence imposed on him or her has expired is not absolute and cannot take precedence over the objective of establishing an effective system of surrender between the Member States.

67. In addition, as the French Government rightly observed at the hearing, pursuant to Article 4 of Framework Decision 2008/909, both the competent authorities of the issuing Member State and those of the executing Member State must be satisfied that the mutual recognition procedure complies, in the situation at issue, with the objective of promoting the social rehabilitation of the sentenced person. That requirement of consensus thus directly opposes the idea that Article 4(6) of Framework Decision 2002/584 allows the executing Member State to determine on its own whether the enforcement of the sentence on its territory is justified. The issuing Member State must also be of the view that enforcing the sentence on the territory of the executing Member State would facilitate the social rehabilitation of the sentenced person and that that objective surpasses the objective of enforcing that sentence in the issuing Member State. Any other ruling would lead to the creation, contrary to the provisions of Article 25 of Framework Decision 2008/909, of a dual system of mutual recognition of decisions imposing sentences in criminal matters. Whilst, outside the context of a European arrest warrant, the two Member States should be convinced that the objective of promoting social rehabilitation is attained, when executing a European arrest warrant only the executing Member State could make that assessment. In addition, as I have previously stated, I do not believe that the EU legislature wanted to create a dual system.

68. I also consider that the objective of facilitating the sentenced person's chances of reintegrating into society cannot erase the legitimate interests which the Member State in which a sentence was handed down may have in that sentence being enforced on its territory. In view of various functions of the sentence within society, criminal policy considerations specific to each Member State may mean that the convicting Member State wishes the sentence handed down to be enforced on its territory, despite the fact that considerations related to the requested person's reintegration into society might oppose its enforcement there. [42] Sentences in terrorism cases provide a good example in this regard.

[41] See, inter alia, judgment of 13 December 2018, *Sut* (C-514/17, EU:C:2018:1016, paragraph 46 and the case-law cited). As Advocate General Pikamäe observed in relation to Article 5(3) of Framework Decision 2002/584 in his Opinion in *SF (European arrest warrant – Guarantee of return to the executing State)* (C-314/18, EU:C:2019:427), 'the objective of facilitating the social reintegration of the convicted person is therefore not absolute and may be weighed against other requirements' (point 61).

[42] See, in this regard, the handbook cited in footnote 26 to this Opinion, which states, in section 3.1 thereof, that, 'for example, the issuing State might wish not to transfer the sentenced person if a less lengthy period of incarceration is foreseen in the executing State, taking into account the provisions on early and conditional release in that State. Victims' interests might also be taken into account in deciding where the offender could best serve his or her sentence. A Member State might also be reluctant to transfer a person if such a transfer would imply the reintegration in the criminal milieu of his or her home State, instead of being in the interest of his or her social rehabilitation'. In that same section, it is stated that 'the full decisional power of the issuing State is also illustrated by Article 13 of [Framework Decision 2008/909] which indicates that as long as the enforcement of the sentence in the executing State has not begun, the issuing State may withdraw the certificate, giving reasons for doing so. See in this context also Article 17(3)'. Moreover, it is observed that 'there is an increasing awareness across Member States that opinions of victims should be taken into account in the context of the enforcement of the sentences of convicted offenders, including international prison transfer. Victims can be present in the executing State as well as in the issuing State. Many Member States have adopted a procedure whereby victims have the opportunity to be consulted regarding transfers and their opinion is taken into account. However, this does not establish a right for victims to oppose a transfer.'

69. I am of the view that, where a Member State opts to issue a European arrest warrant for the purposes of enforcing a custodial sentence, it wants the requested person to be surrendered to it so that it can enforce that sentence on its territory. If that Member State were considering, as its first choice, the possibility of that sentence being enforced in another Member State, it would have implemented the mechanism for recognition and enforcement of judgments in criminal matters provided for in Framework Decision 2008/909.

70. In such a situation where a request is made for the recognition of a judgment and the enforcement of a criminal sentence handed down in the issuing Member State, the very purpose of that procedure is that the person concerned, far from having to be surrendered to the authorities of the issuing Member State, remains in the executing Member State in order to serve his or her sentence there. [43]

71. However, if the convicting Member State favours issuing a European arrest warrant rather than implementing the transfer mechanism provided for in Framework Decision 2008/909, the principle of mutual recognition has consequences of a different nature. That principle then means that the executing judicial authority is obliged to execute the European arrest warrant submitted to it.

72. Obtaining the consent of the convicting Member State allows the freedom of choice which must be enjoyed by that State between the two instruments of judicial cooperation in criminal matters to be respected. As I have already explained, there is no obligation on that Member State to issue the certificate provided for in Framework Decision 2008/909. Where the Member State has exercised its sovereign choice to issue a European arrest warrant, that choice must be respected. Thus, it cannot be assumed that the Member State would be willing, in the event of a refusal to execute that warrant, to waive the right to the sentence being enforced on its territory. On the contrary, issuing a European arrest warrant demonstrates its wish that the sentence be enforced on its territory.

73. The position of the Netherlands Government, which considers that implementing Article 4(6) of Framework Decision 2002/584 is akin to recognising the convicting judgment, thus negating the need to obtain the consent of the convicting Member State, is paradoxical: it amounts to taking the view that, when a judicial authority issues a European arrest warrant for the purposes of enforcing a sentence, this means that it agrees that that sentence may, if appropriate, be enforced in another Member State, with the issuing Member State thereby renouncing its own competence to enforce the sentence. However, the primary purpose of a European arrest warrant is for the requested person to be surrendered to the judicial authority which issues such a warrant. In other words, the objective of issuing a European arrest warrant is not to transfer competence to enforce a sentence to another Member State.

74. By wishing to retain its power of enforcement, the issuing Member State does not infringe the principle of mutual trust. Indeed, the executing Member State is, in principle, required to accede to the request for cooperation made in the form of the European arrest warrant issued. As the French Government rightly argued at the hearing, in such circumstances, that principle cannot serve as a ground for the recognition and enforcement of a judicial decision by another Member State where such recognition and enforcement have not been sought are not desired.

[43] See judgment of 9 November 2023, *Staatsanwaltschaft Aachen* (C-819/21, EU:C:2023:841, paragraph 39).

75. An interpretation to the contrary would mean that the executing Member State could acquire the competence to enforce the sentence even though the Member State in which that sentence was handed down has not waived its right to exercise that competence, as demonstrated by the fact that a European arrest warrant has been issued for the purposes of enforcing that sentence. This would run counter to the principle of mutual trust, under which, primarily, in such a situation, the executing Member State is to execute the European arrest warrant. As the Commission stated at the hearing, as an exception to the principle of surrender and in the light of the optional nature of the ground for non-execution for which it provides, Article 4(6) of Framework Decision 2002/584 establishes not a right to transfer for the convicted person but merely a possibility. That possibility may be applied only if certain conditions are satisfied.

76. Thus, exemption from the framework laid down in Framework Decision 2008/909 is impossible because, regardless of the circumstances in which the recognition of a convicting judgment in criminal matters is envisaged, a fair balance which protects the rights of the convicting Member State can be struck only if the rules laid down in that framework decision are observed.

77. In the context of this case, it is established that the procedure and the conditions laid down in Framework Decision 2008/909 with a view to the recognition and enforcement of the judgment relating to C.J. have not been observed. The Italian judicial authorities refused to execute the European arrest warrant issued in respect of C.J. whilst at the same time recognising the convicting judgment and ordering its enforcement in Italy, even though the Romanian judicial authorities had made known their opposition to such recognition and enforcement outside the territory of Romania.

78. The Italian judicial authorities did not therefore act in accordance with the principle of mutual recognition, to which concrete expression is given in Framework Decision 2008/909, and cannot therefore rely on that principle vis-à-vis the issuing Member State. The latter thus retains the right to enforce the judgment at issue on its territory. While Article 22(1) of Framework Decision 2008/909 does provide that that Member State can no longer enforce the sentence where its enforcement has begun on the territory of the executing Member State, that sentence must still have been enforced in accordance with the rules laid down in that framework decision. That is not the case where a judgment in criminal matters has been recognised contrary to the procedure and the conditions laid down in that framework decision and, in particular, without the judgment together with the certificate provided for in that framework decision having been notified by the issuing Member State. To accept, in such a situation, that the issuing Member State can be denied its competence to enforce that sentence because enforcement of the sentence has begun in the executing Member State would open the door to circumvention of the rules laid down in Framework Decision 2008/909.

79. I would add that, even if the judgment together with the certificate provided for in that framework decision had been forwarded, this raises the question as to whether a national writ of enforcement of the sentence with concurrent suspension, in the form of house arrest, pending a decision by the Italian judicial authorities on an alternative measure to imprisonment, can be regarded as the beginning of the enforcement of that sentence for the purposes of Article 22(1) of that framework decision. However, there is in my view no need to deal with that aspect in the present case because, in any event, the procedure and the conditions laid down in that

framework decision have not been observed. [44]

80. Furthermore, since the decision of the executing judicial authority to refuse to execute the European arrest warrant issued in respect of C.J. is inconsistent with EU law, the issuing judicial authority may pursue the procedure for the surrender of that person by maintaining that warrant or indeed by issuing a new one, with a view to promoting the attainment of the objective of combatting impunity pursued by Framework Decision 2002/584. [45] In other words, the European arrest warrant in question cannot be regarded as being redundant and having exhausted its effects. In addition, the judgment handed down by the issuing Member State, upon which that warrant is based, and to which Article 8(1)(c) of Framework Decision 2002/584 refers, remains enforceable. As the Romanian Government indicated at the hearing, once the surrender has been carried out, it will be for the issuing Member State to take account, where appropriate, of Article 26(1) of that framework decision. As the Court has already held, that provision, in so far as it requires account to be taken of any period during which the person sentenced was detained in the executing Member State, ensures that that person is not required to serve a period of detention the total length of which – both in the executing Member State and in the issuing Member State – would ultimately exceed the length of the custodial sentence imposed on him or her in the issuing Member State. [46]

IV. Conclusion

81. In the light of the foregoing considerations, I propose that the Court answer the first three questions referred for by the Curtea de Apel București (Court of Appeal, Bucharest, Romania) as follows:

Article 4(6) and Article 8(1)(c) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States and Article 4(2) and (5), Article 8(1), Article 22(1) and Article 25 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union

must be interpreted as meaning that a judicial authority cannot refuse to execute a European arrest warrant issued for the purposes of enforcing a custodial sentence by relying on the ground for optional non-execution provided for in the first of those provisions, where the convicting judgment is recognised and enforced contrary to the procedure and the conditions laid down in Framework Decision 2008/909. In such circumstances, the issuing Member State retains the right to enforce that sentence and it falls to the executing judicial authority to execute the European arrest warrant by surrendering the requested person to that Member State.

[44] I note, in this regard, that the case of *Fira* (C-215/24) raises, inter alia, the question of whether, after refusing to execute a European arrest warrant for the purposes of executing a custodial sentence, pursuant to Article 4(6) of Framework Decision 2002/584, the executing Member State can suspend the enforcement of that sentence.

[45] See, to that effect, judgment of 31 January 2023, *Puig Gordi and Others* (C-158/21, EU:C:2023:57, paragraph 141).

[46] See, in the regard, judgment of 28 July 2016, *JZ* (C-294/16 PPU, EU:C:2016:610, paragraph 43).