



## Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

24 May 2016\*

(Request for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — Framework Decision 2002/584/JHA — European arrest warrant — Article 4a(1) — Surrender procedures between Member States — Conditions of execution — Reasons for optional non-execution — Exceptions — Mandatory execution — Sentence handed down in absentia — Concepts of ‘summons in person’ and ‘official notification by other means — Autonomous concepts of EU law)

In Case C-108/16 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 24 February 2016, received at the Court on the same day, in the proceedings relating to the execution of a European arrest warrant issued against

**Paweł Dworzecki,**

THE COURT (Fourth Chamber),

composed of T. von Danwitz (Rapporteur), President of the Chamber, A. Arabadjiev, C. Lycourgos, E. Juhász and C. Vajda, Judges,

Advocate General: M. Bobek,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 14 April 2016,

after considering the observations submitted on behalf of:

- Paweł Dworzecki, by J. Dobosz and A. de Boon, advocaten,
- the Netherlands Government, by M. Bulterman, M. Noort and B. Koopman, acting as Agents,
- the Polish Government, by J. Sawicka and M. Pawlicka, acting as Agents,
- the United Kingdom Government, by V. Kaye, acting as Agent, and by J. Holmes, Barrister,
- the European Commission, by R. Troosters and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 11 May 2016,

gives the following

\* Language of the case: Dutch.

## Judgment

- 1 The 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 This request was submitted in the context of proceedings relating to the execution, in the Netherlands, of a European arrest warrant issued by the Sąd Okręgowy w Zielonej Górze (Regional Court, Zielona Góra, Poland) against Mr Paweł Dworzecki.

### Legal context

#### *EU law*

- 3 Recitals 5 and 7 of Framework Decision 2002/584 are worded as follows:

'(5) ... the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. ...

...

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

- 4 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 amending the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [EU].'

- 5 Framework Decision 2009/299 sets out the grounds for refusing to execute a European arrest warrant where the person concerned did not appear in person at his trial. Recitals 1, 2, 4, 6 to 8 and 14 of that framework decision state:

'(1) The right of an accused person to appear in person at the trial is included in the right to a fair trial provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights. The Court has

also declared that the right of the accused person to appear in person at the trial is not absolute and that under certain conditions the accused person may, of his or her own free will, expressly or tacitly but unequivocally, waive that right.

- (2) The various Framework Decisions implementing the principle of mutual recognition of final judicial decisions do not deal consistently with the issue of decisions rendered following a trial at which the person concerned did not appear in person. This diversity could complicate the work of the practitioner and hamper judicial cooperation.

...

- (4) It is therefore necessary to provide clear and common grounds for non-recognition of decisions rendered following a trial at which the person concerned did not appear in person. This Framework Decision is aimed at refining the definition of such common grounds allowing the executing authority to execute the decision despite the absence of the person at the trial, while fully respecting the person's right of defence. This Framework Decision is not designed to regulate the forms and methods, including procedural requirements, that are used to achieve the results specified in this Framework Decision, which are a matter for the national laws of the Member States.

...

- (6) The provisions of this Framework Decision amending other Framework Decisions set conditions under which the recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused. These are alternative conditions; when one of the conditions is satisfied, the issuing authority, by completing the corresponding section of the European arrest warrant or of the relevant certificate under the other Framework Decisions, gives the assurance that the requirements have been or will be met, which should be sufficient for the purpose of the execution of the decision on the basis of the principle of mutual recognition.
- (7) The recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused if either he or she was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision, or if he or she actually received, by other means, 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. In this context, it is understood that the person should have received such information "in due time", meaning sufficiently in time to allow him or her to participate in the trial and to effectively exercise his or her right of defence.
- (8) The right to a fair trial of an accused person is guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, as interpreted by the European Court of Human Rights. This right includes the right of the person concerned to appear in person at the trial. In order to exercise this right, the person concerned needs to be aware of the scheduled trial. Under this Framework Decision, the person's awareness of the trial should be ensured by each Member State in accordance with its national law, it being understood that this must comply with the requirements of that Convention. In accordance with the case law of the European Court of Human Rights, when considering whether the way in which the information is provided is sufficient to ensure the person's awareness of the trial, particular attention could, where appropriate, also be paid to the diligence exercised by the person concerned in order to receive information addressed to him or her.

...

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

- 6 Article 4a(1) of Framework Decision 2002/584 was inserted by Article 2 of Framework Decision 2009/299 and is entitled ‘Decisions rendered following a trial at which the person did not appear in person’. It is worded as follows:

‘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;

...’

*Netherlands law*

- 7 L’Overleveringswet (Law on surrender, ‘the OLW’) transposes Framework Decision 2002/584 into Netherlands law. Article 12 of that law is worded as follows:

‘Surrender shall not be authorised where the European arrest warrant is intended to execute a judgment when the accused did not appear in person at the trial resulting in that judgment, unless the European arrest warrant states that, in accordance with the procedural requirements of the issuing Member State:

- a) the accused was summoned in due time 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 the trial in such a manner that it was unequivocally established that he or she was aware of the scheduled trial and was informed that a decision may be handed down if he or she does not appear for the trial;

...’

- 8 Point D of Annex 2 to the OLW, entitled ‘Model of the European arrest warrant referred to in Article 2(2) of the OLW’, corresponds to point (d) of the Annex to Framework Decision 2002/584.

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

- 9 On 30 November 2015, the Rechtbank Amsterdam (District Court, Amsterdam) was requested by the officer van justitie bij de rechtbank (public prosecutor attached to that court) to execute a European arrest warrant issued on 4 February 2015 by the Sąd Okręgowy w Zielonej Górze (Regional Court, Zielona Góra, Poland).
- 10 That European arrest warrant seeks the arrest and surrender of Mr Dworzecki, a Polish national residing in The Hague (Netherlands), for the purpose of executing in Poland three custodial sentences of two years, eight months and six months respectively. The latter two sentences must still be executed in full, whereas, as regards the first sentence, seven months and twelve days remain to be served by Mr Dworzecki. The present request for a preliminary ruling concerns only surrender for the purpose of executing the second custodial sentence.
- 11 As regards the latter sentence, point D of the European arrest warrant states that Mr Dworzecki did not appear in person at the trial leading to the judgment in which the sentence was imposed. The issuing judicial authority therefore ticked point 1(b) in point D of the arrest warrant form, corresponding to point 3.1.b of the form annexed to Framework Decision 2002/584, applicable where ‘the person was not summoned in person but by other means actually received official information of the scheduled date and place of the trial which resulted in the decision, in such a manner that it was unequivocally established that he or she was aware of the scheduled trial, and was informed that a decision may be handed down if he or she does not appear for the trial’.
- 12 By way of information about how the relevant condition has been satisfied, which must be stated under point 4 of point D of that form, the European arrest warrant states the following, in English:

‘The summons was sent to the address which Mr Paweł Dworzecki had indicated for service of process and it was collected by an adult occupant at this address, Mr Paweł Dworzecki’s grandfather — pursuant to Article 132 of the Code of Criminal Procedure, which states that “in the event of the addressee’s absence from home, the process is to be served on an adult resident of the addressee’s household — if also absent, the process can be served on the landlord or the caretaker or the village chief — on condition they undertake to pass the process on to the addressee”. A copy of the judgment was also sent to the same address and collected by an adult occupant. Besides, Mr Paweł Dworzecki had pleaded guilty and accepted in advance the punishment suggested by the prosecutor.’
- 13 The referring court observes that it has already interpreted the Netherlands law transposing Article 4a(1) of Framework Decision 2002/584 as meaning that examination of compliance with the conditions laid down in points (a) to (d) of that provision must take account of the law of the issuing Member State. Thus, in particular, where the summons was handed to a member of the household of the requested person, the referring court did not apply the ground for non-execution provided for in Article 12 of the OLV.
- 14 The referring court is uncertain, however, whether such an interpretation of national law is consistent with Article 4a(1) of Framework Decision 2002/584. It considers that the EU legislature, by the expression ‘in accordance with further procedural requirements defined in the national law of the issuing Member State’, which precedes the list of parts (a) to (d) of Article 4a(1) of Framework Decision 2002/584, intended, in particular by the qualifier ‘further’, to make clear that Framework Decision 2009/299 were not designed to harmonise the laws of the Member States on criminal proceedings as regards judgments delivered *in absentia* in general, and the method of issuing a summons in particular, but only to lay down common grounds for refusal as regards judgments delivered *in absentia* in criminal matters. It follows that the expressions in points (a) to (d) of Article 4a(1) of Framework Decision 2002/584 constitute autonomous concepts of EU law.

15 As regards the interpretation of those concepts, the referring court is of the view that the conditions set out in point (a) of Article 4a(1) of Framework Decision 2002/584 are not satisfied in the present case, since it is not established that official information relating to the date and place of the trial was actually received by Mr Dworzecki.

16 In addition, the referring court states that the interpretation of Article 4a(1) of Framework Decision 2002/584 which it proposes may be stricter than is required under the case-law of the European Court of Human Rights on Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950. That Court, in particular in §§ 99 and 101 of its judgment of 1 March 2006 in *Sejdovic v. Italy* (CE:ECHR:2006:0301JUD005658100), requires only that the accused had 'sufficient knowledge of his prosecution and of the charges against him'.

17 It was in those circumstances that the Rechtbank Amsterdam (District Court, Amsterdam) decided to stay proceedings and to refer to the Court the following questions for a preliminary ruling:

'1. Are the following concepts, used in Article 4a(1)(a) of Framework Decision 2002/584/JHA,

— "in due time ... was summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision"

and

— "in due time ... 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"

autonomous concepts of EU law?

2 If so:

(a) how should those autonomous concepts generally be interpreted; and  
(b) does a case such as the present, which is characterised by the facts that:

— according to the European arrest warrant, the summons was served, at the address of the requested person, on an adult resident of the household, who undertook to hand the summons over to the requested person;

— it is not clear from the European arrest warrant whether and when that resident actually handed the summons over to the requested person;

— it cannot be inferred from the statement which the requested person made at the hearing before the referring court that he was — in due time — aware of the date and place of the scheduled trial,

fall under one of the two autonomous concepts referred to in the first question?'

### **The urgent procedure**

18 The referring court has requested that the present reference for a preliminary ruling be dealt with under the urgent procedure provided for in Article 107 of the Court's Rules of Procedure.

19 In support of that request, the referring court relies, in particular, on the fact that Mr Dworzecki is currently deprived of his freedom pending his actual surrender to the Republic of Poland.

- 20 The referring court explains, moreover, that the Court's answer to the questions referred for a preliminary ruling would have a direct and decisive impact on the duration of Mr Dworzecki's detention in the Netherlands, in so far as, in the absence of an answer from the Court, it would be unable to determine whether Mr Dworzecki should be surrendered in respect of all of the judgments referred to in the European arrest warrant.
- 21 It must be observed, in the first place, that this request for a preliminary ruling concerns the interpretation of Framework Decision 2002/584, which is within the fields covered by Part Three, Title V, of the FEU Treaty, relating to the area of freedom, security and justice. It may therefore be dealt with under the urgent preliminary ruling procedure.
- 22 In the second place, as regards the test for urgency, it is necessary, according to the case-law of the Court, to take into consideration the fact that the person involved in the main proceedings is currently deprived of his liberty and that the question as to whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings (see, to that effect, judgment of 16 July 2015 in *Lanigan*, C-237/15 PPU, EU:C:2015:474, paragraph 24). In addition, the situation of the person concerned must be assessed as it existed at the time when consideration was given to whether the request for a preliminary ruling should be dealt with under the urgent procedure (see, to that effect, judgment of 15 February 2016 in *N.*, C-601/15 PPU, EU:C:2016:84, paragraph 40).
- 23 In the present case, it is common ground that at that time Mr Dworzecki was deprived of his liberty. Furthermore, the question as to whether he may continue to be held in custody depends on the outcome of the dispute in the main proceedings, as the custody measure made against him was ordered, according to the explanations provided by the referring court, in the context of the execution of the European arrest warrant issued against him.
- 24 In those circumstances, on 10 March 2016 the Fourth Chamber of the Court of Justice, acting on a proposal from the Judge- Rapporteur and after hearing the Advocate General, decided to accede to the referring court's request that the present request for a preliminary ruling be dealt with under the urgent procedure.

### **The questions for a preliminary ruling**

#### *First question*

- 25 By its first question, the referring court asks, essentially, whether Article 4a(1)(a)(i) of Framework Decision 2002/584 must be interpreted as meaning that the expressions 'summoned in person and thereby informed of the scheduled date and place of the trial which resulted in the decision' and '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' in that provision are autonomous concepts of EU law.
- 26 It should be recalled, as a preliminary point, that the purpose of the Framework Decision, as is apparent in particular from Article 1(1) and (2), and likewise from recitals 5 and 7, thereof, is to replace the multilateral system of extradition based on the European Convention on Extradition of 13 December 1957 with a system of surrender between judicial authorities of convicted or suspected persons for the purpose of executing judgments or conducting prosecutions, that system of surrender being based on the principle of mutual recognition (judgment of 5 April 2016 in *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 75 and the case-law cited).

- 27 Framework Decision 2002/584 thus seeks, by the establishment of a new simplified and more effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the objective set for the European Union to become an area of freedom, security and justice by basing itself on the high degree of confidence which should exist between the Member States (judgment of 5 April 2016 in *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 76 and the case-law cited).
- 28 The Court has consistently held that it follows from the need for a uniform application of EU law, and from the principle of equality, that the terms of a provision of EU law, which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope, must normally be given an autonomous and uniform interpretation throughout the European Union, which must take into account the context of that provision and the purpose of the legislation in question (judgments of 17 July 2008 in *Kozłowski*, C-66/08, EU:C:2008:437, paragraph 42, and of 15 October 2015 in *Axa Belgium*, C-494/14, EU:C:2015:692, paragraph 21 and the case-law cited).
- 29 In that regard, although Framework Decision 2002/584, and in particular Article 4a(1) thereof, contains several express references to the national law of the Member States, none of those references concerns the concepts set out in Article 4a(1)(a)(i).
- 30 In those circumstances, as all the interested parties who have submitted observations to the Court maintained, the expressions forming the subject-matter of the first question must be taken to be autonomous concepts of EU law and be interpreted uniformly throughout the territory of the European Union.
- 31 That interpretation is borne out, moreover, by the origins of Framework Decision 2009/299. As is apparent from recitals 2 and 4 of that framework decision, the EU legislature, having noted that the lack of uniform regulation of questions linked with decisions rendered following a trial in which the person concerned did not appear in person could, in particular, hamper judicial cooperation, considered it necessary to provide clear and common grounds for non-recognition of decisions rendered following a trial in which the person concerned had not appeared in person, but without regulating the forms and methods, including procedural requirements, which are a matter for the laws of the Member States, that are used to achieve the results specified in that framework decision.
- 32 It follows from the foregoing considerations that Article 4a(1)(a)(i) of Framework Directive 2002/584 must be interpreted as meaning that the expressions ‘summoned in person’ and ‘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’ in that provision constitute autonomous concepts of EU law and must be interpreted uniformly throughout the European Union.

### *Second question*

- 33 By its second question, the referring court seeks, in essence, to ascertain whether Article 4a(1)(a)(i) of Framework Decision 2002/584 must be interpreted as meaning that a summons, such as that at issue in the main proceedings, which was not served directly on the person concerned but was handed over, at the latter’s address, to an adult from that household who undertook to pass it on to the person concerned, although it cannot be determined from the European arrest warrant whether and, if so, when that adult actually passed that summons on to the person concerned, satisfies the conditions laid down in that provision.



- 34 Under Article 4a(1) of Framework Decision 2002/584, the executing judicial authority may refuse to execute a European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant states that the conditions set out in subparagraph (a), (b), (c) or (d) of paragraph 1 are satisfied.
- 35 It follows that the executing judicial authority is in principle required to execute a European arrest warrant, notwithstanding the person's failure to appear in person at the trial resulting in the decision, if the conditions set out in Article 4a(1)(a), (b), (c) or (d) of Framework Decision 2002/584 are satisfied.
- 36 As regards, more particularly, Article 4a(1)(a)(i) of that framework decision, the executing judicial authority is under such an obligation where the person 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'.
- 37 In the light of the objectives pursued by Framework Decision 2009/299, as set out in paragraph 31 of this judgment, it must be considered that the methods of effecting service of the summons provided for in Article 4a(1)(a)(i) of Framework Decision 2002/584, by their precise and common nature, are designed to ensure a high level of protection and to allow the executing authority to surrender the person concerned notwithstanding his failure to attend the trial which led to his conviction, while fully respecting the rights of the defence.
- 38 In fact, compliance with the conditions for a summons referred to in Article 4a(1)(a)(i) of Framework Decision 2002/584 is apt to ensure that the person concerned was informed in good time of the date and place of his trial and thus allows the executing authority to conclude that the rights of the defence were respected.
- 39 It is in the light of those considerations that the conditions laid down in that Article 4a(1)(a)(i) of Framework Decision 2002/584 should be interpreted.
- 40 The Netherlands, Polish and United Kingdom Governments submit, in essence, that a summons such as that at issue in the main proceedings comes within the second example scenario described in Article 4a(1)(a)(i) of Framework Decision 2002/584. In the light of the objective of Framework Decision 2002/584, they maintain that when a summons, in the absence of the person to whom it is addressed, was handed over to an adult in the addressee's household, who undertook to pass it on to the addressee, it may be concluded that the person concerned was thus informed to the requisite legal standard of the date and place of his trial. The United Kingdom Government, in particular, refers in that regard to recital 8 of Framework Decision 2009/299, according to which, in accordance with the case-law of the European Court of Human Rights, particular attention could, where appropriate, be paid to the diligence exercised by the person concerned in order to receive information addressed to him or her.
- 41 Conversely, in the Commission's submission, a summons such as that at issue in the main proceedings does not satisfy the conditions set out in Article 4a(1)(a)(i) of Framework Decision 2002/584. Although it does not preclude the possibility that the information relating to the date and place of his trial may be validly transmitted indirectly, through third parties, to the person summoned, provided that it is established that, as required by that provision, he was actually aware of that information, the fact nonetheless remains that the issuing judicial authority must provide evidence showing that the person concerned was actually aware of that information. Accordingly, where service based on a legal fiction is taken into account and the issuing judicial authority provides no further evidence capable of showing that that person was actually informed by that authority of the date and place of his trial, as appears to be the case in this instance, such service cannot be regarded as consistent with that provision.

- 42 In that regard, it should be borne in mind that, although the right of the accused to appear in person at his trial is an essential component of the right to a fair trial, that requirement is not absolute. The accused may waive that right of his own free will, either expressly or tacitly, provided that the waiver is established in an unequivocal manner, is attended by minimum safeguards commensurate to the gravity of the criminal offence with which the accused is charged and does not run counter to any important public interest. In particular, breach of the right to a fair trial has not been established, even where the accused did not appear in person, if he was informed of the date and place of the trial or was defended by a legal counsellor whom he had instructed to defend him (see, to that effect, judgment of 26 February 2013 in *Melloni*, C-399/11, EU:C:2013:107, paragraph 49).
- 43 The right to a fair trial enjoyed by a person summoned to appear before a criminal court thus requires that he has been informed in such a way as to allow him to organise his defence effectively. Article 4a(1)(a)(i) of Framework Decision 2002/584 is designed to achieve that objective, but does not constitute an exhaustive list of the means that can be used to that end. In fact, in addition to a summons in person, the conditions set out in that provision are satisfied if the person concerned was actually given official information of the date and place fixed for his trial by ‘other means’.
- 44 In that regard, as stated in recital 4 of Framework Decision 2009/299, that framework decision is not designed to regulate, at EU level, the forms and methods that are used by the competent authorities in the context of the surrender procedure, including the procedural requirements applicable according to the law of the Member State concerned.
- 45 The purpose of Article 4a(1)(a)(i) of Framework Decision 2002/584 referred to in paragraph 43 of this judgment is necessarily achieved by a summons ‘in person’, as referred to in the first part of that provision, as such a method of service ensures that the person concerned has himself received the summons and, accordingly, has been informed of the date and place of his trial.
- 46 As regards the conditions set out in the second part of that provision, they are designed to achieve the same high level of protection of the person summoned, by ensuring that he has the information relating to the date and place of his trial.
- 47 Regard being had, in particular, to the wording of Article 4a(1)(a)(i) of Framework Decision 2002/584, which states that it must be unequivocally established that the person concerned ‘was aware of the scheduled trial’, the fact that the summons was handed over to a third party who undertook to pass it on to the person concerned, whether or not that third party belonged to the household of the person concerned, cannot in itself satisfy those requirements. Such a method of service does not allow it to be unequivocally established either that the person concerned ‘actually’ received the information relating to the date and place of his trial or, where appropriate, the precise time when that information was received.
- 48 Admittedly, as the Commission has observed, it cannot, in principle, be precluded that handing a summons over to a third party satisfies the requirements of Article 4a(1)(a)(i) of Framework Decision 2002/584. In order to achieve the objective referred to in that provision, however, it must be unequivocally established that that third party actually passed the summons on to the person concerned.
- 49 In that regard, it is for the issuing judicial authority to indicate in the European arrest warrant the evidence on the basis of which it found that the person concerned actually received official information relating to the date and place of his trial. When the executing judicial authority ensures that the conditions set out in Article 4a(1)(a) of Framework Decision 2002/584 are satisfied, it may also rely on other evidence, including circumstances of which it became aware when hearing the person concerned.

- 50 Furthermore, as the scenarios described in Article 4a(1)(a)(i) of Framework Decision 2002/584 were conceived as exceptions to an optional ground for non-recognition, the executing judicial authority may in any event, even after having found that they did not cover the situation at issue, take into account other circumstances that enable it to be assured that the surrender of the person concerned does not mean a breach of his rights of defence.
- 51 In the context of such an assessment of the optional ground for non-recognition, the executing judicial authority may thus have regard to the conduct of the person concerned. It is at this stage of the surrender procedure that particular attention might be paid to any manifest lack of diligence on the part of the person concerned, notably where it transpires that he sought to avoid service of the information addressed to him.
- 52 Likewise, the executing judicial authority may also take into account the fact, to which the Polish Government referred at the hearing before the Court, that the national law of the issuing Member State in any event affords the person concerned the right to request a retrial, where, as in this instance, service of the summons is deemed to be effected when the summons is handed over to an adult member of the household of the person concerned.
- 53 In any event, the executing judicial authority has the option, pursuant to Article 15(2) of Framework Decision 2002/584, of requesting supplementary information, as a matter of urgency, if it finds that the information communicated by the issuing Member State is insufficient to allow it to decide on surrender.
- 54 In the light of all of the foregoing considerations, the answer to the second question should be that Article 4a(1)(a)(i) of Framework Decision 2002/584 must be interpreted as meaning that a summons, such as that at issue in the main proceedings, which was not served directly on the person concerned but was handed over, at the latter's address, to an adult belonging to that household who undertook to pass it on to him, when it cannot be ascertained from the European arrest warrant whether and, if so, when that adult actually passed that summons on to the person concerned, does not in itself satisfy the conditions set out in that provision.

### **Costs**

- 55 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

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

- 1. Article 4a(1)(a)(i) of Council Framework Directive 2002/584/JHA of 13 February 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 expressions 'summoned in person' and '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' in that provision constitute autonomous concepts of EU law and must be interpreted uniformly throughout the European Union.**
- 2. Article 4a(1)(a)(i) of Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that a summons, such as that at issue in the main proceedings, which was not served directly on the person concerned but was handed over, at the latter's address, to an adult belonging to that household who undertook to pass it on to**

**him, when it cannot be ascertained from the European arrest warrant whether and, if so, when that adult actually passed that summons on to the person concerned, does not in itself satisfy the conditions set out in that provision.**

[Signatures]