Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

23 March 2023 *

(Reference for a preliminary ruling – Police and judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Surrender procedure between the Member States – Conditions for execution – Grounds for optional non-execution – Article 4a(1) – Warrant issued for the purpose of executing a custodial sentence – Concept of 'trial resulting in the decision' – Scope – First conviction, with a suspension – Second conviction – Absence of the person concerned at the trial – Revocation of the suspension – Rights of the defence – Convention for the Protection of Human Rights and Fundamental Freedoms – Article 6 – Charter of Fundamental Rights of the European Union – Articles 47 and 48 – Infringement – Consequences)

In Joined Cases C-514/21 and C-515/21,

REQUESTS for a preliminary ruling under Article 267 TFEU from the Court of Appeal (Ireland), made by decisions of 30 July 2021, received at the Court on 20 August 2021, in the proceedings relating to the execution of two European arrest warrants issued against

LU (C-514/21),

PH (C-515/21),

intervener:

Minister for Justice and Equality,

THE COURT (Fourth Chamber),

composed of C. Lycourgos (Rapporteur), President of the Chamber, L.S. Rossi, J.-C. Bonichot, S. Rodin and O. Spineanu-Matei, Judges,

Advocate General: T. Ćapeta,

Registrar: M.-A. Gaudissart, Deputy Registrar,

having regard to the written procedure and further to the hearing on 13 July 2022,

after considering the observations submitted on behalf of:

– LU, by P. Carroll, Senior Counsel, T. Hughes, Solicitor, and K. Kelly, Barrister-at-Law,

* Language of the case: English.

– PH, by E. Lawlor, Barrister-at-Law, R. Munro, Senior Counsel, and D. Rudden, Solicitor,

– the Minister for Justice and Equality and Ireland, by M. Browne, A. Joyce and C. McMahon, acting as Agents, and by R. Kennedy, Senior Counsel, and J. Williams, Barrister-at-Law,

– the Polish Government, by B. Majczyna, acting as Agent,

– the European Commission, by S. Grünheid and J. Tomkin, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 27 October 2022,

gives the following

Judgment

1 These requests for a preliminary ruling concern the interpretation of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union ('the Charter') and of Article 4a of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) ('Framework Decision 2002/584').

2 The requests have been made in the context of the execution, in Ireland, of two European arrest warrants issued, respectively, by the Hungarian judicial authorities against LU and by the Polish judicial authorities against PH for the purpose of executing custodial sentences in the issuing Member States.

Legal context

European Union law

Framework Decision 2002/584

3 According to recital 6 of Framework Decision 2002/584:

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

4 Article 1 of that framework decision provides:

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

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

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.'

5 Article 2(1) of that framework decision is worded as follows:

'A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.'

6 Article 3 of the framework decision provides:

'The judicial authority of the Member State of execution (hereinafter "executing judicial authority") shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;

2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.'

7 Article 4 of Framework Decision 2002/584 states as follows:

'The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;

2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;

3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;

4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;

5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;

6. 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 a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;

7. where the European arrest warrant relates to offences which:
   (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
   (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.'

8 Article 4a(1) of Framework Decision 2002/584, introduced by Framework Decision 2009/299, provides:

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

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

   and

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

or

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

or

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

or

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

or

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

and

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

9 Article 5 of that framework decision provides:

'The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

[1.] if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;

[2.] where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.'

10 Article 8 that framework decision is worded as follows:

'1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

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

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

(c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;

(d) the nature and legal classification of the offence, particularly in respect of Article 2;

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

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

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

(2) The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.'

11 Article 15 of that framework decision provides:

'1. The executing judicial authority shall decide, within the time limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.'

Framework Decision 2009/299

12 Recitals 1 and 15 of Framework Decision 2009/299 state:

'(1) The right of an accused person to appear in person at the trial is included in the right to a fair trial provided for in Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms [signed in Rome on 4 November 1950 ("the ECHR")], as interpreted by the European Court of Human Rights. The Court has also declared that the right of the accused person to appear in person at the trial is not absolute and that under certain conditions the accused person may, of his or her own free will, expressly or tacitly but unequivocally, waive that right.

…

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

13 Article 1(1) of that framework decision provides:

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

Irish law

14 Section 37(1) of the European Arrest Warrant Act 2003, in the version in force at the material time ('the European Arrest Warrant Act 2003'), provides:

'A person shall not be surrendered under this Act if—

(a) his or her surrender would be incompatible with the State's obligations under—
(i) the [ECHR], or
(ii) the Protocols to the [ECHR],

…'

15 Under Section 45 of that act:

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

Polish law

16 Article 75(1) of the kodeks karny (Criminal Code) of 6 June 1997 (Dz. U. No 88, item 553), in the version applicable to the dispute in the main proceedings, provides:

'The court shall order a sentence to be carried out if, during the probation period, the convicted person has committed an intentional offence similar to that for which he or she was validly and finally sentenced to a term of imprisonment.'

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

Case C-514/21

17 On 10 October 2006, following a trial at which LU appeared in person, the Encsi városi bíróság (Municipal Court, Encs, Hungary) convicted LU of four offences committed in 2005.

18 On 19 April 2007, the Borsod Abaúj Zemplén Megyei Bíróság (County Court, Borsod-Abaúj-Zemplén, Hungary), before which LU – who was duly summoned to appear – was represented by a lawyer, upheld that judgment and sentenced LU to one year's imprisonment. However, execution of that sentence was suspended for a two-year probation period. Since he had spent one month in pre-trial detention, LU had a maximum of 11 months' imprisonment left to serve.

19 On 16 December 2010, the Encsi városi bíróság (Municipal Court, Encs) imposed a fine on LU for failure to pay child support in 2008, that is to say during the probation period applicable to the suspended sentence imposed on him previously. LU was present at the hearings held on 15 November and 13 December 2010 but was not present when that court gave its decision.

20 In June 2012, the Miskolci Törvényszék (High Court, Miskolc, Hungary) varied that decision, sentencing LU to five months' imprisonment and to a one-year ban from public affairs. That court also ordered the enforcement of the sentence imposed on him for the offences committed in 2005. It is not established whether that court of appeal was required to order the enforcement of that sentence or whether it had a margin of discretion in that regard.

21 LU was summoned to appear before the Miskolci Törvényszék (High Court, Miskolc). Although that summons was not received by LU, it was deemed duly served under Hungarian law. LU was not present at the hearing before that court, but the court appointed a lawyer to represent him. That lawyer attended that hearing and subsequently, first, filed a motion for a retrial, which was dismissed, and, second, submitted an appeal for clemency on LU's behalf.

22 In September 2012, a European arrest warrant was issued by the Hungarian authorities requesting LU's surrender, who is in Ireland, for the purpose of serving the sentences imposed on him in respect of both the offences committed in 2005 and the offence of failing to pay child support. The High Court (Ireland) refused to execute that warrant.

23 On 28 October 2015, at LU's request, the Miskolci Törvényszék (High Court, Miskolc) instructed the Encsi járásbíróság (District Court, Encs, Hungary [formerly the Encsi városi bíróság (Municipal Court, Encs)]) to consider whether a retrial should be initiated in respect of the offences committed in 2005. On 24 October 2016, the latter court rejected the motion for a retrial. LU did not appear before the Encsi járásbíróság (District Court, Encs [formerly the Encsi városi bíróság (Municipal Court, Encs)]) but he was represented by a lawyer he had appointed.

24 LU challenged that decision before the Miskolci Törvényszék (High Court, Miskolc), which held a hearing on 20 March 2017, at which LU did not appear but was represented by a lawyer he had appointed. On 29 March 2017, the court dismissed the motion for a retrial.

25 As a result of that decision, the sentence of imprisonment imposed on LU following his conviction for the offences committed in 2005 – which, in June 2012, the Miskolci Törvényszék (High Court, Miskolc) had ordered to be enforced – was again enforceable as a matter of Hungarian law.

26 On 27 July 2017, a second European arrest warrant, which is the one at issue in the main proceedings, was issued by the Hungarian authorities for LU to serve the remaining 11 months of the term of imprisonment to which he had been sentenced for the four offences committed in 2005.

27 By decision of 15 December 2020, the High Court ordered LU's surrender on the basis of that warrant. Ruling on an appeal brought by LU, the Court of Appeal (Ireland), that is to say the referring court, notes, in the first place, that LU did not appear at the trial leading, first, to his conviction by the Miskolci Törvényszék (High Court, Miskolc) for failure to pay child support and, second, to the enforcement order in respect of the first custodial sentence, which is the subject of the European arrest warrant at issue in the main proceedings. In so far as LU does not appear to have waived his right to be present at those proceedings, that court considers that those proceedings were not conducted in compliance with Article 6 of the ECHR.

28 The referring court is also inclined to take the view that, if the proceedings before the Miskolci Törvényszék (High Court, Miskolc) are to be regarded as part of the 'trial resulting in the decision', within the meaning of Article 4a of Framework Decision 2002/584, neither the requirements of that article nor those of Section 45 of the European Arrest Warrant Act 2003 are satisfied.

29 In the second place, the referring court submits, however, first, that the enforcement order in respect of the first custodial sentence imposed on LU may be regarded as being no more than a decision relating to the execution or application of that sentence, within the meaning of the judgment of 22 December 2017, *Ardic* (C-571/17 PPU, EU:C:2017:1026), and, second, that neither that decision nor LU's conviction for failure to pay child support had the purpose or effect of modifying the nature or quantum of the custodial sentence imposed on him in respect of the offences committed in 2005, with the result that they both fall outside the scope of Article 4a of Framework Decision 2002/584.

30 That said, that court considers that the case at issue in the main proceedings differs in several respects from the case which gave rise to the judgment of 22 December 2017, *Ardic* (C-571/17 PPU, EU:C:2017:1026).

31 In the present case, first of all, according to that court, LU's second conviction appears to have had a decisive effect in triggering the revocation of the suspension of the custodial sentence previously imposed on LU. Next, it argues that, in the event that he is surrendered, LU will have no right to be heard *ex post*. Lastly, the circumstances of the case at issue in the main proceedings are said to have a much closer nexus to Article 6 of the ECHR and to Article 47 and Article 48(2) of the Charter than the case which gave rise to the judgment of 22 December 2017, *Ardic* (C-571/17 PPU, EU:C:2017:1026). The custodial sentence imposed for the offences he committed in 2005 is enforceable only because of LU's *in absentia* conviction and sentencing for failure to pay child support and there is no doubt that Article 6 of the ECHR applies to the proceedings leading to such a conviction *in absentia*.

32 In addition, the referring court notes that, since Article 4a of Framework Decision 2002/584 and Section 45 of the European Arrest Warrant Act 2003 preclude LU from being surrendered in order for him to serve the sentence imposed on him *in absentia* for failure to pay child support, it would seem anomalous if he could be surrendered to the Hungarian authorities in order to serve the sentence imposed on him for the offences committed in 2005, when that sentence is enforceable only by reason of that *in absentia* conviction.

33 The referring court adds that the order of the Miskolci Törvényszék (High Court, Miskolc) revoking the suspension of the first custodial sentence could be regarded as being so closely connected to the conviction for failure to pay child support that a breach of Article 6(1) of the ECHR affecting that conviction must also affect that order.

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

‘(1) (a) Where the surrender of the requested person is sought for the purpose of serving a custodial sentence which was suspended *ab initio* but which was subsequently ordered to be enforced as a result of the conviction of the requested person for a further criminal offence, and where that enforcement order was made by the court that convicted and sentenced the requested person for that further criminal offence, are the proceedings leading to that subsequent conviction and enforcement order part of the “trial resulting in the decision” for the purposes of Article 4a(1) of [Framework Decision 2002/584]?

(b) Is it relevant to the answer 1(a) above whether the court that made the enforcement order was obliged to make that order as a matter of law or whether it had a discretion to make such an order?

(2) In the circumstances set out in question 1 above, is the executing judicial authority entitled to inquire into whether the proceedings leading to the subsequent conviction and enforcement order, which took place in the absence of the requested person, were conducted in compliance with Article 6 of the [ECHR] and, in particular, whether the absence of the requested person involved a violation of the rights of the defence and/or the requested person’s right to a fair trial?

(3) (a) In the circumstances set out in question 1 above, if the executing judicial authority is satisfied that the proceedings leading to the subsequent conviction and enforcement order were not conducted in compliance with Article 6 of the [ECHR] and, in particular, that the absence of the requested person involved a violation of the rights of the defence and/or of the requested person’s right to a fair trial, is the executing judicial authority entitled and/or obliged ([i]) to refuse surrender of the requested person on the basis that such surrender would be contrary to Article 6 of the [ECHR] and/or [Article] 47 and [Article] 48(2) of the [Charter] and/or ([ii]) to require the issuing judicial authority as a condition of surrender to provide a guarantee that the requested person will, upon surrender, be entitled to a retrial or appeal, in which they will have a right to participate and which allows for the merits of the case, including fresh evidence, to be re-examined which may lead to the original decision being reversed, in respect of the conviction leading to the enforcement order?

(b) For the purposes of question 3(a) above, is the applicable test whether the surrender of the requested person would breach the essence of their fundamental rights under Article 6 of the [ECHR] and/or [Article] 47 and [Article] 48(2) of the Charter and, if so, is the fact that the proceedings leading to the subsequent conviction and enforcement order were conducted *in absentia*, and that, in [the] event of his surrender, the requested person will not have a right to a retrial or appeal, sufficient to permit the executing judicial authority to conclude that surrender would breach the essence of those rights?’

Case C-515/21

35 On 29 May 2015, the Sąd Rejonowy dla Wrocławia-Śródmieścia (District Court, Wrocław-Śródmieście, Poland) sentenced PH, in his presence, to one year’s imprisonment for an offence committed in 2015. However, execution of that sentence was conditionally suspended for a probation period of five years. PH did not appeal against that conviction.

36 On 21 February 2017, PH was found guilty by the Sąd Rejonowy w Bydgoszczy (District Court, Bydgoszcz, Poland) of a second offence for which he was sentenced to 14 months' imprisonment. PH was unaware of the hearing before that court and did not appear at that hearing either in person or through a legal representative.

37 On 16 May 2017, the Sąd Rejonowy dla Wrocławia-Śródmieścia (District Court, Wrocław-Śródmieście) made an order pursuant to Article 75(1) of the Polish Criminal Code for the enforcement of the one-year term of imprisonment to which it had sentenced PH, on the ground that the latter had committed a second offence during his probation period. That court had no discretion in that respect.

38 PH was unaware of the proceedings brought before the Sąd Rejonowy dla Wrocławia-Śródmieścia (District Court, Wrocław-Śródmieście), those proceedings leading to the decision revoking the suspension of his first term of imprisonment, and he did not appear at the hearing on 16 May 2017 either in person or through a legal representative.

39 The period within which PH could appeal against his conviction for the second offence has now expired and, in the event that he is surrendered, PH will have no right to be heard, except in the context of a possible extraordinary legal remedy.

40 On 26 February 2019, the Sąd Rejonowy dla Wrocławia-Śródmieścia (District Court, Wrocław-Śródmieście) issued a European arrest warrant against PH, who is in Ireland, for the purpose of executing the one-year term of imprisonment imposed on him on 29 May 2015.

41 By decision of 16 November 2020, the High Court ordered PH's surrender on the basis of that warrant. PH brought an appeal against that decision before the Court of Appeal.

42 The Court of Appeal points out that the *in absentia* trial leading to PH's second conviction does not appear to comply with Article 6 of the ECHR or with Articles 47 and 48 of the Charter, since PH does not appear to have waived his right to be present at that trial.

43 In those circumstances, the Court of Appeal decided, for reasons similar to those set out in paragraphs 27 to 33 above, to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'(1) Where the surrender of the requested person is sought for the purpose of serving a custodial sentence which was suspended *ab initio* but which was subsequently ordered to be enforced as a result of the subsequent conviction of the requested person for a further criminal offence, in circumstances where the order for enforcement was mandatory by reason of that conviction, are the proceedings leading to that subsequent conviction and/or the proceedings leading to the making of the enforcement order part of the "trial resulting in the decision" for the purposes of Article 4a(l) of [Framework Decision 2002/584]?

(2) In the circumstances set out in question 1 above, is the executing judicial authority entitled and/or obliged to inquire into whether the proceedings leading to the subsequent conviction and/or the proceedings leading to the enforcement order, all of which were conducted in the absence of the requested person, were conducted in compliance with Article 6 of the [ECHR] and, in particular, whether the absence of the requested person from those proceedings involved a violation of the rights of the defence and/or of the requested person's right to a fair trial?

(3) (a) In the circumstances set out in question 1 above, if the executing judicial authority is satisfied that the proceedings leading to the subsequent conviction and enforcement order were not conducted in compliance with Article 6 of the [ECHR] and, in particular, that the absence of the requested person involved a violation of the rights of the defence and/or of the requested person's right to a fair trial, is the executing judicial authority entitled and/or obliged ([i]) to refuse surrender of the requested person on the basis that such surrender would be contrary to Article 6 of the [ECHR] and/or [Article] 47 and [Article] 48(2) of the [Charter] and/or ([ii]) to require the issuing judicial authority as a condition of surrender to provide a guarantee that the requested person will, upon surrender, be entitled to a retrial or appeal, in which they will have a right to participate and which allows for the merits of the case, including fresh evidence, to be re-examined which may lead to the original decision being reversed, in respect of the conviction leading to the enforcement order?

(b) For the purposes of question 3(a) above, is the applicable test whether the surrender of the requested person would breach the essence of their fundamental rights under Article 6 of the [ECHR] and/or [Article] 47 and [Article] 48(2) of the Charter and, if so, is the fact that the proceedings leading to the subsequent conviction and enforcement order were conducted *in absentia*, and that, in [the] event of his surrender, the requested person will not have a right to a retrial or appeal, sufficient to permit the executing judicial authority to conclude that surrender would breach the essence of those rights?'

44 By decision of the President of the Court of Justice of 20 September 2021, Cases C-514/21 and C-515/21 were joined for the purposes of the oral part of the procedure and the judgment.

Consideration of the questions referred

The first question

45 By its first question in Joined Cases C-514/21 and C-515/21, the referring court asks, in essence, whether Article 4a(1) of Framework Decision 2002/584, read in the light of Articles 47 and 48 of the Charter, must be interpreted as meaning that, where the suspension of a custodial sentence is revoked, on account of a new criminal conviction, and a European arrest warrant, for the purpose of executing that sentence, is issued, the decision, adopted *in absentia*, revoking such a suspension or the second criminal conviction, also pronounced *in absentia*, constitutes a 'decision' within the meaning of that provision.

46 In the first place, it must 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 (judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 67 and the case-law cited).

47 With that in mind, it follows from that framework decision, in particular from Article 1(2) thereof, that execution of the European arrest warrant constitutes the rule, whereas refusal to execute is intended to be an exception which must be interpreted strictly (judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 68 and the case-law cited).

48 In the second place, as is apparent from the very wording of Article 4a(1) of Framework Decision 2002/584, the executing judicial authority is entitled to refuse to execute the European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person did not appear in person at the trial resulting in the decision, unless the European arrest warrant indicates that the conditions set out, respectively, in subparagraphs (a) to (d) of that provision are met (judgment of 17 December 2020, *Generalstaatsanwaltschaft Hamburg*, C-416/20 PPU, EU:C:2020:1042, paragraph 38 and the case-law cited).

49 In that respect, it should be noted that Article 4a thus restricts the possibility of refusing to execute the European arrest warrant by listing, in a precise and uniform manner, the conditions under which the recognition and enforcement of a decision rendered following a trial at which the person concerned did not appear in person may not be refused (see, to that effect, judgment of 17 December 2020, *Generalstaatsanwaltschaft Hamburg*, C-416/20 PPU, EU:C:2020:1042, paragraphs 35 and 36 and the case-law cited).

50 Article 4a of Framework Decision 2002/584 thus seeks to guarantee a high level of protection and to allow the executing authority to surrender the person concerned despite that person's failure to attend the trial which led to his or her conviction, while fully respecting his or her rights of defence (judgment of 17 December 2020, *Generalstaatsanwaltschaft Hamburg*, C-416/20 PPU, EU:C:2020:1042, paragraph 39 and the case-law cited). More specifically, it is expressly stated in Article 1 of Framework Decision 2009/299, read in the light of recitals 1 and 15 thereof, that Article 4a was inserted into Framework Decision 2002/584 in order to protect the right of the accused person to appear in person at the trial, while improving mutual recognition of judicial decisions between Member States.

51 Article 4a must also be interpreted and applied in a manner consistent with the second and third paragraphs of Article 47 and with Article 48 of the Charter, which, as stated in the Explanations relating to the Charter, correspond to Article 6 of the ECHR. The Court must, accordingly, ensure that its interpretation of the second and third paragraphs of Article 47 and of Article 48 of the Charter ensures a level of protection which does not disregard that guaranteed by Article 6 of the ECHR, as interpreted by the European Court of Human Rights (judgment of 15 September 2022, *HN (Trial of an accused person removed from the territory)*, C-420/20, EU:C:2022:679, paragraph 55).

52 In the third place, it is apparent from the Court's case-law that the concept of 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, must be understood as referring to the proceeding that led to the judicial decision which finally sentenced the person whose surrender is sought in connection with the execution of a European arrest warrant (judgments of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraph 74, and of 22 December 2017, *Ardic*, C-571/17 PPU, EU:C:2017:1026, paragraph 64).

53 By contrast, a decision relating to the execution or application of a custodial sentence previously imposed does not constitute a 'decision', within the meaning of Article 4a(1), except where it affects the finding of guilt or where its purpose or effect is to modify either the nature or quantum of that sentence and the authority which adopted it enjoyed some discretion in that regard. It follows that a decision revoking the suspension of a custodial sentence on account of the breach by the person concerned of an objective condition attached to that suspension, such as the commission of a new offence during the probation period, does not fall within the scope of

Article 4a(1), since it leaves that sentence unchanged with regard to both its nature and its quantum (see, to that effect, judgment of 22 December 2017, *Ardic*, C-571/17 PPU, EU:C:2017:1026, paragraphs 77, 81, 82 and 88).

54 Furthermore, since the authority responsible for deciding on such a revocation is not called upon to re-examine the merits of the case that gave rise to the criminal conviction, the fact that that authority enjoys a margin of discretion is not relevant, as long as that margin of discretion does not allow it to modify either the quantum or the nature of the custodial sentence, as determined by the decision finally convicting the requested person (see, to that effect, judgment of 22 December 2017, *Ardic*, C-571/17 PPU, EU:C:2017:1026, paragraph 80).

55 That strict interpretation of the concept of 'trial resulting in the decision' within the meaning of Article 4a(1) of Framework Decision 2002/584 is, moreover, consistent with the general scheme of the regime established by that framework decision. As has been pointed out in paragraph 47 above, that provision is an exception to the rule requiring the executing judicial authority to surrender the requested person to the issuing Member State and must, therefore, be interpreted strictly.

56 Furthermore, such an interpretation is capable of best ensuring the objective pursued by that framework decision, which, as recalled in paragraph 46 above, is to facilitate and accelerate judicial cooperation between Member States on the basis of the principles of mutual trust and recognition, by avoiding conferring on the executing judicial authority a general function of reviewing all procedural decisions adopted in the issuing Member State (see, to that effect, judgments of 10 August 2017, *Tupikas*, C-270/17 PPU, EU:C:2017:628, paragraphs 87 and 88, and of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 88).

57 In that respect, it follows from settled case-law that Framework Decision 2002/584, read in the light of the provisions of the Charter, cannot be interpreted in such a way as to call into question the effectiveness of the system of judicial cooperation between the Member States, of which the European arrest warrant, as provided for by the EU legislature, constitutes one of the essential elements (judgment of 22 February 2022, *Openbaar Ministerie (Tribunal established by law in the issuing Member State)*, C-562/21 PPU et C-563/21 PPU, EU:C:2022:100, paragraph 47 and the case-law cited) and, moreover, that observance of the rights of the person whose surrender is requested falls primarily within the responsibility of the issuing Member State (see to that effect, inter alia, judgment of 23 January 2018, *Piotrowski*, C-367/16, EU:C:2018:27, paragraphs 49 and 50).

58 It is also important to note that such an interpretation of Article 4a(1) of Framework Decision 2002/584 is consistent with the case-law of the European Court of Human Rights. According to that case-law, first, proceedings concerning the manner of execution of sentences do not fall within the scope of Article 6 of the ECHR and, second, measures adopted by a court after the final sentence has been imposed or while it is being served can be regarded as 'sentences' for the purposes of that convention only if they may result in the redefinition or modification of the scope of the penalty initially imposed (see, inter alia, ECtHR, 3 April 2012, *Boulois v. Luxembourg*, CE:ECHR:2012:0403JUD003757504, § 87; ECtHR, 10 November 2015, *Çetin v. Turkey*, CE:ECHR:2015:1110DEC003285709, §§ 42 to 47; ECtHR, 12 November 2019, *Abedin v. United Kingdom*, CE:ECHR:2019:1112DEC005402616, §§ 29 to 37; ECtHR, 22 June 2021, *Ballıktaş Bingöllü*, CE:ECHR:2021:0622JUD007673012, § 48; and ECtHR, 10 November 2022, *Kupinskyy v. Ukraine*, CE:ECHR:2022:1110JUD000508418, §§ 47 to 52).

59 In the fourth place, it should be noted, first, that, unlike questions relating to the detailed rules for the execution or application of a sentence, a judicial decision convicting the person concerned falls within the criminal limb of Article 6 of the ECHR (see, to that effect, judgments of 10 August 2017, *Zdziaszek*, C-271/17 PPU, EU:C:2017:629, paragraph 85, and of 22 December 2017, *Ardic*, C-571/17 PPU, EU:C:2017:1026, paragraph 75 and the case-law cited).

60 Second, the right of an accused person to be present at the trial is an essential element of the rights of the defence and, more generally, is of crucial importance in compliance with the right to a fair criminal trial, enshrined in the second and third paragraphs of Article 47 and in Article 48 of the Charter (see, to that effect, judgment of 15 September 2022, *HN (Trial of an accused person removed from the territory)*, C-420/20, EU:C:2022:679, paragraphs 54 to 56 and the case-law cited).

61 In that regard, the European Court of Human Rights has held that a conviction *in absentia* of a person who has not been shown to have waived his or her right to appear and to defend himself or herself or to have sought to escape trial, without being given an opportunity, after having been heard, to obtain a fresh determination of the merits of the charge against him or her, in respect of both law and fact, constitutes a flagrant denial of justice (ECtHR, judgments of 1 March 2006, *Sejdovic v. Italy*, CE:ECHR:2006:0301JUD005658100, § 82, and of 9 July 2019, *Kislov v. Russia*, CE:ECHR:2019:0709JUD000359810, §§ 106, 107 and 115).

62 In the present case, it is also important to note that the second criminal conviction handed down against both PH and LU obliged or authorised the competent national authority to revoke the suspension of the first custodial sentence imposed on each of those individuals and, also, that that revocation itself made it possible to issue the European arrest warrants at issue in the main proceedings, the first custodial sentence imposed on both PH and LU having become enforceable as a result of that revocation.

63 Therefore, a criminal conviction handed down *in absentia* in respect of the person who is the subject of a European arrest warrant and without which, as is the case here, that warrant could not have been issued constitutes a necessary element for the issue of that warrant, which is liable to be affected by a fundamental defect seriously undermining the right of the accused to appear in person at his or her trial, as guaranteed in the second and third paragraphs of Article 47 and in Article 48 of the Charter.

64 Third, as has been noted in paragraph 50 above, the EU legislature decided, in the context of the European arrest warrant mechanism, to attach specific importance to the right of the accused to appear in person at his or her trial by introducing, in Article 4a(1) of Framework Decision 2002/584, an optional ground for non-execution of such a warrant dedicated to the protection of such a right. Furthermore, as has been pointed out in paragraph 51 above, such a ground for refusal must be interpreted in a manner that is consistent with the requirements arising from the second and third paragraphs of Article 47 and from Article 48 of the Charter, as put forward in paragraphs 60 and 61 above.

65 Therefore, if Article 4a(1) of Framework Decision 2002/584 is not to be rendered largely ineffective, the executing judicial authority must be able to take into account, in order to assess whether the surrender of the requested person should be refused under that provision, not only the possible *in absentia* proceedings leading to the final conviction for the execution of which the European arrest warrant was issued, but also any other *in absentia* proceedings leading to a criminal conviction without which such a warrant could not have been issued.

66 Moreover, as the European Commission has pointed out, the concept of 'trial resulting in the decision' may refer to more than one judicial decision where that is necessary in order to attain the objective pursued by Article 4a(1), which seeks, inter alia, to strengthen the rights of the defence of the persons concerned by ensuring that their fundamental right to a fair criminal trial is guaranteed (see, by analogy, judgment of 10 August 2017, *Zdziaszek*, C-271/17 PPU, EU:C:2017:629, paragraph 94).

67 It follows that a judicial decision which convicted, *in absentia*, the requested person must be regarded as being a 'decision' within the meaning of Article 4a(1) of Framework Decision 2002/584, read in the light of Articles 47 and 48 of the Charter, where its adoption was decisive for the issue of the European arrest warrant.

68 It follows from all of the foregoing that Article 4a(1) of Framework Decision 2002/584, read in the light of Articles 47 and 48 of the Charter, must be interpreted as meaning that, where the suspension of a custodial sentence is revoked, on account of a new criminal conviction, and a European arrest warrant, for the purpose of executing that sentence, is issued, that criminal conviction, handed down *in absentia*, constitutes a 'decision' within the meaning of that provision. That is not the case for the decision revoking the suspension of that sentence.

The second and third questions

69 By its second and third questions in Joined Cases C-514/21 and C-515/21, which it is appropriate to examine together, the referring court asks, in essence, whether Framework Decision 2002/584, read in the light of Articles 47 and 48 of the Charter, must be interpreted as authorising or compelling the executing judicial authority to refuse to surrender the requested person to the issuing Member State or to make his or her surrender subject to the guarantee that that person will be entitled, in that Member State, to a retrial or to an appeal, where it is apparent that the *in absentia* proceedings resulting in the revocation of the suspension of the custodial sentence for the execution of which the European arrest warrant was issued or in a second criminal conviction of that person, which was decisive for the issue of that warrant, infringed Article 47 or Article 48(2) of the Charter. It also asks whether it is necessary for such an infringement to affect the essence of the rights guaranteed in those articles.

70 In the first place, it follows from the answer given to the first question in Joined Cases C-514/21 and C-515/21 that the criminal conviction handed down *in absentia* and without which the suspension of the custodial sentence for the execution of which the European arrest warrant was issued would not have been revoked is part of the 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584.

71 With the benefit of that clarification, it must be recalled, first, that Article 4a(1)(a) to (d) lists, in a precise and uniform manner, the conditions under which the recognition and enforcement of a decision rendered following a trial in which the person concerned did not appear in person may not be refused (judgment of 22 December 2017, *Ardic*, C-571/17 PPU, EU:C:2017:1026, paragraph 71 and the case-law cited).

72 It follows that Article 4a(1) of Framework Decision 2002/584 does not allow the executing judicial authority to refuse to surrender the person concerned if the European arrest warrant contains, as regards the judicial decision which imposed the custodial sentence for the execution of which that warrant was issued, one of the statements referred to in points (a) to (d) of that provision.

73 In each of the circumstances referred to in Article 4a(1)(a) to (d) of Framework Decision 2002/584, the execution of the European arrest warrant does not infringe the rights of the defence of the person concerned or the right to an effective judicial remedy and to a fair trial, as enshrined in Article 47 and Article 48(2) of the Charter (judgment of 26 February 2013, *Melloni*, C-399/11, EU:C:2013:107, paragraphs 44 and 53).

74 For the same reasons, the executing judicial authority may not refuse, under Article 4a(1) of Framework Decision 2002/584, to surrender the requested person to the issuing Member State where the European arrest warrant contains, in respect of the criminal conviction handed down *in absentia* and referred to in paragraph 70 above, one of the statements mentioned in points (a) to (d) of that provision.

75 Conversely, where the European arrest warrant does not contain any of the statements mentioned in Article 4a(1)(a) to (d) of Framework Decision 2002/584, the executing judicial authority must be able to refuse to surrender the requested person, irrespective of whether the essence of his or her rights of the defence have been infringed, since no requirement of that kind follows either from the wording of Article 4a or from its objective, as recalled in paragraph 50 above.

76 It also follows from the very wording of Article 4a, in particular from the statement that the executing judicial authority 'may … refuse' to execute the arrest warrant, that that authority must have some discretion as to whether or not it is appropriate to refuse to execute the warrant in such a case. Therefore, it cannot be inferred from Article 4a(1) of Framework Decision 2002/584 that, in a case such as that described in the preceding paragraph, the executing judicial authority is required to refuse to execute the European arrest warrant, without that authority having the opportunity to take into account the circumstances specific to each case (see, by analogy, judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraphs 43 and 44).

77 Such an interpretation is supported by the general scheme of that framework decision. As has been recalled in paragraph 47 above, the execution of a European arrest warrant constitutes the rule laid down by that framework decision, the grounds for refusal to recognise and enforce being exceptions. Making it impossible for the executing judicial authority to take into account any circumstances specific to the individual case which might lead it to consider that the conditions for refusing surrender have not been satisfied would have the effect of substituting the mere option, provided for in Article 4a of that framework decision, with a genuine obligation, thus transforming the refusal to surrender from an exception into a general rule (see, by analogy, judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 47).

78 As the Advocate General observed, in essence, in point 115 of her Opinion, the executing judicial authority may, with that in mind, take into account other circumstances that enable it to satisfy itself that the surrender of the person concerned does not entail a breach of his or her rights of the defence and thus surrender that person to the issuing Member State. This may include, inter alia, the conduct of the person concerned, in particular the fact that he or she sought to avoid service of the information addressed to him or her or to avoid any contact with his or her lawyers (judgment of 17 December 2020, *Generalstaatsanwaltschaft Hamburg*, C-416/20 PPU, EU:C:2020:1042, paragraphs 51 and 52 and the case-law cited).

79 Second, the Court has repeatedly held that the execution of the European arrest warrant may be made subject only to one of the conditions exhaustively laid down in Article 5 of Framework Decision 2002/584 (judgment of 14 July 2022, *Procureur général près la cour d'appel d'Angers*, C-168/21, EU:C:2022:558, paragraph 60 and the case-law cited).

80 The commitment by the issuing Member State that a person who is the subject of a European arrest warrant will be afforded the right to a retrial, where that person is convicted *in absentia*, in breach of the rights of the defence, is not one of the conditions listed in Article 5. It follows that EU law precludes the executing judicial authority from making the surrender of a person who is the subject of a European arrest warrant subject to such a condition.

81 The fact remains that, in order to ensure effective cooperation in criminal matters, the executing judicial authority must make full use of the instruments provided for in Article 15 of Framework Decision 2002/584 (see, to that effect, judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 132 and the case-law cited).

82 Therefore, that authority may have to seek, by means, if necessary, of a request for supplementary information, within the meaning of Article 15(2) of that framework decision, an assurance from the issuing Member State that the person who is the subject of the European arrest warrant will be informed that, under the law of the issuing Member State, he or she will be granted the right to a retrial in which that person will be able to participate and which will allow the merits of the case to be re-examined, including fresh evidence and to have the original decision reversed, it being understood that, if such an assurance were given by the issuing Member State, the executing judicial authority would be obliged to surrender the person concerned, in accordance with Article 4a(1)(d) of that framework decision.

83 In the second place, it follows from the answer to the first question, set out in paragraph 68 above, that the decision revoking the suspension of the custodial sentence for the execution of which the European arrest warrant was issued does not fall within the scope of Article 4a of Framework Decision 2002/584, with the result that the fact that that decision was adopted *in absentia* cannot justify the refusal of an executing judicial authority to surrender the requested person.

84 Furthermore, since that fact does not constitute one of the mandatory or optional grounds for non-execution listed in Articles 3 and 4 of that framework decision, those provisions cannot form the basis for such a refusal either.

85 However, as the Advocate General stated, in essence, in point 126 of her Opinion, the surrender of the requested person may, exceptionally, be refused on the basis of Article 1(3) of that framework decision (see, to that effect, judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 72).

86 In that regard, it must, however, be stated, more specifically, that an executing judicial authority may refuse to execute a European arrest warrant on the basis of Article 1(3) of Framework Decision 2002/584, read in conjunction with Article 47 of the Charter, only in so far as it has, first, evidence indicating that there is a real risk of infringement of the fundamental right to a fair trial, guaranteed in the second paragraph of Article 47 of the Charter, on account of systemic or generalised deficiencies and, second, verified, specifically and precisely, whether, in the light of the personal situation of the requested individual, the nature of the offence in respect of which that person is being prosecuted and the factual context in which the European arrest warrant was

issued, there are substantial grounds for believing that that person will run such a risk if surrendered to the issuing Member State (judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 97).

87 It is for the referring court to ascertain whether the conditions set out in the previous paragraph are satisfied in the present case.

88 Lastly, the executing judicial authority must not give effect to a European arrest warrant which does not meet the minimum requirements on which its validity depends, including those laid down in Article 1(1) and Article 8 of Framework Decision 2002/584 (see, to that effect, judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraphs 69 and 70). In the present case, subject to verification by the referring court, there is no evidence to suggest that the European arrest warrants at issue in the main proceedings do not meet those minimum requirements.

89 Given that Framework Decision 2002/584 lists exhaustively the grounds for refusing to execute a European arrest warrant (see, to that effect, judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 73), that framework decision therefore precludes an executing judicial authority from refusing to surrender a person who is the subject of a European arrest warrant for the purpose of executing a custodial sentence on the ground that the suspension of that sentence has been revoked by a decision rendered *in absentia*.

90 Furthermore, as stated in paragraph 80 above, nor does that framework decision allow the surrender of the requested person to be made subject to the condition that that person may obtain, in the issuing Member State, a judicial review of the decision adopted *in absentia* pursuant to which the suspension of the custodial sentence for the execution of which the arrest warrant was issued was revoked.

91 That condition is not included among those listed in Article 5 of Framework Decision 2002/584, which, as recalled in paragraph 79 above, sets out exhaustively the conditions to which the execution of a European arrest warrant may be subject.

92 It follows from all of the foregoing that:

– Article 4a(1) of Framework Decision 2002/584 must be interpreted as authorising the executing judicial authority to refuse to surrender the requested person to the issuing Member State where it is apparent that the proceedings resulting in a second criminal conviction of that person, which was decisive for the issue of the European arrest warrant, took place *in absentia*, unless the European arrest warrant contains, in respect of those proceedings, one of the statements referred to in subparagraphs (a) to (d) of that provision;

– Framework Decision 2002/584, read in the light of Article 47 and Article 48(2) of the Charter, must be interpreted as precluding the executing judicial authority from refusing to surrender the requested person to the issuing Member State, on the ground that the proceedings resulting in the revocation of the suspension of the custodial sentence for the execution of which the European arrest warrant was issued took place *in absentia*, or from making the surrender of that person subject to a guarantee that he or she will be entitled, in that Member State, to a retrial or to an appeal allowing for the re-examination of such a revocation decision or of the second criminal conviction which was handed down against that person *in absentia* and which proves decisive for the issue of that warrant.

Costs

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

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

1. **Article 4a(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, read in the light of Articles 47 and 48 of the Charter of Fundamental Rights of the European Union,**

   must be interpreted as meaning that where the suspension of a custodial sentence is revoked, on account of a new criminal conviction, and a European arrest warrant, for the purpose of serving that sentence, is issued, that criminal conviction, handed down *in absentia*, constitutes a 'decision' within the meaning of that provision. That is not the case for the decision revoking the suspension of that sentence.

2. **Article 4a(1) of Framework Decision 2002/584, as amended by Framework Decision 2009/299,**

   must be interpreted as authorising the executing judicial authority to refuse to surrender the requested person to the issuing Member State where it is apparent that the proceedings resulting in a second criminal conviction of that person, which was decisive for the issue of the European arrest warrant, took place *in absentia*, unless the European arrest warrant contains, in respect of those proceedings, one of the statements referred to in subparagraphs (a) to (d) of that provision.

3. **Framework Decision 2002/584, as amended by Framework Decision 2009/299, read in the light of Article 47 and Article 48(2) of the Charter of Fundamental Rights of the European Union,**

must be interpreted as precluding the executing judicial authority from refusing to surrender the requested person to the issuing Member State, on the ground that the proceedings resulting in the revocation of the suspension of the custodial sentence for the execution of which the European arrest warrant was issued took place *in absentia*, or from making the surrender of that person subject to a guarantee that he or she will be entitled, in that Member State, to a retrial or to an appeal allowing for the re-examination of such a revocation decision or of the second criminal conviction which was handed down against that person *in absentia* and which proves decisive for the issue of that warrant.

Lycourgos Rossi Bonichot

Rodin Spineanu-Matei

Delivered in open court in Luxembourg on 23 March 2023.

A. Calot Escobar
Registrar

C. Lycourgos
President of the Chamber