ECLI:EU:C:2017:629

Provisional text

JUDGMENT OF THE COURT (Fifth Chamber)

10 August 2017 (*)

(Reference for a preliminary ruling — Urgent preliminary ruling procedure — Police and judicial cooperation in criminal matters — European arrest warrant — Framework Decision 2002/584/JHA — Surrender procedures between Member States — Conditions for execution — Grounds for optional non-execution — Article 4a(1) of Framework Decision 2009/299/JHA — Arrest warrant issued for the purpose of executing a custodial sentence or a detention order — 'Trial resulting in the decision' — Legal proceedings amending or combining a sentence passed previously — Decision handing down a cumulative sentence — Decision handed down without the person concerned having appeared in person — Person convicted not having appeared in person at the trial in the context of his initial conviction, either at first instance or on appeal — Person represented by a legal counsellor in the appeal proceedings — Arrest warrant not providing any information in that regard — Consequences for the executing judicial authority)

In Case C-271/17 PPU,

REQUEST for a preliminary ruling under Article 267 TFEU from the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), made by decision of 18 May 2017, received at the Court on the same date, in the proceedings relating to the execution of a European arrest warrant issued against

Sławomir Andrzej Zdziaszek,

THE COURT (Fifth Chamber),

composed of J.L. da Cruz Vilaça, President of the Chamber, M. Berger, A. Borg Barthet, E. Levits and F. Biltgen (Rapporteur), Judges,

Advocate General: M. Bobek,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 July 2017,

after considering the observations submitted on behalf of:

– Mr Zdziaszek, by M. Bouwman and B.J. Polman, advocaten,

– the Openbaar Ministerie, by K. van der Schaft and U.E.A. Weitzel, acting as Agents,

– the Netherlands Government, by M. Noort and M. Bulterman, acting as Agents,

– Ireland, by J. Quaney, acting as Agent, assisted by C. Noctor, BL,

– the Polish Government, by B. Majczyna and M. Nowak and by K. Majcher, acting as Agents,

– the European Commission, by R. Troosters and S. Grünheid, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 26 July 2017,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 4a(1) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1), as amended by Council Framework Decision 2009/299/JHA of 26 February 2009 (OJ 2009 L 81, p. 24) (‘Framework Decision 2002/584’).

2 The request has been made in connection with the execution in the Netherlands of a European arrest warrant issued by the Sąd Okręgowy w Gdańsku (Regional Court, Gdańsk, Poland) against Mr Sławomir Andrzej Zdziaszek with a view to executing a custodial sentence in Poland.

Legal context

International law

ECHR

3 Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (‘the ECHR’), which is entitled ‘Right to a fair trial’, provides:

‘1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.’

EU law

The Charter

4 Articles 47 and 48 of the Charter of Fundamental Rights of the European Union (‘the Charter’) form part of title VI thereof, entitled ‘Justice’.

5 Under Article 47 of the Charter, entitled ‘Right to an effective remedy and to a fair trial’:

‘Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article.

Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. Everyone shall have the possibility of being advised, defended and represented.

...'

6 The Explanations relating to the Charter of Fundamental Rights (OJ 2007 C 303, p. 17; 'the Explanations relating to the Charter') state that the second paragraph of Article 47 of the Charter corresponds to Article 6(1) of the ECHR.

7 The Explanations relating to the Charter further state, with respect to Article 47, that '[i]n Union law, the right to a fair hearing is not confined to disputes relating to civil law rights and obligations. That is one of the consequences of the fact that the Union is a community based on the rule of law as stated by the Court in [the judgment of 23 April 1986, *Les Verts* v *European Parliament* (294/83, EU:C:986:166)]. Nevertheless, in all respects other than their scope, the guarantees afforded by the ECHR apply in a similar way to the Union'.

8 Article 48 of the Charter, entitled 'Presumption of innocence and right of defence', provides:

'1. Everyone who has been charged shall be presumed innocent until proved guilty according to law.

2. Respect for the rights of the defence of anyone who has been charged shall be guaranteed.'

9 The Explanations relating to the Charter state in that regard :

'Article 48 is the same as Article 6(2) and (3) of the ECHR, ...

...

In accordance with Article 52(3), this right has the same meaning and scope as the right guaranteed by the ECHR.'

10 Article 51(1) of the Charter, entitled 'Field of application', provides:

'The provisions of this Charter are addressed to the institutions, bodies, offices and agencies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law...'

11 Article 52 of the Charter, entitled 'Scope and interpretation of rights and principles', provides:

‘1. Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others.

…

3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

...

7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.’

Framework Decisions 2002/584 and 2009/299

12 Recitals 5, 6, 8, 10 and 12 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. ...

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

...

(8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

...

(10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set

out in Article 6(1) [EU, now after amendment, Article 2 TEU], determined by the Council pursuant to Article 7(1) [EU, now after amendment, Article 7(2) TEU] with the consequences set out in Article [7(2) EU].

...

(12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 [EU] and reflected in the Charter ..., in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

...'

13 Article 1 of that Framework Decision, 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].'

14 Articles 3, 4 and 4a of that Framework Decision set out the grounds for mandatory and optional non-execution of the European arrest warrant.

15 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, 14 and 15 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 [ECHR], as interpreted by the European Court of Human Rights. That 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 [ECHR], 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.

(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…'

16 According to Article 1 of Framework Decision 2009/299, entitled 'Objectives and scope':

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

2. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty, including the right of defence of persons subject to criminal proceedings, and any obligations incumbent upon judicial authorities in this respect shall remain unaffected.

3. This Framework Decision establishes common rules for the recognition and/or execution of judicial decisions in one Member State (the executing Member State) issued by another Member State (the issuing Member State) following proceedings at which the person concerned was not present ...'

17 Article 4a 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'. Article 4a(1) 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;

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 of 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.'

18 Article 8(1) of Framework Decision 2002/584 is worded as follows:

'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.'

19 Article 15 of that Framework Decision, headed 'Surrender 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.'

20 Under Article 17 of that Framework Decision:

'1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

...'

21 Paragraph (d) of the uniform template for a European arrest warrant set out in the Annex to Framework Decision 2002/584 is as follows:

Netherlands law

22 The Overleveringswet (Law on surrender) of 29 April 2004 (Stb. 2004, No 195, 'the OLW') transposes Framework Decision 2002/584 into Netherlands law.

23 Article 12 of the OLG is worded as follows:

'Surrender will not be allowed if the European arrest warrant was issued for the purpose of enforcing a sentence if the suspect did not appear in person at the court hearing resulting in the judgment, unless the European arrest warrant states, in accordance with the procedural requirements of the issuing Member State:

(a) that the suspect was, in due time, either summoned in person and thereby informed of the scheduled date and place of the court hearing which resulted in the sentence, or by other means actually received official information of the scheduled date and place of that court hearing in such a manner that it was unequivocally established that he or she was aware of the scheduled court hearing and was informed that a sentence may be handed down if he or she does not appear for the court hearing; or

(b) that the suspect, being aware of the scheduled court hearing, had given a mandate to a lawyer, who was either appointed by the suspect or by the State, to defend him or her at the court hearing, and that that lawyer did indeed defend the suspect at the court hearing; or

(c) that the suspect, after being served with the judgment and being expressly informed about the right to a retrial, or an appeal, in which the suspect 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:

(1) expressly stated that he or she does not contest the decision;

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

(d) that the suspect was not personally served with the sentence but:

(1) 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;

(2) 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.'

24 Point D of Annex 2 to the OLW, entitled 'Template for the European Arrest Warrant ...' corresponds to point (d) of the annex of Framework Decision 2002/584.

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

25 It appears from the order for reference that, on 17 January 2017, an application for the execution of a European arrest warrant issued on 12 June 2014 by the Sąd Okręgowy w Gdańsku (Regional Court, Gdańsk, Poland) was made before the referring court, the Rechtbank Amsterdam (District Court, Amsterdam, Netherlands), by the officier van justitie bij de rechtbank (Public Prosecutor's Office) ('the European arrest warrant at issue').

26 That European arrest warrant seeks the arrest and surrender of Mr Zdziaszek, a Polish national residing in the Netherlands, for the purpose of carrying out two custodial sentences in Poland.

27 In that regard, the European arrest warrant refers to the existence of a cumulative sentence handed down on 25 March 2014 by the Sąd Rejonowy w Wejherowie (District Court, Wejherowo, Poland). That decision relates to five acts, numbered from 1 to 5, constituting offences under Polish law, that Mr Zdziaszek is alleged to have committed.

28 In the decision of 25 March 2014 the Sąd Rejonowy w Wejherowie (Regional Court, Wejherowo) *ex officio*:

– combined the custodial sentence imposed on Mr Zdziaszek for offence 1 by final judgment of 21 April 2005 of the Sąd Rejonowy w Wejherowie (District Court, Wejherowo) and the custodial sentence imposed on him for offence 2 by final judgment

of 16 January 2006 of the Sąd Rejonowy w Gdyni (District Court, Gdynia, Poland), into one custodial sentence of one year and six months, and

– changed the four-year cumulative custodial sentence imposed on Mr Zdziaszek in respect of offences 3 to 5 by a final judgment of 10 April 2012 of the Sąd Rejonowy w Wejherowie (District Court, Wejherowo), to a cumulative custodial sentence of three years and six months, because an amendment to the law favourable to Mr Zdziaszek required it.

29 In respect of the custodial sentence relating to offences 1 and 2, the referring court, by judgment of 11 April 2017:

– refused the surrender of Mr Zdziaszek in so far as the custodial sentence relates to offence 1, on the ground that that offence, as described in the European arrest warrant at issue, is not punishable under Netherlands law, and

– stayed its decision on the execution of the European arrest warrant in so far as that custodial sentence relates to offence 2, in order to allow it to request further information from the issuing judicial authority.

30 The present request for a preliminary ruling concerns only the custodial sentence relating to offences 3 to 5.

31 Point (d) of the European arrest warrant in question indicates that Mr Zdziaszek did not appear in person during the proceedings which led to the judicial decision which finally determined the sentence that he would have to serve.

32 In point (d), the issuing authority ticked the box in respect only of point 3.2, which reads as follows:

‘being aware of the scheduled trial, the person 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’.

33 Again in point (d), the issuing authority filled in point 4, whose purpose is to allow it to specify the reason why it considers that the requirement referred to in point 3.2 is met, as follows:

‘[Mr Zdziaszek] was properly, in compliance with the provisions of the Polish code of criminal procedure ..., notified of the trial. Notification was sent to the address provided by the person convicted during the pre-trial phase. He was warned of the consequences of not informing the judicial authorities of a change of address or place of residence. During the court proceedings [Mr Zdziaszek] used legal aid of a defence counsel, who was present both at the trial as well as the handing down of the sentence.’

34 The supplementary information provided by the judicial authority shows that:

– point 3.2 and the explanations provided in point 4 relate to the proceedings which led to the judgment handing down a cumulative sentence of 25 March 2014, not to the three underlying convictions;

– under Polish law, in proceedings such as the proceedings which resulted in the decision of 25 March 2014:

(a) 'the subject matter of the case covered by these proceedings' is no longer in dispute,

(b) 'the sentences imposed by a legally binding verdict form the basis of a judgment handing down a cumulative sentence',

(c) a judgment handing down a cumulative sentence refers only to 'matters related to combining those sentences into one or more cumulative sentence (or sentences) and to whether some periods served should be credited toward the cumulative sentence' and

(d) such a judgment is 'by its nature beneficial to convicted persons', because 'combining individual sentences into one cumulative sentence results in practice in the duration of the sentence to be served being significantly shortened';

– Mr Zdziaszek was summoned to the first hearing of 28 January 2014 at the address which he had supplied. He did not respond to the summons and did not appear at that hearing. The Sąd Rejonowy w Wejherowie (District Court, Wejherowo), of its own motion, assigned a lawyer to represent Mr Zdziaszek and then stayed the proceedings. Mr Zdziaszek was similarly summoned to a second hearing on 25 March 2014, at which he did not appear. The lawyer assigned *ex officio* participated in the hearing at the end of which the judgment handing down a cumulative sentence was given.

35 On the basis of the information provided by the issuing authority, the referring court takes the view that the situation referred to in Article 4a(1)(b) of Framework Decision 2002/584, which corresponds to the situation referred to in point (d), 3.2, of the standard template for a European arrest warrant, does not apply in the present case, since it is not apparent from that information that the person sought '[was] aware of the scheduled trial' or that he 'had given a mandate to a legal counsellor, who was either appointed by the person concerned or by the State, to defend him ... at the trial'.

36 The referring court is uncertain, first of all, whether a decision such as the judgment handing down a cumulative sentence of 25 March 2014 amending, in favour of the person concerned, a cumulative custodial sentence to which he had previously been finally sentenced and commuting into one single custodial sentence the separate custodial sentences which had previously been imposed on him by a final judgment, but in the context of which the question of whether or not the person concerned had committed the offences is no longer at issue, comes within the scope of Article 4a(1) of Framework Decision 2002/584.

37 If so, the referring court would be justified in refusing to execute the European arrest warrant at issue, on the ground that the condition referred to in Article 4a(1)(b) of that Framework Decision is not met.

38 Nonetheless, that court takes the view that the question raised calls for a negative response, essentially because of the wording of subparagraphs (c) and (d) of Article 4a(1) of the Framework Decision, which in both cases use the terms 'which allows the merits of the case, including fresh evidence, to be re-examined'.

39 In the view of the referring court, it follows from that wording that it refers to the situation in which the criminal court has ruled on the merits of the case, in that it has ruled on the guilt of the person concerned in relation to the alleged infringement, and, where appropriate, imposed a penalty for the offence committed. In contrast, that is not so in the case of a judgment handing down a cumulative sentence, such as that handed down on 25 March 2014 by the Sąd Rejonowy w Wejherowie (District Court, Wejherowo), since the question of the guilt of the person concerned is no longer at issue in the context of such proceedings.

40 The referring court points out, however, that the Polish issuing judicial authority appears, on the contrary, to be of the opinion that a decision of that kind does fall within the scope of Article 4a(1) of Framework Decision 2002/584, since it mentions in point (d) of the European arrest warrant at issue only information relating to the proceedings which led to judgment handing down a cumulative sentence, and no information concerning the finding of guilt of the person concerned on which the latter judgment is based.

41 In the event that the first question is answered in the negative, the referring court takes the view that it must then examine whether, at the stage of the conviction underlying the judgment handing down a cumulative sentence, the person concerned appeared in person at the trial which led to that finding of guilt and, if not, whether one of the situations referred to in points (a) to (d) of Article 4a(1) of Framework Decision 2002/584 applies.

42 In the present case, as regards the underlying judgment, the Polish judicial authorities, at the request of the Dutch Public Prosecutor's Office, provided additional information according to which Mr Zdziaszek did not appear in person during the proceedings relating to the substance of the case, whether at first instance or on appeal.

43 As regards the applicability of one of the circumstances referred to in subparagraphs (a) to (d) of Article 4a(1) of Framework Decision 2002/584, the referring court notes that the issuing judicial authority did not use point (d)(2) of the European arrest warrant form, nor did it state which of the categories set out in point 3 of paragraph (d) of the European arrest warrant form is applicable.

44 The question therefore arises whether, in those circumstances, the referring court can refuse to execute the European arrest warrant at issue on that ground.

45 That court takes the view that there are grounds for an affirmative answer to that question.

46 Thus, it is possible to deduce from the wording ‘unless the European arrest warrant indicates that’, used in the introductory sentence of Article 4a(1) of the Framework Decision 2002/584, that the information on the applicability of one of the situations referred to in points (a) to (d) of that provision must in principle be set out in point(d) of the European arrest warrant or, at least, in accordance with the wording of the categories therein described.

47 Such an interpretation is also consistent with the objectives of that Framework Decision, namely, first, to ensure that the final decision on the execution of the European arrest warrant is taken within the prescribed period, with the result that it is important to reduce to a minimum cases requiring requests for additional information, secondly, to provide for a precise and uniform ground for refusal, and, thirdly, to allow the executing judicial authority to ensure in a simple and transparent manner that the rights of the defence of the person concerned are effectively upheld.

48 The referring court states, however, that there are also factors supporting the opposite view. The issuing judicial authorities generally appear to consider that it is not necessary to use the categories set out in point (d)(3) of the European arrest warrant form.

49 Moreover, an affirmative reply to that question would be likely to lead to additional refusals and, hence, to fewer surrenders, contrary to the principle of mutual recognition.

50 Should the first two questions be answered in the negative, the referring court takes the view that it still has to verify whether one of the situations referred to in Article 4a(1) (a) to (d) of Framework Decision 2002/584 applies to the conviction underlying the judgment handing down a cumulative sentence.

51 In that regard, it is apparent from the supplementary information provided by the issuing judicial authority that proceedings at first instance, which resulted in Mr Zdziaszek’s conviction on 10 April 2012, and appeal proceedings, which did not result in any change to the sentence, were conducted in Poland.

52 With regard to the proceedings at first instance, the issuing judicial authorities provided the following information:

– 27 hearings were held at first instance;

– the requested person did not appear at any of those hearings;

– the person was initially represented by two legal counsellors appointed *ex officio*, then by another counsellor appointed by the requested person, who appeared at the subsequent hearings;

– the requested person and his chosen counsellor did not appear at the hearing at which the sentence was pronounced, but they were informed of the content of the judgment given on the merits, because they requested to be provided with a 'legal justification' of that judgment.

53 In the opinion of the referring court, it cannot be inferred from that information that, in the phase of the proceedings in which he had a counsellor appointed *ex officio*, Mr Zdziaszek 'was aware of the scheduled trial' within the meaning of Article 4a(1)(b) of Framework Decision 2002/584.

54 However, the situation is different for the stage of the proceedings in which the counsellor selected by the requested person appeared, the referring court inferring from the appearance of that counsellor that, during that phase, Mr Zdziaszek was actually 'aware of the scheduled trial' and that he had 'given a mandate' to that counsellor 'to defend him ... at trial', within the meaning of the that provision.

55 However, it states, the information provided by the issuing judicial authority does not imply that the requested person 'was indeed defended by that counsellor at the trial', but only that that counsellor appeared at the hearings at first instance. Moreover, it is not clear at which of the 27 hearings held in these proceedings Mr Zdziaszek's chosen counsellor appeared, nor what was discussed at those hearings. It may therefore not be inferred from that information alone that the chosen counsellor appeared at the hearings and did also indeed defend the person concerned.

56 The referring court accordingly takes the view that the requested person did not appear in person at the trial which resulted in the decision at first instance, and that none of the circumstances referred to in subparagraphs (a) to (d) of Article 4a(1) of Framework Decision 2002/584 apply in respect of those proceedings.

57 With regard to the proceedings on appeal, the issuing judicial authority, in summary, supplied the following information:

– the requested person did not appear at the hearing on appeal;

– he was properly notified of that hearing;

– the requested person's counsellor did appear at the hearing on appeal.

58 On the basis of the additional information provided by the issuing judicial authority indicating that Mr Zdziaszek and his counsellor were aware of the content of the judgment of 10 April 2012, the referring court infers that the requested person 'was aware of the scheduled trial' on appeal and that he 'had given a mandate' to his chosen counsellor 'to defend him ... at the trial'. Because there had only been one hearing on appeal, it also infers from that information that Mr Zdziaszek 'was indeed defended by that counsellor at that hearing'.

59 In the light of the foregoing, the situation thus appears in a different light depending on whether the focus is on the proceedings at first instance or on those on appeal, assuming that the case was examined there on the merits as part of such proceedings.

60 Before the referring court asks the issuing judicial authority to clarify the latter point, it wonders whether the appeal proceedings fall within the scope of Article 4a(1) of Framework Decision 2002/584.

61 That court takes the view that there are several factors pleading in favour of an affirmative answer.

62 It relies in that regard on the wording of that provision, which does not restrict its scope to the proceedings at first instance, subparagraphs (c) and (d) thereof expressly referring both to a 'retrial' and an 'appeal'. Under Polish law, appeal proceedings entail a fresh examination of the merits of the case.

63 Moreover, that interpretation of Article 4a(1) is borne out by the objective pursued by that provision, which, as held by the Court in paragraph 43 of its judgment of 26 February 2013, *Melloni* (C-399/11, EU:C:2013:107), and in paragraph 37 of the judgment of 24 May 2016, *Dworzecki* (C-108/16 PPU, EU:C:2016:346), is to enable the executing judicial authority to allow surrender, despite the absence of the requested person at the trial resulting in their conviction, while fully upholding the rights of defence.

64 The referring court states that the rights of the defence are part of the right to a fair trial within the meaning of Article 6 of the ECHR and Article 47 of the Charter, with the result that once a Member State has established an appeal procedure, it is required to ensure that the person concerned enjoys, within the framework of that procedure, the fundamental guarantees laid down in those provisions. Thus, although the person concerned has the right to waive his rights of defence, the fact remains that, as the European Court of Human Rights has held, the criminal court, which is called upon once more to rule on the guilt of the person concerned, may not issue a ruling without a direct assessment of the evidence presented in person by an accused who wishes to prove that he did not commit the purportedly criminal act. In such a case, the mere fact that the person concerned has been able to exercise his rights of defence at first instance is, therefore, insufficient for it to be concluded that the requirements of Article 6 ECHR and Article 47 of the Charter have been met.

65 If the person concerned did not appear in person at the trial on appeal and if on appeal there was an examination of the merits and the person concerned was (again) convicted, or the verdict handed down at first instance was upheld, then, in the opinion of the referring court, it is consistent with the objective pursued by Article 4a(1) of Framework Decision 2002/584 that those proceedings should come within the scope of that provision.

66 The referring court observes, however, that that interpretation is not shared by a number of other Member States, which take the view that appeal proceedings are in no way relevant for the purposes of the review to be carried out under Article 4a(1) of Framework Decision 2002/584. It could therefore be argued that, once it has been established that the rights of the defence of the person concerned were fully upheld in the proceedings at first instance, the principle of mutual trust requires it to be held that the authorities of the issuing Member State have not disregarded the fundamental rights recognised by EU law in other proceedings. Nevertheless, the Court has not yet ruled in that regard.

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

‘(1) Are proceedings

– in which the court in the issuing Member State decides to combine separate custodial sentences which had previously been imposed on the person concerned by a final judgment into one single custodial sentence, and/or to change an aggregate custodial sentence which had previously been imposed on the person concerned by a final judgment and

– in which that court no longer examines the question of guilt,

such as the proceedings which led to the cumulative sentence of 25 March 2014, a “trial resulting in the decision” as referred to in the introductory subparagraph of Article 4a(1) of Framework Decision 2002/584?

(2) Can the executing judicial authority:

– in a case where the requested person did not appear in person at the trial resulting in the decision,

– but where the issuing judicial authority has not, either in the [European arrest warrant] or in the supplementary information requested pursuant to Article 15(2) of Framework Decision 2002/584, provided information about the applicability of one or more of the circumstances referred to in subparagraphs (a) to (d) of Article 4a(1) of Framework Decision 2002/584, in accordance with the wording of one or more of the categories of point 3 of paragraph (d) of the [European arrest warrant] form,

for those very reasons conclude that none of the conditions of Article 4a(1)(a) to (d) of Framework Decision 2002/584 has been satisfied and for those very reasons refuse to execute the [European arrest warrant]?

(3) Are appeal proceedings

– in which there has been an examination of the merits and

– which resulted in the passing of a (new) sentence on the person concerned and/or the confirmation of the sentence handed down at first instance,

– where the [European arrest warrant] concerns the execution of that sentence,

the "trial resulting in the decision" as referred to in Article 4a(1) of [the] Framework Decision?'

The urgent procedure

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

69 In support of its application, that court relied on the fact that Mr Zdziaszek is currently in custody in the Netherlands, pending a decision on the course to take concerning the execution of the European arrest warrant issued against him by the competent authorities of the Republic of Poland.

70 The referring court further stated that it could not take a decision in that regard until the Court has given a ruling on the present reference for a preliminary ruling. The Court's answer to the questions raised therefore has a direct and decisive impact on the duration of Mr Zdziaszek's detention in the Netherlands with a view to his possible surrender by way of execution of that European arrest warrant.

71 It should be stated, first of all, that the present reference for a preliminary ruling concerns the interpretation of Framework Decision 2002/584, which comes within the sectors covered by Title V of Part Three of the TFEU on the area of freedom, security and justice. Consequently, that reference may be dealt with under the urgent preliminary ruling procedure.

72 Secondly, as regards the criterion relating to urgency, it is necessary, in accordance with the settled case-law of the Court, to take into account the fact that the person concerned in the case 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, in particular, judgment of 10 November 2016, *Kovalkovas*, C-477/16 PPU, EU:C:2016:861, paragraph 21 and the case-law cited). Moreover, the situation of the person concerned must be assessed as it stood at the time when consideration was given to whether the reference should be dealt with under the urgent procedure (judgment of 24 May 2016, *Dworzecki*, C-108/16 PPU, EU:C:2016:346, paragraph 22 and the case-law cited).

73 In the present case, first, it is common ground that, on that date, Mr Zdziaszek was deprived of his liberty. Moreover, his continued detention depends on the outcome of the

main proceedings, the detention measure against him having been ordered, according to the referring court, in the context of the execution of the European arrest warrant issued against him.

74 In those circumstances, on 8 June 2017, the Fifth Chamber of the Court, acting on a proposal from the Judge-Rapporteur and after hearing the Advocate General, decided to accede to the referring court's request that the present reference for a preliminary ruling be dealt with under the urgent preliminary ruling procedure.

Consideration of the questions referred

The first and third questions

75 By its first and third questions, which it is appropriate to examine together, the referring court essentially asks whether the concept of 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, must be interpreted as referring to the appeal proceedings and/or to proceedings for the amendment of custodial sentences handed down previously, such as those which led to the judgment handing down a cumulative sentence at issue in the main proceedings.

76 In order to answer those questions as reformulated, it must be borne in mind, first of all, that, as is apparent from paragraphs 81, 90 and 98 of today's judgment, *Tupikas* (C-270/17 PPU), for the purposes of the application of Article 4a(1) of Framework Decision 2002/584, the concept of 'trial resulting in the decision' must be interpreted as referring, in the case where the proceedings have taken place over several instances which have given rise to successive decisions, at least one of which was handed down in absentia, to only the appeal proceedings, in so far as the decision handed down at the end of those proceedings has finally found the person concerned guilty and determined the penalty, such as a custodial sentence, after a further examination of the merits of the case in fact and in law.

77 It is true that, in principle, such a conviction has two distinct but related aspects, namely the finding of guilt and the handing down of a sentence, a custodial sentence in this case (see today's judgment, *Tupikas*, C-270/17 PPU, paragraphs 78 and 83).

78 The fact remains, however, that, even if, as in the case in the main proceedings, the quantum of the penalty imposed is amended in a subsequent proceeding, the decision resulting from appeal proceedings with the characteristics set out in paragraph 76 of the present judgment remains relevant for the purposes of the verifications to be carried out by the executing judicial authority under Article 4a(1) of Framework Decision 2002/584.

79 For the same reasons as those set out in paragraphs 83 and 84 of today's judgment, *Tupikas* (C-270/17 PPU), the final finding of guilt at the end of the appeal proceedings directly affects the situation of the person concerned, all the more so as it constitutes the legal basis for the custodial sentence which the person concerned must serve.

80 It is therefore essential that the person concerned be able to exercise his rights of defence fully before a final decision is taken as to his guilt.

81 It should further be stated that, as also follows from paragraphs 85 and 86 of today's judgment, *Tupikas* (C-270/17 PPU), the appeal proceedings are all the more decisive in the context of Article 4a(1) of Framework Decision 2002/584 since the full and effective observance of the rights of the defence at that stage of the proceedings is such as to remedy a possible breach of those rights during a prior stage of the criminal proceedings.

82 It is therefore necessary to conclude, on that aspect of the first and third questions, that the concept of 'trial resulting in the decision' within the meaning of Article 4a(1) of the Framework Decision must be interpreted as covering the appeal proceedings that led to the decision which, after a new examination of the merits of the case in fact and in law, finally determined the guilt of the person concerned and imposed the penalty upon him, such as a custodial sentence, even though the sentence handed down was amended by a subsequent decision.

83 Secondly, it is necessary to determine whether a decision at a later stage of the proceedings amending one or more of the custodial sentences previously imposed, such as the cumulative sentence at issue in the case in the main proceedings, is covered by Article 4a(1) of the Framework Decision.

84 As is apparent from the case file before the Court, first, such a decision, although taken after one or more decisions sentencing the person concerned to one or more penalties, does not affect the finding of guilt set out in the previous decisions, that conviction therefore being final.

85 Next, such a decision modifies the quantum of the penalty or penalties imposed. It is therefore necessary to make a distinction between measures of that type and those relating to the methods of execution of a custodial sentence. It is moreover apparent from the case-law of the European Court of Human Rights that Article 6(1) of the ECHR does not apply to questions concerning the methods for executing a sentence, in particular those relating to provisional release (see, to that effect, ECtHR, 3 April 2012, *Boulois v. Luxembourg*, CE:ECHR:2012:0403JUD003757504, § 87).

86 Finally, proceedings leading to a decision, such as the judgment handing down a cumulative sentence at issue in the main proceedings, consisting in commuting into a single sentence one or more sentences handed down previously in respect of the person concerned, necessarily results in a more favorable result for that person. Thus, for example, a lighter penalty may be imposed following the entry into force of new legislation which penalises the relevant offence less severely. In addition, following several convictions, each of which involves the imposition of a sentence, the sentences may be combined to obtain a cumulative sentence which is less than the sum of the various sentences resulting from previous separate decisions.

87 In that regard, it is apparent from the case-law of the European Court of Human Rights that the guarantees laid down in Article 6 of the ECHR apply not only to the finding of guilt, but also to the determination of the sentence (see, to that effect, ECtHR, 28 November 2013, *Dementyev v. Russia*, CE:ECHR:2013:1128JUD004309505, § 23). Thus, compliance with the requirement of a fair trial entails the right of the person concerned to be present at the hearing because of the significant consequences which it may have on the quantum of the sentence to be imposed (see, to that effect, ECtHR, 21 September 1993, *Kremzov v. Austria*, CE:ECHR:2013:1128JUD004309505, § 67).

88 This is the case with respect to specific proceedings for the determination of an overall sentence where those proceedings are not a purely formal and arithmetic exercise but entail a margin of discretion in the determination of the level of the sentence, in particular, by taking account of the situation or personality of the person concerned, or of mitigating or aggravating circumstances (see ECtHR, 15 July 1982, *Eckle v. Germany*, CE:ECHR:1983:0621JUD000813078, § 77, and 28 November 2013, *Dementyev v. Russia*, CE:ECHR:2013:1128JUD004309505, § 25 and 26).

89 Furthermore, it is irrelevant in that regard whether the court concerned has jurisdiction to increase the sentence previously imposed (see, to that effect, ECtHR, 26 May 1988, *Ekbatani v. Sweden*, CE:ECHR:1988:0526JUD001056383, § 32, and 18 October 2006, *Hermi v. Italy*, CE:ECHR:2006:1018JUD001811402, § 65).

90 It follows that proceedings giving rise to a judgment handing down a cumulative sentence, such as that at issue in the main proceedings, leading to a new determination of the level of custodial sentences imposed previously, must be regarded as relevant for the application of Article 4a(1) of Framework Decision 2002/584, where they entail a margin of discretion for the competent authority within the meaning of paragraph 88 of the present judgment and give rise to a decision which finally determines the sentence.

91 Given that such proceedings determine the quantum of the sentence which the convicted person will ultimately serve, that person must be able to effectively exercise his rights of defence in order to influence favourably the decision to be taken in that regard.

92 The fact that the new sentence is hypothetically more favourable to the person concerned is irrelevant since the level of the sentence is not determined in advance but depends on the assessment of the facts of the case by the competent authority and it is precisely the duration of the sentence to be served which is finally handed down which is of decisive importance for the person concerned.

93 In the light of the grounds set out above, it must be held that, in a case such as that at issue in the main proceedings, where, following appeal proceedings in which the merits of the case were re-examined, a decision finally determined the guilt of the person concerned and also imposed a custodial sentence on him, the level of which was however amended by a subsequent decision taken by the competent authority after it had exercised its discretion in that matter and which finally determined the sentence, both decisions

must be taken into account for the purposes of the application of Article 4a(1) of Framework Decision 2002/584.

94 As is apparent, respectively, from paragraphs 76 to 80 and 90 to 92 of the present judgment, it is necessary to ensure that the rights of the defence are observed in respect of both the finding of guilt and the final determination of the sentence and, where those two aspects, which are in any case closely linked, are dissociated, the final decisions handed down in that regard must, in the same way, be subject to the verifications required by that provision. That provision seeks precisely to strengthen the procedural rights of the persons concerned by ensuring that their fundamental right to a fair trial is guaranteed (see, to that effect, today's judgment, *Tupikas*, C-270/17 PPU, paragraphs 58 and 61 to 63) and, as stated in paragraph 87 of the present judgment, those requirements apply both in respect of the finding of guilt and the determination of the sentence.

95 Moreover, such an interpretation has no practical disadvantage, since, as the Advocate General pointed out in point 55 of his Opinion, the standard form for a European arrest warrant annexed to Framework Decision 2002/584 requires information relating to both aspects to be provided. The foregoing interpretation is therefore not such as to increase the workload of the issuing judicial authority.

96 In the light of all the foregoing, the answer to the first and third questions is that, in a situation such as that at issue in the main proceedings, the concept of a 'trial resulting in the decision', within the meaning of Article 4a(1) of Framework Decision 2002/584, must be interpreted as referring not only to the proceedings which gave rise to the decision on appeal, where that decision, after a fresh examination of the case on the merits, finally determined the guilt of the person concerned, but also to subsequent proceedings, such as those which led to the judgment handing down the cumulative sentence at issue here, at the end of which the decision that finally amended the level of the initial sentence was handed down, inasmuch as the authority which adopted the latter decision enjoyed a certain discretion in that regard.

The second question

97 By its second question, the referring court asks essentially whether Framework Decision 2002/584 should be interpreted as allowing the executing judicial authority to refuse to execute the European arrest warrant for the sole reason that neither the standard form for a European arrest warrant annexed to that Framework Decision nor the additional information obtained from the issuing judicial authority pursuant to Article 15(2) of that Framework Decision provide sufficient information to enable it to establish that one of the situations referred to in Article 4a(1)(a) to (d) of the Framework Decision exists.

98 In order to give a useful answer to that question, it should be borne in mind that the checks required by Article 4a(1) of Framework Decision 2002/584 must in principle relate to the last instances at which the merits of the case were examined and which led to the final conviction of the person concerned (see, to that effect, today's judgment,

Tupikas, C-270/17 PPU, paragraphs 81, 90 and 91). In the particular case, examined in the context of the reply given to the first and third questions, in which the level of the sentence initially imposed has been finally amended pursuant to new proceedings involving the exercise of a discretion, both proceedings, as is apparent from paragraphs 93, 94 and 96 of the present judgment, are relevant in that regard.

99 Accordingly, the issuing judicial authority is required to provide the information referred to in Article 8(1) of Framework Decision 2002/584 in relation to the first of those proceedings or, as the case may be, to both proceedings.

100 It follows, accordingly, that the executing judicial authority must limit its examination to the proceedings referred to in the preceding paragraph for the purposes of applying Article 4a(1) of the Framework Decision.

101 Having regard to the system established by that provision and as is apparent from its very wording, the executing judicial authority is entitled to refuse to execute a European arrest warrant issued for the purpose of executing a custodial sentence or a detention order if the person concerned did not appear in person at the trial resulting in the decision, unless the European arrest warrant indicates that the conditions set out in subparagraphs (a), (b), (c) or (d) of that provision are met.

102 Thus, where the existence of one of the situations referred to in subparagraphs (a) to (d) is established, the executing judicial authority is under an obligation to carry out the European arrest warrant, notwithstanding the absence of the person concerned at the trial which led to the decision (see, to that effect, today's judgment, *Tupikas*, C-270/17 PPU, paragraphs 50, 55 and 95).

103 In the event that that authority takes the view that it does not have sufficient information to enable it to validly decide on the surrender of the person concerned, it is incumbent upon it to apply Article 15(2) of Framework Decision 2002/584, by requesting from the issuing judicial authority the urgent provision of such additional information as it deems necessary before a decision on surrender can be taken.

104 If, at this stage, it still has not obtained the necessary assurances as regards the rights of defence of the person concerned during the relevant proceedings, the executing judicial authority may refuse to execute the European arrest warrant.

105 That authority not only cannot tolerate a breach of fundamental rights but, as provided for in Article 15(2) of Framework Decision 2002/584, it must also ensure that the time limits laid down in Article 17 thereof for taking the decision on the European arrest warrant are complied with, with the result that it cannot be required to resort to that Article 15(2) again (see, to that effect judgment of 5 April 2016, *Aranyosi and Căldăraru*, C-404/15 and C-659/15 PPU, EU:C:2016:198, paragraph 97).

106 However, it should be pointed out in that context that Article 4a of Framework Decision 2002/584 provides for an optional ground for non-execution of the European

arrest warrant and that the cases referred to in Article 4a(1)(a) to (d) were conceived as exceptions to that optional ground for non-recognition (see, to that effect, today's judgment, *Tupikas*, C-270/17 PPU, paragraphs 50 and 96).

107 Accordingly, the Court has already held that the executing judicial authority may, even after it has found that those cases do not cover the situation of the person who is the subject of the European arrest warrant, take account of other circumstances that enable it to ensure that the surrender of the person concerned does not entail a breach of his rights of defence (see, to that effect, judgment of 24 May 2016, *Dworzecki*, C-108/16 PPU, EU:C:2016:346, paragraphs 50 and 51).

108 Thus, Framework Decision 2002/584 does not prevent the executing judicial authority from ensuring that the rights of defence of the person concerned are respected by taking due consideration of all the circumstances characterising the case before it, including the information which it may itself obtain.

109 In the light of the foregoing, the answer to the second question is that Framework Decision 2002/584 must be interpreted as meaning that, where the person concerned has not appeared in person in the relevant proceeding or, as the case may be, in the relevant proceedings for the application of Article 4a(1) of that Framework Decision and where neither the information contained in the standard form for a European arrest warrant annexed to that Framework Decision nor the information obtained pursuant to Article 15(2) of that Framework Decision provide sufficient evidence to establish the existence of one of the situations referred to in Article 4a(1)(a) to (d) of that Framework Decision 2002/584, the executing judicial authority may refuse to execute the European arrest warrant.

110 However, that Framework Decision does not prevent that authority from taking account of all the circumstances characterising the case before it in order to ensure that the rights of the defence of the person concerned are respected during the relevant proceeding or proceedings.

Costs

111 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 (Fifth Chamber) hereby rules:

1. **The concept of 'trial resulting in the decision', within the meaning 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, as amended by Council Framework Decision 2009/299/JHA of 26 February 2009, must be interpreted as referring not only to the proceedings which gave rise to the**

decision on appeal, where that decision, after a fresh examination of the case on the merits, finally determined the guilt of the person concerned, but also to subsequent proceedings, such as those that led to the judgment handing down the cumulative sentence at issue here, at the end of which the decision that finally amended the level of the initial sentence was handed down, inasmuch as the authority which adopted the latter decision enjoyed a certain discretion in that regard.

2. **Framework Decision 2002/584, as amended by Framework Decision 2009/299, must be interpreted as meaning that, where the person concerned has not appeared in person in the relevant proceeding or, as the case may be, in the relevant proceedings for the application of Article 4a(1) of that Framework Decision, as amended, and where neither the information contained in the standard form for a European arrest warrant annexed to that Framework Decision nor the information obtained pursuant to Article 15(2) of that Framework Decision, as amended, provide sufficient evidence to establish the existence of one of the situations referred to in Article 4a(1)(a) to (d) of Framework Decision 2002/584, as amended, the executing judicial authority may refuse to execute the European arrest warrant.**

However, that Framework Decision, as amended, does not prevent that authority from taking account of all the circumstances characterising the case brought before it in order to ensure that the rights of the defence of the person concerned are respected during the relevant proceeding or proceedings.

[Signatures]

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* Language of the case: Dutch.