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Provisional text

JUDGMENT OF THE COURT (Grand Chamber)

6 June 2023 (\*)

(Reference for a preliminary ruling – Judicial cooperation in criminal matters – European arrest warrant – Framework Decision 2002/584/JHA – Grounds for optional non-execution of the European arrest warrant – Article 4(6) – Objective of social rehabilitation – Third-country nationals staying or residing on the territory of the executing Member State – Equal treatment – Article 20 of the Charter of Fundamental Rights of the European Union)

In Case C-700/21,

REQUEST for a preliminary ruling under Article 267 TFEU from the Corte costituzionale (Constitutional Court, Italy), made by decision of 18 November 2021, received at the Court on 22 November 2021, in the proceedings relating to the execution of a European arrest warrant issued against

**O.G.**

intervener:

**Presidenza dei Consiglio dei Ministri,**

THE COURT (Grand Chamber),

composed of K. Lenaerts, President, L. Bay Larsen, Vice-President, K. Jürimäe (Rapporteur), C. Lycourgos, E. Regan, L.S. Rossi and L. Arastey Sahún, Presidents of Chamber, J.-C. Bonichot, S. Rodin, I. Jarukaitis, N. Jääskinen, M. Gavalec and Z. Csehi, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: C. Di Bella, Administrator,

having regard to the written procedure and further to the hearing on 11 October 2022,

after considering the observations submitted on behalf of:

- the Italian Government, by G. Palmieri, acting as Agent, and by S. Faraci, avvocato dello Stato,
  - the Hungarian Government, by M.Z. Fehér and R. Kissné Berta, acting as Agents,
  - the Austrian Government, by A. Posch, J. Schmoll and F. Werni, acting as Agents,
  - the European Commission, by G. Gattinara and S. Grünheid, acting as Agents,
- after hearing the Opinion of the Advocate General at the sitting on 15 December 2022,
- gives the following

## **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Article 1(3) and Article 4(6) 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) and of Article 7 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in proceedings concerning the execution of a European arrest warrant issued against O.G. for the purposes of enforcing a custodial sentence.

### **Legal context**

#### *European Union law*

##### *Framework Decision 2002/584*

3 Recital 6 of Framework Decision 2002/584 states:

'(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.'

4 Article 1 of that framework decision, headed 'Definition of the European arrest warrant and obligation to execute it', provides:

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

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

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 [TEU].'

5 Article 4 of the framework decision, entitled 'Grounds for optional non-execution of the European arrest warrant', provides in point 6:

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

...

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’.

*Directive 2003/109/EC*

6 Recital 12 of Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (OJ 2004 L 16, p. 44) states:

‘In order to constitute a genuine instrument for the integration of long-term residents into society in which they live, long-term residents should enjoy equality of treatment with citizens of the Member State in a wide range of economic and social matters, under the relevant conditions defined by this Directive.’

7 Article 12 of that directive provides:

‘1. Member States may take a decision to expel a long-term resident solely where he/she constitutes an actual and sufficiently serious threat to public policy or public security.

2. The decision referred to in paragraph 1 shall not be based on economic considerations.

3. Before taking a decision to expel a long-term resident, Member States shall have regard to the following factors:

(a) the duration of residence in their territory;

(b) the age of the person concerned;

(c) the consequences for the person concerned and family members;

(d) links with the country of residence or the absence of links with the country of origin.

...’

*Framework Decision 2008/909/JHA*

8 Recital 9 of Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (OJ 2008 L 327, p. 27) states:

‘Enforcement of the sentence in the executing State should enhance the possibility of social rehabilitation of the sentenced person. In the context of satisfying itself that the enforcement of the sentence by the executing State will serve the purpose of facilitating the social rehabilitation of the sentenced person, the competent authority of the issuing State should take into account such elements as, for example, the person’s attachment to the executing State, whether he or she

considers it the place of family, linguistic, cultural, social or economic and other links to the executing State.’

9 Article 3(1) to (3) of that framework decision provides:

‘1. The purpose of this Framework Decision is to establish the rules under which a Member State, with a view to facilitating the social rehabilitation of the sentenced person, is to recognise a judgment and enforce the sentence.

2. This Framework Decision shall apply where the sentenced person is in the issuing State or in the executing State.

3. This Framework Decision shall apply only to the recognition of judgments and the enforcement of sentences within the meaning of this Framework Decision. ...’

10 Article 25 of the framework decision, entitled ‘Enforcement of sentences following a European arrest warrant’, provides:

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

### ***Italian law***

11 Legge n. 69 – Disposizioni per conformare il diritto interno alla decisione quadro 2002/584/GAI del Consiglio, del 13 giugno 2002, relativa al mandato d’arresto europeo e alle procedure di consegna tra Stati membri (Law No 69 – Provisions to bring national law into line with Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States), of 22 April 2005 (GURI No 98 of 29 April 2005), in the version applicable to the facts in the main proceedings (‘Law No 69/2005’), provides in Article 18a, entitled ‘Grounds for the optional refusal of surrender’, that the Corte d’appello (Court of Appeal, Italy) may refuse the surrender requested by the foreign authority, *inter alia* ‘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 an Italian national or a national of another Member State of the [European] Union, who is legally and actually resident or staying in Italy, on the condition that the [Corte d’appello (Court of Appeal)] orders that sentence or detention to be executed in accordance with its domestic law’.

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

12 On 13 February 2012, the Judecătoria Braşov (Court of First Instance, Braşov, Romania) issued a European arrest warrant against O.G., a Moldovan national, for the purposes of executing a custodial sentence. O.G. was convicted and sentenced, by a final judgment, in Romania to five years’ imprisonment for tax evasion and misappropriation of funds due for payment of income tax and value added tax (VAT), committed in his capacity of director of a limited liability company between September 2003 and April 2004.

13 By a first judgment of 7 July 2020, the Corte d'appello di Bologna (Court of Appeal, Bologna, Italy) ordered that O.G. be surrendered to the issuing judicial authority. O.G. appealed to the Corte di cassazione (Supreme Court of Cassation) which set aside that judgment and referred the case back to Corte d'appello di Bologna (Court of Appeal, Bologna) inviting it to consider the possibility of raising questions as to the constitutionality of Article 18a of Law No 69/2005.

14 Finding that, in his defence, O.G. had proof that met the legal standard necessary to demonstrate his stable family and employment situation in Italy, that court raised questions as to the constitutionality of that provision before the Corte costituzionale (Constitutional Court, Italy), which is the referring court in this case.

15 That court states that the Corte d'appello di Bologna (Court of Appeal, Bologna) has in particular observed that the ground of optional non-execution of the European arrest warrant, laid down in Article 4(6) of Framework Decision 2002/584 has the aim of ensuring that the sentence has a genuine function of social rehabilitation. That presupposes the maintenance of the sentenced person's family and social connections so that he or she may properly reintegrate into society after the end of his or her sentence. However, Article 18a of Law No 69/2005 unduly restricts the scope of Article 4(6) to the extent that the option of refusing surrender, in the case of a European arrest warrant for the purposes of executing a custodial sentence or detention order, is limited to Italian nationals and nationals of other Member States only, to the exclusion of third-country nationals, even where the latter prove that they have established stable economic, occupational and emotional ties in Italy. By imposing surrender on third-country nationals residing permanently in Italy for the purposes of executing a custodial sentence abroad, Article 18a of Law No 69/2005 is inconsistent with the rehabilitation purpose of the sentence, or with the right to family life of the person concerned, enshrined in Article 7 of the Charter.

16 The referring court points out, in addition, that the Corte d'appello di Bologna (Court of Appeal, Bologna) found that there was no justification for the difference in treatment, laid down in the national legislation, between, on the one hand, a third-country national residing permanently in Italy and who is subject to a European arrest warrant issued for the purposes of the execution of a custodial sentence or detention order, who could not serve such a sentence in Italy and, on the other hand, a third-country national, also residing permanently in Italy but subject to an arrest warrant issued for the purposes of criminal prosecution who, by contrast, could serve in Italy a sentence pronounced in the issuing State at the end of the trial.

17 The order for reference states that the Presidente del Consiglio dei ministri (President of the Council of Ministers, Italy), represented and defended by the Avvocatura Generale dello Stato (Attorney General's Office, Italy), intervened in the main proceedings to seek a declaration that the constitutional questions relating to Article 18a of Law No 69/2005 are inadmissible, or confirmation of the legality of that provision, submitting, inter alia, that the objective of social rehabilitation of the person concerned cannot limit the scope of the general principle of mutual recognition of decisions, which requires that the refusal to execute a European arrest warrant is to be regarded as an exception to the general rule that the warrant be executed, and that that provision does not infringe the various provisions of primary EU law which protect citizens of the Union against discrimination on grounds of nationality. It observed, furthermore, that the rehabilitation of the person concerned does not constitute the specific objective of Framework Decision 2002/584.

18 In the order for reference the Corte costituzionale (Constitutional Court) considers that, before determining whether the national legislation at issue in the main proceedings complies with the Italian constitution, it is necessary to examine whether that legislation is consistent with EU law and, in particular, with Article 4(6) of Framework Decision 2002/584, read in the light of Article 7

of the Charter. It observes that the case-law of the Court has already recognised that some limits on the grounds for refusal set out in Member States' legislation were justified to the extent that they contribute to strengthening the surrender system established by that framework decision in respect of the area of freedom, security and justice.

19 However, Article 4(6) of that framework decision should be interpreted in accordance with fundamental rights and the fundamental principles of EU law recognised by Article 6 TEU, the respect of which is a condition for the validity of any act of EU law. Thus, the execution of a European arrest warrant must not entail the infringement of the fundamental rights of the person concerned.

20 The Corte costituzionale (Constitutional Court) also recalls that, according to the case-law of the Court of Justice, in areas of EU law which are completely harmonised, such as the European arrest warrant established by Framework Decision 2002/584, Member States cannot make implementation subject to national standards for the protection of fundamental rights, since that is likely to harm the primacy, unity and effectiveness of EU law. It notes, however, that doubts remain as to the possibility for a Member State to exclude, absolutely and automatically, from the benefit of a provision which is intended to transpose the ground of optional non-execution laid down in Article 4(6) of that framework decision, a third-country national who legally and actually resides on Italian territory and who is the subject of a European arrest warrant for the purposes of the execution of a custodial sentence or detention order, given that, in the light of the Court's case-law, the principle of non-discrimination on grounds of nationality could not be relied on by that national.

21 Lastly, it notes that the interest of a third-country national residing or staying legally in a Member State not to be removed from his or her family and social network is protected by EU law and by the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950.

22 In those circumstances, the Corte costituzionale (Constitutional Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Does Article 4(6) of the [Framework Decision 2002/584] interpreted in the light of Article 1(3) of that framework decision and Article 7 of the [Charter], preclude legislation, such as the Italian legislation, that – in the context of a European arrest warrant procedure for the purpose of executing a custodial sentence or detention order – absolutely and automatically precludes the executing judicial authorities from refusing to surrender third-country nationals staying or residing in Italian territory, irrespective of the links those individuals have with that territory?’

(2) If the answer to the first question is in the affirmative, what criteria and conditions must be used to establish that such links are to be regarded as so significant as to require the executing judicial authority to refuse surrender?’

### **The request for an expedited procedure**

23 The referring court requested that the present reference for a preliminary ruling be dealt with under the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court of Justice.

24 While recognising that O.G., who is the subject of the arrest warrant at issue in the main proceedings, is not subject to any measure involving deprivation of liberty, that court submits, first, that this case raises questions of interpretation of central aspects of the European arrest warrant

mechanism and, second, that the interpretation sought is likely to have general consequences for the authorities required to cooperate in the context of the European arrest warrant as well as for the rights of requested persons.

25 Article 105(1) of the Rules of Procedure provides that, at the request of the referring court or tribunal or, exceptionally, of his or her own motion, the President of the Court may decide, after hearing the Judge-Rapporteur and the Advocate General, that a reference for a preliminary ruling is to be determined pursuant to an expedited procedure where the nature of the case requires that it be dealt with within a short time.

26 In the present case, on 20 December 2021, the President of the Court decided, after hearing the Judge-Rapporteur and the Advocate General, to refuse the request made by the referring court, referred to in paragraph 23 of this judgment.

27 It is settled case-law that the application of the expedited preliminary ruling procedure does not depend on the nature of the dispute in the main proceedings as such, but on exceptional circumstances particular to the case in question, which must establish that a ruling on those questions is a matter of exceptional urgency (judgment of 31 January 2023, *Puig Gordi and Others*, C-158/21, EU:C:2023:57, paragraph 27).

28 The fact that the case concerns one or more essential aspects of the surrender mechanism established by Framework Decision 2002/584 is not a reason that establishes the exceptional urgency necessary to justify an expedited procedure. The same is true of the fact that a large number of persons are potentially concerned by the questions referred (see, to that effect, judgment of 21 December 2021, *Randstad Italia*, C-497/20, EU:C:2021:1037, paragraph 39).

29 Nevertheless, having regard to the nature and importance of the questions referred, the President of the Court decided that the present case should be given priority treatment in accordance with Article 53(3) of the Rules of Procedure.

## **Consideration of the questions referred**

### ***The first question***

30 By its first question, the referring court asks, in essence, whether Article 4(6) of Framework Decision 2002/584 must be interpreted as precluding a law of a Member State transposing that provision which excludes, absolutely and automatically, any third-country national staying or residing in the territory of that Member State from benefiting from the ground for optional non-execution of a European arrest warrant laid down in that provision, without the executing judicial authority being able to assess the connections that that national has with that Member State.

31 At the outset, it should be recalled that Framework Decision 2002/584 seeks, by the establishment of a simplified and effective system for the surrender of persons convicted or suspected of having infringed criminal law, to facilitate and accelerate judicial cooperation with a view to contributing to the attainment of the objective set for the European Union of becoming an area of freedom, security and justice, and has as its basis the high level of trust which must exist between the Member States (see, to that effect, judgment of 18 April 2023, *E.D.L. (Refusal on the ground of illness)*, C-699/21, EU:C:2023:295, paragraph 32 and the case-law cited).

32 In the field governed by that framework decision, the principle of mutual recognition, which, according to recital 6 thereof, constitutes the ‘cornerstone’ of judicial cooperation in criminal

matters, is expressed in Article 1(2) of the framework decision, which lays down the rule that Member States are required to execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of the framework decision (see, to that effect, judgment of 18 April 2023, *E.D.L. (Refusal on the ground of illness)*, C-699/21, EU:C:2023:295, paragraph 33 and the case-law cited).

33 It follows, first, that the executing judicial authorities may refuse to execute a European arrest warrant only on grounds stemming from Framework Decision 2002/584, as interpreted by the Court. Second, while execution of the European arrest warrant constitutes the rule, refusal to execute is intended to be an exception which must be interpreted strictly (judgment of 18 April 2023, *E.D.L. (Refusal on the ground of illness)*, C-699/21, EU:C:2023:295, paragraph 34 and the case-law cited).

34 That framework decision explicitly sets out, in Article 3, grounds for mandatory non-execution of a European arrest warrant and, in Articles 4 and 4a, grounds for optional non-execution of such a warrant (judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 40 and the case-law cited).

35 As regards the grounds for optional non-execution of the European arrest warrant listed in Article 4 of Framework Decision 2002/584, it is clear from the case-law of the Court that, when transposing that framework decision into national law, the Member States have a margin of discretion. Therefore, they are free to transpose those grounds into their domestic law or not to do so. They may also choose to limit the situations in which the executing judicial authority may refuse to execute a European arrest warrant, thereby facilitating the surrender of requested persons, in accordance with the principle of mutual recognition set out in Article 1(2) of that framework decision (judgment of 29 April 2021, *X (European arrest warrant – Ne bis in idem)*, C-665/20 PPU, EU:C:2021:339, paragraph 41 and the case-law cited).

36 That is the case, in particular, for Article 4(6) of Framework Decision 2002/584, which provides that the executing judicial authority may refuse to execute a European arrest warrant if it has been issued for the purposes of executing 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.

37 In the light of the discretion recalled in paragraph 35 of this judgment, Member States, when implementing Article 4(6) of that framework decision, may limit, in a manner consistent with the essential rule stated in Article 1(2) thereof, the situations in which it is possible to refuse to surrender a person who falls within the scope of that Article 4(6) (see, to that effect, judgment of 6 October 2009, *Wolzenburg*, C-123/08, EU:C:2009:616, paragraph 62 and the case-law cited).

38 However, the discretion available to Member States when transposing the ground for optional non-execution of a European arrest warrant laid down in Article 4(6) of Framework Decision 2002/584 is not unlimited.

39 In the first place, where a Member State chooses to transpose that ground of optional non-execution of a European arrest warrant, it is required, in accordance with Article 1(3) of the framework decision, to comply with the fundamental rights and fundamental principles referred to in Article 6 TEU.

40 Those fundamental principles include the principle of equality before the law, which is guaranteed by Article 20 of the Charter. Member States are required, in accordance with



Article 51(1) of the Charter, to comply with that provision when implementing EU law, which is the case when they transpose that ground of optional non-execution of a European arrest warrant laid down in Article 4(6) of Framework Decision 2002/584.

41 Unlike the first paragraph of Article 18 TFEU, which is not intended to apply to cases where there may be a difference in treatment between nationals of Member States and third-country nationals, Article 20 of the Charter, does not contain any express limitation on its scope and is therefore applicable to all situations governed by EU law (see, to that effect, Opinion 1/17 (*EU-Canada CET Agreement*), of 30 April 2019, EU:C:2019:341, paragraphs 169 and 171 and the case-law cited).

42 In that regard, according to the settled case-law of the Court, equality before the law, set out in Article 20 of the Charter, is a general principle of EU law that requires that similar situations must not be treated differently and that different situations must not be treated in the same manner, unless such different treatment is objectively justified (see, to that effect, judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)*, C-930/19, EU:C:2021:657, paragraph 57 and the case-law cited).

43 The requirement that situations must be comparable, for the purpose of determining whether there is a breach of the principle of equal treatment, must be assessed in the light of all the elements that characterise them and, in particular, in the light of the subject matter and purpose of the act that makes the distinction in question, while the principles and objectives of the field to which the act relates must also be taken into account. In so far as the situations are not comparable, a difference in treatment of the situations concerned does not infringe equality before the law as enshrined in Article 20 of the Charter (judgment of 2 September 2021, *État belge (Right of residence in the event of domestic violence)*, C-930/19, EU:C:2021:657, paragraph 58 and the case-law cited).

44 It is thus necessary to assess, having regard to the purpose and aim pursued by a national law, such as that at issue in the main proceedings, whether the situation of a third-country national who is the subject of a European arrest warrant for the purposes of the execution of a custodial sentence or detention order and who is staying or resident in the executing Member State is comparable with that of a national of that Member State or that of a national of another Member State who is staying or resident in that Member State and is the subject of such a warrant.

45 It is stated in the order for reference that the difference in treatment resulting from the national law at issue in the main proceedings between Italian nationals and those of other Member States, on the one hand, and third-country nationals on the other hand, was established with a view to transposing Article 4(6) of Framework Decision 2002/584, as the Italian legislature considered that that provision covered only nationals of the executing Member State and citizens of the Union.

46 In that regard, it is clear from its wording that that provision makes no distinction depending on whether the person, who is the subject of the European arrest warrant and who is not a national of the executing Member State, is or is not a national of another Member State. The application of the ground of optional non-execution of the European arrest warrant laid down in that provision is, however, subject to two conditions being met, namely, first, that the requested person is staying in the executing Member State, is a national of or resident in that Member State and, second, that that State undertakes to execute, in accordance with its domestic law, the sentence or detention order in respect of which the European arrest warrant has been issued.

47 As regards the first of those conditions, the Court has already held that a requested person is 'resident' in the executing Member State when that person has established his or her actual place of

residence there, and is ‘staying’ there when, following a stable period of presence in that Member State, he or she has acquired connections with that State which are of a similar degree to those resulting from residence (see, to that effect, judgments of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 43 and the case-law cited, and of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 34 and the case-law cited). It follows that, having regard to that first condition, a third-country national, who is the subject of a European arrest warrant and who is staying or resident in the executing Member State, is in a situation comparable with that of a national of that Member State or that of a national of another Member State who is staying or resident in that Member State and is the subject of such a warrant.

48 As regards the second of those conditions, it follows from the wording of Article 4(6) of Framework Decision 2002/584 that any refusal to execute a European arrest warrant presupposes an actual undertaking on the part of the executing Member State to enforce the custodial sentence imposed on the requested person (judgment of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraph 35 and the case-law cited). The second condition does not therefore contain any element upon which it is possible to base a distinction between the situation of a third-country national and that of a citizen of the Union, where both are the subject of a European arrest warrant for the purposes of executing a custodial sentence or a detention order and where both are staying or resident in the territory of a Member State.

49 Where the executing judicial authority finds that both of the abovementioned conditions recalled in paragraph 44 of this judgment have been satisfied, it must then ascertain whether there is a legitimate interest to justify the sentence imposed in the issuing Member State being enforced on the territory of the executing Member State. That assessment allows that authority to take account of the objective pursued by Article 4(6) of Framework Decision 2002/584 which consists, according to well-established case-law, of increasing the requested person’s chances of reintegrating into society when the sentence imposed on him or her expires (judgment of 13 December 2018, *Sut*, C-514/17, EU:C:2018:1016, paragraphs 33 and 36 and the case-law cited). Union citizens and third-country nationals who satisfy the first condition set out in paragraph 47 of this judgment are likely to have, subject to the checks which the executing judicial authority must make, comparable chances for social rehabilitation if, when they are the subject of a European arrest warrant for the purposes of executing a custodial sentence or detention order, they serve their sentence or are detained in the executing Member State.

50 Accordingly, it follows from the wording of Article 4(6) of Framework Decision 2002/584 and the objective pursued by that provision that it cannot be assumed that a third-country national, who is the subject of such a European arrest warrant and who is staying or resident in the executing Member State, is necessarily in a situation that is different from that of a national of that Member State or that of a national of another Member State who is staying or resident in that Member State and is the subject of such a warrant. On the contrary, it must be held that those persons may be in a comparable situation for the purpose of applying the ground of optional non-execution provided for in that provision, when they are integrated to a certain extent in the executing Member State.

51 Therefore a national law transposing Article 4(6) of that framework decision cannot be regarded as complying with the principle of equality before the law enshrined in Article 20 of the Charter if it treats differently, on the one hand, its own nationals and other citizens of the Union and, on the other hand, third-country nationals, by refusing the latter, absolutely and automatically, the benefit of the ground for optional non-execution of a European arrest warrant provided for in that provision, even where those third-country nationals are staying or resident in the territory of that Member State and without account being taken of the degree of integration of those third-country nationals within the society of that Member State. It is not possible for such a difference in

treatment to be regarded as being objectively justified, within the meaning of the case-law recalled in paragraph 42 of this judgment.

52 However, there is nothing to preclude a Member State, when transposing Article 4(6) of Framework Decision 2002/584 into its domestic law, from making the benefit of the ground of optional non-execution of a European arrest warrant that that provision lays down subject to the condition that that national has stayed or resided continuously in that Member State for a minimum period of time (see, by analogy, judgment of 6 October 2009, *Wolzenburg*, C-123/08, EU:C:2009:616, paragraph 74), provided that that condition does not go beyond what is necessary to ensure that the requested person is integrated to a certain degree in the executing Member State.

53 In the second place, a transposition of Article 4(6) of Framework Decision 2002/584 cannot have the effect of depriving the executing judicial authority of the discretion necessary to be able to decide whether or not, having regard to the intended objective of social reintegration referred in paragraph 49 of this judgment, to refuse to execute the European arrest warrant.

54 In that regard, as recalled in paragraphs 46 to 49 of this judgment, the Court has already held that, in order to ascertain whether, in a given case, the executing judicial authority may refuse to execute a European arrest warrant, the latter must, as a first step, determine whether the requested person, where that person is not a national of the executing Member State, is staying or resident in that Member State, within the meaning of Article 4(6) of Framework Decision 2002/584 as transposed into national law, and is thus within its scope of application. As a second step, and only where the executing judicial authority finds that that person falls within that scope of application, it must be able to ascertain whether there is a legitimate interest to justify the sentence imposed in the issuing Member State being enforced on the territory of the executing Member State (see, to that effect, judgment of 17 July 2008, *Kozłowski*, C-66/08, EU:C:2008:437, paragraph 44).

55 In the present case, it is clear from the order for reference that Article 18a of Law No 69/2005, which is intended to transpose Article 4(6) of Framework Decision 2002/584 into Italian law, restricts the application of the ground of optional non-execution of a European arrest warrant set out in that latter provision solely to Italian nationals and nationals of other Member States. Third-country nationals are thus excluded, absolutely and automatically, from benefiting from that ground, without any discretion being left in that regard to the executing judicial authority even though Article 4(6) does not limit the scope of application of that ground solely to Union citizens.

56 Thus, where the person subject to a European arrest warrant for the purposes of executing a custodial sentence or detention order is a third-country national, such a national law deprives the executing judicial authority of the power to assess, taking into account the specific circumstances of each case, whether the connections between that person and the executing Member State are sufficient for the objective of social rehabilitation pursued by that provision to be better achieved by that person serving his or her sentence in that Member State and thus undermines that objective.

57 It follows that Article 4(6) of Framework Decision 2002/584 precludes, also for that reason, such a national law intended to transpose that provision.

58 Having regard to all the foregoing considerations, the answer to the first question is that Article 4(6) of Framework Decision 2002/584, read in conjunction with the principle of equality before the law enshrined in Article 20 of the Charter, must be interpreted as precluding a law of a Member State transposing that Article 4(6), which excludes, absolutely and automatically, any third-country national staying or resident in the territory of that Member State from benefiting from

the ground for optional non-execution of a European arrest warrant laid down in that provision, without the executing judicial authority being able to assess the connections that that national has with that Member State.

### *The second question*

59 By its second question the referring court asks, in essence, whether Article 4(6) of Framework Decision 2002/584 must be interpreted as meaning that, in order to assess whether it is appropriate to refuse to execute a European arrest warrant issued against a third-country national who is staying or resident in the territory of the executing Member State, the executing judicial authority must carry out an assessment of the elements capable of showing that there are, between that person and the executing Member State, connections demonstrating that he or she is sufficiently integrated into that State and, if so, what are those elements.

60 As recalled in paragraph 49 of this judgment, where the executing judicial authority finds that both of the conditions under Article 4(6) of Framework Decision 2002/584 have been satisfied, it must then ascertain whether there is a legitimate interest which justifies the sentence or detention order imposed in the issuing Member State being enforced on the territory of the executing Member State.

61 Therefore, it is for the executing judicial authority to make an overall assessment of all of the specific elements characterising the situation of the requested person capable of showing that there are connections between that person and the executing Member State that may lead to the conclusion that that person is sufficiently integrated into that State such that the execution, in the executing Member State, of the custodial sentence or detention order pronounced against him or her in the issuing Member State will contribute to the attainment of the objective of social rehabilitation pursued by Article 4(6) (see, to that effect, judgment of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 43).

62 In that context, as the Court has already held, it is appropriate, inter alia, to take into account Framework Decision 2008/909 (see, to that effect, judgment of 11 March 2020, *SF (European arrest warrant – Guarantee of return to the executing State)*, C-314/18, EU:C:2020:191). In particular, recital 9 of that framework decision provides an illustrative list of elements capable of allowing that judicial authority to satisfy itself that the execution of the sentence by the executing Member State will serve the purpose of facilitating the social rehabilitation of the sentenced person. Those elements include, in essence, the attachment of that person to the executing Member State, and whether that Member State is the centre of his or her family life and his or her interests, taking into account, inter alia, his or her family, linguistic, cultural, social or economic links to that State.

63 Since the objective pursued by Article 4(6) of Framework Decision 2002/584 is the same as that referred to in that recital and is pursued by Article 25 of Framework Decision 2008/909, which refers to the ground of optional non-execution provided for in that Article 4(6), those elements are also relevant in the context of the overall assessment that the executing judicial authority must make when it applies that ground.

64 In particular, where the requested person has established the centre of his or her family life and his or her interests in the executing Member State, it must take into account the fact that the social rehabilitation of that person after he or she has served his or her sentence is assisted by the fact that he or she may maintain regular and frequent contact with his or her family and persons close to him or her.

65 Where the requested person is a third-country national, it is also necessary to take into account the nature, duration and conditions of that person's stay in the executing Member State.

66 In that regard, the Court has held that those elements may be taken into account already at the stage of the examination of the first condition laid down by Article 4(6) of Framework Decision 2002/584, referred to notably in paragraph 47 of this judgment. It is for the executing judicial authority, in order to determine whether, in a specific situation, there are connections between the requested person and the executing Member State which lead to the conclusion that that person is staying or resident in that State, within the meaning of that Article 4(6), to make an overall assessment of various objective elements characterising the situation of that person, which include, in particular, the duration, nature and conditions of the presence of the requested person in that State and the family and economic connections which he or she has with that State (judgment of 5 September 2012, *Lopes Da Silva Jorge*, C-42/11, EU:C:2012:517, paragraph 43 and the case-law cited).

67 Those elements are also amongst those that are capable of demonstrating that there is a legitimate interest justifying the execution of the sentence or detention order imposed in the issuing Member State in the territory of the executing Member State. It follows that, at this later stage of the examination of the exception to surrender laid down in Article 4(6) of Framework Decision 2002/584, the executing judicial authority may once again take those elements into account, in particular where the stay of the person concerned in the executing Member State is derived from having the status of a third-country national who is a long-term resident, provided for by Directive 2003/109. That status constitutes, according to recital 12 of that directive, a genuine instrument for the integration of long-term residents into society in which they live and therefore constitutes a strong indication of sufficient connections having been established by the requested person with the executing Member State in order to justify a refusal to execute a European arrest warrant.

68 In the light of all the foregoing considerations, the answer to the second question is that Article 4(6) of Framework Decision 2002/584 must be interpreted as meaning that, in order to assess whether it is appropriate to refuse to execute the European arrest warrant issued against a third-country national who is staying or resident in the territory of the executing Member State, the executing judicial authority must make an overall assessment of all the specific elements that characterise that national's situation which are capable of showing that there are, between that person and the executing Member State, connections demonstrating that he or she is sufficiently integrated into that State such that the execution in that Member State of the custodial sentence or detention order pronounced against that person in the issuing Member State will contribute to increasing the chances of social rehabilitation after that sentence or detention order has been executed. Those elements include the family, linguistic, cultural, social or economic links that the third-country national has with the executing Member State as well as the nature, duration and conditions of his or her stay in that Member State.

### **Costs**

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

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

**1. Article 4(6) of Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, read in**

**conjunction with the principle of equality before the law, enshrined in Article 20 of the Charter of Fundamental Rights of the European Union,**

**must be interpreted as precluding a law of a Member State transposing that Article 4(6), which excludes, absolutely and automatically, any third-country national staying or resident in the territory of that Member State from benefiting from the ground for optional non-execution of a European arrest warrant laid down in that provision, without the executing judicial authority being able to assess the connections that that national has with that Member State.**

## **2. Article 4(6) of Framework Decision 2002/584**

**must be interpreted as meaning that, in order to assess whether it is appropriate to refuse to execute the European arrest warrant issued against a third-country national who is staying or resident in the territory of the executing Member State, the executing judicial authority must make an overall assessment of all the specific elements that characterise that national's situation which are capable of showing that there are, between that person and the executing Member State, connections demonstrating that he or she is sufficiently integrated into that State such that the execution in that Member State of the custodial sentence or detention order pronounced against that person in the issuing Member State will contribute to increasing the chances of social rehabilitation after that sentence or detention order has been executed. Those elements include the family, linguistic, cultural, social or economic links that the third-country national has with the executing Member State as well as the nature, duration and conditions of his or her stay in that Member State.**

[Signatures]

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\* Language of the case: Italian.