ECJ: No Automatic Refusal to Enforce in absentia Convictions

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News

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On 21 May 2026, the ECJ delivered its judgment in Case C-447/24 *(Hölder-mann)* concerning the recognition and enforcement of a custodial sentence imposed following a trial at which the sentenced person did not appear in person in the issuing State (*in absentia* conviction). Interpreting Art. 9(1)(i) of Framework Decision 2008/909 as amended by Framework Decision 2009/299/JHA, the Court first held that a sentenced person can be regarded as "aware of the scheduled trial" where the summons was served on defence counsel authorised both to conduct the defence and to accept service in the issuing State.

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Second, the ECJ confirmed that Art. 9(1)(i) establishes an optional ground for non-recognition. Member States therefore cannot require recognition and enforcement to be refused solely because none of the situations expressly listed in that provision has been established.

Third, in such cases, the executing authority must remain able to assess, in the light of all the circumstances, whether recognition and enforcement would nevertheless be compatible with the sentenced person's rights of defence. In this assessment, the executing authority must take into account, among other factors, that the person personally requested enforcement in the Member State of his/her nationality and where he/she has his/her centre of interests.

Background of the case and questions referred

Under Art. 9(1)(i) of Framework Decision 2008/909/JHA on the mutual recognition of custodial sentences, as amended by Framework Decision 2009/299/JHA, the executing State may refuse to recognise and enforce a judgment following a trial at which the sentenced person did not appear in person. The person's absence cannot, however, justify refusal where the case falls within one of three situations:

- The person was personally summoned or otherwise officially informed in due time of the date and place of the trial (point (i));
- The person, aware of the scheduled trial, had instructed a legal counsellor who represented him or her at it (point (ii)); or
- The person, after being served with the decision and informed of the right to a retrial or appeal, expressly accepted the decision or did not request a retrial or appeal within the applicable time frame (point (iii)).

The German implementation law (Section 84b(1) no. 2 of *the Gesetz über die internationale Rechtshilfe in Strafsachen* (*IRG*, Law on international mutual legal assistance in criminal matters)) turns the optional ground for non-recognition of the Framework Decision into a mandatory bar outside those situations.

SO, a German national, was sentenced by a Polish court in 2019 to one year's imprisonment for participation in an organised criminal group; his appeal was dismissed in 2022. He attended only a small number of the numerous first-instance hearings held over more than four years and did not appear at the appeal hearing, where a lawyer from his instructed defence counsel's firm represented him. Having designated his counsel's professional address as his address for service in Poland, the summons to the appeal hearing was duly served at this address.

At SO's request, the Polish court transmitted the judgment to Germany for enforcement, as Germany is both his Member State of nationality and the centre of his interests. However, the *Landgericht Berlin* (Regional Court, Berlin) refused the Berlin prosecutor's application for declaration of enforceability, holding that SO had neither been properly summoned to nor represented at several first instance hearings. At appeal, the *Kammergericht Berlin* (Higher Regional Court, Berlin, Germany) considered that SO's conduct could weigh in favour of recognition and enforcement, but believed that Section 84b IRG leaves no discretion to take such circumstances into account. In its reference for preliminary ruling, the *Kammergericht* sought guidance from the ECJ on the following issues:

- Whether service of the summons on a legal counselor instructed both to conduct the defence and to accept service can satisfy the requirement that the person concerned was aware of the scheduled trial;
- Whether the person must already know the scheduled date and place of the hearing when instructing that lawyer or whether it is sufficient that those details are communicated in due time before the hearing;
- Whether Art. 9(1)(i) of Framework Decision 2008/909 (as amended) precludes Section 84b(1) no. 2 IRG, which requires recognition and enforcement to be refused where the person did not appear at the relevant hearing unless one of the statutory exceptions applies;
- Whether, where none of the situations listed in Art. 9(1)(i)(i)–(iii) of the Framework Decision applies, the executing authority can take into account that the person concerned personally requested enforcement in the Member State of his or her nationality and centre of interests.

The ECJ's reasoning on service and knowledge of the scheduled hearing

As regards the first question, the ECJ held, by analogy with its judgment in *Kachev* (C-135/25 PPU), that service of the summons at the professional address of legal counsel authorised both to conduct SO's defence and to accept service was tantamount to informing SO personally and therefore satisfied the awareness requirement in Art. 9(1)(i)(ii) of Framework Decision 2008/909 (as amended). In such circumstances, recognition and enforcement do not infringe the rights of the defence or the rights to an effective remedy and a fair trial guaranteed by Arts. 47 and 48(2) of the EU Charter of Fundamental Rights, since SO can be regarded as having voluntarily and unequivocally waived his right to appear in person.

On the second question, the ECJ clarified the temporal relationship between the mandate and the person's awareness of the scheduled hearing. The different language versions of Art. 9(1)(i)(ii) leave open whether "awareness" must relate to the specific date and place of the hearing or merely to the fact that a trial will take place. Consistently with point (i) of the same provision and Art. 8(2) of Directive 2016/343, the judges in Luxembourg held that the person concerned must be informed in due time of the scheduled date and place of the hearing. This information need not, however, have been available when the mandate to the legal counsellor was conferred. Requiring knowledge of the hearing date at the time when the defence counsel was instructed would impose an excessive formal requirement and could require a mandate covering the entire proceedings to be confirmed or renewed once the hearing was scheduled. This would be particularly impracticable in appeal proceedings, where the counsel will generally be instructed before the date and place of the hearing are known.

The ECJ's reasoning on the optional character of the ground for non-recognition

Regarding the third question, the ECJ emphasised that Art. 9(1)(i) of Framework Decision 2008/909 is drafted in permissive terms, providing that the executing authority "*may*" refuse recognition and enforcement. Referring to its case law on the identically worded Art. 4a(1) of the Framework Decision on the European Arrest Warrant, the ECJ held that Art. 9(1)(i) exhaustively and uniformly defines the circumstances in which a judgment rendered in the person's absence must nevertheless be recognised and enforced. Accordingly, where one of the situations listed in points (i)–(iii) is established, refusal on that ground is precluded; but where none applies, refusal remains optional rather than mandatory.

National legislation that converts this discretion into an automatic bar to recognition and enforcement, such as Section 84b(1) no. 2 IRG, prevents the executing authority from assessing, in the light of all the circumstances of the individual case, whether the person's rights of defence were nevertheless respected. Such legislation is therefore incompatible with Art. 9(1)(i). The executing authority must interpret this domestic law as far as possible in conformity with the wording and purpose of Framework Decision 2008/909, without adopting an interpretation *contra legem*.

The ECJ's reasoning on the factors for exercising discretion

According to the ECJ, a request by the sentenced person for enforcement of the sentence in the Member State of his or her nationality and centre of interests does not, in itself, constitute a waiver within the meaning of Art. 9(1)(i)(iii) of Framework Decision 2008/909 (as amended), as it does not necessarily demonstrate that the person has relinquished any available right to challenge the conviction.

It can nevertheless be taken into account as part of the overall assessment of whether recognition and enforcement would impair the rights of the defence. Together with the sentenced person's conduct more generally, the request may be regarded as an indication that recognition and enforcement would not impair those rights, even where none of the situations expressly listed in points (i)–(iii) of Art. 9 of the Framework Decision has been established.

Put in focus

In *Höldermann*, the ECJ transposed its interpretation of Art. 4a(1) of the Framework Decision on the European Arrest Warrant to the instrument on mutual recognition of custodial sentences (identically worded Art. 9(1)(i) of Framework Decision 2008/909). This parallel is particularly close, as both provisions were introduced by Framework Decision 2009/299 with the aim of harmonising the rules governing decisions rendered following a trial at which the person concerned did not appear in person.

The situations expressly listed in Art. 9(1)(i) therefore define the circumstances in which refusal based on the person's absence is precluded, but the ECJ clarified that they do not impose an obligation to refuse recognition and enforcement where the requirements could not be established. In such cases, the executing authority must retain discretion to assess, in the light of all the circumstances of the individual case, whether recognition and enforcement would nevertheless be compatible with the person's rights of defence. The Court adopted the same interpretation in its parallel judgment delivered on the same day in *Khuzdar* (C-95/24), following a reference from an Italian court.

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