



Observatoire ARGA

INTERNATIONAL ANALYTICAL REPORT

D-07. Extradition Following Convictions in Absentia:

Defence Safeguards and Retrial Guarantees

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Executive summary

A conviction in absentia neither automatically bars extradition nor provides a sufficient basis for surrender. The decisive issue is the process that produced it: whether the accused knew about the trial, could participate, knowingly waived that right, instructed counsel to conduct the defence, and can obtain a fresh determination of the charge after transfer. The same description, in absentia, can cover both informed non-participation with effective representation and conviction of someone who first discovered the case when arrested abroad.

This report examines European standards and their application as at 28 September 2026. It compares three legal settings: treaty-based extradition, surrender between EU Member States under a European arrest warrant, and United Kingdom law as illustrated by Supreme Court judgments delivered in 2024. European Court of Human Rights (ECtHR) case law addresses participation safeguards and the exceptional threshold of unfairness capable of preventing transfer. Court of Justice of the European Union (CJEU) decisions explain the specific conditions governing mutual recognition. The British cases illustrate judicial scrutiny of deliberate absence and the substance of an entitlement to retrial.

The principal practical difficulty arises when evidence that a formal procedure was followed is treated as proof that a safeguard was effective. Delivery to a relative does not necessarily establish that the accused received the summons. Appointment of counsel does not necessarily establish authority to conduct the defence in place of personal participation. Permission to submit an application does not necessarily establish an entitlement to a fresh hearing. These distinctions require examination before transfer, since afterwards the dispute about access to justice may take place from foreign custody.

Observatoire ARGAs proposes a sequential method: identify the transfer regime; reconstruct the proceedings through each level of jurisdiction; examine notification and representation; determine the remedy available; compare assurances with domestic law; and assess other obstacles separately. Each disputed element should be linked to a document, a precise objection and a procedural action capable of resolving the uncertainty. General criticism of a foreign justice system is less persuasive than a demonstrated contradiction between a promised right and the conditions governing its exercise.

1. Scope and research method

1.1. Decisions covered by the report

For this report, a conviction in absentia means a conviction following proceedings at which the person did not appear personally. This is a working factual description. It does not replace domestic categories governing trial in absence, representation or restoration of an expired appeal period. The legal classification may differ even where the outward sequence of events is similar.

The focus is on requests for transfer to enforce a sentence. Where a conviction has been set aside and extradition is sought for renewed prosecution, the inquiry changes: it is necessary to establish which instrument is currently enforceable and which safeguards govern the prospective trial. The mere inclusion of an earlier conviction in the papers does not make every subsequent request a request to enforce that conviction.

The research draws on a treaty, EU legislation, and judgments of the ECtHR, CJEU and UK Supreme Court. It examines Sejdivic, Othman, Melloni, Dworzecki, Tupikas, IR, Bertino and Merticariu. The cases were selected to compare distinct legal questions; they are not a statistical sample of extradition proceedings. Recommendations and hypothetical scenarios are ARGAs own analysis and are not presented as judicial holdings.

1.2. The unit of analysis: a safeguard in particular proceedings

Practical assessment requires more than identifying the country and citing its criminal procedure code. A rule must be connected to the individual, decision and procedural stage. Domestic law may provide a retrial for one category of absent defendants while excluding another. The existence of a general provision does not establish the requested person's eligibility.

The inquiry therefore concerns the legal ability to use a remedy on the established facts, rather than its abstract existence. An opinion should distinguish confirmed information from disputed propositions. The absence of a signature on a summons is an observation; lack of knowledge of the proceedings requires assessment of the evidence as a whole. Conversely, an authority's assertion of notification should identify the method, recipient and timing of the communication.

Judgments are used within the questions they determine. A finding that a State violated participation rights in its own criminal proceedings is not equivalent to a prohibition on extradition from another State. An interpretation of EU law does not automatically govern extradition to a third country. Keeping those boundaries clear makes comparative authority useful without replacing the applicable legal basis.

2. Three transfer regimes

2.1. Treaty-based extradition

Article 3 of the Second Additional Protocol to the European Convention on Extradition permits refusal where minimum defence rights were not respected in the proceedings in absentia. A sufficient assurance of a retrial safeguarding the defence removes that particular obstacle. The provision applies within the relevant treaty relationship; participation, reservations and other refusal grounds require separate examination. Under this provision, the requested State's communication of the conviction is not treated as formal notification for the requesting State's criminal procedure. [1, Art. 3]

Case preparation should begin with a concise map of the applicable instruments. It should identify the States, the legal basis and purpose of the request, and the provision addressing conviction in absence. Domestic rules governing consideration of the request should then be examined. This avoids extensive argument under a standard that does not govern the particular proceedings.

A retrial assurance addresses the consequences of the original absence. It does not automatically resolve questions concerning treatment in detention, political persecution or the admissibility of evidence. Submissions should state these grounds separately so that a favourable conclusion on one is not mistaken for an answer to the others.

2.2. The European arrest warrant

Article 4a of Framework Decision 2002/584/JHA, as amended by Framework Decision 2009/299/JHA, creates specific rules for enforcing a sentence following a trial without personal attendance. Its alternatives concern notification and warning of the consequences; knowledge and defence by mandated counsel; failure to use an available remedy after service of the decision; or a guaranteed remedy after surrender. Where the relevant alternative is satisfied, refusal on absence grounds is restricted. Failure to satisfy an alternative does not itself make refusal mandatory under Article 4a. [2, Art. 2]

The practical inquiry is which alternative is relied upon and what establishes it. Incomplete elements of different alternatives cannot simply be combined into one complete ground. If receipt of the summons is unproven, reliance on counsel requires separate examination of the representation conditions. If a future remedy is relied upon, its scope and availability become central.

2.3. United Kingdom proceedings

The British judgments are examined as applications of domestic legislation in their particular procedural setting. Following the United Kingdom's withdrawal from the EU, contemporary surrender arrangements require separate examination of the applicable regime and transitional rules. The 2024 decisions should not be presented as evidence that the United Kingdom continues to participate in the European arrest warrant system on its former terms. The Supreme Court itself identifies that transition. [9; 10]

Regime	Principal question	Matters requiring verification
Treaty extradition	Defence rights and an adequate retrial	Treaty applicability, reservations and domestic procedure
European arrest warrant	Satisfaction of a particular Article 4a alternative	Warrant contents, notification and representation
UK proceedings	Requirements of the applicable domestic legislation	Absence, waiver and entitlement to a fresh determination

3. Original participation: Sejdic

In *Sejdovic v. Italy* [GC], 1 March 2006, the applicant challenged his own conviction in absence. The Grand Chamber found neither an established unequivocal waiver nor sufficiently certain access to a fresh determination with his participation. It found a violation of Article 6 while confirming that trial in absence is not inherently incompatible with the Convention. This was a judgment concerning the trial State's responsibility, not a separate ruling refusing extradition. [3, paras 81-107]

The case's practical value lies in the order of inquiry. First establish what the person knew and what opportunity was available. Then assess the person's conduct. Only then consider the consequences of non-participation. Starting from the assertion that someone absconded risks treating a procedural status assigned by a foreign authority as proof of informed waiver.

A defence file should separate knowledge into distinct events: notice of suspicion, notice of the charge, notification of the scheduled hearing and receipt of the judgment. Each has its own date, content and supporting evidence. Someone may know that a complaint is being investigated without knowing that charges have been brought, still less when the trial will take place. Describing all these events as awareness conceals the critical gap.

The opposite error is to deny any knowledge because of one defect in service. Correspondence with counsel, instructions concerning the defence or the accused's own statements may change the assessment. A sound opinion should examine those materials too. A position is stronger when it explains adverse evidence than when it leaves that evidence unanswered.

ARGA recommends a chronology of knowledge. Each official document should be accompanied by the confirmed date of actual receipt, or a statement that receipt is unconfirmed. Its informational content should be recorded separately. This method helps the court understand the connection between notification and the opportunity to prepare a defence, rather than merely the fact of dispatch.

4. International transfer: Othman

Othman (Abu Qatada) v. the United Kingdom, 17 January 2012, concerned deportation to Jordan, rather than ordinary treaty extradition. Applying the exceptional flagrant-denial-of-justice test, the ECtHR held that transfer would violate Article 6 because of the real risk that evidence obtained by torturing third parties would be used at the retrial. Availability of a new trial did not remove that risk. The threshold is substantially higher than an ordinary procedural breach. [4, paras 258-287]

This distinction directly affects the argument. A complaint about an error in the original trial and an Article 6 objection to transfer perform different functions. The latter requires an explanation of why the anticipated defect would destroy the essence of a fair hearing. An unconnected list of deficiencies may be weaker than one documented obstacle of fundamental significance.

The analytical model should separate access to a new trial from the quality of that trial. The first concerns reopening the determination of the charge. The second concerns the conditions in which the court will decide it. If the evidential basis remains unchanged and includes material whose use is incompatible with fundamental guarantees, a promise of another hearing does not resolve the problem.

This does not mean that every evidential admissibility dispute can prevent extradition. An individual case requires information identifying the material, the reason it is tainted, its anticipated use and the available means of excluding it. Country information may support that argument but cannot replace its connection to the proceedings. A separate account tracing the disputed evidence from its acquisition to its potential use after transfer can be valuable.

The relief sought must also be precise. The requested State's court determines whether transfer is permissible; it does not necessarily have power to reconsider the foreign conviction on its merits. The application should therefore seek an available remedy: refusal, further information, examination of an assurance or a stay permitted by the applicable law. Evidential analysis loses practical force when it ends with a request the deciding authority cannot grant.

5. Notification: from delivery records to knowledge

5.1. Dworzecki and service on another person

In Dworzecki, C-108/16 PPU, 24 May 2016, the CJEU considered delivery of a summons to an adult household member. Where the warrant does not establish whether and when it was actually passed to the accused, that delivery does not by itself satisfy the relevant Article 4a condition. Personal summons and official notification have autonomous meanings under EU law. The judgment does not invalidate every form of delivery through another person. [5, operative part]

Service should be examined through four elements: address, recipient, content and timing. A document may reach the correct address but be received by someone who no longer communicates with the accused. A recipient may confirm passing on an envelope without knowing its contents. The accused may receive the summons after the hearing. Each situation calls for a different objection and different supporting evidence.

The most useful additional information is usually specific: the recipient's signature, relationship to the accused, date of onward delivery, delivery log, copy of the enclosure or explanation of subsequent steps. Asking whether notification was proper often produces another legal conclusion. Asking who received which document and when makes its factual basis examinable.

5.2. Electronic delivery and public notices

Digital files require particular care in distinguishing dispatch, technical delivery and access by the intended recipient. A server record may establish that a message reached an account while leaving ownership and use of the account unresolved. Practical analysis should establish how the address was registered, relevant access history, whether the attachment was included and the wording of the non-attendance warning.

These questions form a proposed method for examining evidence, not a universal rule invalidating electronic service. Domestic law and the applicable international standard determine each method's legal significance. Demonstrating a specific break in the communication chain is more useful than rejecting the technology as a whole.

Publication of a summons on an official website requires similar precision. The inquiry should establish why that method was selected, what steps preceded publication and what was known about the person's address. A preserved copy and publication date matter. A link to the current page may not establish what was available before the hearing.

5.3. Translation and preparation time

Receipt of a document does not fully describe the quality of notification. Comprehensibility, clarity about the hearing's purpose and time to respond matter when examining whether participation was possible. It is useful to establish whether the recipient could understand that the charge would be determined, rather than that a preliminary interview or administrative procedure was scheduled.

The evidence bundle should retain the original and translation together. Where a particular warning is disputed, that passage should be translated accurately and in full. Counsel's summary should not replace the summons itself. If translations differ, the terminology and its legal significance should be explained rather than silently selecting the more favourable wording.

6. Representation: the lesson of Melloni

Melloni, C-399/11, 26 February 2013, illustrates when absence does not create an additional entitlement to demand review as a surrender condition. The case concerned a person aware of the proceedings and defended by chosen lawyers. The CJEU held that, where Article 4a's conditions are satisfied, execution cannot be made conditional on additional review by invoking a higher domestic constitutional standard. The inquiry concerns the provision's specific conditions. [6, paras 40-64 and operative part]

The practical implication is to examine counsel's authority, not merely attendance. Relevant matters include the origin and scope of the mandate, its connection to the particular stage and the defence actually conducted. Authority to obtain documents does not necessarily authorise representation at trial without the client. Conversely, detailed instructions on defence strategy may carry greater significance than the absence of a separate statement consenting to non-attendance.

A mechanical distinction between retained and appointed counsel should be avoided. The mode of appointment alone does not answer every question. The inquiry concerns how representation arose and operated, and what the accused knew. For State-appointed counsel, it is useful to establish whether the person was informed, whether contact occurred and what counsel did.

Confidential communications require careful evidential handling. Disclosure of the entire strategic correspondence is not always necessary. Confirmation of the date of instruction, scope of authority and existence or absence of contact may suffice. The extent of disclosure should be considered with local counsel, maintaining the distinction between proof of representation and the substance of legal advice.

Poor performance and absence of authority are different objections. Dissatisfaction with a chosen lawyer does not automatically turn informed non-participation into lack of notification. An ineffective-assistance argument should identify the specific deficiency, its procedural significance and its relationship to the applicable transfer standard. A general allegation that counsel did nothing adds little without the hearing record and an account of the actions available.

7. Identifying the decisive hearing: Tupikas

In Tupikas, C-270/17 PPU, 10 August 2017, the CJEU considered proceedings involving several levels of jurisdiction. For Article 4a, the relevant stage is the one finally determining guilt and sentence after reconsidering the merits in fact and law. Personal attendance at first instance therefore does not necessarily dispose of absence from a subsequent determination on the merits. The court's formal designation does not alone establish its function. [7, paras 98-99 and operative part]

In practice, this requires a map of the judicial decisions. For each, record the issues examined, the court's powers, personal attendance, counsel's role and the outcome. Establish whether the court could examine evidence, alter factual findings and impose a sentence. Cassation confined to legal issues and an appeal involving full reconsideration of the charge require different analysis.

Requests sometimes contain only the first-instance judgment and certification that it became final. That selection may obscure a later decision changing the penalty or determining the charge anew.

The defence should seek the full list of proceedings and decisions rather than infer the procedural history from a statement of finality.

Mixed proceedings require particular care. A court might leave guilt findings intact while reassessing sentencing circumstances. The precise subject and scope of that stage must then be established under the applicable case law. An automatic assertion that absence from appeal prevents surrender is as inaccurate as the opposite assertion that attendance at first instance removes every issue.

A chronological table is often more useful than an extended narrative. It identifies where the attendance dispute arose and why it relates to the decision being enforced. It also permits scrutiny of whether the promised remedy addresses the relevant decision or only an earlier judgment superseded by a later one.

8. Evasion and a fresh trial: IR

In IR, C-569/20, 19 May 2022, the CJEU interpreted Articles 8 and 9 of Directive 2016/343. A person who could not be located and informed must in principle have access to a fresh examination after notification of the conviction. An exception requires precise, objective indications of sufficient awareness and deliberate obstruction of official notification. Merely describing someone as having absconded is insufficient. This concerns trial safeguards, not an independent refusal ground under the European arrest warrant framework. [8, paras 47-59 and operative part; 11, Arts 8-9]

The practical task is to distinguish carelessness from intentional exclusion of oneself from the proceedings. Moving home, changing a telephone number or lacking registration may have several explanations. An inference of intentional evasion needs a connection between the conduct and what the person knew at the time. Earlier conduct cannot be assigned a meaning based solely on information acquired later.

Nevertheless, evidence of deliberate obstruction must be answered directly. If the accused received the charge, discussed the future trial and then intentionally made official contact impossible, denial of receipt of the final summons may not suffice. Analysis should address the whole sequence and distinguish lack of documentary proof from lack of knowledge.

Representatives should prepare two parallel chronologies: the authorities' attempts to establish contact and the person's actions after receiving relevant information. Dates supported only by a party's explanation should be identified as such. Documentary precision is particularly important where intent is inferred from the proximity of a move to the initiation of proceedings or scheduling of a hearing.

The Directive and surrender rules perform different functions. One governs procedural safeguards within its scope; the other determines the conditions for executing an international request. Invoking a general European standard does not establish how the individual can exercise it after transfer. That transition from a rule to an available right is central to the following sections.

9. Bertino: investigation is not waiver of trial

In *Bertino v Public Prosecutor's Office, Italy* [2024] UKSC 9, 6 March 2024, the person knew of an investigation but was not informed of the subsequent prosecution or trial date. The Supreme Court rejected the finding of deliberate absence: the relevant proceedings had not begun when he left. It allowed the appeal, connecting deliberate absence with unequivocal waiver rather than treating failure to report an address change as decisive. [9, paras 44-59]

This is a strong practical illustration of chronology's importance. The same conduct, changing address, may be assessed differently before and after notification of proceedings. A statement that someone failed to provide a new address should therefore be read alongside the document explaining the obligation and consequences of non-compliance.

A request for further information should separate the relevant questions: when the charge was communicated, when the trial was scheduled, what warning was given and what subsequent communications were sent. If the answers concern different years and stages, that should be made explicit. General language about awareness can conceal a gap of several years.

The decision does not establish a right to ignore official requirements. Its analytical significance is that breach of an obligation and waiver of a fundamental procedural right do not necessarily coincide. Moving from one to the other requires legal and factual justification. A foreign request may compress that step into one sentence; that is the inference which needs to be unpacked and examined.

The British standard of proof applied in the case belongs to the relevant domestic proceedings. It should not be described without explanation as the universal standard in all extradition courts. A comparative opinion should distinguish the general reasoning about informed waiver from the features attributable to the particular national legislation.

10. Merticariu: entitlement versus permission to apply

In *Merticariu v Judecatoria Arad, Romania* [2024] UKSC 10, 6 March 2024, an opportunity to seek reopening was offered, but entitlement depended on a later assessment of the absence. The Supreme Court interpreted section 20(5) as requiring entitlement to retrial, not merely permission to apply. It distinguished procedural steps from determination of a substantive eligibility condition. The appeal was allowed; the Court stated that discharge from the extradition proceedings should have been ordered. [10, paras 50-66]

This distinction makes it possible to examine an assurance by its legal effect. Statements that a person may apply, can seek reopening or will have an application considered describe access to a procedure. They do not necessarily establish that the court must grant a fresh determination once formal requirements are met. At the same time, requiring an application in a prescribed form does not itself make the right illusory.

ARGA's proposed method separates technical and substantive conditions. Technical conditions concern filing, signature, recipient and deadline. Substantive conditions decide whether the person will be admitted to a fresh trial at all: whether absence is considered unintentional, former counsel is

treated as authorised, or the explanation is accepted. This classification helps frame a precise question to the foreign authority.

A contradiction between the assurance and the source's existing position is particularly significant. If the request alleges deliberate waiver and domestic law excludes such people from retrial, a general reference to the reopening provision leaves the problem unresolved. An explanation is needed of why the circumstance asserted by the source will not prevent review in this case.

The requested State's court should not replace the foreign court in deciding every question arising in future proceedings. Equally, transferring the uncertainty along with the person is not a convincing answer to the requirement to examine the available right. A useful assurance should resolve the central contradiction before surrender: identify the applicable basis and confirm that the disputed restriction will not close access to a fresh determination.

11. Examining a retrial assurance

11.1. Who gives the assurance and what does it secure?

An assurance's reliability depends on the issuing authority's competence and its relationship to applicable law. The proposed analysis identifies the author, legal powers, addressee and precise undertaking separately. A statement of a desirable future outcome differs from confirmation of an existing right. If the promised action belongs to an independent court, the analysis must explain how another authority's undertaking secures it.

Three texts should be compared: the international request, the domestic legal provision and the individual assurance. Contradictions should be recorded precisely in the working file and their significance explained in the submission. For example, the law may link reopening to absence of a mandate to counsel while the request asserts that a mandate existed. The assurance must address that contradiction rather than simply repeat the provision's title.

11.2. What will be reconsidered?

The remedy should be described through the reviewing court's powers. Can it reassess facts and evidence, hear the accused, examine defence material and change the outcome? If the procedure is confined to a technical error, calling it an appeal does not establish adequate restoration of participation. Conversely, a remedy with a different domestic name may perform the necessary function.

An opinion should avoid demanding repetition of every act in the original proceedings. The question is whether the fresh determination sufficiently remedies the identified defect. Establish which findings remain binding, which evidence can be challenged and which new material is admissible. Those limits reveal the actual scope of the defence opportunity.

11.3. Time limits and access to the file

An assurance must be usable under the practical conditions of transfer. The event starting the deadline should be identified: receipt of the judgment, formal service after return, arrival or another act. It matters who records that event and by what document. The next question is whether the person can contact counsel and obtain the necessary papers in time.

A short deadline and a large file create an organisational problem even where a right exists. Preparation should identify counsel, arrangements for obtaining the decision and the application's minimum requirements. This does not amount to accepting the lawfulness of surrender. Preparing an alternative course preserves rights if the transfer objections fail.

Assurance element	Question to examine	Useful supporting material
Competence	Can the author secure the undertaking?	Legal powers and an official response
Access	Will this person obtain a fresh determination?	Individual confirmation of eligibility
Scope	Which facts and evidence can be reconsidered?	Legislation and the reviewing court's powers
Deadline	Which event starts time running?	Service rule and record of the relevant date
Implementation	Who arranges access to the defence?	Counsel's contact and file-access procedure

12. The court bundle: documents and evidential connections

12.1. The core materials

A substantive bundle begins with the current request, the decision to be enforced and documents establishing its finality. Notification records, representation material and the law governing review follow. Each item should answer a particular question. Excessive general material can obscure the one instrument determining the outcome.

ARGA recommends a concise index linking the source's assertion, the document, the objection and its relevance to the applicable ground. If personal service is asserted but an annex records another person's signature, the index should lead directly to that page. If the dispute concerns the appeal's scope, the relevant statutory text and appellate decision should take priority.

Documents limiting the defence position matter as much as those supporting it. An instruction to counsel to continue the defence may weaken an argument that representation was unauthorised. A later assertion of ignorance may conflict with earlier correspondence. Such inconsistencies should be addressed before filing, maintaining accuracy rather than removing inconvenient material from the factual account.

12.2. Foreign-law opinions

An expert opinion is useful when it answers a narrow disputed question and explains the sources supporting the conclusion. It should identify the relevant version of the law, temporal applicability, judicial interpretation and effect of the individual circumstances. A general review of the code rarely resolves whether a particular person will receive a retrial.

Questions should be framed around examinable facts: whether the identified mandate prevents reopening, whether facts can be reconsidered, or whether the court may refuse on a ground already asserted in the request. Description of the law should be distinguished from a prediction about institutional behaviour. Even an experienced specialist should not present an expected outcome as an unconditional entitlement.

12.3. Translation and document versions

Cross-language work is especially sensitive to expressions of entitlement, possibility and discretion. Translating permission to apply as entitlement to retrial changes the judicial inquiry. Likewise, served, sent and deemed served are not interchangeable. Where terminology is disputed, the original should be supplied with an explanation of the translation.

A foreign authority's clarification should be retained alongside its earlier answer. New language may remove an uncertainty or create another one. A short comparison, with dates and an explanation of the source's current position, helps the court. It also avoids continuing to argue against an assertion the requesting authority has already withdrawn.

13. Hypothetical situations and procedural choices

The situations below are ARGAs' analytical examples. They do not describe clients or individual reported cases.

13.1. A summons sent to a former address

A person moves before being charged. A relative signs for the summons, with no confirmation that it was passed on. The source relies on a domestic rule of valid service. The first step is to establish the summons's contents, the relationship with the recipient and the timing of any actual communication. Evidence of the move assists the chronology but does not itself prove lack of knowledge.

Under the European arrest warrant regime, those facts should be compared with the Article 4a alternative invoked. In treaty extradition, the issue should be framed through the applicable defence-rights and retrial provision. The inquiry may support an objection to surrender or establish an adequate right to a new hearing. An opinion should not decide the outcome before examining that second issue.

13.2. Counsel attended without contact with the accused

The papers identify appointed counsel but contain no information about contact or instructions. The source asserts that counsel's participation secured the defence. The basis of appointment, scope of authority and record of actual work should be requested. Appointed representation should not automatically be described as fictitious: absence of contact may have different procedural explanations.

If informed representation is relied upon as a surrender condition, that is the element requiring an answer. If counsel had authority but performed inadequately, a different argument and evidential basis arise. Combining the situations makes assessment harder and allows an answer to the simpler question while leaving the central issue unresolved.

13.3. Review is promised but the law contains an exclusion

The request alleges intentional evasion and promises an opportunity to seek reopening. Domestic law permits refusal where absence was deliberate. Repeating a general question about the right to appeal is insufficient. The response must address whether that exclusion applies to the requested person and the basis for any confirmation that it does not.

If only the code is supplied, the uncertainty remains. If individual confirmation is provided, its author's competence and legal effect should be examined. The request for clarification should identify the documentary contradiction rather than express general distrust. This lets the deciding court see precisely which information remains necessary.

13.4. Attendance at first instance, absence on appeal

The person attended the initial trial and subsequently left. An appeal altered the ultimate sentence after considering the case. Before analysing notification, establish the stage's function: which questions the court could decide and which it actually decided. Only then assess the significance of absence for transfer.

If the relevant judgment is missing, obtaining it becomes a priority. A short certificate of finality does not replace examination of the appeal's powers and reasoning. Even before reaching a final conclusion, this work identifies the missing document and explains why the proposed surrender basis cannot be assessed without it.

14. Detention and urgent protection

Objections to extradition and the lawfulness of detention require separate consideration. Case management should maintain two calendars: deadlines for challenging transfer and deadlines for reviewing restrictions on liberty. An application concerning one should not be assumed to address the other. The court's powers and the effect of an appeal depend on the applicable law.

Where a transfer date exists, an urgent application should begin with confirmation of that date and the current procedural position. It should then identify available domestic remedies, their use and outcome, and the nature of the risk. An extensive case-law review cannot replace the extradition decision, evidence that it is enforceable and confirmation of the scheduled transfer.

The ECtHR indicates Rule 39 measures exceptionally where there is an imminent risk of irreparable harm to a Convention right. This is a separate urgent procedure; submitting a request is not equivalent to obtaining a measure. An ordinary dispute about a conviction in absence does not itself establish that relief will be granted. Specific evidence of risk and urgency is required. [12]

The practical plan should include examination of the decision on the urgent request and its exact terms. The addressee, duration and any obligation to supply further information must be identified. If no measure is indicated, that does not determine every substantive argument, but it requires immediate reassessment of the procedural options remaining.

Coordination becomes particularly important when several jurisdictions are involved. One lawyer may oppose surrender, another prepare an application against the conviction, and a third gather risk evidence. A common chronology and current list of operative decisions reduce contradictory

submissions. Each representative's authority and responsibility for deadlines should nevertheless be explicit.

15. International alerts and the consequences of refusal

An extradition decision and an INTERPOL record perform different functions. A domestic court determines transfer in the proceedings before it; the CCF examines data processing within its competence. A refusal therefore needs separate submission and analysis if an international record is to be changed. It should not be treated as automatically deleting every connected entry. [13]

The refusal ground matters for subsequent action. An inadequate particular assurance, a temporary procedural obstacle and a fundamental defect in the prosecution may require different explanations. The full reasoned decision and evidence of its finality should be retained. A brief statement that extradition has been prohibited often loses distinctions relevant in another country.

After the proceedings, ARGAs recommends listing the remaining legal instruments and statuses: foreign conviction, domestic arrest warrant, international record, restriction on liberty and immigration position. The operative decision and competent authority should be identified for each. This is an organisational model; specific consequences depend on the relevant jurisdiction's law.

Even a favourable outcome should not be described as an international acquittal. The court may have decided only whether a retrial was available, without examining the allegation's truth. Accurate communication is necessary both for the client and for later proceedings: exaggerated language may contradict the decision itself and weaken subsequent submissions.

16. Comparative findings from eight cases

Case	Issue determined	Practical use
Sejdovic	Participation and an available fresh hearing	Separate fugitive status from proven waiver
Othman	Flagrant denial of justice on transfer	Examine the quality of the prospective trial
Dworzecki	Summons delivered to a household member	Establish receipt and timing of onward delivery
Melloni	Defence by mandated counsel	Test Article 4a conditions before seeking extra assurances
Tupikas	Relevant stage in successive proceedings	Examine the later court's function
IR	An unlocated accused and access to retrial	Assess knowledge and intentional evasion
Bertino	Investigation and a subsequently scheduled trial	Reconstruct the chronology of knowledge
Merticariu	Entitlement and a contingent application	Identify substantive barriers to access

The comparison reveals three independent levels of examination. The first is factual: what happened concerning notification and representation. The second is legal: which standard governs those facts. The third concerns implementation: what action will actually be available after transfer. A strong opinion connects all three without substituting one for another.

Evidence should match the question. A postal record assists with delivery; legislation explains review conditions; a competent authority's assurance addresses the right's application. None is universal. Reading them together matters particularly where the source uses the same language of guarantee for promises with different legal force.

Comparative practice also exposes the limits of general slogans. Neither the importance of cooperation nor invocation of fundamental rights removes the need to examine the particular condition. A focused approach assists both sides: it enables rejection of an unfounded objection while identifying a defect that genuinely prevents surrender.

17. Observatoire ARGA proposals

17.1. Information accompanying requests

A request based on conviction in absence should include structured information on the decisive stage, notification, representation and review. Each entry should identify the supporting document as well as the legal conclusion. This would reduce clarification requests caused by statements lacking an examinable factual basis.

Representation information should describe the authority to act and counsel's actual participation. Review information should specify scope, eligibility conditions and the starting point for time limits. Multi-stage proceedings require a list identifying which decision determines the sentence to be enforced. The proposal concerns information quality, not imposition of one criminal procedure code across different States.

17.2. Scrutiny of assurances

ARGA proposes assessing each undertaking as a reasoned answer to the identified defect. If the problem is uncertainty about access to retrial, the answer should explain why this person has that right. If the problem concerns the reviewing court's powers, the relevant provision and limits of reconsideration should be supplied.

A finding that an assurance is sufficient should make clear which undertaking was relied upon. Precise wording facilitates verification of compliance and reporting of obstacles. General promises of fair treatment should not replace an answer to a narrow procedural question.

17.3. Defence organisation and follow-up

Representatives should maintain a common deadline and responsibility table, a separate map of judicial decisions and a record of disputed source assertions. This is especially valuable after urgent arrest, when documents arrive in stages and in different languages. It allows the position to be updated without losing earlier evidence.

If transfer occurs, follow-up should record service of the decision, filing of the application, access to counsel and the decision on reopening. These facts allow assessment of the individual assurance's implementation. If extradition is refused, work on outstanding warrants and records should be completed rather than ending with an announcement of the favourable ruling.

18. Conclusion

A conviction in absence requires examination of participation, informed waiver and the means of restoring the defence. Its label does not decide whether transfer is permissible. The strongest analysis identifies a particular gap: between dispatch and receipt, appointment and authority, or permission to apply and entitlement to a determination.

The cases support a practical principle: uncertainty should be expressed in verifiable terms before transfer. That requires identifying the relevant stage, collecting its documents and asking a question to which the foreign authority can give a legally meaningful answer. This method saves time while maintaining the required level of protection.

For international cooperation, procedural quality matters more than the volume of correspondence. A detailed undertaking consistent with domestic law can remove an obstacle; repeated general assurances can leave it intact. ARGAs proposed method seeks transfer decisions grounded in an identifiable right and verified circumstances, with consequences that remain capable of being followed and examined.

Annex A. Questions for an individual assessment

1. Which treaty or other mechanism governs transfer, and what is the current request's purpose?
2. Which decision determines the sentence to be enforced, and at what stage were fact and law finally reconsidered?
3. How, when and in which language did the person learn of the charge, trial date and consequences of non-attendance?
4. Who received the documents, to whom were they passed, and what establishes actual communication to the accused?
5. Who mandated counsel, for which stage and with what authority?
6. What did counsel do, and which documents establish participation?
7. Which particular remedy is available after transfer, and what can be reconsidered?
8. Does access depend on a new determination about evasion or representation?
9. Who gave the assurance, what powers does that authority have, and is the undertaking consistent with the law?
10. When does the application period begin, and who ensures access to the decision and legal assistance?
11. Which independent risks remain even if a retrial is provided?
12. Which transfer, detention and urgent-protection decisions are currently operative?
13. Which warrants, records and domestic restrictions will remain after these proceedings conclude?

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Sources consulted on 28 September 2026. The analysis covers selected European legal regimes. Practical models and recommendations are proposals by Observatoire ARGAs.